

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)



STATE OF MAINE
DEPARTMENT
OF THE
SECRETARY OF STATE

SHENNA BELLOWS
SECRETARY OF STATE

February 1, 2024

Suzanne Gresser, Executive Director
Maine State Legislative Council
115 State House Station
Augusta, ME 04333-0115

Dear Executive Director Gresser:

Maine Revised Statutes Title 5, §8053-A(5), provides that by February 1st of each year, the Secretary of State shall provide the Executive Director of the Legislative Council with lists, by agency, of all rules adopted by each agency in the previous calendar year. I am pleased to present the report for 2023.

The list must include, for each rule adopted, the following information:

- A) The statutory authority for the rule and the rule chapter number and title;
- B) The principal reason or purpose for the rule;
- C) A written statement explaining the factual and policy basis for each rule;
- D) Whether the rule was routine technical or major substantive;
- E) If the rule was adopted as an emergency; and
- F) The fiscal impact of the rule.

In 2023, there were 255 rule adoption filings, 2 fewer than in 2022. Following is a list of the agencies with the number of adopted rule filings:

Umbrella number	Agency	Total Adopted	Routine Technical	Major Substantive	Emergency	Non Emergency
01	Department of Agriculture, Conservation and Forestry	27	27	0	12	15
02	Department of Professional and Financial Regulation	54	53	1	0	54
03	Department of Corrections	2	2	0	0	2
05	Department of Education	3	0	3	1	2
06	Department of Environmental Protection	9	6	3	0	9
09	Department of Inland Fisheries and Wildlife	9	9	0	1	8
10, 14	Department of Health and Human Services	36	34	2	2	34
12	Department of Labor	8	8	0	0	8
13	Department of Marine Resources	21	21	0	8	13
16	Department of Public Safety	22	22	0	1	21
18	Department of Administrative and Financial Services	12	12	0	0	12
19	Department of Community and Economic Development	5	5	0	0	5
26	Office of the Attorney General	1	1	0	0	1

Umbrella number	Agency	Total Adopted	Routine Technical	Major Substantive	Emergency	Non Emergency
28	Office of State Treasurer	1	0	1	0	1
29	Secretary of State	9	9	0	2	7
65	Public Utilities Commission	3	3	0	0	3
90-351	Workers' Compensation Board	3	3	0	0	3
90-590	Maine Health Data Organization	4	2	2	0	4
90-699	Maine Retirement Savings Board	1	1	0	0	1
94-178	Kim Wallace Loan Program	1	1	0	0	1
94-270	Commission on Governmental Ethics and Election Practices	2	0	2	0	2
94-293	Baxter State Park Authority	1	1	0	0	1
94-411	Public Employees Retirement System	7	7	0	0	7
94-412	Saco River Corridor Commission	3	3	0	0	3
94-457	Finance Authority of Maine	3	3	0	0	3
94-649	Comm. on Indigent Legal Services	4	2	2	1	3
95-648	Efficiency Maine Trust	1	1	0	0	1
99-346	Maine State Housing Authority	2	2	0	0	2
99-420	Maine Turnpike Authority	1	1	0	0	1
	Totals for 2023	255	239	16	28	227

The report is presented in multiple files:

- 1) An Excel spreadsheet, sorted by agency, that includes for each rule -- the agency name, umbrella unit and the rule chapter number, title, statutory authority, effective date, the rule type (i.e., routine technical or major substantive) and whether the rule is an emergency rule. The internal log number used by the APA office also is included so that this Bureau can easily find the complete filing if requested; and
- 2) A Word document for each agency that includes the above information for each rule, as well as the principal reason or purpose for adopting the rule, the basis statement and the fiscal impact of the rule. This information was extracted from the documentation that is required to be filed with our office for each adoption.

If further information is requested for any rule, this office can provide the complete filing which includes additional information including the dates and locations of any hearings held on the proposed rules and public comments received regarding the rule.

If you have any questions regarding the *Administrative Procedure Act*, please contact me at 626-8400 or Julie Flynn, Deputy Secretary of State, at the Bureau of Corporations, Elections and Commissions at 624-7736.

Sincerely,



Shenna Bellows
Secretary of State

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-214	01	001	Department of Agriculture, Conservation and Forestry	266	Hemlock Woolly Adelgid Quarantine	7 MRS, Chapter 409, § 2301-2303	Routine Technical	No	10/30/2023
2023-215	01	001	Department of Agriculture, Conservation and Forestry	272	European Larch Canker Quarantine	7 MRS, Chapter 409, § 2301-2303	Routine Technical	No	10/30/2023
2023-024	01	001	Department of Agriculture, Conservation and Forestry, Division of Animal and Plant Health	274	Rules for Growing Hemp	7 MRS Chapter 406-A §2231	Routine Technical	No	2/19/2023
2023-240	01	001	Department of Agriculture, Conservation and Forestry	275	Emerald Ash Borer Quarantine	7 MRS, Chapter 409, § 2301-2303	Routine Technical	No	11/26/2023
2023-027	01	001	Department of Agriculture, Conservation and Forestry, Animal Welfare Program	702	Rules for the Low Income Spay Neuter Program	§3910-B	Routine Technical	No	3/1/2023
2023-015	01	015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	3	Schedule of Minimum Prices, Order #02-23	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	1/29/2023
2023-037	01	015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	3	Schedule of Minimum Prices, Order #03-23	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	3/5/2023
2023-049	01	015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	3	Schedule of Minimum Prices, Order #04-23	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	4/2/2023
2023-058	01	015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	3	Schedule of Minimum Prices, Order #05-23	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	4/30/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-075	01	015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	3	Schedule of Minimum Prices, Order #06-23	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	5/28/2023
2023-098	01	015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	3	Schedule of Minimum Prices, Order #07-23	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	7/2/2023
2023-112	01	015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	3	Schedule of Minimum Prices, Order #08-23	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	7/30/2023
2023-134	01	015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	3	Schedule of Minimum Prices, Order #09-23	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	9/2/2023
2023-180	01	015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	3	Schedule of Minimum Prices, Order #10-23	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	10/1/2023
2023-194	01	015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	3	Schedule of Minimum Prices, Order #11-23	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	10/29/2023
2023-243	01	015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	3	Schedule of Minimum Prices, Order #12-23	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	12/1/2023
2023-254	01	015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	3	Schedule of Minimum Prices, Order #01-24	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	12/31/2023
2023-085	01	015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	27	Retail Margins	7 M.R.S. § 2954	Routine Technical	No	6/18/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-115	01	015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	61	Maine Milk Pool Administration	7 M.R.S. §3154(2)	Routine Technical	No	8/1/2023
2023-175	01	017	Department of Agriculture, Conservation and Forestry, Maine State Harness Commission	1	Administration	8 M.R.S. §§ 263-A, 268, 275-C, 279-A, 279-B, and 281	Routine Technical	No	9/25/2023
2023-176	01	017	Department of Agriculture, Conservation and Forestry, Maine State Harness Commission	3	Officials and Racetrack Personnel	8 M.R.S. §§ 263-A, 268, 275-C, 279-A, 279-B, and 281	Routine Technical	No	9/25/2023
2023-039	01	017	Department of Agriculture, Conservation and Forestry, Maine State Harness Racing Commission	7	Racing	8 MRS §§ 263-A, 268 and 279-A	Routine Technical	No	3/11/2023
2023-053	01	669	Department of Agriculture, Conservation and Forestry, Division of Forest Health and Monitoring	35	Browntail Moth Mitigation Fund	12 MRS § 8321	Routine Technical	No	4/9/2023
2023-117	01	672	Department of Agriculture, Conservation and Forestry, Land Use Planning Commission	2	Definitions	12 MRS §§ 685-A(3); 685-A(7-A); and 685-C(5)	Routine Technical	No	8/11/2023
2023-118	01	672	Department of Agriculture, Conservation and Forestry, Land Use Planning Commission	4	Rules of Practice	12 MRS §§ 684, 685-A(3), and 685-C(5); and 5 MRS § 8051	Routine Technical	No	8/11/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-074	01	672	Department of Agriculture, Conservation and Forestry, Land Use Planning Commission	10	Land Use Districts and Standards: Land Use Guidance Maps (Amended Zoning Maps): Zoning Petition: ZP 155E, USDA Forest Service, White Mountain National Forest	12 MRS §§ 685-A(7-A), 689	Routine Technical	No	5/19/2023
2023-119	01	672	Department of Agriculture, Conservation and Forestry, Land Use Planning Commission	10	Land Use Districts and Standards	12 MRS § 685-A(3); 685-A(7-A); and 685-C(5)	Routine Technical	No	8/11/2023
2023-091	02	030	Bureau of Consumer Credit Protections	701	Establishment of Registration and Renewal Fees and Licensing Requirements for Maine's Check Casher/Currency Exchanger Licensing and Requirements for Registration Through the Nationwide Multistate Licensing System (NMLS)	32 M.R.S. §§ 6133(3) and 6133(4)	Routine Technical	No	6/25/2023
2023-137	02	030	Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection	702	Establishment of Registration and Renewal Fees and Registration Requirements for Maine's Employee Leasing Company Registration and Requirement for Registration Through the Nationwide Multistate Licensing System (NMLS)	32 MRS. § 14053	Routine Technical	No	9/2/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-138	02	030	Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection	703	Establishment of Fees and Application Requirements for Maine's Exchange Facilitator Licensing	10 M.R.S. § 1396(2)	Routine Technical	No	9/2/2023
23023-092	02	030	Bureau of Consumer Credit Protections	704	Establishment of License and Renewal Fees and Licensing Requirements for Maine's Fair Credit Reporting Act Licensing and Requirements for Licensing Through the Nationwide Multistate Licensing System (NMLS)	10 M.R.S. § 1310-A(G)	Routine Technical	No	6/25/2023
2023-093	02	030	Bureau of Consumer Credit Protections	705	Establishment of License and Renewal Fees and Application Requirements for Maine's Debt Collector Licensing and Requirement for Licensing Through the Nationwide Multistate Licensing System (NMLS)	32 M.R.S. §11031(2)	Routine Technical	No	6/25/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-139	02	030	Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection	706	Establishment of Registration and Renewal Fees and Application Requirements for Maine's Debt Management Service Provider Registration and Requirements for Registration Through the Nationwide Multistate Licensing System (NMLS)	32 M.R.S. § 6173	Routine Technical	No	9/2/2023
2023-140	02	030	Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection	707	Establishment of License and Renewal Fees and Application Requirements for Maine's Loan Broker Licensing and Requirement for Licensing Through the National Multistate Licensing System (NMLS)	9-A M.R.S. § 10-201(4), 9-A M.R.S. § 6-105-A(l)	Routine Technical	No	9/2/2023
2023-094	02	030	Bureau of Consumer Credit Protections	708	Amendment of License and Renewal Fees For Maine's Mortgage Loan Originator Licensing Through the Nationwide Multistate Licensing System (NMLS)	9-A M.R.S. §13-103, §13-104, §13-110, §13-119	Routine Technical	No	6/25/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-095	02	030	Bureau of Consumer Credit Protections	709	Establishment of License and Renewal Fees and Application Requirements for Maine's Money Transmitter Licensing and Requirement for Licensing Through the Nationwide Multistate Licensing System (NMLS)	32 M.R.S. §6103(4)	Routine Technical	No	6/25/2023
2023-141	02	030	Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection	710	Establishment of License and Renewal Fees and Application Requirements for Maine's Payroll Processor Licensing and Requirement for Licensing Through the Nationwide Multistate Licensing System (NMLS)	10 M.R.S. § 1495-D(1-A)	Routine Technical	No	9/2/2023
2023-142	02	030	Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection	711	Establishment of License and Renewal Fees and Application Requirements for Maine's Supervised Lenders and Requirement for Licensing of All Supervised Lenders Through the Nationwide Multistate Licensing System (NMLS)	9-A M.R.S. § 2-302(1); 9-A M.R.S. § 6-105-A	Routine Technical	No	9/2/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-143	02	030	Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection	712	Establishment of License and Renewal Fees and Application Requirements for Maine's Foreclosure Purchaser Licensing	32 M.R.S. § 6193	Routine Technical	No	9/2/2023
2023-144	02	030	Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection	713	Establishment of Registration and Renewal Fees and Application Requirements for Maine's Guaranteed Asset Protection Waiver Administrators and Requirement for Registration Through the Nationwide Multistate Licensing System (NMLS)	10 M.R.S. § 1500-H(6-A)	Routine Technical	No	9/2/2023
2023-145	02	030	Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection	714	Establishment of Registration and Renewal Fees and Registration Requirements for Maine Legal Funding Providers	9-A M.R.S. § 12-106(2)	Routine Technical	No	9/2/2023
2023-146	02	030	Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection	715	Establishment of Registration and Renewal Fees and Registration Requirements for Maine Residential Real Estate Settlement Agency Registration and Requirement for Registration Through the Multistate Licensing System (NMLS)	10 M.R.S. § 1400-B(1)	Routine Technical	No	9/2/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-111	02	031	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Bureau of Insurance	835	Dental Insurance Plan Loss Ratio Reporting	24-A M.R.S. §§ 212 and 4319-B	Routine Technical	No	7/29/2023
2023-150	02	288	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine State Board for Licensure of Architects, Landscape Architects and Interior Designers	10	Definitions	32 M.R.S. §§ 214(1), 220, 221	Routine Technical	No	9/15/2023
2023-151	02	288	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine State Board for Licensure of Architects, Landscape Architects and Interior Designers	12	Licensure of Architects	32 M.R.S. §§ 214(1), 220, 221	Routine Technical	No	9/15/2023
2023-152	02	288	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine State Board for Licensure of Architects, Landscape Architects and Interior Designers	13	Licensure of Landscape Architects	32 M.R.S. §§ 214(1), 220, 221	Routine Technical	No	9/15/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-155	02	288	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine State Board for Licensure of Architects, Landscape Architects and Interior Designers	15	Application for Licensure (repeal)	32 M.R.S. §§ 214(1), 220, 221	Routine Technical	No	9/15/2023
2023-153	02	288	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine State Board for Licensure of Architects, Landscape Architects and Interior Designers	17	Grounds for Disciplinary Action	32 M.R.S. §§ 214(1), 220, 221	Routine Technical	No	9/15/2023
2023-154	02	288	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine State Board for Licensure of Architects, Landscape Architects and Interior Designers	18	Documentation	32 M.R.S. §§ 214(1), 220, 221	Routine Technical	No	9/15/2023
2023-156	02	288	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine State Board for Licensure of Architects, Landscape Architects and Interior Designers	19	Incorporation by Reference (repeal)	32 M.R.S. §§ 214(1), 220, 221	Routine Technical	No	9/15/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-036	02	288	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine State Board for Licensure of Architects, Landscape Architects and Interior Designers	12-A	Licensure by Endorsement - Architects	32 M.R.S. §§ 214(1) and 220-D and 10 M.R.S. § 8003-H	Routine Technical	No	3/5/2023
2023-008	02	313	Department of Professional and Financial Regulation, Board of Dental Practice	14	Rules for Use of Sedation and General Anesthesia	32 MRS §§ 18324, 18379	Routine Technical	No	1/15/2023
2023-010	02	331	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Funeral Service	11	Annual Renewal; Continuing Education; Inactive Status	32 MRS §§ 1451, 1501 and 1506	Routine Technical	No	1/22/2023
2023-133	02	331	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine State Board of Funeral Service	12	Transportation of Human Remains	32 M.R.S. §§ 1451 and 1501; P.L. 2021, c. 268	Major Substantive	No	9/23/2023
2023-218	02	392	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Pharmacy	1	Definitions	32 M.R.S. §§ 13721(1)(E) and 13751(3)	Routine Technical	No	11/4/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-068	02	392	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Pharmacy	4-A	Administration of Drugs and Vaccines	32 M.R.S. §§ 13720, 13723, 13831, 13832, 13833, 13834(1), 13835	Routine Technical	No	5/15/2023
2023-219	02	392	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Pharmacy	13	Operation of Retail Pharmacies	32 M.R.S. §§ 13721(1)(E) and 13751(3)	Routine Technical	No	11/4/2023
2023-220	02	392	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Pharmacy	25	Patient Counseling	32 M.R.S. §§ 13721(1)(E) and 13751(3)	Routine Technical	No	11/4/2023
2023-221	02	392	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Pharmacy	36	Licensure of Opioid Treatment Programs (Repeal)	32 M.R.S. §§ 13721(1)(E) and 13751(3)	Routine Technical	No	11/4/2023
2023-069	02	392	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Pharmacy	41	Sales of Nonprescription Drugs Through Vending Machine Outlets	32 M.R.S. §§ 13751, 13792(2)	Routine Technical	No	5/15/2023
2023-070	02	392	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Pharmacy	42	Compounding Drugs for Veterinary Office Use (New)	32 M.R.S. §§ 13720, 13723, 13722(1)(B-2)	Routine Technical	No	5/15/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-100	02	416	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Social Worker Licensure	10	Definitions	32 M.R.S. §§ 7001-A(10), 7030(2), 7053-A	Routine Technical	No	7/4/2023
2023-013	02	477	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Occupational Therapy Practice	3	Licensure by Endorsement	32 MRS §§ 2274(2), 2279(6), 10 MRS §8003-H	Routine Technical	No	1/25/2023
2023-051	02	477	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Occupational Therapy Practice	4	License Renewal and Continuing Education Requirements; Reinstatement (new)	32 MRS §§ 2274(2), 2283(4), 10 MRS §8003(5-A)(D)	Routine Technical	No	4/3/2023
2023-052	02	477	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Occupational Therapy Practice	6-A	License Renewal; Reinstatement (repeal)	32 MRS §§ 2274(2), 2283(4), 10 MRS §8003(5-A)(D)	Routine Technical	No	4/3/2023
2023-048	02	514	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Counseling Professionals Licensure	6-A	Licensure by Endorsement	32 M.R.S. § §§ 13853(2), 13858(8); 10 M.R.S. § 8003-H.	Routine Technical	No	4/1/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-014	02	477	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Occupational Therapy Practice	7	Code of Ethics	32 MRS §§ 2274(2), 2279(6), 10 MRS §8003-H	Routine Technical	No	1/25/2023
2023-157	02	658	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine Fuel Board	1	Definitions	5 M.R.S. §§ 8051, 9001(4); 32 M.R.S. §§ 18107(2); 18123(2), 18132, 18133, 18134, 18134-A, 18135, 18136, 18138, 18139	Routine Technical	No	9/16/2023
2023-158	02	658	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine Fuel Board	2	Advisory Rulings	5 M.R.S. §§ 8051, 9001(4); 32 M.R.S. §§ 18107(2); 18123(2), 18132, 18133, 18134, 18134-A, 18135, 18136, 18138, 18139	Routine Technical	No	9/16/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-159	02	658	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine Fuel Board	3	Categories and Responsibilities of Licensure	5 M.R.S. §§ 8051, 9001(4); 32 M.R.S. §§ 18107(2); 18123(2), 18132, 18133, 18134, 18134-A, 18135, 18136, 18138, 18139	Routine Technical	No	9/16/2023
2023-160	02	658	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine Fuel Board	4	Qualifications for Examinations and Licensure	5 M.R.S. §§ 8051, 9001(4); 32 M.R.S. §§ 18107(2); 18123(2), 18132, 18133, 18134, 18134-A, 18135, 18136, 18138, 18139	Routine Technical	No	9/16/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-161	02	658	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine Fuel Board	5	Use of Other Licensure Authorities	5 M.R.S. §§ 8051, 9001(4); 32 M.R.S. §§ 18107(2); 18123(2), 18132, 18133, 18134, 18134-A, 18135, 18136, 18138, 18139	Routine Technical	No	9/16/2023
2023-162	02	658	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine Fuel Board	6	Adoption of Standards	5 M.R.S. §§ 8051, 9001(4); 32 M.R.S. §§ 18107(2); 18123(2), 18132, 18133, 18134, 18134-A, 18135, 18136, 18138, 18139	Routine Technical	No	9/16/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-163	02	658	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine Fuel Board	7	Modifications of Standards	5 M.R.S. §§ 8051, 9001(4); 32 M.R.S. §§ 18107(2); 18123(2), 18132, 18133, 18134, 18134-A, 18135, 18136, 18138, 18139	Routine Technical	No	9/16/2023
2023-164	02	658	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine Fuel Board	8	Installation of Oil Burning Equipment (with Appendix)	5 M.R.S. §§ 8051, 9001(4); 32 M.R.S. §§ 18107(2); 18123(2), 18132, 18133, 18134, 18134-A, 18135, 18136, 18138, 18139	Routine Technical	No	9/16/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-165	02	658	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine Fuel Board	9	Installation of Solid Fuel Burning Equipment	5 M.R.S. §§ 8051, 9001(4); 32 M.R.S. §§ 18107(2); 18123(2), 18132, 18133, 18134, 18134-A, 18135, 18136, 18138, 18139	Routine Technical	No	9/16/2023
2023-166	02	658	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine Fuel Board	10	Chimneys	5 M.R.S. §§ 8051, 9001(4); 32 M.R.S. §§ 18107(2); 18123(2), 18132, 18133, 18134, 18134-A, 18135, 18136, 18138, 18139	Routine Technical	No	9/16/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-167	02	658	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine Fuel Board	11	Installation of Waste Oil Appliances and Waste Oil Supply Tanks	5 M.R.S. §§ 8051, 9001(4); 32 M.R.S. §§ 18107(2); 18123(2), 18132, 18133, 18134, 18134-A, 18135, 18136, 18138, 18139	Routine Technical	No	9/16/2023
2023-168	02	658	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine Fuel Board	12	Permits for Aboveground and Underground Propane and Natural Gas Storage Facilities and Rooftop Installations	5 M.R.S. §§ 8051, 9001(4); 32 M.R.S. §§ 18107(2); 18123(2), 18132, 18133, 18134, 18134-A, 18135, 18136, 18138, 18139	Routine Technical	No	9/16/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-169	02	658	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine Fuel Board	13	Installation of Propane and Natural Gas Burning Equipment	5 M.R.S. §§ 8051, 9001(4); 32 M.R.S. §§ 18107(2); 18123(2), 18132, 18133, 18134, 18134-A, 18135, 18136, 18138, 18139	Routine Technical	No	9/16/2023
2023-170	02	658	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine Fuel Board	14	Propane and Natural Gas Containers, Dispensers and Piping (with Appendix)	5 M.R.S. §§ 8051, 9001(4); 32 M.R.S. §§ 18107(2); 18123(2), 18132, 18133, 18134, 18134-A, 18135, 18136, 18138, 18139	Routine Technical	No	9/16/2023
2023-253	03	201	Department of Corrections	1	Detention and Correctional Standards for Counties and Municipalities	34-A MRSA §§ 1208 & 1208-B	Routine Technical	No	1/1/2024
2023-191	03	201	Department of Corrections	4	Line of Duty Death Benefit for Corrections Offices & MDOC Law Enforcement Officers	25 MRS §1612	Routine Technical	No	10/25/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-105	05	071	Department of Education	33	Rules Governing Physical Restraints and Seclusion	20-A §4104(5)	Major Substantive	No	8/6/2023
2023-104	05	071	Department of Education	101	Maine Unified Special Education Regulation Birth to Age 20	20-A §7005(1); §8054	Major Substantive	Yes	7/7/2023
2023-229	05	071	Department of Education	117	Rule Regarding the Duties of School Counselors and School Social Workers	Title 20-A MRSA §4008-A(3)	Major Substantive	No	12/9/2023
2023-230	06	096	Department of Environmental Protection	101	Visible Emissions Regulation	38 M.R.S. §§ 585 and 585-A	Routine Technical	No	1/1/2024
2023-130	06	096	Department of Environmental Protection	119	Motor Vehicle Fuel Volatility Requirements	38 M.R.S. §§ 585, 585-A, and 585-C	Major Substantive	No	9/14/2023
2023-042	06	96	Department of Environmental Protection	143	New Source Performance Standards (NSPS)	38 MRS § 585-A; 38 MRS § 585-B; and 38 MRS § 590	Routine Technical	No	3/13/2023
2023-043	06	96	Department of Environmental Protection	144	National Emission Standards for Hazardous Air Pollutands (NESHAP)	38 MRS § 585-A; 38 MRS § 585-B; and 38 MRS § 590	Routine Technical	No	3/13/2023
2023-103	06	096	Department of Environmental Protection	171	Control of Petroleum Storage Facilities	38 M.R.S. §§ 585, 585-A, and 590(1)	Major Substantive	No	8/4/2023
2023-041	06	96	Department of Environmental Protection	263	Maine Comprehensive and Limited Environmental Laboratory Accreditation Rule	22 MRS § 567 and 38 MRS § 341-H	Routine Technical	No	3/15/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-231	06	096	Department of Environmental Protection	305	Natural Resources Protection Act - Permit by Rule: Section 16, Activities in Coastal Sand Dunes	38 M.R.S. §344(7)	Major Substantive	No	12/9/2023
2023-109	06	096	Department of Environmental Protection	531	Wastewater Treatment Plant Operator Certification	32 M.R.S. § 4179	Routine Technical	No	7/24/2023
2023-079	06	96	Department of Environmental Protection	600	Oil Discharge Prevention and Pollution Control Rules for Marine Oil Terminals, Transportation Pipelines and Vessels	38 M.R.S. § 546(4)	Routine Technical	No	6/6/2023
2023-182	09	137	Department of Inland Fisheries and Wildlife	1	Open Water and Ice Fishing Regulations	12 MRSA, Sections 10104, 12452 & 12461	Routine Technical	No	1/1/2024
2023-183	09	137	Department of Inland Fisheries and Wildlife	1-A	State Heritage Fish Waters	12 MRSA, Sections 10104, 12452 & 12461	Routine Technical	No	1/1/2024
2023-189	09	137	Department of Inland Fisheries and Wildlife	2	Rules Pertaining to Commercial Fishing, Fish Culture and Fishing Derbies and Tournaments	12 MRS § 10104, 12504, 12504-A, & 12505	Routine Technical	No	1/1/2024
2023-072	09	137	Department of Inland Fisheries and Wildlife	5	State Owned Wildlife Management Areas, Shooting Ranges and Boat Launch Facilities	12 MRS 10104, 12701	Routine Technical	No	5/21/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-054	09	137	Department of Inland Fisheries and Wildlife	16	16.11, Migratory Game Bird Hunting	12 MRS §§10104, 11855	Routine Technical	No	4/10/2023
2023-073	09	137	Department of Inland Fisheries and Wildlife	16	Moose Hunting (permit allocations)	12 MRS 11551, 11552	Routine Technical	No	5/21/2023
2023-106	09	137	Department of Inland Fisheries and Wildlife	16	Hunting: 16.07, Antlerless Deer Permits	12 MRS 10104, 11152, 11402	Routine Technical	No	7/12/2023
2023-217	09	137	Inland Fisheries and Wildlife	16	Hunting	12 MRS, Sections 10104, 10105, 11401	Routine Technical	Yes	10/27/2023
2023-107	09	137	Department of Inland Fisheries and Wildlife	17	Trapping: 17.06, Beaver Trapping	12 MRS 10104, 12251	Routine Technical	No	7/12/2023
2023-018	10	144	Department of Health and Human Services	1	Administrative Hearing Regulations	5 MRS §§ 8051-10004, 22 MRS. § 42, and 22-A MRS § 207	Routine Technical	No	1/30/2023
2023-216	10	144	Department of Health and Human Services, Office of MaineCare Services – Division of Policy	101	MaineCare Benefits Manual:Ch. II Section 60, Medical Supplies and Durable Medical Equipment	22 M.R.S. §§ 42, 42(8); 3173; 22 M.R.S. 3173-J; 42 CFR § 440.70; P.L. 2021, ch. 398, Sec. A-17	Routine Technical	No	10/31/2023
2023-225	10	144	Department of Health and Human Services, Office of MaineCare Services – Division of Policy	101	MaineCare Benefits Manual, Ch. 1, Section 4, Telehealth Services	22 MRS §§ 42, 3173; P.L. 2021, Ch. 291	Routine Technical	No	11/6/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-226	10	144	Department of Health and Human Services, Office of MaineCare Services – Division of Policy	101	MaineCare Benefits Manual, Ch. II, Section 71, National Diabetes Prevention Program Services	22 MRS §§ 42, 3173; P.L. 2021, Ch. 398, Part A, Sec. A-17; 22 M.R.S. 3173-J	Routine Technical	No	11/8/2023
2023-239	10	144	Department of Health and Human Services, MaineCare Services, Division of Policy	101	MaineCare Benefits Manual, Chapter III, Section 67, Principles of Reimbursement for Nursing Facilities	22 M.R.S.A, Ch 855 § 3173	Routine Technical	No	11/26/2023
2023-244	10	144	Department of Health and Human Services, MaineCare Services, Division of Policy	101	MaineCare Benefits Manual, Chapter II, Section 89, MaineMOM Services and Reimbursement	22 M.R.S. §§ 42, 3173	Routine Technical	No	12/6/2023
2023-251	10	144	Department of Health and Human Services, MaineCare Services, Division of Policy	101	MaineCare Benefits Manual, Chapter III, Section 45, Principles of Reimbursement for Hospital Services	22 M.R.S. §§ 42(8), 3173; 22 M.R.S. 3173-J; P.L. 2021, ch 635; P.L. 2023, ch 3, Sec. S-1	Routine Technical	No	12/18/2023
2023-172	10	144	Department of Health and Human Services, Maine Center of Disease Control and Prevention	241	Subsurface Wastewater Disposal Rule	22 MRS §§ 42(3), 42(3-A), 42(3-B); 30-A MRS §§ 4211, 4215, & 4452(A); and 22-A MRS § 205(2)	Routine Technical	No	9/23/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-040	10	144	Department of Health and Human Services, Maine Center for Disease Control and Prevention	263	Maine Comprehensive and Limited Environmental Laboratory Accreditation Rule	22 MRS § 567 and 38 MRS § 341-H	Routine Technical	No	3/15/2023
2023-149	10	144	Department of Health and Human Services, Maine Center of Disease Control and Prevention	264	Immunization Requirements for Healthcare Workers	22 MRS §§802(1), (3)	Routine Technical	No	9/5/2023
2023-196	10	144	Department of Health and Human Services, Maine Center of Disease Control and Prevention	265	Substance Use Testing for the Workplace Rule	26 MRS §§ 683(11) and 687(1)	Routine Technical	No	11/1/2023
2023-050	10	144	Department of Health and Human Services, Maine Center for Disease Control and Prevention	270	Sample Collection and Drug Testing Rule for Suspected Operating Under the Influence Cases	29-A MRS §§ 2431, 2524 and 2527	Routine Technical	No	4/3/2023
2023-026	10	144	Department of Health and Human Services, Office for Family Independence	301	Supplemental Nutrition Assistance Program (SNAP) #223 - Omnibus Rule Change 2022	22 MRS §§ 42(1) and (8), 3104(13), and 3104-A(1)(C) and (D)	Routine Technical	No	3/1/2023
2023-136	10	144	Department of Health and Human Services, Office for Family Independence	301	Supplemental Nutrition Assistance Program (SNAP) Rules: Sections 111-7, 999-1: Rule #228A – FRA 2023	22 M.R.S. §§ 42(1); 3104(13), and 3104-A	Routine Technical	No	9/1/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-187	10	144	Department of Health and Human Services, Office for Family Independence	301	Supplemental Nutrition Assistance Program (SNAP) Rules; Section 999-3, Rule 231-E – FY 24 Budgeting Changes	22 M.R.S. §§ 42, 3104; 5 M.R.S. § 8054	Routine Technical	Yes	9/29/2023
2023-238	10	144	Department of Health and Human Services, Office for Family Independence	301	Supplemental Nutrition Assistance Program (SNAP) Rules; Section 999-2, Rule 230A – ABAWD Geographic Exemptions	22 M.R.S. § 42(1); 7 C.F.R. § 273.24(f)	Routine Technical	No	11/26/2023
2023-242	10	144	Department of Health and Human Services, Office for Family Independence	301	Supplemental Nutrition Assistance Program (SNAP) Rules; Section 999-3; SNAP Rule #231 – FFY 23 Budgeting Changes	22 M.R.S. §§ 42(1), 3104	Routine Technical	No	12/3/2023
2023-192	10	144	Department of Health and Human Services, Office for Family Independence	323	Maine General Assistance Manual, Section 4: Eligibility	22 M.R.S. §§ 42(1); 4301(8)(B); 4301(11-A)	Routine Technical	No	10/25/2023
2023-193	10	144	Department of Health and Human Services, Office for Family Independence	330	Higher Opportunity for Pathways to Employment (HOPE) Program Rules, Chapter 3: Rule #102, Income Eligibility	22 M.R.S. § 42(1); § 3790-A(2)(E); P.L. 2023 ch. 21	Routine Technical	No	10/25/2023
2023-077	10	144	Department of Health and Human Services, Office for Family Independent	332	MaineCare Eligibility Manual, MaineCare Rule 302, Penalty Divisor Rule	22 MRS § 42(1), § 3173-J	Routine Technical	No	6/5/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-123	10	144	Department of Health and Human Services, Office for Family Independence	332	MaineCare Eligibility Manual, MaineCare Rule 301A, Certain MAGI and CHIP Coverage Group Changes	22 MRS § 42(1); and (8), 3174-G, and 3174-FFF	Routine Technical	No	8/15/2023
2023-019	10	144	Department of Health and Human Services, Office for Family Independence, Division of Support Enforcement and Recovery	351	Maine Child Support Enforcement Manual: Ch. 6, Child Support Guidelines	22 M.R.S. § 42(1); 19-A M.R.S., § 2011	Routine Technical	No	2/13/2023
2023-116	10	144	Department of Health and Human Services, Office for Family Independence	609	Supplemental Nutrition Assistance Program Employment and Training (SNAP E & T) #6 - Name Change and Other Clarifications	22 M.R.S. §§ 42(1) and (8), 3737(3)	Routine Technical	No	8/6/2023
2023-121	10	148	Department of Health and Human Services, Office of Child and Family Services	6	Child Care Subsidy Rules	22 M.R.S. §§ 42, 3737	Routine Technical	No	8/10/2023
2023-080	10	148	Department of Health and Human Services, Office of Child and Family Services	8	Rules for the Licensure of Shelters for Homeless Children (repeal)	22 M.R.S. §§ 42(1), 4099-E, 4099-G, 7802(7); P.L. 2021, ch. 98	Routine Technical	No	6/14/2023
2023-081	10	148	Department of Health and Human Services, Office of Child and Family Services	9	Rules for the Licensing of Emergency Shelters for Children (repeal)	22 M.R.S. §§ 42(1), 4099-E, 4099-G, 7802(7); P.L. 2021, ch. 98	Routine Technical	No	6/14/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-245	10	148	Department of Health and Human Services, Office of Child and Family Services	30	Early Childhood Educator Workforce Salary Supplement Program Rules	22 M.R.S. §§ 42, 3737-A, 5 M.R.S. Sec. 8054	Routine Technical	Yes	12/1/2023
2023-020	10	148	Department of Health and Human Services, Office of Child and Family Services	31	Quality Rating and Improvement System: Rising Stars for ME	22 M.R.S. §§ 42, 3737	Routine Technical	No	2/13/2023
2023-082	10	148	Department of Health and Human Services, Office of Child and Family Services	37	Emergency Children's Shelter, Shelter for Homeless Children, and Transitional Living Programs that are Children's Home Licensing Rule	22 M.R.S. §§ 42(1), 4099-E, 4099-G, 7802(7); P.L. 2021, ch. 98	Routine Technical	No	6/14/2023
2023-012	10	149	Department of Health and Human Services, Office of Aging and Disability Services	5	Policy Manual: Introduction, Table of Contents, Rule History	22 M.R.S. § 7303(2); 34-B M.R.S. § 5439(9); Resolves 2011, ch. 71	Routine Technical	No	7/1/2023
2023-021	10	149	Department of Health and Human Services, Office of Aging and Disability Services	5	Policy Manual: Introduction, Table of Contents, Rule History: Section 65, Nutrition Services (Repeal)	22 M.R.S. §§ 42, 5106	Routine Technical	No	2/14/2023
2023-096	10	149	Department of Health and Human Services, Offices of Aging and Disability	5	Policy Manual: In-Home and Community Services for Elderly and Other Adults(Repeal); Home Based Supports and Services for Older and Disabled Adults (New)	22 M.R.S. § 7303(2); 34-B M.R.S. § 5439(9); Resolves 2011, ch. 71	Major Substantive	No	10/1/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-022	10	149	Department of Health and Human Services, Office of Aging and Disability Services	6	Section 5, Nutrition Services Program	22 M.R.S. §§ 42, 5106	Routine Technical	No	2/14/2023
2023-044	14	197	Department of Health and Human Services, Office of Aging and Disability Services	5	Regulations Governing Behavioral Support, Modification and Management with Intellectual Disabilities or Autism in Maine	34-B M.R.S. §§ 5201(9), 5605	Routine Technical	No	3/16/2023
2023-237	14	197	Department of Health and Human Services, Office of Aging and Disability Services	7	Pilot Program for Transitional Services (Repeal)	22 M.R.S. §§ 42(1); 34-B M.R.S. § 5609(3)	Routine Technical	No	11/22/2023
2023-097	14	197	Department of Health and Human Services, Offices of Aging and Disability	11	Consumer Directed Personal Assistance Services (Repeal)	22 M.R.S. § 7303(2); 34-B M.R.S. § 5439(9); Resolves 2011, ch. 71	Major Substantive	No	10/1/2023
2023-247	12	150	Department of Labor, Division for the Blind and Visually Impaired	15	Rules Governing the Business Enterprise Program	26 M.R.S.A. §1418-F – §1418-M	Routine Technical	No	12/13/2023
2023-016	12	179	Department of Labor, Occupational Safety and Health Board	3	Occupational Safety and Health Standards for the Construction Industry Employment in the Public Sector	26 MRS §565	Routine Technical	No	1/29/2023
2023-088	12	180	Department of Labor, Maine Labor Relations Board	10	General Rules	26 MRS § 968(3)	Routine Technical	No	7/1/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-089	12	180	Department of Labor, Maine Labor Relations Board	11	Bargaining Unit Composition and Representation Matters	26 MRS § 968(3)	Routine Technical	No	7/1/2023
2023-090	12	180	Department of Labor, Maine Labor Relations Board	12	Prohibited Practice Complaints; Interpretive Rulings	26 MRS § 968(3)	Routine Technical	No	7/1/2023
2023-029	12	181	Department of Labor, Maine Apprenticeship Program	3	Rules Relating to Labor Standards for Certification of Pre-Apprenticeship Training Programs	26 M.R.S. § 565	Routine Technical	No	3/1/2023
2023-086	12	186	Department of Labor, State Board of Arbitration and Conciliation	1	General Rules	26 MRS §931	Routine Technical	No	7/1/2023
2023-087	12	186	Department of Labor, State Board of Arbitration and Conciliation	3	Logging Dispute Resolution Board Rules	26 MRS § 3707	Routine Technical	No	7/1/2023
2023-124	13	188	Department of Marine Resources	2	Aquaculture Regulations	§§ 6072, 6072-A, 6072-B, 6072-C	Routine Technical	No	8/13/2023
2023-005	13	188	Department of Marine Resources	11	Scallops: 11.08, Targeted Conservation Closures	12 MRS §6171(3)(A)	Routine Technical	Yes	1/8/2023
2023-025	13	188	Department of Marine Resources	11	Scallops: 11.08, Targeted Conservation Closures	12 MRS §6171(3)(A)	Routine Technical	Yes	2/19/2023
2023-222	13	188	Department of Marine Resources	11	Ch. 11, Scallops: 2023-2024 Season	12 M.R.S. §6171, §6722	Routine Technical	No	11/5/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-252	13	188	Department of Marine Resources	11	11.08, Targeted Closures: (8) Roque Island Harbor and Little Kennebec Bay in Englishman Bay Rotational Area; (9) Harrington River in Addison Rotational Area	12 MRS §6171(3)(A)	Routine Technical	Yes	12/24/2023
2023-125	13	188	Department of Marine Resources	25	Lobster and Crab Regulations	12 MRS 6171	Routine Technical	No	8/13/2023
2023-223	13	188	Department of Marine Resources	25	Lobster and Crab: 25.98, Electronic Tracking Requirements for Federally Permitted Lobster and Jonah Crab License Holders	12 MRS 6171	Routine Technical	No	11/5/2023
2023-126	13	188	Department of Marine Resources	26	Sea Urchins 2023-2024 Season	12 MRS §6749	Routine Technical	No	8/20/2023
2023-045	13	188	Department of Marine Resources	32	Elver Quota System for the 2023 season	12 MRS § 6505-A	Routine Technical	No	3/18/2023
2023-046	13	188	Department of Marine Resources	34	Groundfish: Maximized Retention Monitoring	12 MRS § 6171	Routine Technical	No	3/18/2023
2023-131	13	188	Department of Marine Resources	34	Groundfish Regulations: Adjust Recreational Measures for Cod and Haddock	12 M.R.S. 6171(3)(C)	Routine Technical	Yes	8/18/2023
2023-224	13	188	Department of Marine Resources	34	Groundfish Regulations: Recreational Measures for Cod, Haddock and Halibut Clean-up	12 MRS 6171	Routine Technical	No	11/5/2023
2023-047	13	188	Department of Marine Resources	36	Atlantic Herring: 2023 Administrative Update	12 MRS § 6171	Routine Technical	No	3/18/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-078	13	188	Department of Marine Resources	36	Atlantic Herring	12 M.R.S. § 6171(3)(C)	Routine Technical	Yes	5/31/2023
2023-188	13	188	Department of Marine Resources	36	Atlantic Herring; 2023 Season 2 Open	12 M.R.S. § 6171(3)(C)	Routine Technical	Yes	9/30/2023
2023-071	13	188	Department of Marine Resources	41	Atlantic Menhaden: 2023 Season	12 M.R.S. § 6171; § 6502-C	Routine Technical	No	5/17/2023
2023-076	13	188	Department of Marine Resources	42	Striped Bass; 42.01 Statewide Striped Bass Size Restrictions, Harvest Methods	12 M.R.S. § 6171(3)(C)	Routine Technical	Yes	5/18/2023
2023-127	13	188	Department of Marine Resources	42	Striped Bass (Changes to Striped Bass Slot Limit)	12 MRS §6171(3)(A)	Routine Technical	No	8/13/2023
2023-084	13	188	Department of Marine Resources	55	Gear Restrictions; 55.99 Fishing in the Saco River	12 M.R.S. §6171(3)(A)	Routine Technical	Yes	6/10/2023
2023-128	13	188	Department of Marine Resources	55	Gear Restrictions: Fishing in the Saco River	12 MRS §6171	Routine Technical	No	8/13/2023
2023-129	13	188	Department of Marine Resources	75	Protected Resources: Definitions (Technical Correction)	12 MRS §6171	Routine Technical	No	8/13/2023
2023-246	16	163	Department of Public Safety, Maine Emergency Medical Services	24	Implementing the Maine EMS Stabilization Program (Emergency)	32 M.R.S. §84(1) 32 M.R.S. §98	Routine Technical	Yes	12/13/2023
2023-038	16	633	Department of Public Safety, Gambling Control Board	5	Internal Controls; Appendix A	8 MRS § 1003(1)(B)	Routine Technical	No	3/7/2023
2023-190	16	633	Department of Public Safety, Gambling Control Board	13	Exclusion	8 M.R.S. § 1003(1)(B) and (3)(I)	Routine Technical	No	10/18/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-227	16	633	Department of Public Safety, Gambling Control Unit	36	License Fee and Renewal	8 M.R.S. §§ 1102(1)(D) and 1103(5) & 8 M.R.S. §§ 1102(1)(D), 1102(1)(G) and 1103(3)(G)-(I).	Routine Technical	No	11/11/2023
2023-228	16	633	Department of Public Safety, Gambling Control Unit	41	Licensee Records, Annual Reporting and Audits	8 M.R.S. §§ 1102(1)(D) and 1103(5) & 8 M.R.S. §§ 1102(1)(D), 1102(1)(G) and 1103(3)(G)-(I).	Routine Technical	No	11/11/2023
2023-197	16	633	Department of Public Safety, Gambling Control Unit	50	Introduction	8 M.R.S. §1203(2)	Routine Technical	No	10/29/2023
2023-198	16	633	Department of Public Safety, Gambling Control Unit	51	Definitions	8 M.R.S. §1203(2)	Routine Technical	No	10/29/2023
2023-199	16	633	Department of Public Safety, Gambling Control Unit	52	License Application, Fee and Renewal	8 M.R.S. §1203(2)	Routine Technical	No	10/29/2023
2023-200	16	633	Department of Public Safety, Gambling Control Unit	53	Internal Controls	8 M.R.S. §1203(2)	Routine Technical	No	10/29/2023
2023-201	16	633	Department of Public Safety, Gambling Control Unit	54	Facility Operator Operational Requirements	8 M.R.S. §1203(2)	Routine Technical	No	10/29/2023
2023-202	16	633	Department of Public Safety, Gambling Control Unit	55	Physical Premise Requirements	8 M.R.S. §1203(2)	Routine Technical	No	10/29/2023
2023-203	16	633	Department of Public Safety, Gambling Control Unit	56	House Rules	8 M.R.S. §1203(2)	Routine Technical	No	10/29/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-204	16	633	Department of Public Safety, Gambling Control Unit	57	Sports Wagering Requirements	8 M.R.S. §1203(2)	Routine Technical	No	10/29/2023
2023-205	16	633	Department of Public Safety, Gambling Control Unit	58	Sports Wagers	8 M.R.S. §1203(2)	Routine Technical	No	10/29/2023
2023-206	16	633	Department of Public Safety, Gambling Control Unit	59	Sports Wagering Kiosks	8 M.R.S. §1203(2)	Routine Technical	No	10/29/2023
2023-207	16	633	Department of Public Safety, Gambling Control Unit	60	Sports Wagering Accounts	8 M.R.S. §1203(2)	Routine Technical	No	10/29/2023
2023-208	16	633	Department of Public Safety, Gambling Control Unit	61	Sports Wagering Revenue Reconciliations	8 M.R.S. §1203(2)	Routine Technical	No	10/29/2023
2023-209	16	633	Department of Public Safety, Gambling Control Unit	62	Geolocation and Remote Access	8 M.R.S. §1203(2)	Routine Technical	No	10/29/2023
2023-210	16	633	Department of Public Safety, Gambling Control Unit	63	Responsible Wagering Program	8 M.R.S. §1203(2)	Routine Technical	No	10/29/2023
2023-211	16	633	Department of Public Safety, Gambling Control Unit	64	Advertising and Promotions	8 M.R.S. §1203(2)	Routine Technical	No	10/29/2023
2023-212	16	633	Department of Public Safety, Gambling Control Unit	65	Management Service Contract Criteria	8 M.R.S. §1203(2)	Routine Technical	No	10/29/2023
2023-213	16	633	Department of Public Safety, Gambling Control Unit	66	Complaints and Disciplinary Actions	8 M.R.S. §1203(2)	Routine Technical	No	10/29/2023
2023-061	18	125	Department of Administrative and Financial Services, Maine Revenue Services	102	Electronic Fund Transfer (EFT)	36 M.R.S. §§ 112 and 193	Routine Technical	No	5/3/2023
2023-062	18	125	Department of Administrative and Financial Services, Maine Revenue Services	202	Tree Growth Tax Law Valuations - 2023	36 M.R.S. § 576	Routine Technical	No	5/3/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-177	18	125	Department of Administrative and Financial Services, Maine Revenue Services	325	Sales to Tribes, Tribal Members, and Tribal Entities	36 M.R.S. § 112 & P.L. 2021, c. 681	Routine Technical	No	9/30/2023
2023-178	18	125	Department of Administrative and Financial Services, Maine Revenue Services	803	Income Tax Withholding Reports and Payments	36 M.R.S. § 112 & P.L. 2021, c. 681, Pt. H	Routine Technical	No	9/30/2023
2023-063	18	125	Department of Administrative and Financial Services, Maine Revenue Services	805	Composite Filing	36 M.R.S. § 112	Routine Technical	No	5/3/2023
2023-064	18	125	Department of Administrative and Financial Services, Maine Revenue Services	808	Corporate Income Tax Nexus	36 M.R.S. § 112	Routine Technical	No	5/3/2023
2023-065	18	125	Department of Administrative and Financial Services, Maine Revenue Services	810	Maine Unitary Business Taxable Income, Combined Reports, and Tax Returns	36 M.R.S. § 112	Routine Technical	No	5/3/2023
2023-066	18	125	Department of Administrative and Financial Services, Maine Revenue Services	812	Credit for Educational Opportunity	36 M.R.S. § 112	Routine Technical	No	5/3/2023
2023-067	18	125	Department of Administrative and Financial Services, Maine Revenue Services	813	Property Tax Fairness Credit	36 M.R.S. § 112	Routine Technical	No	5/3/2023
2023-179	18	125	Department of Administrative and Financial Services, Maine Revenue Services	825	Tribal Member Income from Sources on Tribal Land	36 M.R.S. § 112 & P.L. 2021, c. 681, Pt. H	Routine Technical	No	9/30/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-173	18	553	Department of Administrative and Financial Service, Bureau of Alcoholic Beverages and Lottery Operations, Maine State Liquor and Lottery Commission	10	Lottery Rules	8 MRSA §374 and 8 MRSA §372, sub-§2, ¶I	Routine Technical	No	9/24/2023
2023-232	18	553	Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations, Maine State Liquor and Lottery Commission	30	Cash Pop Game Rules	8 MRSA §374 and 8 MRSA §372, sub-§2, ¶I	Routine Technical	No	11/19/2023
2023-055	19	100	Department of Economic and Community Development	4	Rule Regarding Housing Opportunity Program Grants	P.L. 2021, ch. 635, Pt. U codified at 5 M.R.S. §13056-J(4)	Routine Technical	No	4/18/2023
2023-056	19	100	Department of Economic and Community Development	5	Housing Opportunity Program: Municipal Land Use and Zoning Ordinance Rule	P.L. 2021, ch. 672 codified at 30-A M.R.S. §§ 4364, 4364-A, 4364-B	Routine Technical	No	4/18/2023
2023-181	19	100	Department of Economic and Community Development	5	Housing Opportunity Program: Municipal Land Use and Zoning Ordinance Rule	PL 2021 ch. 672, PL 2023, ch. 192, P.L. 2023, ch. 264, codified at 30-A MRS §§ 4364, 4364-A, 4364-B	Routine Technical	No	10/1/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-004	19	100	Department of Economic and Community Development	400	Employment Tax Increment Financing	36 MRS §6759	Routine Technical	No	1/11/2023
2023-006	19	499	Department of Economic and Community Development, Office of Business Development	303	Rural Workforce Recruitment and Retention Grant	5 MRS §13056-I	Routine Technical	No	1/15/2023
2023-255	26	239	Office of the Attorney General	500	Rules for Law Enforcement Collection of Traffic Stop Data to Eliminate Profiling	5 MRS § 4753	Routine Technical	No	12/31/2023
2023-059	28	248	Office of the State Treasurer	104	Certain Payments not Immediate	5 M.R.S.A. Section 131	Major Substantive	No	5/24/2023
2023-060	29	250	Secretary of State, Bureau of Motor Vehicles	3	Physical, Emotional and Mental Competence to Operate a Motor Vehicle	29-A MRS §§ 153 and 1258	Routine Technical	No	5/3/2023
2023-120	29	250	Secretary of State, Bureau of Motor Vehicles	16	Rules for the Collection of Driver's License Reinstatement Fees	29-A M.R.S.A. §153	Routine Technical	No	9/6/2023
2023-195	29	250	Secretary of State, Bureau of Motor Vehicles	101	Electronic Lien Titling Program	29-A M.R.S.A. §651-A	Routine Technical	No	10/30/2023
2023-057	29	250	Secretary of State, Bureau of Motor Vehicles	173	Rules for the Sale, Purchase, Removal, Transport, and Disposal of Catalytic Converters	29-A MRS § 1113(14)	Routine Technical	No	4/17/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-101	29	250	Secretary of State, Bureau of Corporations, Elections and Commissions	700	Rules Governing Notaries Public, Notarial Officers, Notarial Acts and the Procedures for Electronic and Remote Notarization	Title 4, section 1928 and Title 4, section 1915(13)-(Revised Uniform Law on Notarial Acts)	Routine Technical	Yes	7/5/2023
2023-184	29	250	Secretary of State, Bureau of Corporations, Elections and Commissions	700	Rules Governing Notaries Public, Notarial Officers, Notarial Acts and the Procedures for Electronic and Remote Notarization	Title 4, section 1928 and Title 4, section 1915(13)-(Revised Uniform Law on Notarial Acts)	Routine Technical	No	10/2/2023
2023-102	29	250	Secretary of State, Bureau of Corporations, Elections and Commissions	720	Rules Governing the Licensing of Marriage Officiants who are Authorized to Solemnize Marriages in Maine	Title 5, section 90-G	Routine Technical	Yes	7/5/2023
2023-185	29	250	Secretary of State, Bureau of Corporations, Elections and Commissions	720	Rules Governing the Licensing of Marriage Officiants who are Authorized to Solemnize Marriages in Maine	Title 5, section 90-G	Routine Technical	No	10/2/2023
2023-108	29	255	Secretary of State, Maine State Archives	2	State Records Center Facilities and Services	5 MRSA, Chapter 6, §95-C, sub-1	Routine Technical	No	7/17/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-241	65	407	Public Utilities Commission	311	Portfolio Requirements	Public Law 2023, chapters 306 and 361 and; 35-A M.R.S. §§ 104, 111, 1301, 3203(9) and 3210	Routine Technical	No	12/2/22023
2023-233	65	407	Public Utilities Commission	324	Small Generator Interconnection Procedures	35-A M.R.S. §§ 104, 111, 3474, P.L. 2021 Ch. 264	Routine Technical	No	11/20/2023
2023-174	65	407	Maine Public Utilities Commission	880	Attachments to Joint-use Utility Poles; Determination and Allocation of Costs; Procedure	35-A M.R.S. §§ 104, 111, 711, 2524, 7903, 8302	Routine Technical	No	9/25/2023
2023-248	90	351	Workers' Compensation Board	4	Independent Medical Examiner	39-A MRS §312	Routine Technical	No	12/16/2023
2023-147	90	351	Workers' Compensation Board	5	Medical Fees; Reimbursement Levels; Reporting Requirements	39-A M.R.S.A. §§ 208 and 209-A; 39-A M.R.S.A. §§§ 312 and 315 and 611	Routine Technical	No	9/4/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-148	90	351	Workers' Compensation Board	17	Expenses and Fees	39-A M.R.S.A. §§ 208 and 209-A; 39-A M.R.S.A. §§§ 312 and 315 and 611	Routine Technical	No	9/4/2023
2023-171	90	590	Maine Health Data Organization	100	Enforcement Procedures	22 M.R.S. Section 8705-A and 24-A M.R.S. §6951	Major Substantive	No	10/14/2023
2023-249	90	590	Maine Health Data Organization	243	Uniform Reporting System for Health Care Claims Data Sets	22 MRSA, §§8703(1), 8704(4), 8708(6-A) and 8712(2)	Routine Technical	No	12/17/2023
2023-250	90	590	Maine Health Data Organization	247	Uniform Reporting System for Non-Claims Based Primary Care Payments and Other Supplemental Health Care Data Sets	22 M.R.S. §§8703(1); 8704(1)&(4); and 24-A M.R.S. §6951	Routine Technical	No	12/17/2023
2023-083	90	590	Maine Health Data Organization	570	Uniform Reporting System for Prescription Drug Price Data Sets	22 M.R.S. 5\$ 8703(1), 8704(1), 8705-A and 8705-A(3), 8731, 8732, 8733, 8734, 8735 and 8737.	Major Substantive	No	7/8/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-236	90	699	Maine Retirement Savings Board	101	Maine Retirement Savings Program	5 MRS §174	Routine Technical	No	11/22/2023
2023-110	94	178	Kim Wallace Adaptive Equipment Loan Program Fund Board	503	Kim Wallace Adaptive Equipment Loan Program Underwriting Guidelines	10 MRS §§ 371-377	Routine Technical	No	7/26/2023
2023-113	94	270	Commission on Governmental Ethics and Election Practices	2	Hearing Procedures	1 M.R.S. § 1003(1), 21-A M.R.S. § 1126	Major Substantive	No	8/27/2023
2023-114	94	270	Commission on Governmental Ethics and Election Practices	3	Maine Clean Election Act and Related Provisions	1 M.R.S. § 1003(1), 21-A M.R.S. § 1126	Major Substantive	No	8/27/2023
2023-132	94	293	Baxter State Park Authority	1	Baxter State Park Rules and Regulations	12 MRS §903(1)	Routine Technical	No	8/20/2023
2023-030	94	411	Maine Public Employees Retirement System	506	Eligibility for Disability Retirement Benefits	5 MRS § 17103(4)	Routine Technical	No	3/1/2023
2023-031	94	411	Maine Public Employees Retirement System	507	Determination of Inability to Engage in Substantially Gainful Activity	5 MRS § 17103(4)	Routine Technical	No	3/1/2023
2023-032	94	411	Maine Public Employees Retirement System	509	Determination of Inability to Perform the Essential Functions of the Employment Position	5 MRS § 17103(4)	Routine Technical	No	3/1/2023
2023-033	94	411	Maine Public Employees Retirement System	510	Reduction of Disability Retirement Benefits because of Lump-Sum Settlements of Benefits payable under the Workers' Compensation or Similar Law of the United State Social Security Act	5 MRS § 17103(4)	Routine Technical	No	3/1/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-034	94	411	Maine Public Employees Retirement System	511	Standards for Actively Seeking Work	5 MRS § 17103(4)	Routine Technical	No	3/1/2023
2023-035	94	411	Maine Public Employees Retirement System	702	Appeals of Decisions of the Chief Executive Officer	5 MRS §§9051-9064, 17103(4), 17106-A, 17106-B and 17451	Routine Technical	No	3/1/2023
2023-011	94	411	Maine Public Employees Retirement System	803	Participating Local District Consolidated Retirement Plan	5 MRS §§ 17103(4), 18801	Routine Technical	No	1/24/2023
2023-001	94	412	Saco River Corridor Commission	103	Standards to Address the Environmental Factors	38 MRS §954-C	Routine Technical	No	1/10/2023
2023-002	94	412	Saco River Corridor Commission	104-A	Performance Standards for Multi-Unit Uses, including Condominium and Cluster Develop within the General Development District	38 MRS §954-C	Routine Technical	No	1/10/2023
2023-003	94	412	Saco River Corridor Commission	107	Performance Standards Governing Expansions of Existing Nonconforming Uses, including Structures	38 MRS §954-C	Routine Technical	No	1/10/2023
2023-234	94	457	Finance Authority of Maine	601	Maine State Grant Program	10 M.R.S.A. § 969-A; 20-A M.R.S.A. §§ 11617(2); P.L. 2023, ch. 23	Routine Technical	No	11/20/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-007	94	457	Finance Authority of Maine	618	Maine Veterinary Medicine Loan Program, <i>Amendment 2</i>	P.L. 2009, Ch. 488; 20-A MRS §12124; P.L. 2021, Ch. 725; 20-A MRS §§ 12121-12125	Routine Technical	No	1/10/2023
2023-235	94	457	Finance Authority of Maine	619	Foreign Credential and Skills Recognition Grant Program – Amendment 2	10 MRS § 969-A; 10 MRS § 1100-AA	Routine Technical	No	11/20/2023
2023-135	94	649	Maine Commission on Indigent Legal Services	4	Caseload Standards for Assigned Counsel and Contract Counsel	4 M.R.S.A. §§ 1804 (2)(C), (2)(G), and (4)(D)	Routine Technical	No	1/1/2024
2023-028	94	649	Maine Commission on Indigent Legal Services	301	Fee Schedule and Administrative Procedures for Payment of Court or Commission Assigned Counsel	4 M.R.S.A. §§ 1804(2)(F), (3)(B), (3)(F) and (4)(D); P.L. 2021, Ch. 398, Sec. A-22	Major Substantive	Yes	2/24/2023
2023-122	94	649	Maine Commission on Indigent Legal Services	301	Fee Schedule and Administrative Procedures for Payment of Court or Commission Assigned Counsel	4 M.R.S.A. §§ 1804(2)(F), (3)(B), (3)(F) and (4)(D); P.L. 2021, Ch. 398, Sec. A-22	Major Substantive	No	9/1/2023

Annual List of Rule-making Activity
Rules Adopted 1/1/2023 to 12/31/2023
Prepared by the Secretary of State

Log #	Umbrella	Unit	Agency name	Ch.	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2023-186	94	649	Maine Commission on Indigent Legal Services	301-A	Payment for Attending and Reimbursement of Expenses Incidental to Attending Trainings	4 M.R.S.A. §§ 1804(2)(F), (3)(B), and (4)(D)	Routine Technical	No	10/2/2023
2023-023	95	648	Efficiency Maine Trust	5	Commercial Property Assessed Clean Energy (C-PACE) Program Regulations	35-A MRS §10203(4), §10203(5), §10204(1)	Routine Technical	No	2/16/2023
2023-099	99	346	Maine State Housing Authority	24	Home Energy Assistance Program Rule	30-A M.R.S.A. §§4722(1)(W), 4741(1) and (15) and 4991 <i>et seq.</i> ; 42 U.S.C.A. §§8621, <i>et seq.</i>	Routine Technical	No	7/3/2023
2023-017	99	346	Maine State Housing Authority	27	Transfers of Ownership Interests	30-A MRS § 4741(1)	Routine Technical	No	1/30/2023
2023-009	99	420	Maine Turnpike Authority	1	Rules Governing the Use of the Maine Turnpike	23 MRS § 1965	Routine Technical	No	1/23/2023

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Agriculture, Conservation and Forestry
Umbrella-Unit: **01-001**
Statutory authority: 7 MRS, Chapter 409, § 2301-2303
Chapter number/title: **Ch. 266**, Hemlock Woolly Adelgid Quarantine
Filing number: **2023-214**
Effective date: 10/30/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To prevent the spread of Hemlock Woolly Adelgid, a highly destructive pest of Eastern Hemlock trees, within the State of Maine.

Basis statement:

Since 1988, the State of Maine has imposed a quarantine to prevent the introduction of hemlock woolly adelgid (HWA). The current rule prohibits the importation of hemlock plants and plant products, including nursery stock, logs, and lumber with bark from many states and counties in the United States as well as parts of Canada that have been designated as infested with HWA. It also specifies requirements that persons must meet to import hemlock plants and plant products from non-infested areas of the United States.

The quarantine has not been entirely successful since an annual survey in 2003 detected this highly destructive pest on native hemlocks in one town in York County. HWA has now been detected all along the Maine coast as far north as Mount Desert Island. This expansion of the quarantine is in reaction to additional detections in 2022. Five of the detections were in towns on the existing quarantine border, and one detection was found outside of the existing quarantine.

The quarantine area will be expanded to include the entire counties of Androscoggin, Cumberland, Kennebec, and Waldo, and towns and minor civil divisions within Franklin, Hancock, Oxford, Penobscot, and Somerset counties. This includes both infested and uninfested towns. HWA has expanded rapidly in the last few years, and traditionally, plant pests with this spread are regulated at the county level. Maine has decided to regulate at the sub-county level because counties are large, and the Department will continue to conduct a standardized annual survey on the edge of the quarantine area to monitor spread. Because of these factors and the fact that amending regulations is a slow process, it was important to include a significant number of buffer towns in the quarantine area. In addition, the amendment will include counties from other states that have become infested since the rule was last amended in 2020.

Fiscal impact of rule:

The fiscal impact of the proposed rule will be minor. It may require additional inspection work, which will be scheduled, as much as possible, when other inspection work is taking place. It may limit the availability of hemlock nursery stock to homeowners and landscapers, but alternate trees and shrubs are available, and the Department will work with the nursery industry to seek additional alternatives. If this rule is not adopted, and the Hemlock Woolly Adelgid moves into other areas of the State's native hemlock resource, the fiscal impact to the state, forest product companies, and the habitat of many species of wildlife, will be significant. We would not expect the economic impact to be above \$1,000,000.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Agriculture, Conservation and Forestry
Umbrella-Unit: **01-001**
Statutory authority: 7 M.R.S.A., Chapter 409, § 2301-2303
Chapter number/title: **Ch. 272**, European Larch Canker Quarantine
Filing number: **2023-215**
Effective date: 10/30/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To prevent the spread of European Larch Canker, a highly destructive pest of all types of larch trees, within the State of Maine.

Basis statement:

European larch canker has been a federally regulated pest for over 39 years. Maine has been partially infested with European larch canker (ELC) since the 1970s. For Maine to maintain a partially infested status with the USDA (United States Department of Agriculture), Maine is required to have in place a program to conduct an annual survey to monitor the spread of European larch canker within the state. The state has been monitoring the spread of this pest for over 34 years.

Another requirement of USDA is that the state maintain parallel regulations to the federal regulations. Maine meets this requirement by using the authority under 7 M.R.S.A. Chapter 409, Section 2301. There will be no changes to the process in place for annually monitoring European larch canker populations, but by having this rule in place, Maine will be able to maintain its status with USDA as a state partially infested with ELC.

Fiscal impact of rule:

The fiscal impact of the proposed rule will be minor. The state will continue to monitor the spread of European larch canker with funds provided by USDA. If this rule is not put into place, the USDA could declare the entire state infested with European larch canker, and this would have an impact on out-of-state movement of larch wood products.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Agriculture, Conservation and Forestry
Umbrella-Unit: **01-001**
Statutory authority: 7 MRS Chapter 406-A §2231
Chapter number/title: **Ch. 274**, Rules for Growing Hemp
Filing number: **2023-024**
Effective date: 2/19/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To implement statutory changes and align the state rules with the USDA final rules.

Basis statement:

In September 2022 changes to Title 7 MRS Chapter 406-A § 2231, Hemp, instructed the Department to adopt rules to align the laws governing hemp in this State with 7 United States Code, Section 1639p(a)(2)(A) (2020), 7 Code of Federal Regulations, Part 990 (2020) and any additional federal statutes or regulations.

The Secretary of State published a notice on November 4, 2022, and on the same day, 18 growers and 1200 individuals on the hemp GovDelivery list were notified electronically about the proposed rule. A public hearing was held in Augusta on November 28, 2022, with 3 people in attendance, in person and one person in attendance virtually. None of the hearing attendees provided any substantive comments on the rule.

The comment period ended on January 5, 2023, with 3 people submitting emailed comments and 2 speakers from the public hearing submitting emailed comments. No comments were received in the U.S. mail.

The Department's staff reviewed the hearing record and written comments on January 30, 2022, and noted most comments centered on the proposed licensing and regulation of hemp processors. These comments illustrated the need for the Department to hold off on regulating processors until more is known about the production and sale of intoxicating hemp products and the need to assure all consumable hemp products are safe for consumers.

Upon further analysis, the Department removed all the requirements for licensing and regulating hemp processors from the final rule and will hold public information-gathering sessions before developing new proposed rules to regulate hemp products.

The amendments to Chapter 274 that align the state rules with the USDA rules were all adopted as proposed since there were no substantive comments to the contrary.

Fiscal impact of rule:

The fiscal impact will depend on the level of participation. This program is required to be self-funded, so the intention is to collect adequate fees to run the program. If at least 150 growers participate there should be minimal fiscal impact; if not there will be a fiscal impact on the Department.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Agriculture, Conservation and Forestry
Umbrella-Unit: **01-001**
Statutory authority: 7 MRS, Chapter 409, § 2301-2303
Chapter number/title: **Ch. 275**, Emerald Ash Borer Quarantine
Filing number: **2023-240**
Effective date: 11/26/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To prevent the spread of Emerald Ash Borer, a highly destructive pest of all types of true ash trees, within the State of Maine.

Basis statement:

Emerald Ash Borer (EAB) has been a federally regulated pest since 2010. It has already killed millions of ash trees from Minnesota to Texas and Georgia to Maine. The US Department of Agriculture, Animal & Plant Health Inspection Service deregulated EAB on January 14, 2021, and Chapter 275 was amended by adding an exterior quarantine to replace the federal quarantine on April 21, 2021. Additionally, Maine has now seen significant mortality in ash trees in western York County and parts of Cumberland and Oxford Counties, while the Aroostook County infestation appears to be moving slower. Even though EAB is spreading in the southeastern part of the state, the Maine Forest Service estimates that over 60% of Maine's ash remains uninfested.

Unfortunately, only a fraction of a percent of Maine's more than 400 million stems of white, green, and black/brown ash is expected to survive this insect's attack. The first detection of emerald ash borer in Maine was in Madawaska on May 22, 2018; subsequent infestations were found in Frenchville and Grand Isle. In September of 2018, EAB was detected on monitoring traps in Lebanon and Acton. It was also detected in trees in Acton and Berwick in February 2019. In October and November of 2019, EAB was found in a monitoring trap in Payson Park in Portland and in girdled trap trees in the towns of Alfred, Kittery, and Limington.

After the 2018 and early 2019 discoveries, the State adopted a quarantine of the northeast corner of Aroostook County and all of York County. Chapter 275 became law on April 10, 2019. Since then, multiple towns in Androscoggin, Cumberland, Kennebec, Oxford, Sagadahoc, and Somerset Counties have been infested.

This amendment extends the quarantine into all or parts of Androscoggin, Franklin, Kennebec, Knox, Lincoln, Oxford, Penobscot, Piscataquis, Sagadahoc, Somerset, and Waldo Counties.

Fiscal impact of rule:

The fiscal impact of the proposed rule on state government should be minimal (~ \$5,000). The state will continue to monitor the spread of EAB despite losing some funds provided by USDA-APHIS for that purpose. Those funds have been moved to the EAB biocontrol program, and MFS should receive greater fiscal assistance for that part of the EAB response. Education and enforcement have already been ongoing and should continue with a minor increase in effort. Impacts on firewood dealers could continue if their unregulated market area is not included in this proposal. Otherwise, they will need to purchase a heat treatment system or negotiate a special compliance agreement with MFS. Municipalities could suffer major budget impacts

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

from the eventual need to remove or treat roadside or park ash trees, however, the quarantine should help slow the spread and allow the towns time to prepare. Finally, Wabanaki tribal basket makers may be significantly impacted if brown/black ash resources are restricted or lost due to EAB and the quarantine. We would not expect the economic impact to be above \$1,000,000.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Agriculture, Conservation and Forestry, Animal Welfare Program
Umbrella-Unit: **01-001**
Statutory authority §3910-B, Companion Animal Sterilization Fund
Chapter number/title: **Ch. 702**, Rules for the Low Income Spay Neuter Program
Filing number: **2023-027**
Effective date: 3/1/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Rule changing to accommodate administration by third party and the addition of feral cats per 7 MRS §3910-B(1-A) Companion Animal Sterilization Fund enacted in 2022, as well as updating program's payment delivery to providers, increasing program efficiency, and reducing administration costs.

Basis statement:

The revisions proposed to these rules will accommodate administration by third party and the addition of feral cats per 7 MRS §3910-B(1-A) Companion Animal Sterilization Fund enacted in 2022, as well as updating program's payment delivery to providers, increasing program efficiency, and reducing administration costs. These rules provide necessary guidelines for administration of the Help Fix ME (Companion Animal Sterilization Fund) to comply with the requirement of engaging a third-party administrator per 7 MRS §3910-B(1-A) Companion Animal Sterilization Fund enacted earlier this year. Additional rules are required to ensure a suitable administrator will be found and to ensure the effective delivery of the program on behalf of the state.

These rules will also improve delivery of the Help Fix ME (Companion Animal Sterilization Fund programming) to both the public and participant veterinary providers by providing updated and more effective and efficient payment processes and communication processes. These rules allow for methods and modes of service delivery more in line with modern approaches to spay/neuter delivery to low-income clientele. These rules also account for the current shortage of veterinary professionals in the state by specifically including large scale spay/neuter events which have become the primary mode of service delivery to areas of the state most lacking in veterinary capacity for providing Help Fix ME surgeries. They will also allow for feral cats to be spayed and neutered by anyone regardless of income status.

Section I changes- Definitional changes were required to add definitions that were not necessary for previous Rules, to address previous omissions, and to ensure alignment with current statutes.

Section 2 changes- Aligns eligibility with 2022 statute change adding feral cats.

Section 3 changes- Facilitate more efficient payment and administrative tracking of veterinary providers utilizing spay/neuter events as mode of surgical delivery, while providing option for current payment methods to continue for occasional veterinary participants.

Section 4 changes. Accommodates third party administration and clarify requirements and communication between the department and administrator and to safeguard use of taxpayer funded monies.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Section 5 changes. Improves reporting requirements to better provide insight into meeting the purposes of this funding and facilitate data based strategic planning of programming going forward.

Fiscal impact of rule:

Expectation is that the Rules will increase efficiency of program delivery. Any potential impact expected to be negligible.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission
Umbrella-Unit: **01-015**
Statutory authority: 5 MRS §8054; 7 MRS §2954
Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #02-23**
Filing number: **2023-015**
Effective date: 1/29/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The principal reason for this rule is the need to respond to Federal Order changes and to certain other conditions affecting prevailing Class I, II and III milk prices in Southern New England in accordance with 7 M.R.S.A. Section 2954.

The final February **2023** minimum Class I price is **\$24.03/cwt. plus \$1.63/cwt.** for Producer margins and a **\$1.04/cwt** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$27.37/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus, the minimum retail price of a gallon of whole milk is set at **\$4.32.**

Basis statement:

Pursuant to 5 M.R.S.A., Section 8054 and 7 M.R.S.A., Section 2954 the Maine Milk Commission conducted an emergency rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$20.50/cwt.** and a Class IV price of **\$22.12/cwt.** for **December 2022.**

The Class II price for **December 2022 is \$23.11/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$24.03/cwt. plus \$1.63/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on January 19, 2023 and therefore should be passed on in minimum prices effective January 29, 2023. These prices also include a handling fee of \$0.47/cwt.**

The schedule of prices listed herein reflects the latest Class I, Class II, Class III and Class IV prices plus the minimum dealer, producer and retail margins adopted by the Commission's Orders (DM) Dealer Margins, (PM) Producer Margins, and (RM) Retail Margins. The Class I prices reflect a Processor Assessment of **\$.20/cwt.** as authorized by Commission Order #93-MPF. Any change in prices at any level from last month reflects the action taken today by the Commission for Class I, Class II, Class III and Class IV and Butterfat prices.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission
Umbrella-Unit: **01-015**
Statutory authority: 5 MRS §8054; 7 MRS §2954
Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #03-23**
Filing number: **2023-037**
Effective date: 3/5/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The principal reason for this rule is the need to respond to Federal Order changes and to certain other conditions affecting prevailing Class I, II and III milk prices in Southern New England in accordance with 7 M.R.S.A. Section 2954.

The final **March 2023** minimum Class I price is **\$22.24/cwt. plus \$1.63/cwt.** for Producer margins and a **\$1.04/cwt** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$25.58/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus, the minimum retail price of a gallon of whole milk is set at **\$4.15.**

Basis statement:

Pursuant to 5 M.R.S.A., Section 8054 and 7 M.R.S.A., Section 2954 the Maine Milk Commission conducted an emergency rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$19.43/cwt.** and a Class IV price of **\$20.01/cwt.** for **January 2023.**

The Class II price for **January 2023 is \$21.61/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the **March 2023** Federal Order Class I price of **\$22.24/cwt. plus \$1.63/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on February 23, 2023 and therefore should be passed on in minimum prices effective March 5, 2023. These prices also include a handling fee of \$0.47/cwt.**

The schedule of prices listed herein reflects the latest Class I, Class II, Class III and Class IV prices plus the minimum dealer, producer and retail margins adopted by the Commission's Orders (DM) Dealer Margins, (PM) Producer Margins, and (RM) Retail Margins. The Class I prices reflect a Processor Assessment of **\$.20/cwt.** as authorized by Commission Order #93-MPF. Any change in prices at any level from last month reflects the action taken today by the Commission for Class I, Class II, Class III and Class IV and Butterfat prices.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission
Umbrella-Unit: **01-015**
Statutory authority: 5 MRS §8054; 7 MRS §2954
Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #04-23**
Filing number: **2023-049**
Effective date: 4/2/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The principal reason for this rule is the need to respond to Federal Order changes and to certain other conditions affecting prevailing Class I, II and III milk prices in Southern New England in accordance with 7 M.R.S.A. Section 2954.

The final **April 2023** minimum Class I price is **\$22.10/cwt. plus \$1.63/cwt.** for Producer margins and a **\$1.04/cwt** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$25.44/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus, the minimum retail price of a gallon of whole milk is set at **\$4.14.**

Basis statement:

Pursuant to 5 M.R.S.A., Section 8054 and 7 M.R.S.A., Section 2954 the Maine Milk Commission conducted an emergency rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$17.78/cwt.** and a Class IV price of **\$18.86/cwt.** for **February 2023.**

The Class II price for **February 2023 is \$20.83/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the **April 2023** Federal Order Class I price of **\$22.10/cwt. plus \$1.63/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on March 23, 2023 and therefore should be passed on in minimum prices effective April 2, 2023. These prices also include a handling fee of \$0.47/cwt.**

The schedule of prices listed herein reflects the latest Class I, Class II, Class III and Class IV prices plus the minimum dealer, producer and retail margins adopted by the Commission's Orders (DM) Dealer Margins, (PM) Producer Margins, and (RM) Retail Margins. The Class I prices reflect a Processor Assessment of **\$.20/cwt.** as authorized by Commission Order #93-MPF. Any change in prices at any level from last month reflects the action taken today by the Commission for Class I, Class II, Class III and Class IV and Butterfat prices.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission
Umbrella-Unit: **01-015**
Statutory authority: 5 MRS §8054; 7 MRS §2954
Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #05-23**
Filing number: **2023-058**
Effective date: 4/30/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The principal reason for this rule is the need to respond to Federal Order changes and to certain other conditions affecting prevailing Class I, II and III milk prices in Southern New England in accordance with 7 M.R.S.A. Section 2954.

The final **May 2023** minimum Class I price is **\$22.82/cwt. plus \$1.63/cwt.** for Producer margins and a **\$1.04/cwt** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$26.16/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus, the minimum retail price of a gallon of whole milk is set at **\$4.20**.

Basis statement:

Pursuant to 5 M.R.S.A., Section 8054 and 7 M.R.S.A., Section 2954 the Maine Milk Commission conducted an emergency rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$18.10/cwt.** and a Class IV price of **\$18.38/cwt.** for **March 2023**.

The Class II price for **March 2023 is \$19.52/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the **May 2023** Federal Order Class I price of **\$22.82/cwt. plus \$1.63/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on April 20, 2023 and therefore should be passed on in minimum prices effective April 30, 2023. These prices also include a handling fee of \$0.47/cwt.**

The schedule of prices listed herein reflects the latest Class I, Class II, Class III and Class IV prices plus the minimum dealer, producer and retail margins adopted by the Commission's Orders (DM) Dealer Margins, (PM) Producer Margins, and (RM) Retail Margins. The Class I prices reflect a Processor Assessment of **\$.20/cwt.** as authorized by Commission Order #93-MPF. Any change in prices at any level from last month reflects the action taken today by the Commission for Class I, Class II, Class III and Class IV and Butterfat prices.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Agriculture, Conservation and Forestry, **Maine Milk Commission**
Umbrella-Unit: **01-015**
Statutory authority: 5 MRS §8054; 7 MRS §2954
Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #06-23**
Filing number: **22023-075**
Effective date: 5/28/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The principal reason for this rule is the need to respond to Federal Order changes and to certain other conditions affecting prevailing Class I, II and III milk prices in Southern New England in accordance with 7 M.R.S.A. Section 2954.

The final **June 2023** minimum Class I price is **\$21.26/cwt. plus \$1.63/cwt.** for Producer margins and a **\$1.04/cwt** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$24.60/cwt.**, which includes a processor assessment of **\$0.20/cwt.** Thus, the minimum retail price of a gallon of whole milk is set at **\$4.06.**

Basis statement:

Pursuant to 5 M.R.S.A., Section 8054 and 7 M.R.S.A., Section 2954 the Maine Milk Commission conducted an emergency rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$18.52/cwt.** and a Class IV price of **\$17.95/cwt.** for **April 2023.**

The Class II price for **April 2023 is \$19.20/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the **June 2023** Federal Order Class I price of **\$21.26/cwt. plus \$1.63/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on May 18, 2023 and therefore should be passed on in minimum prices effective May 28, 2023. These prices also include a handling fee of \$0.47/cwt.**

The schedule of prices listed herein reflects the latest Class I, Class II, Class III and Class IV prices plus the minimum dealer, producer and retail margins adopted by the Commission's Orders (DM) Dealer Margins, (PM) Producer Margins, and (RM) Retail Margins. The Class I prices reflect a Processor Assessment of **\$.20/cwt.** as authorized by Commission Order #93-MPF. Any change in prices at any level from last month reflects the action taken today by the Commission for Class I, Class II, Class III and Class IV and Butterfat prices.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission
Umbrella-Unit: **01-015**
Statutory authority: 5 MRS §8054; 7 MRS §2954
Chapter number/title: **Ch. 3, Schedule of Minimum Prices, Order #07-23**
Filing number: **2023-098**
Effective date: 7/2/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The principal reason for this rule is the need to respond to Federal Order changes and to certain other conditions affecting prevailing Class I, II and III milk prices in Southern New England in accordance with 7 M.R.S.A. Section 2954.

The final **July 2023** minimum Class I price is **\$20.57/cwt. plus \$1.63/cwt.** for Producer margins and a **\$1.04/cwt** that reflects premiums being offered and prevailing in Southern New England and **\$0.93/cwt.** handling fee for a total of **\$24.37/cwt.**, which includes a processor assessment of **\$0.20/cwt.** Thus, the minimum retail price of a gallon of whole milk is set at **\$4.03.**

Basis statement:

Pursuant to 5 M.R.S.A., Section 8054 and 7 M.R.S.A., Section 2954 the Maine Milk Commission conducted an emergency rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$16.11/cwt.** and a Class IV price of **\$18.10/cwt.** for **May 2023.**

The Class II price for **May 2023 is \$19.11/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the **July 2023** Federal Order Class I price of **\$20.57/cwt. plus \$1.63/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on June 22, 2023 and therefore should be passed on in minimum prices effective July 2, 2023. These prices also include a handling fee of \$0.93/cwt.**

The schedule of prices listed herein reflects the latest Class I, Class II, Class III and Class IV prices plus the minimum dealer, producer and retail margins adopted by the Commission's Orders (DM) Dealer Margins, (PM) Producer Margins, and (RM) Retail Margins. The Class I prices reflect a Processor Assessment of **\$.20/cwt.** as authorized by Commission Order #93-MPF. Any change in prices at any level from last month reflects the action taken today by the Commission for Class I, Class II, Class III and Class IV and Butterfat prices.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission
Umbrella-Unit: **01-015**
Statutory authority: 5 MRS §8054; 7 MRS §2954
Chapter number/title: **Ch. 3, Schedule of Minimum Prices, Order #08-23**
Filing number: **2022-112**
Effective date: 7/30/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The principal reason for this rule is the need to respond to Federal Order changes and to certain other conditions affecting prevailing Class I, II and III milk prices in Southern New England in accordance with 7 M.R.S.A. Section 2954.

The final **August 2023** minimum Class I price is **\$19.87/cwt. plus \$1.63/cwt.** for Producer margins and a **\$1.04/cwt** that reflects premiums being offered and prevailing in Southern New England and **\$1.40/cwt.** handling fee for a total of **\$24.14/cwt.**, which includes a processor assessment of **\$0.20/cwt.** Thus, the minimum retail price of a gallon of whole milk is set at **\$4.01.**

Basis statement:

Pursuant to 5 M.R.S.A., Section 8054 and 7 M.R.S.A., Section 2954 the Maine Milk Commission conducted an emergency rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$14.91/cwt.** and a Class IV price of **\$18.26/cwt.** for **June 2023.**

The Class II price for **June 2023 is \$18.83/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the **August 2023** Federal Order Class I price of **\$19.87/cwt. plus \$1.63/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on July 20, 2023 and therefore should be passed on in minimum prices effective July 30, 2023. These prices also include a handling fee of \$1.40/cwt.**

The schedule of prices listed herein reflects the latest Class I, Class II, Class III and Class IV prices plus the minimum dealer, producer and retail margins adopted by the Commission's Orders (DM) Dealer Margins, (PM) Producer Margins, and (RM) Retail Margins. The Class I prices reflect a Processor Assessment of **\$.20/cwt.** as authorized by Commission Order #93-MPF. Any change in prices at any level from last month reflects the action taken today by the Commission for Class I, Class II, Class III and Class IV and Butterfat prices.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission
Umbrella-Unit: **01-015**
Statutory authority: 5 MRS §8054; 7 MRS §2954
Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #09-23**
Filing number: **2023-134**
Effective date: 9/3/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The principal reason for this rule is the need to respond to Federal Order changes and to certain other conditions affecting prevailing Class I, II and III milk prices in Southern New England in accordance with 7 M.R.S.A. Section 2954.

The final **September 2023** minimum Class I price is **\$22.15/cwt. plus \$1.63/cwt.** for Producer margins and a **\$1.04/cwt** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$25.49/cwt.**, which includes a processor assessment of **\$0.20/cwt.** Thus, the minimum retail price of a gallon of whole milk is set at **\$4.13.**

Basis statement:

Pursuant to 5 M.R.S.A., Section 8054 and 7 M.R.S.A., Section 2954 the Maine Milk Commission conducted an emergency rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$13.77/cwt.** and a Class IV price of **\$18.26/cwt.** for **July 2023.**

The Class II price for **July 2023** is **\$19.12/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the **September 2023** Federal Order Class I price of **\$22.15/cwt. plus \$1.63/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on August 24, 2023 and therefore should be passed on in minimum prices effective September 3, 2023. These prices also include a handling fee of \$0.47/cwt.**

The schedule of prices listed herein reflects the latest Class I, Class II, Class III and Class IV prices plus the minimum dealer, producer and retail margins adopted by the Commission's Orders (DM) Dealer Margins, (PM) Producer Margins, and (RM) Retail Margins. The Class I prices reflect a Processor Assessment of **\$.20/cwt.** as authorized by Commission Order #93-MPF. Any change in prices at any level from last month reflects the action taken today by the Commission for Class I, Class II, Class III and Class IV and Butterfat prices.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission
Umbrella-Unit: **01-015**
Statutory authority: 5 MRS §8054; 7 MRS §2954
Chapter number/title: **Ch. 3, Schedule of Minimum Prices, Order #10-23**
Filing number: **2023-180**
Effective date: 10/1/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The principal reason for this rule is the need to respond to Federal Order changes and to certain other conditions affecting prevailing Class I, II and III milk prices in Southern New England in accordance with 7 M.R.S.A. Section 2954.

The final **October 2023** minimum Class I price is **\$22.72/cwt. plus \$1.63/cwt.** for Producer margins and a **\$1.04/cwt** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$26.06/cwt.**, which includes a processor assessment of **\$0.20/cwt.** Thus, the minimum retail price of a gallon of whole milk is set at **\$4.19.**

Basis statement:

Pursuant to 5 M.R.S.A., Section 8054 and 7 M.R.S.A., Section 2954 the Maine Milk Commission conducted an emergency rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$17.19/cwt.** and a Class IV price of **\$18.91/cwt.** for **August 2023.**

The Class II price for **August 2023 is \$19.91/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the **October 2023** Federal Order Class I price of **\$22.72/cwt. plus \$1.63/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on September 21, 2023 and therefore should be passed on in minimum prices effective October 1, 2023. These prices also include a handling fee of \$0.47/cwt.**

The schedule of prices listed herein reflects the latest Class I, Class II, Class III and Class IV prices plus the minimum dealer, producer and retail margins adopted by the Commission's Orders (DM) Dealer Margins, (PM) Producer Margins, and (RM) Retail Margins. The Class I prices reflect a Processor Assessment of **\$0.20/cwt.** as authorized by Commission Order #93-MPF. Any change in prices at any level from last month reflects the action taken today by the Commission for Class I, Class II, Class III and Class IV and Butterfat prices.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission
Umbrella-Unit: **01-015**
Statutory authority: 5 MRS §8054; 7 MRS §2954
Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #11-23**
Filing number: **2023-194**
Effective date: 11/02/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The principal reason for this rule is the need to respond to Federal Order changes and to certain other conditions affecting prevailing Class I, II and III milk prices in Southern New England in accordance with 7 M.R.S.A. Section 2954.

The final **November 2023** minimum Class I price is **\$23.00/cwt. plus \$1.63/cwt.** for Producer margins and a **\$1.04/cwt** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$26.34/cwt.**, which includes a processor assessment of **\$0.20/cwt.** Thus, the minimum retail price of a gallon of whole milk is set at **\$4.22.**

Basis statement:

Pursuant to 5 M.R.S.A., Section 8054 and 7 M.R.S.A., Section 2954 the Maine Milk Commission conducted an emergency rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$18.39/cwt.** and a Class IV price of **\$19.09/cwt.** for **September 2023.**

The Class II price for **September 2023 is \$19.98/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the **November 2023** Federal Order Class I price of **\$23.00/cwt. plus \$1.63/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on October 19, 2023 and therefore should be passed on in minimum prices effective October 29, 2023. These prices also include a handling fee of \$0.47/cwt.**

The schedule of prices listed herein reflects the latest Class I, Class II, Class III and Class IV prices plus the minimum dealer, producer and retail margins adopted by the Commission's Orders (DM) Dealer Margins, (PM) Producer Margins, and (RM) Retail Margins. The Class I prices reflect a Processor Assessment of **\$.20/cwt.** as authorized by Commission Order #93-MPF. Any change in prices at any level from last month reflects the action taken today by the Commission for Class I, Class II, Class III and Class IV and Butterfat prices.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Agriculture, Conservation and Forestry, **Maine Milk Commission**
Umbrella-Unit: **01-015**
Statutory authority: 5 MRS §8054; 7 MRS §2954
Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #12-23**
Filing number: **2023-243**
Effective date: 12/3/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The principal reason for this rule is the need to respond to Federal Order changes and to certain other conditions affecting prevailing Class I, II and III milk prices in Southern New England in accordance with 7 M.R.S.A. Section 2954.

The final **December 2023** minimum Class I price is **\$23.01/cwt. plus \$1.63/cwt.** for Producer margins and a **\$1.04/cwt** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$26.35/cwt.**, which includes a processor assessment of **\$0.20/cwt.** Thus, the minimum retail price of a gallon of whole milk is set at **\$4.23.**

Basis statement:

Pursuant to 5 M.R.S.A., Section 8054 and 7 M.R.S.A., Section 2954 the Maine Milk Commission conducted an emergency rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$16.84/cwt.** and a Class IV price of **\$21.49/cwt.** for **October 2023.**

The Class II price for **October 2023 is \$21.95/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the **December 2023** Federal Order Class I price of **\$23.01/cwt. plus \$1.63/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on November 22, 2023 and therefore should be passed on in minimum prices effective December 03, 2023. These prices also include a handling fee of \$0.47/cwt.**

The schedule of prices listed herein reflects the latest Class I, Class II, Class III and Class IV prices plus the minimum dealer, producer and retail margins adopted by the Commission's Orders (DM) Dealer Margins, (PM) Producer Margins, and (RM) Retail Margins. The Class I prices reflect a Processor Assessment of **\$.20/cwt.** as authorized by Commission Order #93-MPF. Any change in prices at any level from last month reflects the action taken today by the Commission for Class I, Class II, Class III and Class IV and Butterfat prices.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission
Umbrella-Unit: **01-015**
Statutory authority: 5 MRS §8054; 7 MRS §2954
Chapter number/title: **Ch. 3, Schedule of Minimum Prices, Order #01-24**
Filing number: **2023-254**
Effective date: 12/31/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The principal reason for this rule is the need to respond to Federal Order changes and to certain other conditions affecting prevailing Class I, II and III milk prices in Southern New England in accordance with 7 M.R.S.A. Section 2954.

The final **January 2024** minimum Class I price is **\$21.73/cwt. plus \$1.63/cwt.** for Producer margins and a **\$1.04/cwt** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$25.07/cwt.**, which includes a processor assessment of **\$0.20/cwt.** Thus, the minimum retail price of a gallon of whole milk is set at **\$4.11.**

Basis statement:

Pursuant to 5 M.R.S.A., Section 8054 and 7 M.R.S.A., Section 2954 the Maine Milk Commission conducted an emergency rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$17.15/cwt.** and a Class IV price of **\$20.87/cwt.** for **November 2023.**

The Class II price for **November 2023** is **\$21.21/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the **January 2024** Federal Order Class I price of **\$21.73/cwt. plus \$1.63/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on December 21, 2023 and therefore should be passed on in minimum prices effective December 31, 2023. These prices also include a handling fee of \$0.47/cwt.**

The schedule of prices listed herein reflects the latest Class I, Class II, Class III and Class IV prices plus the minimum dealer, producer and retail margins adopted by the Commission's Orders (DM) Dealer Margins, (PM) Producer Margins, and (RM) Retail Margins. The Class I prices reflect a Processor Assessment of **\$0.20/cwt.** as authorized by Commission Order #93-MPF. Any change in prices at any level from last month reflects the action taken today by the Commission for Class I, Class II, Class III and Class IV and Butterfat prices.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission
Umbrella-Unit: **01-015**
Statutory authority: 7 M.R.S., Section 2954
Chapter number/title: **Ch. 27**, Retail Margins
Filing number: **2023-085**
Effective date: 6/18/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The principal reason for this rule is the need to establish retail margins for milk sold within the State of Maine in accordance with 7 M.R.S. Section 2954 using information from the latest Retail Margins study.

Basis statement:

Pursuant to 7 M.R.S.A., Section 2954 the Maine Milk Commission (the Commission) is vested with the power to establish and change, after investigation and public hearing, the minimum wholesale and retail prices to be paid to producers, dealers and stores for milk received, purchased, stored, manufactured, processed, distributed or otherwise handled within the State of Maine. Further the law states that the minimum retail prices established for payment by consumers shall be based on the minimum wholesale price that retail stores must pay to dealers plus a rate of return to the retail store (retail margin) deemed just and reasonable by the Commission.

Retail stores are required by law to sell fluid milk at a price no lower than the minimum set by the Commission; they may, however, sell at a price higher than the minimum. The Commission issues a monthly Schedule of Minimum Retail Prices, which is based on the current price dealers (milk processors) must pay producers for their milk (which can fluctuate from month to month) plus the current dealer margin plus the current retail margin.

This Order establishes new minimum retail margins for milk sold in retail stores. The retail margin is the minimum amount that a retail store must add to the cost of a container of milk, purchased from a processor, in order to cover the store's direct costs and indirect costs (miscellaneous and overhead) associated with making the container available for final sale to the consumer. The Commission entered into a contractual agreement in 2019 with the Herbein & Co. to conduct a study to determine whether the minimum retail margins for milk currently in effect should be changed. This Order is the result of that study.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission
Umbrella-Unit: **01-015**
Statutory authority: 7 M.R.S. §3154(2)
Chapter number/title: **Ch. 61**, Maine Milk Pool Administration
Filing number: **2023-115**
Effective date: 8/1/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The principal reason for this rulemaking is to amend the cost of administering the Maine Milk Pool to recover current costs.

Basis statement:

Costs incurred for the Maine Milk Pool for personnel services and for operation were approximately \$60,000 annually from 2018 to 2022. Based on the last twelve months expenses (2022), it is estimated that the Pool costs for similar expenses for 2023 will be about \$65,000.

The total pounds in the Pool for the last twelve month (January 2022 – December 2022) were 550,151,781. It is estimated that the total pounds in the Pool for 2023 will be approximately the same.

Based on the above projected costs and pounds the Pool Administration sets the rate per hundredweight of milk for the cost of administering the Pool for the remainder of the calendar year 2023 at \$0.01/cwt. This represents no change from the previous rule set in 2018.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Agriculture, Conservation and Forestry,
Maine State Harness Racing Commission
Umbrella-Unit: **01-017**
Statutory authority: 8 M.R.S. §§ 263-A, 268, 275-C, 279-A, 279-B, and 281
Chapter number/title: **Ch. 1, Administration; Ch. 3, Officials and Racetrack Personnel**
Filing number: **2023-175, 2023-176**
Effective date: 9/25/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Chapter 1

- Definitions, Sec. 1. Adding and modifying definitions for Commission Veterinarian, Licensed Agricultural Fair, Trainer of Record, and Racing Officials.
- Rules of Construction, Sec. 2. Adding Situations not addressed by a Rule, which proposes that the Commission will reference the USTA rule book when MHRC rules do not address any situation.
- State Steward, Sec 4. Providing that the State Steward shall act as the Presiding judge at all races.
- Sulky Approval, Sec 9. Changing this section to the current USTA Sulky requirements.
- Judge Licensing Requirements, Sec. 10. Gives requirements for Associate Judge and Presiding Judge licensure and requires continuing education to stay current with that license.
- General Provisions, Sec. 13. Changes registration certificate to electronic eligibility.
- Eligibility To Race in Maine, Sec. 14. Allows horses 15 Years old eligible to race under certain conditions.
- Licensing a Commission Veterinarian, Sec 17. Requires all veterinarians to hold a valid MSHRC license to be considered a Commission Veterinarian and under the umbrella of the Commission.
- Postmortem Examination, Sec. 20. Gives the power to the Commission Veterinarian and the State Steward to decide whether a horse that has expired at a race track needs a postmortem examination.

Chapter 3

- Officials employed by associations, Sec 2. Removes Patrol Judge and adds Starter/Patrol Judge for this is one person. Presiding Judge is removed from this list as the State Steward will act as the Presiding Judge at race meets.
- Official's restrictions, Sec 4. Changes restrictions on officials to a specific race, and not an entire race day when there is a conflict of interest.
- Judge's Duties, Sec. 5. Adds Commission Veterinarian, Race Secretary, and Starter/Patrol Judge to the list of positions under the supervision of the Presiding Judge. It also eliminates 10 day Gate security and Patrol Judge.
Language has been added for an Associate Judge to act as the Presiding Judge if for any reason the Presiding Judge is unable to perform his duties.
- Track Conditions, Sec. 5. Allows a participant who wishes not to race on a questionable surface to be excused by the Presiding Judge.
- Presiding Judge and Associate Judges. Sec. 5. Changes the language for a No Contest to focus more on safety and extraordinary circumstances.
- Duties of the Race Secretary, Sec. 6. Makes the Race Secretary accountable to the Presiding Judge for his performance.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

- Starter/Patrol Judge, Sec. 8. Changes Starting Judge to Starter/Patrol Judge and also adds the responsibilities of the Patrol Judge to this section.
- Horse Identifier, Sec. 10. Adds language requiring the person to read a microchip to identify a horse and also requires identifying horses prior to entering the track for the post parade.
- Gate Security, Sec. 17. Adds language that requires persons seeking admission to the paddock present a valid license when necessary.

The proposed changes above will promote and ensure the efficiency and integrity of racing meets. The proposed changes will be beneficial to the Harness Racing Industry by means of referring to the United States Trotting Association rules when appropriate and changing language in the MSHRC rules to make the existing rules more definite for both the participants and the officials. The changes are to keep current with the more modern technology that is available such as microchipping and freeze branding. The proposed rules also give definition to official's positions and added responsibilities.

Basis statement:

The Commission proposed dozens of technical and substantive amendments and updates to Chapters 1 and 3. Chapter 1 provides for the administration of harness racing in Maine and includes definitions, rules of constructions, sulky standards, and licensing requirements for racing participants, racing officials, and others involved in the sport. Chapter 3 describes the duties and responsibilities of the various licensing officials who are responsible for enforcing the rules and also describes duties and responsibilities of other racing officials. The technical amendments are to make the rules clearer and more understandable for the regulated community and those enforcing the rules. The substantive amendments are intended to make the rules more definite for licensees participating in all aspects of racing.

Prior to the formal rulemaking process, the Commission invited public comment at meetings regarding suggested changes to the rules. The Commission took testimony at a public hearing held on May 16, 2023 and received written comments on the proposed rulemaking. The comments received and the Commission's responses to those comments are attached to this Basis Statement. Based on the comments received, the Commission made minor refinements to the proposed language in several sections of the rules. As a result of the comments received, the Commission made substantive changes to the proposed rules and republished them for a second comment period which ended on August 4, 2023. The Commission received no comment during the second comment period. The previously proposed rules required that State Stewards act as the Presiding Judge at all licensed race meets. As reflected in the republished rules, the proposed rules no longer require State Stewards act as Presiding judge at all meets. Instead, they permit associations to request that a State Steward act as a Presiding Judge for a race season. The proposed rules outline how a licensee-association may make such a request.

The proposed rule changes will benefit the licensees and others involved in harness racing by permitting licensee-associations to request that State Stewards act as a Presiding Judge for a race season. This will allow associations that make such a request to save costs. Additionally, State Stewards will receive thorough education and training regarding harness racing rules and procedures to ensure high quality racing for those involved and for the betting public.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Fiscal impact of rule:

Minimal. There will be a small fee to obtain licensure as a Commission Veterinarian. There are approximately four (4) contracted employees the proposed rule would affect. Combining other officials' duties will reduce licensure fees for those positions.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Agriculture, Conservation and Forestry,
Maine State Harness Racing Commission
Umbrella-Unit: **01-017**
Statutory authority: 8 MRS §§ 263-A, 268 and 279-A
Chapter number/title: **Ch. 7, Racing**
Filing number: **2023-039**
Effective date: 3/11/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

- Steward's List, Sec. 7. Allowing a horse not to have to qualify after making a break off a qualifier.
- Claiming Procedure, Sec. 17. Eliminates claiming authorizations and allows for a claimant to withdraw a claim 10 minutes prior to the start of the race, and provides it is a level 2 violation if a person associated with the owner or trainer of a claimed horse to disrupt the process of the claim exchange.
- Conditioned races, Sec. 18. Allows for a Track Master Classification to be part of writing classes.
- Declaration Requirements, Sec. 23. Encourages entering a horse online to promote this type of entry. Provides that it is a level 2 violation if the owners of a horse are not fully licensed by the Commission prior to declaration.
- Draw, Sec 30 - Adds Random Draw by USTA as a method to Draw for post positions and provides that if necessary to reopen a race, notice of the same will be made at least once by text message alert.
- Falling or Unseating Driver, Sec. 45. Adds language that any horse that falls on the Track will be scratched regardless of the approval of a State Veterinarian.
- Driving Violations, Sec. 53 - Adds unnecessary conversation among drivers on the track and failure to wear helmets with fastened chinstraps as conduct detrimental to the sport.
- Racing Objections Sec. 55 - Extends the time to object or complain about a driving violation or other misconduct to a judge to before the race is declared official.
- Minor changes and clarifications to the following Sections: 6 - Race Meet Standards and Eligibility; 12 - Condition Sheets; 18-A- Maine Owned or Bred Races; 46- Duties of Trainer; 52 - Admission to the Paddock; 57 - Contested Races and Unsatisfactory Drives; 58 - Placing Offending Horses

The proposed changes above will promote and ensure the efficiency and integrity of racing meets.

The proposed changes will be beneficial to the Harness Racing Industry by means of using the United States Trotting Association rules and changing language in the MSHRC rules to make the existing rules more definite for both the participants, as well as the officials. The changes are to keep current with the more modern technology that is available such as microchipping, freeze branding, changes to the Draw process, trainer electronic eligibility documentation.

Basis statement:

The Commission proposed dozens of technical amendments and updates to Chapter 7, which provides the rules of racing meets, in order to make it clearer and more readable. The Commission also proposed additional substantive amendments so that rules are more definite for licensees participating in all aspects of racing. The Commission took testimony at a public

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

hearing and received written comments on the proposed rulemaking. Additionally, it invited public comment at meetings prior to the formal public hearing and deliberated the merits of the amendments at three separate meetings during this rulemaking initiative.

The Commission made minor refinements to the proposed language in several areas based largely on comments received, and in some cases, findings made by the Commission. The Commission deliberated extensively on the language and proposed amendments contained in Sections 7, 17, 18, 23, 30, 45, 52, 55, and finally settled on the language which the Commission determined best suited the Harness Racing industry.

After review and deliberation, the Commission voted to finally adopt the Chapter 7 as contained herein on January 18, 2023 based on its belief that the adopted amendments best serve the public interest.

Fiscal impact of rule:

None

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Agriculture, Conservation and Forestry, Division of Forest Health and Monitoring
Umbrella-Unit: **01-669**
Statutory authority: 12 MRS § 8321
Chapter number/title: **Ch. 35**, Browntail Moth Mitigation Fund
Filing number: **2022-053**
Effective date: 4/9/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule is proposed to outline the details for the administration of the browntail moth mitigation fund.

Basis statement:

Introduction

The statutory authority for this rule is 12 M.R.S. §8321 as enacted by Public Law 2021, chapter 727. The law requires the Commissioner of Agriculture, Conservation and Forestry, through the Bureau of Forestry, aka the Maine Forest Service (MFS), to draft routine technical rules to administer browntail moth funds appropriated to be distributed in support of browntail moth mitigation using mechanical, cultural, or chemical control methods; education campaigns; and other activities.

Process involved in developing this rule

Division director worked with browntail moth program lead, bureau Resource Administrator, and Commissioner's office to draft the rule. The MFS released the draft rule for public comment on November 2, 2022. One public hearing was conducted on November 22, 2022. Three university students attended to observe the process but did not provide comment. No one was in attendance to provide comments. The MFS received four sets of comments on this proposal in the first round of comments. After AAG review it was determined that the notification standards were not met. The MFS elected to withdraw the proposed rule and begin a new rulemaking process to correct this deficiency. The rule was advertised for comment again on February 8, 2023. Comments closed on March 10, 2023. Three responses were received. Because the substance of this rule is essentially identical to the draft rule released on November 2, 2022, the comments submitted during that process are relevant and are addressed in this basis statement.

Economic impact of the rule

The law governing state rulemaking (5 M.R.S, Chapter 375, subchapter 2) requires agencies to conduct economic impact analyses of proposed rules, including but not limited to, effects on small businesses, fiscal impact (on the state treasury), and any effects on municipalities and counties. Agencies may, within existing resources, also conduct a cost-benefit analysis of proposed rules. The MFS has determined that the operation of this rule will not have a fiscal impact on the state treasury, municipalities, or counties. Further, the MFS has determined that this rule will have no discernible impact on small businesses or the regulated community.

Fiscal impact of rule:

Up to \$150,000 in general funds to be distributed to successful applicants through reimbursement for activities that will reduce the impact of browntail moth.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

State government: The MFS will administer this rule using existing resources.

Municipal and county government: This rule will not have a minor fiscal impact on municipalities or counties as the fund is designed to provide financial support to communities.

Impact on small businesses: This rule may have minor fiscal impact on small businesses as funds may be used to contract their services.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Agriculture, Conservation and Forestry,
Land Use Planning Commission (LUPC)
Umbrella-Unit: **01-672**
Statutory authority: 12 MRS §§ 685-A(3); 685-A(7-A); and 685-C(5)
Chapter number/title: **Ch. 2, Definitions**
Filing number: **2023-117**
Effective date: 8/11/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Maine Land Use Planning Commission is proposing revisions to Chapter 2. The proposed revisions include clerical edits and clarifications. All proposed revisions are routine in nature.

Basis statement:

Revisions to Chapter 2 clarify which factors are considered when contemplating the compatibility of a use, to match the approach used in companion definitions but not change outcomes, add a term and related definition for consistency with the Maine Department of Environmental Protection, and achieve several clerical edits and clarifications.

Revisions to Chapter 10 include updates to terms and township names to maintain consistency with Maine laws, updates to match revised statutory language, the removal of an automatic hearing requirement for zoning petitions involving a D-PD subdistrict, the addition of parking space requirements for non-residential development, clerical edits and clarifications, and the removal of Appendix E. Removal of the automatic hearing requirement for rezoning to a D-PD subdistrict is based on experience in applying the Commission's rules. Hearings for certain small proposals for and amendments to existing D-PD subdistricts have not involved complex technical issues and have not been particularly helpful to the Commission in deciding on the proposals. This change does not prevent any interested party from requesting or the Commission from deciding to hold a hearing for these types of rezoning requests. The list of adopted FEMA maps in Chapter 1's Appendix E was included for reader convenience. However, requiring a rulemaking process to adopt changes has delayed updates to the list. The list currently included in Appendix E will be maintained and posted on the LUPC's website as a stand-alone document.

All revisions are routine in nature. Revisions to Chapter 10 also incorporate by reference the 2010 Americans with Disabilities Act {ADA} Standards for Accessible Design; U.S. Department of Justice.

Fiscal impact of rule:

Not applicable per 12 M.R.S. 5685-A(7-A)(B)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Agriculture, Conservation and Forestry,
Land Use Planning Commission (LUPC)
Umbrella-Unit: **01-672**
Statutory authority: 12 MRS §§ 684, 685-A{3}, and 685-C(5); and 5 MRS § 8051
Chapter number/title: **Ch. 4**, Rules of Practice
Filing number: **2023-118**
Effective date: 8/11/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Maine Land Use Planning Commission adopted revisions to Chapter 4 to identify two specific types of applications as being 'routine' and therefore authorize staff to act on those applications. The two types of applications include, i) applications to amend wetland subdistrict boundaries when supported by on-site wetland delineations, and ii) applications for the adoption of official Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, or Flood Hazard Boundary Maps produced by the Federal Emergency Management Agency. All other revisions represent typical rule maintenance.

Basis statement:

The primary objective of this rulemaking is to identify two specific types of zoning applications as being 'routine' and therefore authorize staff to act on those applications. All other revisions represent typical clerical edits.

Fiscal impact of rule:

Not applicable pursuant to 12 M.R.S. §685-A(7-A)(B)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Agriculture, Conservation and Forestry,
Land Use Planning Commission (LUPC)
Umbrella-Unit: **01-672**
Statutory authority: 12 MRS §§ 685-A(7-A), 689
Chapter number/title: **Ch. 10**, Land Use Guidance Maps (Amended Zoning Maps):
Zoning Petition: **ZP 155E** (USDA Forest Service, White Mountain
National Forest)
Filing number: **2023-074**
Effective date: 05/19/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This memo and attachment is to notify your office of Commission actions to amend certain Land Use Guidance Maps, and that notice of said changes has been published in the *Kennebec Journal* newspaper. A current copy of the map has been placed on file as required.

Basis statement:

Pursuant to 12 MRS §§ 685-A(7-A) and 689, the Maine Land Use Planning Commission hereby gives notice of its approval of certain amendments to official Land Use Guidance Maps and that these changes have been placed on file with the appropriate County Registry of Deeds:

ZONING PETITION

**PETITIONER OR
COPETITIONER**

LOCATION

ZP 155E

USDA Forest Service,
National Forest

Albany Twp., Batchelders
Grant Twp., Mason Twp;
Oxford County

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Agriculture, Conservation and Forestry,
Land Use Planning Commission (LUPC)
Umbrella-Unit: **01-672**
Statutory authority: 12 MRS § 685-A(3); 685-A(7-A); and 685-C(5)
Chapter number/title: **Ch. 10**, Land Use Districts and Standards
Filing number: **2023-119**
Effective date: 8/11/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Maine Land Use Planning Commission is proposing revisions to Chapter 10. The proposed revisions include updates to terms and township names to maintain consistency with Maine laws, updates to match revised statutory language, the removal of an automatic hearing requirement for zoning petitions involving a D-PD subdistrict, the addition of parking space requirements for non-residential development, clerical edits and clarifications, and the removal of Appendix E. All proposed revisions are routine in nature.

Basis statement:

Revisions to Chapter 2 clarify which factors are considered when contemplating the compatibility of a use, to match the approach used in companion definitions but not change outcomes, add a term and related definition for consistency with the Maine Department of Environmental Protection, and achieve several clerical edits and clarifications.

Revisions to Chapter 10 include updates to terms and township names to maintain consistency with Maine laws, updates to match revised statutory language, the removal of an automatic hearing requirement for zoning petitions involving a D-PD subdistrict, the addition of parking space requirements for non-residential development, clerical edits and clarifications, and the removal of Appendix E. Removal of the automatic hearing requirement for rezoning to a D-PD subdistrict is based on experience in applying the Commission's rules. Hearings for certain small proposals for and amendments to existing D-PD subdistricts have not involved complex technical issues and have not been particularly helpful to the Commission in deciding on the proposals. This change does not prevent any interested party from requesting or the Commission from deciding to hold a hearing for these types of rezoning requests. The list of adopted FEMA maps in Chapter 10's Appendix E was included for reader convenience. However, requiring a rule making process to adopt changes has delayed updates to the list. The list currently included in Appendix E will be maintained and posted on the LU PC's website as a stand-alone document.

All revisions are routine in nature. Revisions to Chapter 10 also incorporate by reference the 2010 Americans with Disabilities Act (ADA) Standards for Accessible Design. U.S. Department of Justice.

Fiscal impact of rule:

Not applicable pursuant to 12 M.R.S. § 685-A(7-A)(B)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation,
Bureau of Consumer Protection
Umbrella-Unit: **02-030**
Statutory authority: 32 M.R.S. §§ 6133(3) and 6133(4)
Chapter number/title: **Ch. 701**, Establishment of License and Renewal Fees for Maine's
Check Cashier/Currency Exchanger Registration and Requirement
for Registration Through the Nationwide Multi-State Licensing
System (NMLS)
Filing number: **2023-091**
Effective date: 6/25/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is proposed to effectuate recent changes to 32 M.R.S. §6131 et seq. allowing the Bureau of Consumer Credit Protection to require registration of check cashers and foreign currency exchangers through the Nationwide Multistate Licensing System (NMLS), to establish, by rule, fees for initial registration and renewal of such registrations and to establish by rule the requirements for application. The Bureau needs to establish the fees by this rule as recent changes to the Act removed statutorily established fees.

Basis statement:

The purpose of this Chapter is to permit the State of Maine to utilize NMLS for registration of all check casher/currency exchangers. NMLS is a platform established by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) in response to the mortgage crisis in 2009. The system has grown from licensing mortgage loan originators and mortgage lenders to licensing a variety of business types which operate on a national or regional basis. Use of the system will provide improved oversight over the activities of the companies, will simplify recordkeeping, and will standardize processes for all check casher/currency exchangers registered in Maine.

Fiscal impact of rule:

There will be a minor impact on the Bureau in that revenues from fees should increase slightly as license and renewal fees for the principal license will increase by \$50 per year. The fee for additional business locations will remain unchanged.

Licensees will be impacted by the \$50 per year increase in principal location licensing fees and annual fees charged by NMLS for licensing through the system. The NMLS fees are currently \$100 for the principal license and \$20 for each additional location.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation,
Bureau of Consumer Protection
Umbrella-Unit: **02-030**
Statutory authority: 32 MRS. § 14053
Chapter number/title: **Ch. 702**, Establishment of Registration and Renewal Fees and Application Requirements for Maine's Employee Leasing Company Registration and Requirement for Registration Through the Nationwide Multistate Licensing System (NMLS)
Filing number: **2023-137**
Effective date: 9/2/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is proposed to effectuate recent changes to 32 M.R.S. §14051 et seq, allowing the Bureau of Consumer Credit Protection to require registration of employee leasing companies through the Nationwide Multistate Licensing System (NMLS), to set registration requirements, and to establish, by rule, fees for initial registration and renewal of such registrations.

Basis statement:

This Chapter makes the modifications necessary to transition registration of all employee leasing companies currently registered by the State of Maine to a multi-state system administered by the Nationwide Multistate Licensing System (NMLS). As authorized by law, this Chapter establishes an annual registration effective from January 1 through December 31 of each year and sets application fees, renewal fees, and application requirements for employee leasing companies. The rule requires applicants for new registrations to apply to NMLS as of the effective date of this rule and requires employee leasing companies currently registered in Maine to transition to NMLS.

Use of the system will provide improved oversight over the activities of the registered companies, will simplify recordkeeping, and standardize processes for all employee leasing companies registered in Maine.

Fiscal impact of rule:

There will be a minor impact on the Bureau in that revenues from fees should increase slightly as renewal fees will increase by \$100 per year. The fee for initial registration will remain unchanged. Registrants will be impacted by the \$100.00 per year increase in renewal fees and an annual fee charged by NMLS for registration through the system. The annual NMLS fee is currently \$100.00.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation,
Bureau of Consumer Protection
Umbrella-Unit: **02-030**
Statutory authority: 10 M.R.S. § 1396(2)
Chapter number/title: **Ch. 703**, Establishment of Fees and Application Requirements for
Maine's Exchange Facilitator Licensing
Filing number: **2023-138**
Effective date: 9/2/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is proposed to effectuate recent changes to 10 M.R.S. §1395 et seq. allowing the Bureau of Consumer Credit Protection to establish, by rule, fees for initial licensing and renewal of such licenses and to amend the license term. The rule also establishes the application requirements for such license.

Basis statement:

The purpose of this Chapter is to change the license term for exchange facilitators in order to standardize licensing terms for activities licensed by the Bureau, to set fees for initial and renewal licensing, and to establish the requirements for applications. This Chapter establishes by rule licensing and application requirements which were previously established by statute and order.

Fiscal impact of rule:

There will be a minor impact on the Bureau in that revenues from fees should increase slightly as renewal fees for the principal license will increase by \$50 per year. The fee for additional business locations will remain unchanged.

Licensees will be impacted by the \$50 per year increase in principal location licensing fees.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation,
Bureau of Consumer Protection
Umbrella-Unit: **02-030**
Statutory authority: 10 M.R.S. § 1310-A(G)
Chapter number/title: **Ch. 704**, Establishment of License and Renewal Fees and Licensing Requirements for Maine's Fair Credit Reporting Act Licensing and Requirement of Licensing Through the Nationwide Multistate Licensing System (NMLS)
Filing number: **2023-092**
Effective date: 6/25/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

See basis statement.

Basis statement:

The purpose of this Chapter is to permit the State of Maine to utilize the Nationwide Multistate Licensing System (NMLS) for registration of all Credit Reporting Agencies (CRAs). NMLS is a platform established by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators in response to the mortgage crisis in 2009. The system has grown from licensing mortgage loan originators and mortgage lenders to licensing and registering a variety of business types which operate on a national or regional basis. Use of the system will provide improved oversight over the activities of the companies, will simplify recordkeeping, and will standardize processes for all Credit Reporting Agencies registered in Maine.

Fiscal impact of rule:

There will be no impact on the Bureau in that fees will be unchanged.

Licensees will be impacted by the annual fee charged by NMLS for licensing through the system, currently \$100.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation,
Bureau of Consumer Protection
Umbrella-Unit: **02-030**
Statutory authority: 32 M.R.S. §11031(2)
Chapter number/title: **Ch. 705**, Establishment of License and Renewal Fees and
Application Requirements for Maine's Debt Collector Licensing and
Requirement of Licensing Through the Nationwide Multistate
Licensing System (NMLS)
Filing number: **2023-093**
Effective date: 6/25/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is proposed to effectuate recent changes to 32 M.R.S. §11001 et seq. allowing the Bureau of Consumer Credit Protection to require licensing of debt collectors through the Nationwide Multistate Licensing System (NMLS) and to establish, by rule, fees for initial licensing and renewal of such licenses.
and to establish application requirements.

Basis statement:

The purpose of this Chapter is to permit the State of Maine to utilize NMLS for licensing of all debt collectors. NMLS is a platform established by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators in response to the mortgage crisis in 2009. The system has grown from licensing mortgage loan originators and mortgage lenders to licensing a variety of business types which operate on a national or regional basis. Use of the system will provide improved oversight over the activities of the companies, will simplify recordkeeping, and will standardize processes for all debt collectors licensed in Maine.

Fiscal impact of rule:

There will be a minor impact on the Bureau in that revenues from fees should increase as license and renewal fees for the principal license will increase by \$100 per year. The fee for branch locations will increase by \$50 per year.

Licensees will be impacted by the \$100 per year increase in principal location licensing fees, the \$50 per year increase in branch location fees, and the annual fee charged by the NMLS for licensing through the system, currently \$100 for the principal license and \$20 for each additional location.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation,
Bureau of Consumer Protection
Umbrella-Unit: **02-030**
Statutory authority: 32 M.R.S. § 6173
Chapter number/title: **Ch. 706**, Establishment of Registration and Renewal Fees and Application Requirements for Maine's Debt Management Service Provider Registration and Requirements for Registration Through the Nationwide Multistate Licensing System (NMLS)
Filing number: **2023-139**
Effective date: 9/2/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is proposed to effectuate recent changes to 32 M.R.S. § 6171 et seq. allowing the Bureau of Consumer Credit Protection to require registration of debt management service providers through the Nationwide Multistate Licensing System (NMLS) and to establish, by rule, fees for initial registration and renewal of such registrations and the application requirements.

Basis statement:

This Chapter makes the modifications necessary to transition registration of all debt management service providers currently registered by the State of Maine to a multi-state system administered by the Nationwide Multi-state Licensing System (NMLS). As authorized by law, this Chapter establishes an annual registration effective from January 1 through December 31 of each year and sets application and renewal fees and application requirements for debt management service providers. The rule requires applicants for new registrations to apply to NMLS as of November 1, 2023 and requires debt management service providers currently registered in Maine to transition to NMLS.

Use of the system will provide improved oversight over the activities of the companies, will simplify recordkeeping, and will standardize processes for all debt management service providers registered in Maine.

Fiscal impact of rule:

There should be no impact on the Bureau in that fees will remain unchanged.

Registrants will be impacted by the annual fee charged by NMLS for registration through the system. currently \$100.00 for a main office and \$20,00 per year for branch offices.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation,
Bureau of Consumer Protection
Umbrella-Unit: **02-030**
Statutory authority: 9-A M.R.S. § 10-201(4), 9-A M.R.S. § 6-105-A(l)
Chapter number/title: **Ch. 707**, Establishment of License and Renewal Fees
and Application Requirements for Maine's Loan
Broker Licensing and Requirement for Licensing
Through the Nationwide Multistate Licensing System
(NMLS)
Filing number: **2023-140**
Effective date: 9/2/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is proposed to effectuate recent changes to 9-A M.R.S. § 10-101 et seq. allowing the Bureau of Consumer Credit Protection to require licensing of all loan brokers through the Nationwide Multistate Licensing System (NMLS) and to establish, by rule, fees for initial licensing and renewal of such licenses and application requirements.

Basis statement:

This Chapter will allow the State of Maine to utilize NMLS for the licensing of all loan brokers. Many companies are licensed in more than one state. Use of the system will provide improved oversight over the activities of the companies, simplify recordkeeping, and standardize processes for all loan brokers licensed in Maine. This Chapter also establishes requirements for application for licensing and sets fees for initial and renewal licensing.

Fiscal impact of rule:

There will be a minor impact on the Bureau in that revenues from fees should increase slightly as renewal fees for the principal license will increase by \$50 per year and by \$25 per year for a branch.

Licensees will be impacted by the increase in renewal fees and the annual fee charged by NMLS for licensing through the system, currently \$100 for the principal license and \$20 for each additional location.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation,
Bureau of Consumer Protection
Umbrella-Unit: **02-030**
Statutory authority: 9-A M.R.S. §13-103, §13-104, §13-110, §13-119
Chapter number/title: **Ch. 708**, Amendment of License and Renewal Fees for Maine's
Mortgage Loan Originator Licensing Through the Nationwide
Multistate Licensing System (NMLS)
Filing number: **2023-094**
Effective date: 6/25/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is proposed to establish, by rule, amended fees for initial licensing and renewal of licenses as a mortgage loan originator. The current fees are unchanged since 2013 and a fee of \$20 per year does not adequately cover the expense involved in granting the initial license, renewing the license yearly and dealing with changes required by filings during the year.

Basis statement:

The purpose of this Chapter is to amend the current licensing and renewal fees for mortgage loan originators to reflect the cost of processing to the Bureau. The original fee of \$20.00 was set when Article 13 was added to Title 9-A M.R.S., the Maine Consumer Credit Code. That fee does not adequately cover the cost to the Bureau for processing applications or renewals and information reported or changed during the license period.

Fiscal impact of rule:

There will be a significant impact on the Bureau in that revenues from fees should increase as license and renewal fees for the principal license will increase from \$20 to \$80 per year. Licensees will be impacted by the \$60 per year increase in licensing fees.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation,
Bureau of Consumer Protection
Umbrella-Unit: **02-030**
Statutory authority: 32 M.R.S. §6103(4)
Chapter number/title: **Ch. 709**, Establishment of License and Renewal Fees and
Application Requirements for Maine's Money Transmitter Licensing
and Requirements for Licensing Through the Nationwide Multistate
Licensing System (NMLS)
Filing number: **2023-095**
Effective date: 6/25/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is proposed to effectuate recent changes to 32 M.R.S. §6101 et seq. allowing the Bureau of Consumer Credit Protection to require licensing of money transmitters through the Nationwide Multistate Licensing System (NMLS) and to establish, by rule, fees for initial licensing and renewal of such licenses and to establish by rule the requirements for application.

Basis statement:

The purpose of this Chapter is to permit the State of Maine to use NMLS for licensing of all money transmitters. NMLS is a platform established by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators in response to the mortgage crisis in 2009. The system has grown from licensing mortgage loan originators and mortgage lenders to licensing a variety of business types which operate on a national or regional basis. Use of the system will provide improved oversight over the activities of the companies and will simplify recordkeeping and standardize processes for all money transmitters licensed in Maine.

Fiscal impact of rule:

There will be no impact on the Bureau in that fees will be unchanged. Licensees not currently using the NMLS voluntarily will be impacted by the annual fee charged by the NMLS for licensing through the system, currently \$100.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation,
Bureau of Consumer Protection
Umbrella-Unit: **02-030**
Statutory authority: 10 M.R.S. § 1495-D(1-A)
Chapter number/title: **Ch. 710**, Establishment of License and Renewal Fees and
Application Requirements for Maine's Payroll Processor Licensing
and Requirement for Licensing Through the Nationwide Multistate
Licensing System (NMLS)
Filing number: **2023-141**
Effective date: 9/2/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is proposed to effectuate recent changes to 10 M.R.S. § 1495 et seq. allowing the Bureau of Consumer Credit Protection to require licensing of payroll processors through the Nationwide Multistate Licensing System (NMLS) and to establish, by rule, fees for initial licensing and renewal of such licenses and the requirements for application.

Basis statement:

The purpose of this Chapter is to permit the State of Maine to use the NMLS for licensing of all payroll processors. Use of the system will provide improved oversight over the activities of the licensed companies and will simplify recordkeeping and standardize processes for all payroll processors licensed in Maine. This Chapter does not modify the standards for licensing or the applicability of the provisions of the Maine Payroll Processor Act, but rather sets forth the licensing provisions to be utilized henceforth by the Bureau.

Fiscal impact of rule:

There will be a minor impact on the Bureau in that revenues from fees should increase slightly, as license and renewal fees for the license will increase by \$100.00 per year.

Licensees will be impacted by the \$100 per year increase in licensing fees and the annual fee charged by the NMLS for licensing through the system, currently \$100.00.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation,
Bureau of Consumer Protection
Umbrella-Unit: **02-030**
Statutory authority: 9-A M.R.S. § 2-302(1); 9-A M.R.S. § 6-105-A
Chapter number/title: **Ch. 711**, Establishment of License and Renewal Fees and Application Requirements for Maine's Supervised Lenders and Requirement for Licensing of all Supervised Lenders Through the Nationwide Multistate Licensing System (NMLS)
Filing number: **2023-142**
Effective date: 9/2/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is proposed to effectuate recent changes to 9-A M.R.S. § 2-301 et seq. allowing the Bureau of Consumer Credit Protection to require licensing of all supervised lenders through the Nationwide Multistate Licensing System (NMLS) and to establish, by rule, fees for initial licensing and renewal of such licenses. It also establishes by rule the requirements for application.

Basis statement:

This Chapter will permit the State of Maine to utilize NMLS for the licensing of all supervised lenders. Use of the system will provide improved oversight over the activities of the companies and will simplify recordkeeping and standardize processes for all supervised lenders licensed in Maine. This chapter also establishes application requirements and fees for initial and renewal licensing.

Fiscal impact of rule:

There will be a minor impact on the Bureau in that fees will remain unchanged.

Licensees not currently licensed through NMLS will be impacted by the annual fee charged by NMLS for licensing through the system, currently \$100.00 for the principal license and \$20.00 for each additional location.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation,
Bureau of Consumer Protection
Umbrella-Unit: **02-030**
Statutory authority: 32 M.R.S. § 6193
Chapter number/title: **Ch. 712**, Establishment of License and Renewal Fees and
Application Requirements for Maine's Foreclosure Purchaser
Licensing
Filing number: **2023-143**
Effective date: 9/2/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is proposed to effectuate recent changes to 32 M.R.S. § 6191 et seq. allowing the Bureau of Consumer Credit Protection to establish, by rule, fees for initial licensing and renewal of such licenses, the terms of such licenses, and the requirements for application.

Basis statement:

The purpose of this Chapter is to establish requirements for information and documentation to be submitted by applicants for a license and to set fees for new and renewal license applications.

Fiscal impact of rule:

There should be a no impact on the Bureau or licensees, in that fees will remain unchanged.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation,
Bureau of Consumer Protection
Umbrella-Unit: **02-030**
Statutory authority: 10 M.R.S. § 1500-H(6-A)
Chapter number/title: **Ch. 713**, Establishment of Registration and Renewal Fees and Application Requirements for Maine's Guaranteed Asset Protection Waiver Administrators and Requirement for Registration Through the Nationwide Multistate Licensing System (NMLS)
Filing number: **2023-144**
Effective date: 9/2/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is proposed to effectuate recent changes to 10 M.R.S. § 1500-H allowing the Bureau of Consumer Credit Protection to establish, by rule, fees for initial registration and renewal of registrations for Maine guaranteed asset protection waiver administrators and to set requirements for registration application. It makes the modifications necessary to transition registration of all guaranteed asset protection waiver administrators currently registered by the State of Maine to a multi-state system administered by the Nationwide Multistate Licensing System (NMLS). It establishes an annual registration effective from January 1 through December 31 of each year and sets application and renewal fees and application requirements. The rule requires applicants for new registrations to apply to NMLS as of the effective date of this rule and requires guaranteed asset protection waiver administrators currently registered in Maine to transition to NMLS.

Basis statement:

This Chapter will permit the State of Maine to use NMLS for registration of all guaranteed asset protection waiver administrators. Use of the system will provide improved oversight over the activities of the entities and will simplify recordkeeping and standardize processes for all guaranteed asset protection waiver administrators registered in Maine. This Chapter does not modify the standards for registration or the applicability of the provisions of the Maine Guaranteed Asset Protection Waivers Act, 10 M.R.S. § 1500-HI, but rather sets forth the registration requirements to be utilized henceforth by the Bureau.

Fiscal impact of rule:

There will be a financial impact on the Bureau, in that revenues from fees should increase because application fees will increase from \$20.00 to \$200.00, and renewal fees will increase from \$20.00 to \$150.00.

Registrants will be impacted by the increase in initial application and renewal fees, as well as the annual fee charged by NMLS for licensing through the system, currently \$100.00.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation,
Bureau of Consumer Protection
Umbrella-Unit: **02-030**
Statutory authority: 9-A M.R.S. § 12-106(2)
Chapter number/title: **Ch. 714**, Establishment of Registration and Renewal Fees and
Registration Requirements for Maine Legal Funding Providers
Filing number: **2023-145**
Effective date: 9/2/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is proposed to effectuate recent changes to 9-AMR.S. §12-101 et seq. allowing the Bureau of Consumer Credit Protection to establish, by rule, fees for initial registration and renewal of such registration, application requirements and to establish a registration term matching the term of registration for other entities registered by the Bureau.

Basis statement:

This Chapter sets by rule the registration provisions to be utilized henceforth by the Bureau and establishes fees for registration as a Legal Funding Provider.

Fiscal impact of rule:

There will be a no impact on the Bureau or registrants, **in** that fees will remain unchanged.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation,
Bureau of Consumer Protection
Umbrella-Unit: **02-030**
Statutory authority: 10 M.R.S. § 1400-B(1)
Chapter number/title: **Ch. 715**, Establishment of Registration and Renewal Fees and
Registration Requirements for Maine Residential Real Estate
Settlement Agency Registration and Requirement for Registration
Through the Multistate Licensing System (NMLS)
Filing number: **2023-146**
Effective date: 9/2/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is proposed to effectuate recent changes to 10 M.R.S. §1400-A et seq. allowing the Bureau of Consumer Credit Protection to require registration of residential real estate settlement agencies through the Nationwide Multistate Licensing System (NMLS) and to establish, by rule, fees for initial registration and renewal of such registrations. It also establishes, by rule, the requirements for application.

Basis statement:

This Chapter will permit the State of Maine to utilize NMLS for the registration of all settlement agencies. Use of the system will provide improved oversight over the activities of the entities and will simplify recordkeeping and standardize processes for all settlement agencies registered in Maine. This Chapter sets forth the registration application requirements to be utilized henceforth by the Bureau and sets initial and renewal registration fees.

Fiscal impact of rule:

There will be a minor impact on the Bureau, in that revenues from fees should increase slightly as renewal fees for main offices will increase by \$75.00 per year and for branches will increase by \$50.00 per year. Fees for initial applications will increase by \$75.00 for the main license and \$50.00 for branch licenses.

Registrants will be impacted by the increase in the initial application fee and increase in renewal fees and the annual fee charged by NMLS for registration through the system, currently \$100.00 for main location and \$20.00 for branch locations.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation,
Bureau of Insurance
Umbrella-Unit: **02-031**
Statutory authority: 24-A M.R.S. §§ 212 and 4319-B
Chapter number/title: **Ch. 835**, Dental Insurance Plan Loss Ratio Reporting
Filing number: **2023-111**
Effective date: 7/29/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The proposed amendment updates the rule to establish standards for calculating average loss ratios for plans providing dental care services, reporting dental loss ratios to the Superintendent, and determining dental plan credibility, and to establish a process to determine outlier dental plans.

Basis statement:

Acting Superintendent of Insurance Timothy N. Schott hereby adopts rule Chapter 835, “Dental Insurance Plan Loss Ratio Reporting,” pursuant to 24-A M.R.S. §§ 212 and 4319-B. The purpose of the proposed rule is to establish standards for calculating average loss ratios for plans providing dental care services, reporting dental loss ratios to the Superintendent, determining dental plan credibility, and to establish a process to determine outlier dental plans.

On March 17, 2023, the Bureau published a Notice of Rulemaking setting the public hearing at 9:00 a.m. on April 12, 2023 and closing the comment period at 4:30 p.m. on April 24, 2023. On March 17, 2023, the Bureau posted the proposed rule to its website, distributed it to subscribers to the Bureau’s e-mail subscription service, and filed a Rule-Making Fact Sheet with the Maine Secretary of State, published in the State Rulemaking Register on March 22, 2023, and with the Executive Director of the Legislative Council.

Fiscal impact of rule:

None

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, **Maine State Board for Licensure of Architects, Landscape Architects and Interior Designers**

Umbrella-Unit: **02-288**

Statutory authority: 32 M.R.S. §§ 214(1), 220, 221

Chapter number/title: **Ch. 10**, Definitions
Ch. 12, Licensure of Architects
Ch. 13, Licensure of Landscape Architects
Ch. 17, Grounds for Disciplinary Action
Ch. 18, Documentation

Ch. 15, Application for Licensure (repeal)
Ch. 19, Incorporation by Reference (repeal)

Filing number: **2023-150 to 156**

Effective date: 9/15/2023

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The rulemaking proposes a repeal and replace of several chapters to update the board's rules, including updating definitions, amending the pathways and qualifications for licensure for architects and landscape architects; and proposes repealing chapters and relocating several sections of the current rules to other chapters.

The principal reasons for this proposed rulemaking are to align the Maine State Board for Licensure of Architects, Landscape Architects and Interior Designers' licensure requirements more closely with the requirements of the National Council of Architectural Registration Boards (NCARB) for architect licensure and the Council of Landscape Architectural Registration Boards (CLARB) for landscape architect licensure.

Revised rules will allow the majority of architect and landscape architect exam applicants to apply directly to NCARB/CLARB for the Architect Registration Examination (ARE) and Landscape Architect Registration Exam (LARE) in most instances without first paying an application fee to the Maine State Board for Licensure of Architects, Landscape Architects and Interior Designers.

Chapter 10, Definitions. The proposed changes include adding a definition of "direct supervision" as that term is used in Chapter 12, Licensure of Architects, clarifying the definition of "prototypical building documents" to mean "prototypical building construction documents" and adding a definition of a "year of full time architectural work experience" to mean 40 hours a week for 50 weeks of the year. The proposed replacement rule would eliminate the definition of "diversified experience in landscape architecture," as the board is proposing adopting "regulated practice of landscape architecture" as the standard for requisite experience for licensure, a term based on model CLARB Uniform Licensure standards.

Chapter 12, Licensure of Architects. The proposed changes include incorporating by reference the Architectural Experience Program Guidelines, © 2020 National Council of

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Architectural Registration Boards, effective May 2020, and the *NCARB Education Standard* contained in Education Guidelines, © 2021 National Council of Architectural Registration Boards, effective January 2021; reorganizing the pathways to licensure; amending the board's rules to require completion of the NCARB Architectural Experience Program ("AXP") for all pathways except for those completing the Canadian Provincial Internship in Architecture Program; incorporating rules on application for licensure previously located in Chapter 15; proposes eliminating the two-step process by which an applicant first applies for examination to the board and later for licensure after passing the Architectural Registration Examination ("ARE"); the replacement rule would direct all candidates to establish a record with the National Council of Architectural Registration Boards ("NCARB") directly to take the examination and to provide evidence of satisfaction of one of the pathways to licensure to Maine to NCARB, which will then transmit the applicant's record directly to the board at the applicant's request at the time they apply for licensure in Maine. The rule also clarifies that an applicant who graduated from a non-accredited program or who earned their degree in a foreign country *may* be required, at the applicant's expense, to obtain an NCARB Evaluation Report prepared by the Education Evaluation Services for Architects (EESA), which is administered by the National Architectural Accrediting Board ("NAAB"), to determine whether the applicant's professional education substantially satisfied the credit hour and area distribution requirements for coursework set forth in the NCARB Education Standard.

Chapter 13, Licensure of Landscape Architects. The proposed repeal and replace of this chapter aligns the pathways to licensure in Maine as a landscape architect with the Council of Landscape Architectural Registration Boards ("CLARB") Uniform Licensure Standard for Landscape Architecture 2022, which includes a change to combining all non-landscape architecture degrees as part of one pathway to licensure which also requires passage of the Landscape Architect Registration Examination ("LARE") and six (6) years of experience in the regulated practice of landscape architecture, as that term is defined in the rule; the rule eliminates "diversified" and "qualified experience" as well as "experience as a principal" from the licensure requirements; the rule provides that an individual applying for licensure on the basis of a Landscape Architectural Accreditation Board ("LAAB")-accredited degree in landscape architecture may apply for examination directly through CLARB; whereas those applying through alternative pathways must apply to the board prior to taking the examination.

Chapter 15, Application for Licensure. The board proposes a complete repeal of this chapter, and has proposed incorporating relevant provisions in other chapters of the board's rules. The goal is for an applicant for licensure to be able to view all of the rules pertaining to application for licensure in one chapter without needing to cross reference multiple chapters.

Chapter 17, Grounds for Disciplinary Action. The board is proposing to repeal and replace this chapter with a rule that removes the section that makes Sealing of Technical Submissions Prepared in the Absence of Direct Knowledge/Involvement and Control of an Architect or Landscape Architect a ground for disciplinary action and relocates it to Chapter 18.

Chapter 18, Documentation. The board proposes a repeal and replacement rule which would add a section relocated from the current Chapter 17 (Sealing of Technical Submissions Prepared in the Absence of Direct Knowledge/Involvement and Control of an

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Architect or Landscape Architect) and add a section regarding technical submissions in electronic form.

Chapter 19, Incorporation by Reference. The board proposes a complete repeal of this chapter, as it proposes to instead incorporate the NCARB guidelines into Chapter 12, Licensure by Architects and to no longer incorporate the CLARB Standards of Eligibility for Council Certification into its rules, as CLARB informed board staff that it is advising its members to reference the CLARB Uniform Licensure Standard for Landscape Architecture instead of CLARB Certification.

Basis statement:

The Maine State Board of Licensure for Architects, Landscape Architects and Interior Designers (the “Board”) is charged by the Legislature with the regulation of architects, landscape architects and interior designers in the State of Maine for the sole purpose of protecting the public health and welfare. The Legislature granted the Board rulemaking authority pursuant to 32 M.R.S. § 214 (1).

The proposed rulemaking would create the following chapter(s)

Repeal and Replace:

Chapter 10, Definitions
Chapter 12, Licensure of Architects
Chapter 13, Licensure of Landscape Architects
Chapter 17, Grounds for Disciplinary Action
Chapter 18, Documentation

Repeal:

Chapter 15, Application for Licensure
Chapter 19, Incorporation by Reference

The rulemaking proposed a repeal and replace of several chapters to update the board’s rules, including updating definitions, amending the pathways and qualifications for licensure for architects and landscape architects; and proposes repealing chapters and relocating several sections of the current rules to other chapters.

The principal reasons for this rulemaking were to align the Maine State Board for Licensure of Architects, Landscape Architects and Interior Designers’ licensure requirements more closely with the requirements of the National Council of Architectural Registration Boards (NCARB) for architect licensure and the Council of Landscape Architectural Registration Boards (CLARB) for landscape architect licensure.

Revised rules will allow the majority of architect and landscape architect exam applicants to apply directly to NCARB/CLARB for the Architect Registration Examination (ARE) and Landscape Architect Registration Exam (LARE) in most instances without first paying an application fee to the Maine State Board for Licensure of Architects, Landscape Architects and Interior Designers.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Notice of the proposed rulemaking was published in the Maine Secretary of State weekly notice on April 19, 2023, in the Portland Press Herald, the Kennebec Journal, the Bangor Daily News, and the Sun Journal on April 19, 2023, posted on the Maine State Board for Licensure of Architects, Landscape Architects and Interior Designers webpage on April 19, 2023; interested parties were emailed a copy of the rulemaking package on April 19, 2023. The Fact Sheet was filed with the Legislative Council on April 11, 2023.

The written comment period was open through May 19, 2023 at 5:00 p.m.

At its May 30, 2023 meeting, the Board received comments regarding proposed changes to Chapter 13, Licensure of Landscape Architects. The commenters requested that the Board consider amending the proposed rule to require that one half of all of the required supervised experience that a landscape architect must have to qualify for examination be under the direct supervision of a licensed landscape architect. The remaining experience could be gained under the direct supervision of a licensed professional in a related field. The Board wanted to adopt this comment and propose the suggested change, and solicited comments from the public for an additional 30 days on those changes.

Additional changes were also proposed due to the following:

Board staff also noted a statutory provision requiring that a landscape architect meet certain minimum requirements for qualifying for examination, as opposed to licensure, and suggested changes to the proposed rule on the basis of this statutory language. The Board also requested a definition be added to reflect a “year of experience in the regulated profession of landscape architecture” means 40 hours a week for 50 weeks a year.

Notice of the proposed additional changes was published in the Maine Secretary of State weekly notice on June 14, 2023, in the Portland Press Herald, the Kennebec Journal, the Bangor Daily News, and the Sun Journal on June 14, 2023, posted on the Maine State Board for Licensure of Architects, Landscape Architects and Interior Designers webpage on June 13, 2023; interested parties were emailed a copy of the rulemaking package on June 13, 2023. The Fact Sheet was filed with the Legislative Council on June 6, 2023.

The second written comment period was open through July 14, 2023 at 5:00 p.m.

At its July 18, 2023 meeting, the Board accepted the additional comment received and made some minor, non-substantive changes to clarify wording and correct typographical errors.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, **Maine State Board for Licensure of Architects, Landscape Architects and Interior Designers**

Umbrella-Unit: **02-288**

Statutory authority: 32 M.R.S. §§ 214(1) and 220-D and 10 M.R.S. § 8003-H

Chapter number/title: **Ch. 12-A**, Licensure by Endorsement - Architects

Filing number: **2023-036**

Effective date: 3/5/2023

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

This rulemaking proposes to create a new chapter – Chapter 12A - titled Licensure by Endorsement-Architects. This chapter describes the pathway for Maine licensure for applicants with an active architect license in a U.S. jurisdiction that maintains licensing requirements that are substantially equivalent to Maine’s requirements. This rule implements LD 149 (P.L. 2021, c. 167), An Act to Facilitate Licensure for Credentialed Individuals from Other Jurisdictions and LD 2035 (P.L. 2021, c. 642), An Act to Make Changes to the Laws Regarding Licensure of Certain Individuals from Other Jurisdictions.

Basis statement:

The Maine State Board of Licensure for Architects, Landscape Architects and Interior Designers (the “Board”) is charged by the Legislature with the regulation of architects, landscape architects and interior designers in the State of Maine for the sole purpose of protecting the public health and welfare. The Legislature granted the Board rulemaking authority pursuant to 32 M.R.S. § 214 (1) and 10 M.R.S. § 8003-H.

The proposed rulemaking would create the following chapter(s)

Chapter 12-A: Licensure by Endorsement - Architects

The principal reason for this proposed rulemaking was to propose a rule to implement a pathway for licensure by Endorsement pursuant to Public Law 2021, Chapter 167, An Act to Facilitate Licensure for Credentialed Individuals from Other Jurisdictions and Public Law 2021, Chapter 642, An Act to Make Changes to the Laws Regarding Licensure of Certain Individuals from Other Jurisdictions.

Notice of the proposed rulemaking was published in the Maine Secretary of State weekly notice on November 30, 2022, in the Portland Press Herald, the Kennebec Journal, the Bangor Daily News, and the Sun Journal on November 30, 2022, posted on the Maine State Board of Licensure for Architects, Landscape Architects and Interior Designers webpage on November 28, 2022; bill sponsors were provided a copy of the proposed rulemaking on November 22, 2022; interested parties were emailed a copy of the rulemaking package on November 28, 2022. The Fact Sheet was filed with the Legislative Council on November 22, 2022.

The written comment period was open through January 4, 2023 at 5:00 p.m.

Fiscal impact of rule:

None anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation,
Office of Professional and Occupational Regulation,
Board of Funeral Service

Umbrella-Unit: **02-331**

Statutory authority: 32 MRS §§ 1451, 1501 and 1506

Chapter numbers/titles: **Ch. 11**, Annual Renewal; Continuing Education; Inactive Status

Filing numbers: **2023-010**

Effective date: 1/22/2023

Type of rules: Routine Technical

Emergency rule: No

Principal reason or purpose for rules:

The proposed rule was developed as a result of the change in statute regarding continuing education requirements. The rule clarifies that at the time of an odd-year renewal, practitioners of funeral service shall certify compliance with the continuing education requirement set forth in 32 MRS § 1506 and Chapter 11 of Board rules. The proposed rulemaking would make changes to the current rule regarding what is considered approved continuing education programs, by enlarging the scope of potential programs that would satisfy the continuing education requirement and removing the requirement that sponsors and/or activities be pre-approved by the Board. The proposed rule would also clarify that if a licensee with inactive status seeks reinstatement to active status, the six (6) contact hours of continuing education that are required may be completed either through in-person or through online or distance learning programs.

Basis statement:

The Maine State of Funeral Service (the “Board”) is charged by the Legislature with the regulation of funeral practitioners, trainees and funeral attendants in the State of Maine for the sole purpose of protecting the public health and welfare 10 MRS § 8008. The Legislature granted the Board rulemaking authority pursuant to 32 MRS § 1451.

The rulemaking amends the following chapter:

Chapter 11: Annual renewal; Continuing Education; Inactive Status

The proposed rule was developed as a result of the change in statute regarding continuing education requirements. The rule clarifies that at the time of an odd-year renewal, practitioners of funeral service shall certify compliance with the continuing education requirement set forth in 32 MRS § 1506 and Chapter 11 of Board rules. The proposed rulemaking would make changes to the current rule regarding what is considered approved continuing education programs, by enlarging the scope of potential programs that would satisfy the continuing education requirement and removing the requirement that sponsors and/or activities be pre-approved by the Board. The proposed rule would also clarify that if a licensee with inactive status seeks reinstatement to active status, the six (6) contact hours of continuing education that are required may be completed either through in-person or through online or distance learning programs.

Fiscal impact of rules:

None known. It is anticipated that the rule change will increase the type and scope of continuing education programs that will satisfy the continuing education requirement at the time of odd-year renewal of licenses for practitioners of funeral service.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation,
Office of Professional and Occupational Regulation
Maine Board of Funeral Service

Umbrella-Unit: **02-331**

Statutory authority: 32 M.R.S. §§ 1451 and 1501; P.L. 2021, c. 268

Chapter numbers/titles: **Ch. 12**, Transportation of Human Remains

Filing numbers: **2023-133**

Effective date: 9/23/2023

Type of rules: Major Substantive

Emergency rule: No

Principal reason or purpose for rules:

Following a public hearing held on July 12, 2022 and a comment period ending on July 29, 2022, the Board voted at its September meeting to provisionally adopt the proposed major substantive rule titled Chapter 12, Transportation of Human Remains. Subsequently and during the review required by 5 M.R.S. § 8052(7)(B) and § 8056(1)(A), it was determined that the section of Federal Motor Carrier Safety Regulations referenced in the second paragraph of Section 4, subsection D of the rule would need to be fully incorporated by reference pursuant to 5 M.R.S. § 8056(1)(B).

In response to that specific finding, and pursuant to 5 M.R.S. § 8052(5)(B), the Board is soliciting comments from the public regarding its proposal to remove this reference to federal regulation altogether. The Board had intended the citation to the federal regulation to be a helpful and educational reference, and based on the information it has received that to include the reference in the rule would require incorporating the provision entirely, proposes to omit the reference to Federal Motor Carrier Safety Regulations section 393.102. The other proposed changes are technical changes to correct minor errors.

Basis statement:

The Maine State Board of Funeral Service (the “Board”) is charged by the Legislature with the regulation of practitioners of funeral service, practitioner trainees, funeral attendants, and funeral establishments in the State of Maine for the sole purpose of protecting the public health and welfare. The Legislature granted the Board rulemaking authority pursuant to 32 M.R.S. § 1451.

The proposed rulemaking would repeal and replace the following chapter:

Chapter 12: Transportation of Human Remains

This major substantive rulemaking was developed as a result of LD 1214 (enacted by the 130th Legislature and signed into law as P.L 2021, c. 268) which directed the Board of Funeral Service to collaborate with stakeholders to develop a rule governing the safety of drivers and passengers of vehicles owned, leased or otherwise used by a practitioner of funeral service or a funeral establishment for the transport of human remains. A stakeholder group met on three (3) separate occasions and consisted of individuals with various areas of expertise including a practitioner of funeral service, a representative of the Department of Transportation with expertise in cargo transportation, a representative of the State Police, and a representative of the insurance industry. The stakeholder group issued a report that was used to develop a draft rule that was presented to the Board for its consideration. The proposed rule was the result of both the stakeholder process and the Board’s input.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

The Board held a public hearing on July 12, 2022 at 9:00 a.m., to take oral comments, and continued to accept written comments through 5:00 pm on July 29, 2022.

Following a public hearing held on July 12, 2022 and a comment period ending on July 29, 2022, the Board voted at its September meeting to provisionally adopt the proposed major substantive rule titled Chapter 12, Transportation of Human Remains. Subsequently and during the review required by 5 M.R.S. § 8052(7)(B) and § 8056(1)(A), it was determined that the section of Federal Motor Carrier Safety Regulations referenced in the second paragraph of Section 4, subsection D of the rule would need to be fully incorporated by reference pursuant to 5 M.R.S. § 8056(1)(B).

In response to that specific finding, and pursuant to 5 M.R.S. § 8052(5)(B), the Board solicited additional comments from the public regarding its proposal to remove this reference to federal regulation altogether. The Board had intended the citation to the federal regulation to be a helpful and educational reference, and based on the information it has received that to include the reference in the rule would require incorporating the provision entirely, proposes to omit the reference to Federal Motor Carrier Safety Regulations section 393.102. The other proposed changes were technical changes to correct minor errors.

Notice of the proposed rulemaking was published in the Maine Secretary of State weekly notice on June 22, 2022 and again on November 16, 2022, in newspapers on June 22, 2022, and November 16, 2022, and uploaded to the Board of Funeral Service webpage on June 17, 2022 and November 14, 2022. The stakeholder group; along with interested parties were emailed a copy of the rulemaking package on June 17, 2022 and again on November 14, 2022. The Fact Sheet was filed with the Legislative Council on June 14, 2022 and again on November 9, 2022. The sponsor of the bill was sent a copy of the proposed rulemaking on June 15, 2022 and again on November 9, 2022.

The rule was provisionally adopted by the Board on January 3, 2023 and sent to the Legislature for review pursuant to 5 M.R.S. § 8072(3). The provisionally adopted rule was presented through LD 374, which after being approved by the Legislature was signed into law by the Governor on June 1, 2023 as Resolve 2023, c. 20. The Board voted for final adoption at board meeting on July 11, 2023.

Fiscal impact of rules:

None anticipated with regards to the proposed change to eliminate a reference to a federal regulation.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation,
Office of Professional and Occupational Regulation,
Board of Funeral Service

Umbrella-Unit: **02-331**

Statutory authority: 32 MRS §§ 1451, 1501 and 1506

Chapter numbers/titles: **Ch. 11**, Annual Renewal; Continuing Education; Inactive Status

Filing numbers: **2023-010**

Effective date: 1/22/2023

Type of rules: Routine Technical

Emergency rule: No

Principal reason or purpose for rules:

The proposed rule was developed as a result of the change in statute regarding continuing education requirements. The rule clarifies that at the time of an odd-year renewal, practitioners of funeral service shall certify compliance with the continuing education requirement set forth in 32 MRS § 1506 and Chapter 11 of Board rules. The proposed rulemaking would make changes to the current rule regarding what is considered approved continuing education programs, by enlarging the scope of potential programs that would satisfy the continuing education requirement and removing the requirement that sponsors and/or activities be pre-approved by the Board. The proposed rule would also clarify that if a licensee with inactive status seeks reinstatement to active status, the six (6) contact hours of continuing education that are required may be completed either through in-person or through online or distance learning programs.

Basis statement:

The Maine State of Funeral Service (the “Board”) is charged by the Legislature with the regulation of funeral practitioners, trainees and funeral attendants in the State of Maine for the sole purpose of protecting the public health and welfare 10 MRS § 8008. The Legislature granted the Board rulemaking authority pursuant to 32 MRS § 1451.

The rulemaking amends the following chapter:

Chapter 11: Annual renewal; Continuing Education; Inactive Status

The proposed rule was developed as a result of the change in statute regarding continuing education requirements. The rule clarifies that at the time of an odd-year renewal, practitioners of funeral service shall certify compliance with the continuing education requirement set forth in 32 MRS § 1506 and Chapter 11 of Board rules. The proposed rulemaking would make changes to the current rule regarding what is considered approved continuing education programs, by enlarging the scope of potential programs that would satisfy the continuing education requirement and removing the requirement that sponsors and/or activities be pre-approved by the Board. The proposed rule would also clarify that if a licensee with inactive status seeks reinstatement to active status, the six (6) contact hours of continuing education that are required may be completed either through in-person or through online or distance learning programs.

Fiscal impact of rules:

None known. It is anticipated that the rule change will increase the type and scope of continuing education programs that will satisfy the continuing education requirement at the time of odd-year renewal of licenses for practitioners of funeral service.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation,
Office of Professional and Occupational Regulation
Maine Board of Funeral Service

Umbrella-Unit: **02-331**

Statutory authority: 32 M.R.S. §§ 1451 and 1501; P.L. 2021, c. 268

Chapter numbers/titles: **Ch. 12**, Transportation of Human Remains

Filing numbers: **2023-133**

Effective date: 9/23/2023

Type of rules: Major Substantive

Emergency rule: No

Principal reason or purpose for rules:

Following a public hearing held on July 12, 2022 and a comment period ending on July 29, 2022, the Board voted at its September meeting to provisionally adopt the proposed major substantive rule titled Chapter 12, Transportation of Human Remains. Subsequently and during the review required by 5 M.R.S. § 8052(7)(B) and § 8056(1)(A), it was determined that the section of Federal Motor Carrier Safety Regulations referenced in the second paragraph of Section 4, subsection D of the rule would need to be fully incorporated by reference pursuant to 5 M.R.S. § 8056(1)(B).

In response to that specific finding, and pursuant to 5 M.R.S. § 8052(5)(B), the Board is soliciting comments from the public regarding its proposal to remove this reference to federal regulation altogether. The Board had intended the citation to the federal regulation to be a helpful and educational reference, and based on the information it has received that to include the reference in the rule would require incorporating the provision entirely, proposes to omit the reference to Federal Motor Carrier Safety Regulations section 393.102. The other proposed changes are technical changes to correct minor errors.

Basis statement:

The Maine State Board of Funeral Service (the “Board”) is charged by the Legislature with the regulation of practitioners of funeral service, practitioner trainees, funeral attendants, and funeral establishments in the State of Maine for the sole purpose of protecting the public health and welfare. The Legislature granted the Board rulemaking authority pursuant to 32 M.R.S. § 1451.

The proposed rulemaking would repeal and replace the following chapter:

Chapter 12: Transportation of Human Remains

This major substantive rulemaking was developed as a result of LD 1214 (enacted by the 130th Legislature and signed into law as P.L. 2021, c. 268) which directed the Board of Funeral Service to collaborate with stakeholders to develop a rule governing the safety of drivers and passengers of vehicles owned, leased or otherwise used by a practitioner of funeral service or a funeral establishment for the transport of human remains. A stakeholder group met on three (3) separate occasions and consisted of individuals with various areas of expertise including a practitioner of funeral service, a representative of the Department of Transportation with expertise in cargo transportation, a representative of the State Police, and a representative of the insurance industry. The stakeholder group issued a report that was used to develop a draft rule that was presented to the Board for its consideration. The proposed rule was the result of both the stakeholder process and the Board’s input.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

The Board held a public hearing on July 12, 2022 at 9:00 a.m., to take oral comments, and continued to accept written comments through 5:00 pm on July 29, 2022.

Following a public hearing held on July 12, 2022 and a comment period ending on July 29, 2022, the Board voted at its September meeting to provisionally adopt the proposed major substantive rule titled Chapter 12, Transportation of Human Remains. Subsequently and during the review required by 5 M.R.S. § 8052(7)(B) and § 8056(1)(A), it was determined that the section of Federal Motor Carrier Safety Regulations referenced in the second paragraph of Section 4, subsection D of the rule would need to be fully incorporated by reference pursuant to 5 M.R.S. § 8056(1)(B).

In response to that specific finding, and pursuant to 5 M.R.S. § 8052(5)(B), the Board solicited additional comments from the public regarding its proposal to remove this reference to federal regulation altogether. The Board had intended the citation to the federal regulation to be a helpful and educational reference, and based on the information it has received that to include the reference in the rule would require incorporating the provision entirely, proposes to omit the reference to Federal Motor Carrier Safety Regulations section 393.102. The other proposed changes were technical changes to correct minor errors.

Notice of the proposed rulemaking was published in the Maine Secretary of State weekly notice on June 22, 2022 and again on November 16, 2022, in newspapers on June 22, 2022, and November 16, 2022, and uploaded to the Board of Funeral Service webpage on June 17, 2022 and November 14, 2022. The stakeholder group; along with interested parties were emailed a copy of the rulemaking package on June 17, 2022 and again on November 14, 2022. The Fact Sheet was filed with the Legislative Council on June 14, 2022 and again on November 9, 2022. The sponsor of the bill was sent a copy of the proposed rulemaking on June 15, 2022 and again on November 9, 2022.

The rule was provisionally adopted by the Board on January 3, 2023 and sent to the Legislature for review pursuant to 5 M.R.S. § 8072(3). The provisionally adopted rule was presented through LD 374, which after being approved by the Legislature was signed into law by the Governor on June 1, 2023 as Resolve 2023, c. 20. The Board voted for final adoption at board meeting on July 11, 2023.

Fiscal impact of rules:

None anticipated with regards to the proposed change to eliminate a reference to a federal regulation.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation,
Office of Professional and Occupational Regulation,
Board of Pharmacy

Umbrella-Unit: **02-392**

Statutory authority: 32 M.R.S. §§ 13721(1)(E) and 13751(3)

Chapter number/title: **Ch. 1**, Definitions; **Ch. 13**, Operation of Retail Pharmacies; **Ch. 25**, Patient Counseling; **Ch. 36**, Licensure of Opioid Treatment Programs (repeal)

Filing number: **2023-218 to 2023-221**

Effective date: 11/4/2023

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The rulemaking would repeal Board of Pharmacy rules that establish licensure of and otherwise regulate Opioid Treatment Programs. Opioid Treatment Programs are already regulated at both the federal and state level – certified by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration and licensed by the Maine Department of Health and Human Services, Division of Licensing and Regulatory Services.

Basis statement:

This rulemaking involves a complete repeal of Chapter 36: Licensure of Opioid Treatment Programs and removes other rule chapter references to opioid treatment programs as a category of pharmacy requiring licensure by the Board of Pharmacy. The requirement of Board of Pharmacy licensure for opioid treatment programs is being removed to reduce overlapping regulatory requirements for these programs which are also regulated by other federal and state agencies, specifically the United States Department of Health and Human Services, Substance Abuse Mental Health Services Administration (SAMHSA), the United States Drug Enforcement Administration (DEA), and the Maine Department of Health and Human Services, Division of Licensing and Regulatory Services.

Fiscal impact of rule:

Expected to be minimal

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation,
Office of Professional and Occupational Regulation,
Board of Pharmacy

Umbrella-Unit: **02-392**

Statutory authority: 32 M.R.S. §§ 13720, 13723, 13831, 13832, 13833, 13834(1),
13835

Chapter number/title: **Ch. 4-A**, Administration of Drugs and Vaccines

Filing number: **2023-068**

Effective date: 5/15/2023

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

Chapter 4-A – This chapter sets forth minimum requirements for treatment protocols, administration and recordkeeping requirements, and standards for the administration of drugs and vaccines and the operation of drugs and vaccine administration clinics.

Basis statement:

The Notice of Proposed Rulemaking was published on November 9, 2022, and a public hearing was held on December 1, 2022. The public comment period ended on December 11, 2022, at 5:00 p.m. (EST). The following is a summary of the comments collected from the public hearing verbally and written comments submitted.

This proposed rule is in response to Public Law 2021 Chapter 271 (L.D. 1293 An Act To Improve Access to Certain Injectable Medications Approved by the Federal Food and Drug Administration). This chapter sets forth minimum requirements for treatment protocols, administration and recordkeeping requirements, and standards for the administration of drugs and vaccines and the operation of drugs and vaccine administration clinics. This chapter eliminates the requirement for submission of a vaccine administration treatment protocol and Board approval and requires pharmacies to maintain a protocol on the premises and to make the protocol available to the Board or an agent of the Board upon request. This chapter outlines the requirements for administration of drug clinics and the one-time approval by the Board for a drug administration clinic.

Fiscal impact of rule:

None

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation,
Office of Professional and Occupational Regulation,
Board of Pharmacy

Umbrella-Unit: **02-392**

Statutory authority: 32 M.R.S. §§ 13751, 13792(2)

Chapter number/title: **Ch. 41**, Sales of Nonprescription Drugs Through Vending Machine
Outlets

Filing number: **2023-069**

Effective date: 5/15/2023

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

This chapter sets forth requirements for licensing, management, and safe operation of vending machine outlets.

Basis statement:

The Notice of Proposed Rulemaking was published on November 9, 2022, and a public hearing was held on December 1, 2022. The public comment period ended on December 11, 2022, at 5:00 p.m. (EST). The following is a summary of the comments collected from the public hearing verbally and written comments submitted.

This proposed rule is in response to Public Law 2019 Chapter 454 (L.D. 37 An Act To Allow for the Sale of Nonprescription Drugs through Vending Machines). This chapter sets forth requirements for licensing, management, and safe operation of vending machine outlets for the sale of nonprescription drugs through vending machines.

Fiscal impact of rule:

None

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation,
Office of Professional and Occupational Regulation,
Board of Pharmacy

Umbrella-Unit: **02-392**

Statutory authority: 32 M.R.S. §§ 13720, 13723, 13722(1)(B-2)

Chapter number/title: **Ch. 42**, Compounding Drugs for Veterinary Office Use

Filing number: **2023-070**

Effective date: 5/15/2023

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

This chapter establishes the terms and conditions for compounding drugs for veterinarian office use pursuant to 32 M.R.S. § 13722(1)(B-2). This chapter was developed in consultation with the Maine State Board of Veterinary Medicine.

Basis statement:

The Notice of Proposed Rulemaking was published on November 9, 2022, and a public hearing was held on December 1, 2022. The public comment period ended on December 11, 2022, at 5:00 p.m. (EST). The following is a summary of the comments collected from the public hearing verbally and written comments submitted.

This proposed rule is in response to Public Law 2021 Chapter 289 (L.D. 4 An Act To Amend the Maine Pharmacy Act). This chapter establishes the terms and conditions for compounding of animal drugs for nonfood-producing animals and nonpatient-specific use in veterinary offices. This chapter was developed in consultation with the Maine State Board of Veterinary Medicine.

Fiscal impact of rule:

None

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, **Board for Social Worker Licensure**

Umbrella-Unit: **02-416**

Statutory authority: 32 M.R.S. §§ 7001-A(10), 7030(2), 7053-A

Chapter number/title: **Ch. 10**, Definitions

Filing number: **2023-100**

Effective date: 7/4/2023

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The principal reason for this proposed rulemaking is to amend the definition of “organic mental illness” in the board’s rules. While 32 M.R.S. § 7001-A(10) and 32 M.R.S. § 7053-A use the term “organic mental illness” in the board’s law, that term is undefined. Pursuant to 32 M.R.S. § 7053-A, no social worker at any level may diagnose organic mental illness.

The board recently revised its rules, including Chapter 10 and the definition of “organic mental illness” to mean “any neurocognitive disorder or neurodevelopmental disorder” as described in the Diagnostic and Statistical Manual of Mental Disorders (Fifth Edition), American Psychiatric Association (Washington, D.C. 2013) (“DSM”). After the rule was adopted, the board received feedback from various stakeholders that the rule as amended broadened the disorders included in the definition of “organic mental illness” in a way that unintentionally restricts the ability of licensed clinical social workers to diagnose certain disorders, such as ADD/ADHD. As such a restriction was not the intent of the board, it is now proposing a language change to define “organic mental illness” to accurately reflect the board’s interpretation of the term as used in 32 M.R.S. §§ 7001-A(10) and 7053-A.

Basis statement:

The Maine Board of Social Worker Licensure (the “Board”) is charged by the Legislature with the regulation of social workers in the State of Maine for the sole purpose of protecting the public health and welfare. The Legislature granted the Board rulemaking authority pursuant to 32 M.R.S. § 7030.

The principal reason for this rulemaking was to amend the definition of “organic mental illness” in the Board’s rules. While 32 M.R.S. § 7001-A(10) and 32 M.R.S. § 7053-A use the term “organic mental illness” in the Board’s law, that term is undefined. Pursuant to 32 M.R.S. § 7053-A, no social worker at any level may diagnose organic mental illness.

The Board recently revised its rules, including Chapter 10 and the definition of “organic mental illness” to mean “any neurocognitive disorder or neurodevelopmental disorder” as described in the Diagnostic and Statistical Manual of Mental Disorders (Fifth Edition), American Psychiatric Association (Washington, D.C. 2013) (hereinafter “DSM” or “DSM-5”). After the rule was adopted, the Board received feedback from various stakeholders that the rule as amended broadened the disorders included in the definition of “organic mental illness” in a way that unintentionally restricts the ability of licensed clinical social workers to diagnose certain disorders, such as ADD/ADHD. As such a restriction was not the intent of the Board, it is now proposing a language change to define “organic mental illness” to accurately reflect the Board’s interpretation of the term as used in 32 M.R.S. §§ 7001-A(10) and 7053-A.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Chapter 10, Definitions: The rulemaking is proposing a language change to define “organic mental illness” to accurately reflect the Board’s interpretation of the term as used in 32 M.R.S. §§ 7001-A(10) and 7053-A.

The Board accepted written comments from March 22, 2023 through 5:00 pm on April 21, 2023.

Fiscal impact of rule:

None Anticipated

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation,
Office of Professional and Occupational Regulation,
Board of Occupational Therapy Practice

Umbrella-Unit: **02-477**

Statutory authority: 32 MRS §§ 2274(2), 2279(6), 10 MRS §8003-H

Chapter numbers/titles: **Ch. 3**, Licensure by Endorsement
Ch. 7, Code of Ethics

Filing numbers: **2023-013, 2023-014**

Effective date: 1/25/2023

Type of rules: Routine Technical

Emergency rule: No

Principal reason or purpose for rules:

Chapter 3: Licensure by Endorsement

The Board is proposing to add a new chapter describing the pathway for Maine licensure for applicants with an active license in a U.S. jurisdiction that maintains licensing requirements that are substantially equivalent to Maine's requirements. This rule implements LD 149 (P.L. 2021, c. 167), An Act to Facilitate Licensure for Credentialed Individuals from Other Jurisdictions and LD 2035 (P.L. 2021, c. 642), An Act to Make Changes to the Laws Regarding Licensure of Certain Individuals from Other Jurisdictions.

Chapter 7: Code of Ethics

The Board is proposing to amend its Chapter 7 by adopting and incorporating by reference the AOTA 2020 Occupational Therapy Code of Ethics, Copyright © 2020, of the American Occupational Therapy Association, Inc (hereinafter the 2020 AOTA Code of Ethics"). The current rule adopts the 2010 American Occupational Therapy Association (AOTA) Occupational Therapy Code of Ethics and Ethics Standards, with certain exceptions [excluding Principle 4, Social Justice, in its entirety, with the exception of the title "Social Justice," the prefatory phrase "Occupational therapy personnel shall" and paragraph F; excluding Principle 5, Procedural Justice, paragraphs D and F; and excluding Principle 7, Fidelity, paragraphs C, D and G.] In voting to propose the amended rule, the Board expressed desire to update the Code of Ethics to the current version published by AOTA and, given the changes from the 2010 AOTA Occupational Therapy Code of Ethics, voted to incorporate the AOTA Code of Ethics without exclusions, but instead to adopt the 2020 version in its entirety.

Basis statement:

The Maine State Board of Occupational Therapy Practice (the "Board") is charged by the Legislature with the regulation of Occupational Therapists and Occupational Therapy Assistants in the State of Maine for the sole purpose of protecting the public health and welfare. 10 M.R.S. § 8008. The Legislature granted the Board rulemaking authority pursuant to 32 M.R.S. S 2274(2).

The proposed rulemaking would add and amend the following chapters:

Chapter 3: Licensure by Endorsement (new)

Chapter 7: Code of Ethics (amended)

The Board proposed to add a new chapter describing the pathway for Maine licensure for applicants with an active license in a U,S, jurisdiction that maintains licensing requirements that are substantially equivalent to Maine's requirements. This rule implements LD 149 (P.L.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

2021, c. 167), An Act to Facilitate Licensure for Credentialed Individuals from Other Jurisdictions and LD 2035 (P.L. 2021, c. 642), An Act to Make Changes to the Laws Regarding Licensure of Certain Individuals from Other Jurisdictions.

Chapter 7: Code of Ethics

The Board also proposed to amend its Chapter 7 by adopting and incorporating by reference the AOTA 2020 Occupational Therapy Code of Ethics, Copyright © 2020, of the American Occupational Therapy Association, Inc (hereinafter the "2020 AOTA Code of Ethics"). The current rule adopts the 2010 American Occupational Therapy Association (AOTA) Occupational Therapy Code of Ethics and Ethics Standards, with certain exceptions [excluding Principle 4, Social Justice, in its entirety, with the exception of the title "Social Justice," the prefatory phrase "Occupational therapy personnel shall" and paragraph F; excluding Principle 5, Procedural Justice, paragraphs D and F; and excluding Principle 7, Fidelity, paragraphs C, D and G.] In voting to propose the amended rule, the Board expressed desire to update the Code of Ethics to the current version published by AOTA and, given the changes from the 2010 AOT A Occupational Therapy Code of Ethics, voted to incorporate the AOTA Code of Ethics without exclusions, but instead to adopt the 2020 version in its entirety.

Fiscal impact of rules:

None anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation,
Office of Professional and Occupational Regulation,
Board of Occupational Therapy Practice

Umbrella-Unit: **02-477**

Statutory authority: 32 MRS §§ 2274(2), 2283(4), 10 MRS §8003(5-A)(D)

Chapter numbers/titles: **Ch 4**, License Renewal and Continuing Education Requirements; Reinstatement (new); **Ch. 6-A**, License Renewal; Reinstatement (repealed)

Filing numbers: **2023-051, 2023-052**

Effective date: 4/3/2023

Type of rules: Routine Technical

Emergency rule: No

Principal reason or purpose for rules:

The proposed rule was developed as a result of the change in the Board's governing statute requiring continuing education requirements as a condition for renewal of a license. The new law directs the board to prescribe those requirements in rule. The rulemaking would incorporate the existing provisions in rule regarding license renewal and reinstatement that are currently in Chapter 6-A of board rules, and propose to repeal that chapter in its entirety and consolidate all provisions with the Continuing Education Requirements in a newly created Chapter 4. The rule proposes that each occupational therapist shall complete ten (10) hours and every occupational therapy assistant shall complete six (6) hours of continuing education relevant to the practice of occupational therapy or interprofessional practice during each reporting period as a condition of renewal. At least one (1) hour shall be on ethics. There is no requirement for either in-person attendance or a live, remote program during which immediate interaction with the instructor is possible. A minimum of four (4) hours must be completed by participation in a program offered by a recognized sponsor, while the remaining hours may be satisfied through a number of other qualifying activities including (but not limited to; please refer to text of the proposed rule) academic coursework, publications related to occupational therapy, preparation for and presenting at a workshop or seminar, and research.

Basis statement:

The Maine State Board of Occupational Therapy Practice (the "Board") is charged by the Legislature with the regulation of Occupational Therapists and Occupational Therapy Assistants in the State of Maine for the sole purpose of protecting the public health and welfare. 10 M.R.S. § 8008. The Legislature granted the Board rulemaking authority pursuant to 32M.R.S. § 2274(2).

Chapter 4: License Renewal and Continuing Education Requirements; Reinstatement (new)

Chapter 6-A: License Renewal; Reinstatement (repeal)

The proposed rule was developed as a result of the change in the Board's governing statute requiring continuing education requirements as a condition for renewal of a license. The new law directs the board to prescribe those requirements in rule. The rulemaking would incorporate the existing provisions in rule regarding license renewal and reinstatement that are currently in Chapter 6-A of board rules, and propose to repeal that chapter in its entirety and consolidate all provisions with the Continuing Education Requirements in a newly created Chapter 4. The rule proposes that each occupational therapist shall complete ten (10) hours and every occupational therapy assistant shall complete six (6) hours of continuing education relevant to

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

the practice of occupational therapy or interprofessional practice during each reporting period as a condition of renewal. At least one (1) hour for both license categories shall be on ethics. There is no requirement for either in-person attendance or a live, remote program during which immediate interaction with the instructor is possible. A minimum of four (4) hours must be completed by participation in a program offered by a recognized sponsor, while the remaining hours may be satisfied through a number of other qualifying activities including academic coursework, publications related to occupational therapy, preparation for and presenting at a workshop or seminar, and research.

Fiscal impact of rules:

It is estimated that some licensees may incur some costs to comply with the requirements in this rule. The proposed rule, however, permits a wide range of options to comply with the continuing education requirements, therefore, the total cost to any individual licensee, if any, cannot be ascertained. Moreover, some renewing licensees who maintain a current NBCOT Certification may already be completing hours that would satisfy this requirement in board rule in order to maintain their certification.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation,
Office of Professional and Occupational Regulation,
Board of Counseling Professionals Licensure

Umbrella-Unit: **02-514**

Statutory authority: 32 M.R.S. § §§ 13853(2), 13858(8); 10 M.R.S. § 8003-H.

Chapter numbers/titles: **Ch. 6-A**, Licensure by Endorsement

Filing numbers: **2023-048**

Effective date: 4/1/2023

Type of rules: Routine Technical

Emergency rule: No

Principal reason or purpose for rules:

This rulemaking proposes to create a new chapter – Chapter 6-A - titled Licensure by Endorsement. This chapter describes the pathway for Maine licensure for applicants with an active license in a U.S. jurisdiction that maintains licensing requirements that are substantially equivalent to Maine’s requirements. This rule implements LD 149 (P.L. 2021, c. 167), An Act to Facilitate Licensure for Credentialed Individuals from Other Jurisdictions and LD 2035 (P.L. 2021, c. 642), An Act to Make Changes to the Laws Regarding Licensure of Certain Individuals from Other Jurisdictions.

Basis statement:

The Board of Counseling Professionals Licensure (the “Board”) is charged by the Legislature with the regulation of social workers in the State of Maine for the sole purpose of protecting the public health and welfare. The Legislature granted the Board rulemaking authority pursuant to 32 M.R.S. § 13853(2).

The Board proposed this rule to implement Public Law 2021, Chapter 167, An Act to Facilitate Licensure for Credentialed Individuals from Other Jurisdictions and Public Law 2021, Chapter 642, An Act to Make Changes to the Laws Regarding Licensure of Certain Individuals from Other Jurisdictions. This rulemaking proposes to create a new chapter – Chapter 6-A - titled Licensure by Endorsement. Chapter 6-A describes the pathway for Maine licensure for applicants with an active license in a U.S. jurisdiction that maintains licensing requirements that are substantially equivalent to Maine’s requirements.

The Board accepted written comments on the proposed rule from July 27, 2022 until August 26, 2022 at 5:00 pm.

Fiscal impact of rules:

None anticipated

Annual List of Rule-Making Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A(5)

Agency name: Department of Professional and Financial Regulation,
Maine Fuel Board

Umbrella-Unit: **02-658**

Statutory authority: 5 M.R.S. §§ 8051, 9001(4); 32 M.R.S. §§ 18107(2);
18123(2), 18132, 18133, 18134, 18134-A, 18135, 18136,
18138, 18139

Chapter number/title: **Ch. 1,** Definitions
Ch. 2, Advisory Rulings
Ch. 3, Categories and Responsibilities of Licensure
Ch. 4, Qualifications for Examination and Licensure
Ch. 5, Use of Other License Authorities
Ch. 6, Adoption of Standards
Ch. 7, Modification of Standards
Ch. 8, Installation of Oil Burning Equipment (with
Appendix)
Ch. 9, Installation of Solid Fuel Burning Equipment
Ch.10, Chimneys
Ch. 11, Installation of Waste Oil Appliances and Waste Oil
Supply Tanks
Ch.12, Permits for Aboveground and Underground
Propane and Natural Gas Storage Facilities and Rooftop
Installations
Ch. 13, Installation of Propane and Natural Gas Burning
Equipment
Ch. 14, Propane and Natural Gas Containers, Dispensers,
and Piping (with Appendix)

Filing number: **2023-157 to 2023-170**

Effective date: 9/16/2023

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

Chapter 1, Definitions. The proposal includes amending this chapter as follows: making minor, technical changes, aligning the definition of "equipment installations" with statute; amending the definition of licensed practical experience to state that one year of licensed practical experience means an individual has worked at least 2,000 hours within a 12-month period and six months of licensed practical experience means an individual has worked at least 1,000 hours within a 6-month period; and changing the term from a "signing" to a "supervising" master oil burner and/or solid fuel technician or a propane and natural gas technician.

Chapter 2, Advisory Rulings. The proposed changes to amend this chapter are as follows: minor, technical changes, as well as removing the requirement of the assent of four (4) members of the Board for the issuance of an advisory ruling.

Chapter 3, Categories and Responsibilities of Licensure. The proposed rule repeals and replaces this chapter in its entirety. The replacement rule would clarify certain provisions and standardize the order and structure of rule for each licensure category.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A(5)

The proposed replacement includes a new section requiring a master oil burner and/or solid fuel technician, upon a valid request for verification of licensed practical experience, to provide a signed affidavit documenting said experience while the journeyman or apprentice (or helper) was under their supervision or employ. The proposed rule incorporates language that is currently located in Appendix I, which was promulgated when there existed a separate Oil & Solid Fuel Board and a Propane and Natural Gas Board. The other changes are minor, technical, changes to align the rule with statute; including but limited to adding pellet-fired central heating to the licensing authorities for oil and/or solid fuel technicians.

Chapter 4, Qualifications for Examination and Licensure. The proposed rule repeals and replaces this chapter with a rule that more clearly organizes and describes the experience and/or education requirements when applying for examination and licensure. The replacement rule would align the rule with the qualifications for licensure as set forth in statute; in particular requiring that an individual submitting proof of completion of a certified employee training program (CETP) when applying to be a propane and natural gas technician must also take an examination to qualify for licensure.

Chapter 5, Use of Other License Authorities. The proposed rule amendment sets forth the requirements for licensed master and journeyman oil burner and/or solid fuel technicians to gain licensed experience as an apprentice to qualify for an additional license authority. Current license authorities are: 1 & 2 up to 15 gph oils; 1 & 2 over 15 gph oils; 4, 5 & 6 oils; 1-6 oils; solid fuel; and pellet-fired central heating appliances. The proposed rule also adds a pathway for journeyman and master oil burner technicians to apply for a pellet-fired central heating appliance authority.

Chapter 6, Adoption of Standards. The proposed rule amendment updates the installation standards that the Board incorporates by reference into its rules, subject to the exclusions and amendments set forth therein, for installation of any oil and solid fuel burning equipment, propane and natural gas equipment, chimneys, fireplaces and vents. The Board is proposing to adopt updated editions of NFPA JOA, 31, 52, 54, 55, 58, 59, 59A, 70, 88A, 90B and 211, subject to the amendments and exclusions as stated in the proposed rule. The proposed changes would also include repealing the incorporation of the Appendices in Chapter 6 and instead relocate and reorganize the information contained therein. The substantive information contained in Appendix A will form the basis of an Appendix contained in Chapter 8, the current Appendix B will be repealed in its entirety as redundant of DEP rules regarding asbestos, Appendices C, D, and H will be posted on the Board's webpage as it has been determined unnecessary to incorporate in rules, Appendices E and Fare forms that will be directly provided in Chapter 10, Chimneys, the substantive information contained in Appendix G will form the basis of an Appendix contained in Chapter 14, and Appendix I will be repealed in its entirety and the contents incorporated directly in rule provisions contained in Chapter 3, Categories and Responsibilities of Licensure.

Chapter 7, Modification of Standards. The proposed amendments to this chapter are minor, technical changes to the rule.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A(5)

Chapter 8, Installation of Oil Burning Equipment. The proposed rule would replace the current rule, and: include a new section to inform licensees exactly what they can do with potable water piping; add a new section to inform licensees of requirements for condensate disposal from fuel fired appliances; add a new section regarding PEX Tubing for use in heating systems; add a section with regards to fuel supply systems that are permanently taken out of service; remove certain sections as they will appear in other chapters for clarity; and make some other wording changes to clarify meaning of terms. This Chapter will also reference and incorporate an Appendix regarding DEP regulations of underground oil storage tanks and the cleanup of any discharge of oil onto or into land or waters of the State of Maine.

Chapter 9, Installation of Solid Fuel Burning Equipment. The proposed rule would repeal and replace the current chapter and includes: changes to the section regarding Oil Tank Requirements upon Conversion to Solid Fuel; adds a new section regarding PEX Tubing for use in heating systems; removes the allowance to weld warm air heat exchangers in solid fuel burning appliances; and makes other technical changes proposed for clarity.

Chapter 10, Chimneys. The proposed rule would replace the current rule, and would include sections added for clarity and would contain certain relocated sections from current Chapters 8 and 13, as they relate to regulation of chimneys. This chapter would contain copies of the forms formerly located in Appendices E and F, the Chimney or Fireplace Construction/Installation Disclosure and the Emergency Chimney Update Waiver Form.

Chapter 11, Installation of Waste Oil Appliances and Waste Oil Supply Tanks. The proposed rule would repeal and replace the current chapter, changing the structure and order of the rule, adding language to clarify limitations on water connections to waste oil boilers and requirements that all piping and safety controls on domestic water heaters, provide that domestic water connections to boilers and water heaters as well as condensate disposal from oil fired condensing appliances must be made in accordance with the rules of the Plumbers' Examining Board, and making other technical changes proposed for clarity.

Chapter 12, Permits for Aboveground and Underground Propane and Natural Gas Storage Facilities and Rooftop Installations. The proposed rule would repeal and replace current chapter and restructure the sections applicable to aboveground and underground propane storage facilities versus compressed natural gas and liquified natural gas storage facilities. Some sections were relocated from the current Chapter 6 and added to the proposed rule for clarity.

Chapter 13, Installation of Propane and Natural Gas Burning Equipment. The proposed rule would repeal and replace current chapter. Changes would include relocating sections from current Chapter 6 for clarity and ease of reference, adding a section regarding gas piping identification in response to the vast use of plain copper piping and the possibility of a gas line being mistaken for water, set forth what water connections a propane and natural gas technician with appliance connection and

Annual List of Rule-Making Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A(5)

service authority may make; provide that all piping and safety controls on domestic water heaters, domestic water connections to boilers and water heaters, and condensate disposal from condensing gas fired appliances must be made in accordance with the rules of the Plumbers' Examining Board, and other technical changes needed for clarity.

Chapter 14, Propane and Natural Gas Containers, Dispensers, and Piping. This new proposed rule chapter would include provisions that were relocated to a new chapter for clarity and ease of reference. The chapter describes the necessary safety controls, devices and standards for the reduction of fire hazards associated with propane and natural gas storage and transfer equipment (including piping) used in residential, commercial and industrial applications. The proposed new chapter would add a section to delegate the initial review of nonstandard engineered vehicle protection systems to the Senior Fuel Inspector and permit review of the inspector's disposition on an application to the board. This chapter would contain an Appendix summarizing the current vehicle protection requirements as set forth in the Chapter.

Basis statement:

The Maine Fuel Board (the "Board") is charged by the Legislature with the regulation of licensed fuel technicians, propane and natural gas technicians, and standards for the proper installation of oil, solid fuel, propane, and natural gas burning equipment in the State of Maine for the sole purpose of protecting the public health and welfare. The Legislature granted the Board rulemaking authority pursuant to 32 M.R.S. § 18123(2).

The principal reasons for this proposed rulemaking are to update all of the Board's rules to reflect statutory changes, to add clarity to the phrasing and structure of the rules, and to adopt updated codes and standards.

Notice of the proposed rulemaking was published in the Maine Secretary of State weekly notice on March 8, 2023, in the Portland Press Herald, the Kennebec Journal, the Bangor Daily News, and the Sun Journal on March 8, 2023, posted on the Maine Fuel Board webpage on March 8, 2023; interested parties were emailed a copy of the rulemaking package on March 8, 2023. The Fact Sheet was filed with the Legislative Council on February 28, 2023. The written comment period was open through April 10, 2023, at 5:00 p.m.

Fiscal impact of rule:

None anticipated. The Board is proposing to adopt updated NFPA code standards; however, many licensees have already started complying with the updated standards without rule adoption, and thus the Board rule change will reflect the standards the regulated community is already following. The updated standards permit new materials to be used in gas and oil installations that may increase the overall cost of those installations; however, the use of such materials is permissive and not required. Therefore, within the scope of the proposed updated standards and related amendments and exclusions, there will be changes that may both increase and decrease the cost of a particular gas or oil installation.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name:	Department of Corrections
Umbrella-Unit:	03-201
Statutory authority:	34-A MRSA §§ 1208 & 1208-B
Chapter number/title:	Ch. 1 , Detention and Correctional Standards for Counties and Municipalities
Filing number:	2023-253
Effective date:	1/1/2024
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The primary reason for amending the current rule is to add and revise jail standards to fulfill recent statutory requirements related to the follow subjects as they affect jail inmates: affirmation of a transgender inmate's consistently held gender identity; grievance process for complaints of violations of jail standards; transportation of females to and from medical appointments and privacy during appointments; access to menstrual products; protection of confidential attorney-client communications; and additional requirements for approval of home release monitoring for domestic violence offenders.

Basis statement:

The basis for amending the current rule is to add and revise jail standards to fulfill recent statutory requirements related to the follow subjects as they affect jail inmates: affirmation of a transgender inmate's consistently held gender identity; grievance process for complaints of violations of jail standards; transportation of females to and from medical appointments and privacy during appointments; access to menstrual products; protection of confidential attorney-client communications; additional requirements for approval of home release monitoring for domestic violence offenders; and jail boards of visitors.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name:	Department of Corrections
Umbrella-Unit:	03-201
Statutory authority:	25 MRS §1612
Chapter number/title:	Ch. 4 , Line of Duty Death Benefits for Corrections Officers
Filing number:	2023-191
Effective date:	10/25/2023
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The amendment to this rule complies with recently enacted P.L. 2023, ch. 433, which goes into effect on 10/25/23. The amended rule makes two changes, which are:

1. adding death by suicide to be considered as line of duty death; and
2. changing the responsibility for determining line of duty death benefits from the Maine State Police Chief to the Commissioner of Corrections for MDOC law enforcement officers.

Basis statement:

The amendment to this rule complies with recently enacted P.L. 2023, ch. 433, which goes into effect on 10/25/23. The amended rule makes two changes, which are:

1. adding death by suicide to be considered as line of duty death; and
2. changing the responsibility for determining line of duty death benefits from the Maine State Police Chief to the Commissioner of Corrections for MDOC law enforcement officers.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name:	Department of Education
Umbrella-Unit:	05-071
Statutory authority:	20-A §4104 (5)
Chapter number/title:	Ch. 33 , Rules Governing Physical Restraint and Seclusion
Filing number:	2023-105
Effective date:	8/6/2023
Type of rule:	Major Substantive
Emergency rule:	No

Principal reason or purpose for rule:

The Department is submitting a final adoption of the legislatively reviewed Chapter 33: Rules Governing Physical Restraint and Seclusion. The Department opened two comment periods and worked the rule through the major substantive rulemaking process which included full legislative review. This rule revision was promoted by statutory changes that were made regarding restraint and seclusion. The revised rule includes new definitions, prohibitions on unlawful restraint and seclusions, reporting requirements and expectations for the provisions of technical assistance. These changes required targeted revisions to ensure that the rule for restraint and seclusion procedures is in line with the statute. The provisional rule was filed with the Secretary of State on December 8, 2022 and delivered to the Legislative Council on the same day. The rule received a public hearing in the Education and Cultural Affairs Committee and was heard and debated in both the House and the Senate. The language was signed by the Governor on June 12, 2023.

Basis statement:

As a result of Public Law 2021, Chapter 453, statutory changes were made regarding restraint and seclusion, which necessitating revisions to the Chapter 33 rules. There are new definitions, prohibitions on unlawful restraint and seclusions, reporting requirements and expectations for the provisions of technical assistance. These statutory changes will require targeted revisions to ensure that the rule for restraint and seclusion procedures is aligned with the statute.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Education
Umbrella-Unit: 05-071
Statutory authority: 20-A §7005(1); §8054
Chapter number/title: Ch. 101, Maine Unified Special Education Regulation Birth to Age 20
Filing number: 2023-104
Effective date: 7/7/2023
Type of rule: Major Substantive
Emergency rule: Yes

Principal reason or purpose for rule:

The Department of Education has identified a barrier to its obligation pursuant to the Individuals with Disabilities Education Act (IDEA) and the Maine Unified Special Education Regulation (MUSER) to ensure the provision of a free, appropriate public education (FAPE) to all eligible students including the availability of a continuum of educational placements. The current funding structure outlined in Section XVIII.C(C) of MUSER for private schools that serve exclusively students with disabilities (referred to throughout as “special purpose private schools”) is causing those schools to limit or cease operations, leaving some of Maine’s most significantly impacted children without the educational placements they are entitled to by law. Further breakdown of this critical component of the continuum of educational placements will leave the State unable to maintain compliance with IDEA and MUSER.

Basis statement:

In March 2023, The Department of Education (DOE) implemented emergency measures to address the financial shortage facing Maine's special purpose private schools. At that time, the DOE deployed available resources to provide a financial stop-gap. In the immediate sense, these resources provided temporary relief, however, on May 31, the Department of Education determined that fiscal year 2024 is a critical timeline for the financial stability of special purpose private schools and the availability of a continuum of educational placements for students with disabilities. In order to ensure compliance with Individuals with Disabilities Education Act (IDEA) and the Maine Unified Special Education Regulation (MUSER) and to ensure the provision of a free, appropriate public education (FAPE) to all eligible students, the Department has chosen to move forward with an emergency rule change. The current funding structure outlined in Section XVIII.3.C(2) of MUSER for private schools that serve exclusively students with disabilities (referred to throughout as "special purpose private schools") is causing those schools to limit or cease operations, leaving some of Maine's most significantly impacted children without the educational placements they are entitled to by law. Further breakdown of this critical component of the continuum of educational placements will leave the State unable to maintain compliance with IDEA and MUSER at the start of the 2024 fiscal year.

Based on the detailed findings below in the "findings of emergency," Department has determined that a rule change is necessary on an emergency basis in order to protect the public health, safety and general welfare by ensuring that there is a continuum of placements available for all students with individualized education programs (IEPs) in accordance with federal and state law as follows:

- Change #1: Section XVIII.3.C(2) is amended to change the required number of instructional days to the "days on which instruction was provided in accordance with the school's calendar" rather than the *actual days of student attendance for the year*.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Rationale: The current funding formula penalizes the private school when a student is unable to attend, even if the lack of attendance is due to a disability-related reason, despite the obligation of the private school to have staff and supports available for the student every day of the school year.

•Change #2: adds a section (3-A) to ensure "Each SAU shall pay the daily tuition rate calculated above for the total number of student days, regardless of whether the student is in attendance each day, with the following exception: the IEP Team determines whether a student attends during ESY/full-year programming: if the IEP Team decides a student doesn't need ESY full-year programming, the SAU is not required to pay the daily tuition rate for any day that falls outside the student's program year (e.g. during the summer months)." Rationale: Some students attend special purpose private schools only during the regular school year, while others attend extended school year, or year-round programming. Because the revised rule moves away from linking payment to attendance, an exception was warranted to provide that the sending SAU is only obligated to pay for the days in each student's program, instead of having every SAU pay for the full year, despite sending a student for the regular school year only. A Note has been added following this language to clarify specifically what changes when a student attends only during the regular school year.

•Change #3: adds a section 4(D) which provides that "nothing in subparagraph (4) shall limit any increase in the tuition rate resulting from the change in calculating the number of student days in subparagraph 2) from the actual days of student attendance to the days on which instruction was provided in accordance with the school's calendar." Rationale: This change ensures that any increase in tuition resulting from the change in 2023 does not get reduced by the cap on the percentage of increase from year to year.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name:	Department of Education
Umbrella-Unit:	05-071
Statutory authority:	Title 20-A MRSA §4008-A(3)
Chapter number/title:	Ch. 117 , Rule Regarding the Duties of School Counselors and School Social Workers
Filing number:	2023-229
Effective date:	12/9/2023
Type of rule:	Major Substantive
Emergency rule:	No

Principal reason or purpose for rule:

Chapter 117 outlines standards for the professional qualifications and duties of school counselors and school social workers; including appropriate roles, and use of time. This rule was developed over two years of conceptual discussions with various stakeholder groups including school-based counselors, social workers, and the Maine chapter of the National Association of Social Workers and in response to Public Law 2019, chapter 45, an Act to Increase the Amount of Time School Counselors and Social Workers Spend Providing Students Direct and Indirect Counseling. The new rule establishes that each school counselor and each school social worker shall spend at least 80% of their time providing indirect and direct services on behalf of students in accordance with 20-A MRSA §4008-A(2). A public hearing was scheduled October 24 2022 which was followed by a comment period that concluded on November 14, 2022. The provisional rule was filed with the Secretary of State on December 8, 2022 and delivered to the Legislative Council on the same day. The rule received a public hearing in the Education and Cultural Affairs Committee and was heard and debated in both the House and the Senate. The language was signed by the Governor on June 8, 2023.

Basis statement:

As a result of Public Law 2019, Chapter 45, statutory changes were made regarding school counselors and social workers. which necessitated the development of a rule regarding the duties of school counselors, including that a school counselor delivers a comprehensive school counseling program, and guidelines regarding the duties of school social workers. There are new definitions, scope of work by practice, and use of time identified in the new rule. The statutory changes require a rule to ensure at the professional qualifications and duties of school counselors and social workers including appropriate roles and use of time are aligned with statute.

Fiscal impact of rule:

None

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name:	Department of Environmental Protection (DEP)
Umbrella-Unit:	06-096
Statutory authority:	38 M.R.S. §§ 585 and 585-A
Chapter number/title:	Ch 101 , Visible Emissions Regulation
Filing number:	2023-230
Effective date:	1/1/2024
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The proposed revisions to the rule were originally posted to public comment on May 4, 2023. A public hearing was held on June 15, 2023, at the Marquardt Building in Augusta. The comment period closed on June 26, 2023. In response to comments received, changes were made to the draft rule. The comment period is being reopened to receive additional written comment on the revised draft.

Basis statement:

Visible Emissions Regulation, Chapter 101, establishes visible emission standards, also known as opacity limits, for facilities, both licensed and unlicensed, throughout the state. Chapter 101 is part of Maine's State Implementation Plan (SIP).

Court decisions involving EPA¹ have held that blanket exemptions for periods of Startup, Shutdown, and Malfunction (SSM) are not allowed in SIPs. In response to a petition by the Sierra Club, EPA took final action in May 2015 to ensure states have rules that are fully consistent with the Clean Air Act. EPA issued a "SIP Call" requiring states to revise their rules to remove such exemptions. In response, the Department completed rulemaking on revisions to Chapter 101 in February 2019, and the updated Chapter 101 was submitted to EPA for inclusion in Maine's SIP in May 2019.

In October 2022, EPA notified the Department that the new version of Chapter 101 had several deficiencies that would prevent its approval into the SIP. Deficiencies noted included blanket exemptions for emission units subject to certain federal rules, the use of work practice standards that may be practically unenforceable, and the lack of technical demonstration justifying the need and appropriateness of alternative emission standards. This rulemaking rectifies language and requirements to bring Chapter 101 into compliance with the SIP Call and CAA requirements.

In accordance with 38 M.R.S. §§ 585 and 585-A, the formal rulemaking process began on May 4, 2023, when the Department presented its proposal to the Board of Environmental Protection (Board), and requested that a public hearing be held on June 15, 2023. During the June 15th public hearing, the Board heard testimony from the regulated community, interested parties, and the public. Comments were also received during the written comment period, which closed on June 30, 2023. Based on the comments received, the Department made changes to the rule and reposted the proposed rule for additional comments on August 17, 2023. The final comment period closed on September 29, 2023.

The Department received comments on this proposal from five interested people and parties during the public comment period. The final proposed rule incorporates a number of suggested changes, including:

¹ The United States Court of Appeals for the D.C. Circuit, in *Sierra Club et. al. v. EPA*, overturned the U.S. Environmental Protection Agency's (EPA) long-standing startup, shutdown, and malfunction (SSM) exemption from the hazardous air emission maximum achievable control technology (MACT) standards. *Case No. 02-1135, Dec. 19, 2008.*

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

- Clarification of the exemption for certain emission units regulated by 40 C.F.R. Part 63, Subpart DDDDD;
- Inclusions of definitions of Continuous Opacity Monitoring System and Recovery Furnace;
- Making a separate category for multi-fuel boilers and process heaters and clarifying what standards apply when a single fuel is fired in these units;
- Creating a new category for recovery furnaces and addressing applicable requirements for these units; and
- Changing the allowed frequency of RTO/RCO bake-out events from no more than once every three months to no more than six times per calendar year.

Fiscal impact of rule:

The proposed rule is not expected to have a fiscal impact on facilities other than the cost to reprogram existing data collection systems. These costs only affect facilities that operate Continuous Opacity Monitoring Systems (COMS), which are typically only employed on larger emission units. The cost to reprogram such units is expected to be minimal.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 38 M.R.S. §§ 585, 585-A, and 585-C
Chapter number/title: Ch 119, Motor Vehicle Fuel Volatility Requirements
Filing number: 2023-130
Effective date: 9/14/2023
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

The Department is proposing an administrative amendment to Chapter 119 to be consistent with Public Law 2019, Chapter 55, which repealed the required sale of reformulated gasoline in the Southern Maine Area.

<https://legislature.maine.gov/bills/getPDF.asp?paper=SP0086&item=3&snum=129>

The 129th Maine Legislature repealed the requirement to sell only reformulated gasoline (RFG) in the Southern Maine area of York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox and Lincoln Counties as of November 1, 2020. In order to opt-out of the federal RFG program, Maine was required to petition U.S. EPA and submit a State Implementation Plan (SIP) revision. Maine DEP's technical analysis demonstrated that emissions in these counties will continue to decline after the requirement is lifted. EPA approved Maine's petition and determined that the removal of the federal RFG program for the Southern Maine Area is consistent with the applicable provisions of the Clean Air Act (CAA) and EPA's regulations. As a result, RFG was no longer required in the Southern Maine Area as of September 30, 2021.

Basis statement:

Public Law 2019 ch. 55 (LD 274), An Act To Allow the Sale of Ethanol-free Gasoline Statewide, repealed the requirement for retailers to sell only reformulated gasoline (RFG) in certain counties in Maine. The proposed amendment brings the rule in line with this statutory change.

The 129th Maine Legislature repealed the requirement to sell only RFG in certain counties in Southern Maine as of November 1, 2020. After the Legislature's action, DEP petitioned the U.S. Environmental Protection Agency (EPA) and submitted a State Implementation Plan revision. After review, EPA approved Maine's petition and determined that the removal of the federal RFG program for the Southern Maine Area is consistent with the applicable provisions of the Clean Air Act and EPA's regulations. This amendment will remove the RFG requirement, which is no longer required in the Southern Maine Area as of September 30, 2021 due to EPA's approval.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 38 MRS § 585-A; 38 MRS § 585-B; and 38 MRS § 590
Chapter number/title: **Ch 143**, New Source Performance Standards (NSPS); **Ch. 144**, National Emission Standards for Hazardous Air Pollutants (NESHAP)
Filing number: **2023-042, 2023-043**
Effective date: 3/13/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Clean Air Act offers states the option of accepting delegation of enforcement authority for NSPS and NESHAP to streamline the air emission licensing process, and Maine's State Implementation Plan (SIP) allows for such delegation. This rulemaking will incorporate by reference the new and amended NSPS and NESHAP that have been added between July 1, 2013 and July 1, 2022, for which the Department has chosen to take delegation.

Basis statement:

The purpose of these rules is to accept Federal delegation of authority to enforce specific Clean Air Act standards at the state level, thereby reducing the time and effort required for regulated entities to comply with licensing application requirements and decreasing response times for oversight and potential remediation. The Clean Air Act offers states the option of accepting delegation of enforcement authority for NSPS and NESHAP to streamline the air emission licensing process, and Maine's State Implementation Plan allows for such delegation. These rules enumerate the sections of Parts 60, 61, and 63 of the federal Clean Air Act for which enforcement authority has been delegated to the state of Maine. The amendments update the versions of the Federal standards for which delegation has been accepted, and add new standards as deemed appropriate by the Department. Affected entities are obligated to comply with the standards regardless of which agency has enforcement authority.

Public notice of this rulemaking was initially posted on the Department's rulemaking page on November 9, 2022, to comply with Clean Air Act notice requirements, and published in the Secretary of State's rulemaking notices on November 23, 2022, to comply with the Maine APA notice requirements. The Board held a public hearing on the proposed rulemaking on December 15, 2022, and the period for submitting public comments closed on December 27, 2022. The Department received no comments from interested persons or organizations prior to the close of the comment period. The Department made no changes to the draft rule.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 38 M.R.S. §§ 585, 585-A, and 590(1)
Chapter number/title: Ch 171, Control of Petroleum Storage Facilities
Filing number: 2023-103
Effective date: 8/4/2023
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

On June 21, 2021, the governor signed into law L.D. 163, *An Act Concerning the Regulation of Air Emissions at Petroleum Storage Facilities*. This legislation requires the Department to initiate rulemaking to amend its rules to align with the new requirements contained in 38 M.R.S. § 590, subsection 1. The proposed regulation implements the requirements outlined by the legislature.

Basis statement:

This rule is proposed for final adoption to implement Public Law 2021, Chapter 294, *An Act Concerning the Regulation of Air Emissions at Petroleum Storage Facilities*. Section 2 of that law directed the Department to initiate rulemaking to align Department rules with the new requirements contained in 38 M.R.S. § 590(1), which establishes new control, operating, inspection, testing, monitoring, recordkeeping, and reporting requirements for petroleum storage facilities throughout the state including:

- Requiring new distillate tanks to be constructed with an internal floating roof;
- Requiring heated storage tanks be fully insulated to reduce breathing emissions;
- Prohibiting switchloading, which is the uncontrolled loading of distillate into trucks which previously carried gasoline;
- Implementing a quarterly inspection program using optical gas imaging equipment to look for leaks;
- Requiring additional visual and instrumental inspections of tanks with internal floating roofs;
- Testing of emissions from heated tanks twice per year; and
- Implementation of a fenceline monitoring program which requires each facility to deploy passive monitors around their facility that are collected and analyzed every two weeks.

The formal rulemaking process for these major substantive rules began in mid-December, 2021, when the Department presented its proposal to the Board of Environmental Protection (Board), and requested that a public hearing be held on February 3, 2022. During the February 3rd public hearing, the Board heard testimony from the regulated community, interested parties, and the public. Additional comments were received during the written comment period, which closed on February 18, 2022. Because this rulemaking was designated major substantive by the Legislature, the Board provisionally adopted the rule on May 5, 2022. Additionally, the Board sent a letter dated July 7, 2022, to the ENRC encouraging them to consider concerns regarding the rule's fenceline monitoring provisions when conducting its legislative review of the provisionally adopted rule.

The Department submitted the rule to the Legislature for review and approval on July 21, 2022, and the Legislature accepted the Department's submission on August 5, 2022. Because the 130th Legislature had already adjourned, the provisionally adopted rule was scheduled for Legislative review in the 131st Session, in 2023.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

The ENRC considered the Board's comments during its deliberations; however, they ultimately decided not to recommend any changes to the rule as doing so would first require changes to the underlying statute. The provisionally adopted rule was subsequently approved by the Legislature without changes in Resolves 2023, Chapter 10, and signed by Governor Mills as Emergency Legislation on May 8, 2023. The Department is now bringing the rule back to the Board for final adoption.

The Department received comments on this proposal from 43 interested people and parties during the public comment period. The final proposed rule incorporates a number of suggested changes, including:

- Revising the definition of "leak" to remove an unnecessary option;
- Adding a definition of the term "petroleum storage tank;"
- Shortening the time to commence optical gas imaging (OGI) survey to the first full quarter after Department approval of the OGI leak detection and repair plan;
- Providing for the identification of emission components for which OGI may not be appropriate due to nearby interference or safety concerns;
- Regarding inspections of internal floating roof tanks, removing the requirement to calibrate the monitors with the sample line attached; revising the maximum wind speed allowed to take into account the average wind speed for the local area, and shortening the minimum sample time required; and
- Regarding fenceline monitoring, requiring facilities to measure ethylbenzene, toluene and xylenes in addition to benzene and providing for the ability to use a shorter sampling period with Department approval.

Fiscal impact of rule:

The proposed regulation will have a fiscal impact on all petroleum storage facilities, with the degree of impact depending on the type(s) of petroleum product(s) stored. All petroleum storage facilities will be required to conduct quarterly inspections using optical gas imaging equipment. The cameras required to be used typically cost in excess of \$100,000 per unit, and specialized training is required to operate them. Facilities may be able to contract this work to a third party; however, limited availability of contractors and the time sensitivity and weather dependency of the work may make this impractical.

Facilities which operate heated storage tanks (e.g., asphalt or #6 fuel oil) will be required to conduct emissions testing twice per year. These tests are expected to cost \$5,000 - \$10,000 for each event.

Facilities which store petroleum products in internal or external floating roof tanks (e.g., gasoline, crude oil) will be required to contract with a third-party vendor to implement a fenceline monitoring program. The cost of the individual monitors is small. However, the cost to design the integrated monitoring system and install the monitoring stations as well as the required meteorological station is expected to be \$20,000 - \$50,000 per facility, though it is possible that multiple facilities may share a meteorological station and the associated costs if they are located reasonably close together. The annual recurring costs for sampling, laboratory analysis, and reporting is expected to be \$75,000 - \$130,000 per facility.

The Department estimates that two full-time equivalent (FTE) positions will be required to determine facility compliance and administer the requirements of this rule.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name:	Department of Environmental Protection (DEP)
Umbrella-Unit:	06-096
Statutory authority:	22 MRS § 567 and 38 MRS § 341-H
Chapter number/title:	Ch 263 , Maine Comprehensive and Limited Environmental Laboratory Accreditation Rule
Filing number:	2023-041
Effective date:	3/15/2023
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The principal reason for the proposed rule changes is to update federal references and update the laboratory accreditation fee schedule. The proposed changes will permit the use of laboratory methods most recently approved federally by the U.S. Environmental Protection Agency (EPA), which includes the recently EPA-approved LC/MS/MS method for analysis of the regulated contaminants carbofuran and oxamyl in drinking water. Additionally, DHHS and DEP may allow certain methods approved by the EPA after this rule is promulgated as an alternate method, as described in this rule. The benefits of using the newest method(s) for laboratories include the following: reduced analysis time, higher sensitivity and less hazardous waste, translating into reduced cost for analysis and disposal. Other proposed changes include adding a reference to Table IA, omitted from the current rule under the methods for the Wastewater Program test category as provided in 40 CFR Part 136. In order to align with the statute, a change is proposed to add ‘enterococcus’ to the list of pollutants for which laboratories operated by wastewater discharge facilities licensed pursuant to 38 MRS § 413 may analyze wastewater discharges and not require accreditation. Pursuant to 22 MRS §567(4), proposed changes to the current fee schedule are based on the cost of certifying or accrediting laboratories and reflect fees set for bordering states. The fees collected under this rule are deposited into the Health and Environmental Testing Laboratory Special Revenue Account to fund staffing and program operations. Additionally, changes are proposed to specify that the written management review and management team meeting will be completed within the first quarter of the following year; define ‘duplicate’ and ‘field duplicate;’ add actual mass/volume of sample analyzed to the components of test reports; clarify that, for the required analytical method SOP, the topic references must include method revision number or letter and publication date; and add a requirement for labs that fail a second PT to notify the appropriate department (DHHS or DEP). Proposed rule changes also include minor grammatical and technical changes to improve the rule.

Basis statement:

This rule is adopted jointly by the Department of Health and Human Services – Maine Center for Disease Control and Prevention (Maine CDC) and Maine’s Department of Environmental Protection (DEP). Maine Comprehensive And Limited Environmental Laboratory Accreditation Rule governs the accreditation of laboratories producing compliance data for programs administered by Maine CDC and DEP, as authorized by 22 MRS § 567 and 38 MRS § 341-H. Adopted amendments update requirements and revise fees for laboratory accreditation.

This rule adoption permits laboratories to use methods most recently approved federally by the U.S. Environmental Protection Agency (EPA), which includes the EPA-approved LC/MS/MS method for analysis of the regulated contaminants carbofuran and oxamyl in drinking water, as well as future alternative methods approved by EPA after the rule has been promulgated that the Department may allow. The benefits of new method(s) for laboratories

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

include the following: reduced analysis time, higher sensitivity and less hazardous waste, translating into reduced cost for analysis and disposal. The reference to Table IA corrects the omission of the Wastewater Program test category as provided in 40 CFR Part 136. The changes to the list of pollutants that wastewater discharge facility labs licensed under 38 MRS § 413 may analyze align with statute. The amended fee schedule is based on the cost of certifying or accrediting laboratories, and these updates are in line with costs set for bordering states (22 MRS §567(4)).

As laboratory owner/operators, approximately 11 utility districts will be impacted by the fee increase adopted for this rule. The Department does not consider the increase in fee(s) to be prohibitive. The biennial accreditation fee for laboratories with limited accreditation will increase from \$650 to \$850. The laboratories will experience a fee increase ranging from 5-50%, depending on the number of methods analyzed.

After consideration of comments about the potential administrative burden and anticipated cost for labs to implement the proposed change that would add actual mass/volume to components required for test reports, this proposed change is not included as a requirement in the final adopted rule. Additionally, in response to comments, non-substantive changes are adopted to further clarify in Section 7 that a lab may have some methods that are fully accredited, have others that are provisional, and then lose accreditation for others – all while being an “accredited lab”. In order to receive initial accreditation, the laboratory must have applied for and passed the assessment for at least one method and, for the purpose of this rule, be accredited for the specific method(s) run by the lab.

Fiscal impact of rule:

The Department of Health and Human Services determined that Maine Laboratory Accreditation Program operations are not sustainable with the current modest fee collection. The Department estimates that more than 40% of the cost of operating will continue to be unmet by the proposed fee collection increase and will require funding through other revenue account(s), including general funds. The revenue anticipated from the proposed fee structure will reduce, but not eliminate, the need for other funding to cover approximately 30% of program costs. The biennial accreditation fee for laboratories with limited accreditation will increase from \$650 to \$850. The laboratories will experience a fee increase ranging from 5-50%, depending on the number of methods analyzed. The average DHHS fee increase for labs is estimated to be 26%.

TEST METHOD CATEGORIES	CURRENT RULE (2018-Present)	PROPOSED RULE (Proposed Fees)
Bacteriology	\$50	\$75
Inorganic Chemistry	\$50	\$75
Metals	\$125	\$150
Organic Compounds	\$150	\$175
Radiochemistry	\$200	\$250

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 38 M.R.S. §344(7)
Chapter number/title: Ch 305, Natural Resource Protection Act – Permit by Rule
Filing number: 2023-231
Effective date: 12/9/2023
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this proposed revision is to bring the Department’s rules into alignment with statutory changes concerning minor expansions in coastal sand dunes and to allow some beach nourishment projects to qualify for Natural Resource Protection Act (NRPA) permit by rule. The proposed revision also allows for planting native dune vegetation by hand with a NRPA permit by rule.

Basis statement:

This regulation allows certain activities to obtain Natural Resources Protection Act (NRPA) permits through a permit by rule (PBR) process. The purpose of this rulemaking is to bring the Department of Environmental Protection’s (Department) rules into alignment with statutory changes concerning minor expansions in coastal sand dunes, to allow some beach nourishment projects to qualify for NRPA PBR, and to allow for planting native dune vegetation by hand with a NRPA PBR.

Minor Expansions (Section 16):

Prior to 2021, certain minor expansions of structures in coastal sand dunes were exempted from NRPA permitting requirements, and no review or approval was required. In 2021, P.L. Ch. 186 removed that exemption and replaced it with a provision allowing these same minor expansions through a NRPA PBR process (38 M.R.S. 480-E(14)). This rulemaking updates Ch. 305, Section 16 “Activities in coastal sand dunes” to conform with this statutory change. The statute includes the following limitations on minor expansions in coastal sand dunes, which are reflected in the rule revision:

- Each structure is limited to a one-time minor expansion.
- The footprint of the expansion is contained within an impervious area that existed on January 1, 2021
- The footprint of the expansion is no further seaward than the existing structure
- The height of the expansion conforms to any applicable law or ordinance
- The expansion conforms to the municipal shoreland zoning ordinance

To conform to the statutory change, submission requirements were updated. A definition of minor revision was added to the rule and updates to the definitions of “permanent structure” and “footprint” were made to better conform to the statutory definitions of these terms in NRPA. Minor changes were made to the rule for clarity and to be more consistent with Chapter 355 Coastal Sand Dune Rules.

Changes were made to exempt minor expansions from lot coverage restrictions. This is in keeping with the intention of the law not to restrict minor expansions on small lots, but to simply require notice and a permit by rule for these activities.

Finally, the standards section was updated to bring the height requirements for buildings in line with the goals of P.L. Ch. 504 (2022). This law changed the way building heights are

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

measured in cases where a building is raised to accommodate sea level rise or increased flood hazard due to climate change.

These revisions to Section 16 of Chapter 305 are major substantive rulemaking because they relate to development in coastal sand dunes (38 M.R.S. 480-AA).

Non-Development Related Activities (Section 16-A):

Section 16-A is a new section within Chapter 305 specifically for non-development related activities in coastal sand dunes, namely: dune restoration and dune construction, beach nourishment, and hand planting of native dune vegetation. Dune restoration and dune construction activities were eligible for NRPA PBR prior to this rulemaking and have been moved from Section 16 to Section 16-A. Beach nourishment and the hand planting of native dune vegetation are new activities now covered by Chapter 305. Non-development activities are grouped together in their own section because the submission requirements and relevant standards depend heavily on whether development is proposed.

Many property owners, municipalities, and engaged citizens want to increase coastal resilience to storm erosion and rising sea levels and limit the economic and recreational impact from degrading beach conditions. In some cases, spreading additional sand on a beach (termed beach nourishment) can counter the effects of erosion, creating a healthier and more appealing beach and dune environment. This rule revision allows certain beach nourishment projects to receive NRPA PBRs, lowering the regulatory barriers for this type of restoration activity. To be eligible, the sand must come from an upland source; projects using dredged sources of sand must apply for an individual NRPA permit. In addition, only projects below a certain volume of sand can qualify for the permit by rule. This volume is limited both by the square footage of beach to be nourished and by an overall upper limit. For dune restoration, dune construction, and beach nourishment activities, the applicant must submit written confirmation from the Maine Geological Survey that they find the plan acceptable and the proposed sediment suitable for the natural system.

This rule revision also adds hand planting of native dune vegetation to the list of activities allowed through NRPA PBR. Loss of dune vegetation is a significant concern because healthy dune vegetation prevents erosion and provides habitat for birds to nest. Allowing municipalities, homeowners, or homeowner associations to use a PBR to plant dune grass or other native dune vegetation by hand makes it easier for them to accomplish this type of restoration activity.

All of the activities included in this section are subject to timing restrictions in order to protect threatened and endangered bird species during their nesting season. If an applicant proposes to undertake any of these activities outside of the specified time windows, written approval from the Maine Department of Inland Fisheries and Wildlife (MDIFW) is required.

The creation of this new section is routine technical rulemaking.

Fiscal impact of rule:

None

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 32 M.R.S. § 4179
Chapter number/title: Ch 531, Wastewater Treatment Plant Operator Certification
Filing number: 2023-109
Effective date: 7/24/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department is proposing to repeal and replace the existing 06-096 C.M.R. Chapter 531: Regulations for Wastewater Operator Certification. This rule establishes standards for certification of wastewater treatment plant operators and for the classification of treatment plants. The purpose of the rulemaking proposal is to include changes to the authorizing statute enacted by the legislature in 2021. The rulemaking proposal also includes changes requested by stakeholders.

Basis statement:

The purpose of this rule is to establish criteria for the classification of wastewater treatment plants and the requirements for certification as an operator of a wastewater treatment plant under the authority of 32 M.R.S. § 4179.

Chapter 531 was first adopted in 1975 and has been amended 5 times since adoption. This repeal and replace rulemaking process was undertaken to implement recent statutory changes required by Public Law 2021, ch. 173, *An Act to Amend the Laws Governing Wastewater Treatment Plant Operator Certification*, to implement recommendations from Department staff and stakeholders in the wastewater treatment community and to update the structure and language of the Chapter.

Changes to the Chapter include: chapter title; definition section; criteria for classifying treatment plants; numeric classification levels, eliminating Roman numerals; requirement for an owner to designate an operator in responsible charge; revised language for contract operations; removed requirement to display certificate; added categories of operator status; a new procedure for provisional certification; revised education and work experience requirements; removed option for Advanced Treatment Examination; expanded description of reciprocity; updated language to recognize online testing and registration; new procedures for revocation, suspension and reinstatement; and added professional standards for operators.

Public notice of this rulemaking was initially posted on the Department's rulemaking page on February 1, 2023, and published in the Secretary of State's rulemaking notices on February 8, 2023, to comply with the Maine APA notice requirements. The period for submitting public comments closed on March 16, 2023. The Department received one public comment prior to the close of the comment period.

Fiscal impact of rule:

None. Replacing the existing rule with the proposed rule will have no fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 38 M.R.S. § 546(4)
Chapter number/title: Ch 600, Oil Discharge Prevention and Pollution Control
Rules for Marine Oil Terminal, Transportation Pipelines and
Vessels
Filing number: 2023-079
Effective date: 6/6/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this rulemaking is to update the existing rules to more current standards, improve the protectiveness of the rule, make administrative changes, incorporate statutory changes, and include climate change in the design, operation and planning of marine oil terminals. The fiscal cost of the rule is expected to be less than \$1,000,000 per marine oil terminal facility.

Basis statement:

Purpose: The purpose of this rulemaking is to update the existing rules to current standards, improve the protectiveness of the rule, make administrative changes, incorporate statutory changes, include climate change in the design, operation and planning of marine oil terminals, and make other clarifications and minor language improvements. The amendments will update cited references to modern standards while addressing legislative changes to closure, financial assurance and liability insurance provisions and incorporate climate change into the design, operation and planning at marine oil terminals.

In 2020 the Maine Legislature amended sections of statute relating to marine terminal closures, financial assurance, and liability insurance. This rule incorporates those changes. Also in accordance with the goal of incorporating climate change into Department rules, these changes incorporate siting, design, operation and planning for climate change into the rule.

The authority for this rulemaking is found in 38 M.R.S. § 546(4) for marine terminal rules which provides broad authority for the rule. In particular, 38 M.R.S. § 546(4)(E-1) - (E-2), § 542 (4-B), as well as § 552-B provides more specific requirements for closure, financial assurance, and liability insurance.

The Scientific and Technical Subcommittee of the Maine Climate Council, established through 2019 Public Law, Chapter 476, prepared the *Scientific Assessment of Climate Change and Its Effects in Maine*. The assessment included science-based sea level rise projections that were subsequently adopted by the Council in Maine's 2020 Climate Action Plan "Maine Won't Wait". Based on these reports, as requested by the legislature in 2021 Public Resolve, Chapter 67, several state agencies identified in the Resolve analyzed how to incorporate sea level rise into Maine laws and rules.

The interagency report to the legislature, *Result of Analysis Required by 2021 Public Resolve, Chapter 67, Resolve, To Analyze the Impact of Sea Level Rise* was submitted to the Joint Standing Committee on Environment and Natural Resources in January 2022. Chapter 600 was listed in this report (page 21) as one rule where the Department was planning to propose revisions to include sea level rise in siting provisions and spill containment requirements.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

2021 Public Law, Chapter 590 has implemented agency recommendations from the 2021 Resolve, Chapter 67 by amending site location of development laws and solid waste facility laws to authorize the Department to consider the effect of 1.5 feet of relative sea level rise by 2050 and 4 feet of relative sea level rise by 2100 in determining whether this infrastructure fits harmoniously into the existing natural environment. These sea level rise elevations are consistent with the intermediate and high scenarios from the reports by the Maine Climate Council in response to 2019 legislation. These are the same scenarios used in the proposed revisions to Chapter 600.

Background: The rule was initially developed in 1971. It has been revised 10 previous times, the last in 2016. These amendments were developed over the course of several years.

There are 13 climate-related definitions added to the Chapter 600 revisions primarily pertaining to flooding, natural hazards, adaptation, and resilience. Four of the definitions exist in other Department rules (floodplain, highest astronomical tide, seal level rise, and 24-hour storm), nine of the definitions exist in guidance in use by other state agencies (adaptation, critical infrastructure, flooding, natural hazards, resilience, storm surge, and storm tide). The Department chose to first be consistent with other Department rules, followed by other State agencies, and then federal agencies.

Fiscal impact of rule:

The estimated fiscal impact is expected to be less than \$1,000,000 per marine facility.

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS: The potential economic impact is expected to be \$170,000 to \$10,000,000. These costs would be offset through reduced risk to local communities and nearby residential properties.

INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED AND HOW THEY WILL BE AFFECTED: Marine oil terminal facilities would need to comply with additional and more modern standards and would need to plan for and in select features incorporate a 4-foot elevation change and a 100 year storm event into their operations. The four municipalities where these facilities are located as well as nearby residential properties would be able to plan for storm events better and with time would reduce the negative impacts from climate change through adaptive measures.

BENEFITS OF THE RULE: The more modern standards, improved protectiveness of the rule, more thorough planning for closure and climate change would all enhance the benefits of the marine oil terminal facilities at the same time as it would reduce the risk to nearby residential properties and negative impacts on the host communities.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRSA, Sections 10104, 12452 & 12461
Chapter number/title: Ch. 1, Open Water and Ice Fishing Regulations; Ch. 1-A, State Heritage Fish Waters
Filing number: 2023-182, 2023-183
Effective date: 1/1/2024
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These rules are designed to provide for the effective conservation and management of inland fish throughout the state and provide for a variety of fishing opportunities. The rules set specific season dates, bag limits, length limits, tackle restrictions, and other special regulations designed to accomplish fisheries management objectives.

Basis statement:

The Department of Inland Fisheries and Wildlife has adopted rules pertaining to the 2024 ice fishing and open water seasons, The State Heritage Fish Waters list has also been amended with the removal of a water and the addition of one water. These rules are necessary for the sound management and proper utilization of the State's inland fishery resource; this is, to provide for the fullest level of use of the resource without adversely affecting species distribution and abundance, thus ensuring that all benefits are retained. The rules set specific season dates, bag limits, length limits, tackle restrictions, and other special regulations designed to accomplish fisheries management objectives and are the result of the vetting process of the fisheries division law and rule committee. Biological information, public outreach, angler counts, survey results, and other available data on individual water bodies are reviewed when crafting these rules. These rules will have an effective date of January 1, 2024,

The rulemaking packet was advertised to include 24 individual proposals presented in the following "theme" categories: State Heritage Fish Waters; Special Need; North Zone Bass Management; Errors, Conflicts, and Confusion; Endangered and Threatened Species Clarification; and Recreational Baitfish and Smelt Clarification.

One amendment to the original proposals was recommended based on public comment that was received. The proposed regulation for Grand Lake, East in Danforth, Forest City Twp, Orient, Weston was amended to retain the "B" ice fishing season which would allow anglers to continue use of ice shacks until the end of the ice fishing season.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS § 10104, 12504, 12504-A, & 12505
Chapter number/title: Ch. 2, Rules Pertaining to Commercial Fishing, Fish Culture and Fishing Derbies and Tournaments
Filing number: 2023-189
Effective date: 1/1/2024
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule is designed to simplify and consolidate existing rules, capture items as rule that were previously being applied as permit conditions and incorporate strategic planning and other administrative needs. This sets specific rules in regard to conducting Bass Fishing Tournaments and Fishing Derbies.

Basis statement:

The Department of Inland Fisheries and Wildlife has amended Chapter 2 rules as they apply to Fishing Derbies and Bass Tournaments to simplify and consolidate existing rules, capture items as rule that were previously being applied as permit conditions and incorporate strategic planning and other administrative needs. The rules are the result of the vetting process of the fisheries division law and rule committee based on biological information, public outreach, strategic plan action items, and survey results. The rules will have an effective date of January 1, 2024.

A public hearing was held on July 10, 2023 (minutes attached) with seventeen citizens in attendance. The Department also received 21 written comments from individuals/organizations (attached) which were acknowledged and forwarded to the Commissioner's Advisory Council as well as appropriate staff for consideration. A summary of public comment and testimony and the Department's response is attached outlining amendments to the original rule proposal affecting the following sections of the rule language - 2.04 (C.5.) (D.3.); 2.05 (B.2.) (C.2.) (C. 10. a.b.) (C.16.) and (C.17.) (E.3.).

On September 19, 2023, the Commissioner brought forward the amended rule packet for adoption by the Advisory Council. Nine (9) of the ten (10) members present voted in favor to adopt the Chapter 2 rulemaking proposal as amended with one (1) member (Eric Ward) voting in opposition.

Fiscal impact of rule:

No fiscal impact anticipated as a result of this rule.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS 10104, 12701
Chapter number/title: Ch. 5, State Owned Wildlife Management Areas, Shooting Ranges and Boat Launch Facilities;
Filing number: 2023-072
Effective date: 5/21/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department is transitioning operations at the Steve Powell Wildlife Management Area (WMA) to a self-access model for both day-use and overnight camping. This model of operation also removes the need for the public to reserve camping facilities. The rule change removes the obligation for a reservation system and provides clarity to other provisions within Department Rule Chapter 5, specific to the Steve Powell Wildlife Management Area

Basis statement:

The rule will apply to the Swan Island WMA in the Kennebec River. The WMA receives a lot of public use with a campground on the north end of the island that for quite a number of years the Department provided access from the Richmond side. Historically, a DIFW staff member from the Sidney regional office spent about 6-8 months per year operating as a full time Swan Island manager and we hired two seasonal staff during the summer. There had been a few changes over the past couple of years that caused the Department to rethink the model by which we facilitated public access to the island. Staff housing used for seasonal staff was condemned due to mold and other issues, and there was also a determination by the Coast Guard in 2022 that the ferry used to transport the public to the island needed to meet Coast Guard requirements for a ferry in tidal waters. For the Department to continue operating the ferry in the way that we had we would have to make significant upgrades to the ferry and we would have to hire someone with a captain's license to run the ferry for the trip across the river to the island. A captain's license required a significant amount of training. The Department felt the appropriate path forward was to switch to a self-access model where the island would stay open for public use and camping, but the public would have to provide their own access or contract with a Maine guide to get them back and forth across the river.

Chapter 5 rules have been amended by removing the requirement for a reservation and fee and going to a first come first served approach which was similar to remote campsites across the state on the Bureau of Public Lands land base. The Department has retained the Commissioner's authority to charge a fee but is not something we anticipate doing in the short term. Camping will be limited to three consecutive nights rather than two, and the rules pertaining to campfires has also been amended. The rule will enable public access to the WMA from May 1 to October 30 annually. The Department anticipates these rule changes will allow for continued public use and enjoyment of the resource while at the same time, creating consistency regarding access to Swan Island WMA to all other Department WMAs. Removing the requirement for reservations will simplify the process for the public to access the WMA and remove the administrative and financial burden on the Department to receive, track and maintain a reservation system.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

The rule proposal was advertised on March 29, 2023 and a public hearing was held on April 20, 2023. No members of the public attended the hearing and no written comments were received.

The Commissioner brought forward the original rule proposal to the Advisory Council on May 9, 2023 and of the seven (7) members participating, voted unanimously to adopt the proposal as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 11855
Chapter number/title: Ch. 16, Hunting: 16.11, Migratory Game Bird Hunting
Filing number: 2023-054
Effective date: 4/10/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To implement the Federal Migratory Bird Treaty Act which establishes the general guidelines within which the States are permitted to regulate the hunting of migratory game birds. This rule will protect migratory game birds from over-harvest by setting these limitations. Proposed adjustments to the migratory bird hunting seasons are based on a collaborative effort to collect and analyze data by the USFWS and state agencies.

Basis statement:

These rules are adopted for the purpose of implementing the Federal Migratory Bird Treaty Act, which establishes the general guidelines within which the States are permitted to regulate the hunting of migratory game birds. The policy behind the Federal Act and, therefore, behind these rules, is to protect the migratory game birds from over-harvest by hunters. Adjustments to the migratory bird hunting seasons are based on a collaborative effort to collect and analyze data by the USFWS and state agencies, including MDIFW. Information included in these analyses includes waterfowl banding information, harvest data, and population surveys. In addition, the Department communicates with a separate waterfowl council consisting of members appointed by the Commissioner of IFW, similar to the Commissioner's Advisory Council in that it is a subset of individuals representing each county in the interest of waterfowl hunters when developing waterfowl seasons and bag limits.

After receiving the framework from the United States Fish and Wildlife Service (USFWS), the Department's rule implements Maine's 2023/24 migratory bird hunting seasons by selecting season dates and bag limits for ducks, coots, mergansers, geese, crows and woodcock. Upon recommendation from the Atlantic Flyway Council, the mallard bag limit was increased from 2 per day to 4 per day (with no more than 2 being hen mallards). This bag limit increase is a result of an estimated increase in the overall eastern mallard population. In addition, the brant season and daily bag limit was reduced from a 50-day season and a 2-bird daily bag limit to a 30-day season and a 1-bird daily bag limit based on winter aerial surveys in the brant range.

A public hearing on the proposal was held on February 28, 2023, with 9 citizens attending (minutes attached). The Department presented the proposal and discussed the season frameworks and bag and possession limits. Only 1 member of the public offered testimony, which was generally supportive of the rule proposal particularly the increased bag limit for Canada geese. Two (2) written comments were received on the proposal (attached). One comment was advocating for extending the coastal zone season longer into January; this would affect the front end of the season. Sea duck guides had provided input previously that they looked at 3-day windows when setting up sea duck hunts, so the season dates were set to try to avoid breaking that up in the beginning. The comment recommended going from the 9th to the 11th of January, which was only a couple of days but would mean a November 11th start date which was a Friday and would break up that 3-day window. Discussions with the

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Commissioner's Waterfowl Council members and staff determined the Department response was not in favor of the recommendations in the comment. The second written comment had several items listed regarding the proposal. Basically, all of the items went against the USFWS sideboards and the desires of the Commissioner's Waterfowl Council. In response to the comments the Department did not see any reason for adjustments to the original proposal.

The Commissioner moved forward with the original proposal and the Commissioner's Advisory Council met on March 28, 2023, and of the eight (8) members participating, voted unanimously to accept the proposal as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS 11551, 11552
Chapter number/title: Ch. 16, Hunting: 16.08, Moose Hunting Permit Allocations
Filing number: 2023-073
Effective date: 5/21/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Moose permit areas are adjusted on an annual basis in response to moose population estimates and population goals in each Wildlife Management District (WMD). Department biologists use moose harvest levels, aerial surveys, and biological data to evaluate the status of moose within each WMD. This information is compared to publicly derived goals outlined in the moose management system to determine whether the population in an individual WMD should be stabilized, increased, or decreased. This allocation also addresses ongoing concerns about the impacts of winter tick on moose survival and productivity while continuing to provide hunting opportunity across Maine's moose range.

Basis statement:

This rule is being adopted to establish the number of moose hunting permits to be issued for each Wildlife Management District (WMD) for the 2023 season. Permits may be valid for either antlered moose or antlerless moose depending on the WMD and specific season in which the permit authorizes hunting. Moose permit allocations are adjusted on an annual basis in response to moose population estimates and population goals in each Wildlife Management District (WMD). Department biologists use moose harvest levels, aerial surveys, and biological data to evaluate the status of moose within each WMD. This information is compared to publicly derived goals outlined in the moose management system to determine whether the population in an individual WMD should be stabilized, increased, or decreased. These recommendations are designed to achieve the goals of the 2017-2027 Big Game Management Plan which are focused on population health, rather than managing for specific densities of moose. The attached memorandum from the Department moose biologist Lee Kantar outlines the moose population status and recommended actions by WMD.

The Department advertised a proposal on March 29, 2023, and recommended issuing 4,155 permits statewide to meet moose harvest objectives. This included a total of 2,645 antlered moose permits, and 1,510 antlerless permits. The proposal included 600 permits for the Adaptive Management Unit hunt referred to as WMD 4a which was implemented beginning in 2021. The rule also combines several units wherein a permittee can hunt either WMD. This will include WMD 14 and 17 combined, WMD 15 and 12 combined and WMD 7 and 13 combined. Permit levels remain unchanged in WMD 14/17 as well as 7/13. For WMD 15 permits will change from Any moose to Bull only and be reduced to 15 permits. This also means WMD 15 season will occur during the October Bull season and no longer run in conjunction with the November firearms season on deer (month of Nov.). There will also be an increase of 50 antlerless permits in WMD 8 where the population is stable to decreasing. The Department also proposed to transition the Adaptive Management Unit hunt to three, two-week seasons beginning on October 23rd and running until December 2, 2023.

A public hearing on the proposal was held on April 18, 2023 with eight (8) members of the public in attendance (minutes attached). Six written comments were also received on the proposal (attached). The comments were acknowledged and forwarded to the Commissioner's

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Advisory Council and staff for consideration. In summary, the written comments and testimony received at the public hearing consistently showed concern with the following sections of the proposal:

16.08 (1.B.) – Although supportive of expanding the antlerless seasons, the timing of implementing the change for 2023

was problematic for guides; permit holders may face issues with securing lodging and guide services as most were already booked for the upcoming seasons.

-Department response: The proposal was amended to revert back to original rule language and keep the season start date to begin on the Monday preceding the opening day of the regular firearms deer season rather than the proposed additional week of hunting to begin the third Monday in October.

16.08 (1.D.) – Concerns that combining WMDs may result in hunter conflicts. Hunters may gravitate towards these areas during one week in October for potential conflicts.

-Department response: The Department has seen success in areas previously combined (27 & 28) and combining the WMDs would give hunters greater flexibility and provide opportunity. These areas, in some cases, result in fairly low hunter success rates and by combining the WMDs hunters have more opportunity to be successful. The Department moved forward with the originally proposed language and will monitor for potential change during the next annual rulemaking.

16.08 (9.C.) – Concerns with the timing of the adaptive moose hunt season to begin later and extend into December. This was too late in the season and availability of lodging would be limited as well as safety concerns with inclement weather and hunters being unprepared and potential for damage to roads to occur. Hunter conflicts with deer, grouse and moose hunting occurring at the same time in the area was also a concern.

-Department response: The Department amended the proposed Adaptive Management Unit hunt back to the original framework of three, weeklong seasons beginning on October 16th and running until November 4, 2023 with an additional 4th week, November 6 – 11, 2023 for adaptive permit hunters to come back if they had not filled their tag. Permit numbers were also amended back to the original rule language.

The Commissioner brought forward an amended proposal (attached with changes to original proposal highlighted in blue) for a total number of 4,105 (2,645 antlered; 1460 antlerless) moose permits to be issued for the 2023 hunting season. The Advisory Council met on May 9, 2023 and of the seven (7) members participating, voted unanimously to adopt the proposal as amended.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name:	Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit:	09-137
Statutory authority:	12 MRS 10104, 11152, 11402
Chapter number/title:	Ch. 16 , Hunting: 16.07 , Antlerless Deer Permit allocations
Filing number:	2023-106
Effective date:	7/12/2023
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

Antlerless deer permit numbers are adjusted by MDIFW on an annual basis by department biologists who consider deer harvest levels, biological metrics and indices, and estimates of winter severity when evaluating the status of the deer population within each wildlife management district (WMD). Antlerless deer permit recommendations are based on removal rates of adult does that will stabilize, increase, or decrease deer densities. Also included are changes to establish a 2-day Youth Hunt in accordance with legislation from the 131st Legislature.

Basis statement:

Antlerless deer permit numbers are adjusted by MDIFW on an annual basis by department biologists who consider deer harvest levels, biological metrics and indices, and estimates of winter severity when evaluating the status of the deer population within each wildlife management district (WMD). Adjustments to antlerless deer permit numbers are based on the Department's Deer Management System, which was developed as part of our long-term species planning process. This comprehensive document includes an extensive scientific assessment of deer populations and management strategies. Currently, we collect and analyze several types of data to develop informed recommendations for permit numbers. These data sources include measures of winter severity, hunter effort, yearling frequencies, yearling antler beam diameters, recruitment estimates, harvest density, and ages of harvested deer.

For 2023, the Department will issue a total of 108,070 antlerless deer permits across 25 WMDs and two deer management subunits to meet our doe harvest objective of 15,486 does, which is an increase of 11,730 permits or 12.1% more than 2022. WMDs 1, 2, 4, and 5 will be open to buck harvest only (aside from the Youth Hunt and archery and crossbow season) as they remain under objective and have low growth potential. Slight increases in antlerless deer permits in nearly all districts that had permits in 2022 will occur. Doe harvest recommendations were largely met where needed in 2022 and increases across these districts are the result of steady growth and mild winter conditions during the 2022-23 winter. The Department will continue to issue additional permits in two deer management subunits in WMDs 25 and 26. The harvest of antlerless deer without a permit during the youth hunt and the regular archery and crossbow season is allowed only in designated WMDs and all WMDs are designated as open to the harvest of antlerless deer without a permit during these seasons in 2023.

In accordance with Public Law 2023 Chapter 191, the rule includes language to institute a 2-day youth hunt to be held on the Friday and Saturday preceding the residents-only Saturday of the regular deer season. When determining how to configure the 2-day youth hunt, the Department considered historic harvest during the youth day season and made a best estimate of the impacts of adding a Friday to that hunt. These estimated impacts were factored into development of recommendations for permit allocations.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

A public hearing was held on June 1, 2023 and no members of the public were in attendance; no written comments were received.

The Commissioner brought forward the original rule proposal and the Advisory Council gave their consent on June 20, 2023 and of the seven (7) members present, voted unanimously to adopt the proposal as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS, Sections 10104, 10105, 11401
Chapter number/title: Ch. 16, Hunting
Filing number: 2023-217
Effective date: 10/27/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This emergency rule is brought forth in light of the mass shooting incident in Lewiston, Maine occurring on October 25, 2023, where an active shooter killed 18 people and wounded 13 others. The shooter has not been brought into custody, remains at large, and is considered armed and dangerous. The Commissioner of Inland Fisheries and Wildlife, in consultation with Maine State Police, Governor Mills and the Attorney General's Office, finds that an emergency exists under these circumstances and the immediate adoption of this rule is necessary to avoid an immediate threat to public safety and health. Therefore, the Commissioner adopts this rule prohibiting any hunting activity, for any species, with use of any implement in the locations where the "shelter-in-place order" issued by the Maine State Police exists. The prohibitions in this rule will go into effect at 12:01 a.m., Saturday, October 28, 2023, until the "shelter-in-place order" issued by the Maine State Police is lifted or 90 days after the effective date, whichever comes sooner.

Basis statement:

This emergency rule is brought forth in light of the mass shooting incident in Lewiston, Maine occurring on October 25, 2023, where an active shooter killed 18 people and wounded 13 others. The shooter has not been brought into custody, remains at large, and is considered armed and dangerous. The Commissioner of Inland Fisheries and Wildlife, in consultation with Maine State Police, Governor Mills and the Attorney General's Office, finds that an emergency exists under these circumstances and the immediate adoption of this rule is necessary to avoid an immediate threat to public safety and health. Therefore, the Commissioner adopts this rule prohibiting any hunting activity, for any species, with use of any implement in the locations where the "shelter-in-place order" issued by the Maine State Police exists. The prohibitions in this rule will go into effect at 12:01 a.m., Saturday, October 28, 2023, until the "shelter-in-place order" issued by the Maine State Police is lifted or 90 days after the effective date, whichever comes sooner.

The Commissioner convened a special meeting of the Advisory Council on Friday, October 27, 2023 via videoconference (Microsoft Teams) and of the eight (8) members present voted unanimously to adopt the emergency rule as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS 10104, 12251
Chapter number/title: Ch. 17, Trapping: 17.06, Beaver Trapping
Filing number: 2023-107
Effective date: 7/12/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department regularly adjusts furbearer hunting and trapping regulations in response to emerging scientific information, changes in hunter and trapper participation, and biological data. As in previous years, we are opening or closing certain areas to beaver trapping in response to requests from landowners.

Basis statement:

The Department regularly adjusts furbearer hunting and trapping regulations in response to emerging scientific information, changes in hunter and trapper participation, and biological data. Wildlife Biologists consider annual requests from landowners to close their properties to beaver trapping, in conjunction with the amount of habitat, past harvests, and complaints of beaver damage to public property. This information informs staff recommendations on closures for the upcoming trapping season.

The Department has replaced the current list of beaver trapping closures with new closures to accommodate the wishes of private landowners on whose land the trapping activity would occur. Townships or portions thereof are opened and closed on an individual basis to manage local beaver populations within the general season framework. The list of areas open or closed to beaver trapping has been amended to remove the closure in an area of Charleston in WMD 17; remove a closure in the town of Freedom and add a closure in the towns of Searsmont and Waldo in WMD 23.

A public hearing was held on May 30, 2023 with no members of the public attending. No written comments on the proposal were received.

The Commissioner moved forward with the original rule proposal and the Advisory Council gave their consent on June 20, 2023 and of the seven (7) members present, voted unanimously to adopt the proposal as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

2023 Agency name: Department of Health and Human Services
Umbrella-Unit: **10-144**
Statutory authority: 5 MRS §§ 8051-10004, 22 MRS. § 42, and 22-A MRS § 207
Chapter number/title: **Ch. 1**, Administrative Hearing Regulations
Filing number: **2023-018**
Effective date: 1/30/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The proposed rule changes will modernize the administrative hearing process in several ways, which include the following: (1) adding provisions for remote hearings; (2) updating subpoena issuance power in accordance with 22-A M.R.S. § 207; (3) updating outdated references to Department programs such as Food Stamps and Aid to Families with Dependent Children and replacing them with SNAP and TANF, along with replacing references to "Bureaus" with the current term of "Offices"; (4) adding important time restrictions on when a hearing decision can be corrected or when the record can be re-opened and specifies when a decision becomes final agency action, to align with a recent Law Court decision; (5) eliminating ambiguities regarding what actions a Hearing Officer can take after a Recommended Decision has been issued but before the Commissioner has taken final action; (6) clarifying the process when and how a hearing is reinstated after a party fails to appear; (7) adding guidance to the Hearing Officer and the parties on how the Hearing Officer will address disruptive persons in a hearing; and (8) adding definitions, re-arranging the order of the rule, and correcting grammar and typographical errors will make the rule easier to comprehend.

Basis statement:

On October 26, 2022, the Department of Health and Human Services, Division of Administrative Hearings (Department), advertised rulemaking changes for 10-144 CMR, Ch. 1, Administrative Hearing Regulations. The public comment period ended on November 28, 2022. The Department received three comments related to the rulemaking, which are described in the Summary of Public Comments and Department's Responses & List of Changes Made to the Final Rule.

The proposed rule changes will modernize the administrative hearing process in several ways. The proposed rule adds explicit language allowing hearings to be conducted on a remote basis and specifying deadlines for the exchange of exhibits to accommodate the remote hearing process. The proposed rule makes changes that reflect that 22-A M.R.S. § 207 gave the Commissioner the authority to delegate subpoena issuance power. The proposed rule deletes the reference to the necessity of requesting an Assistant Attorney General to issue a subpoena. The proposed rule updates outdated references to Department programs such as Food Stamps and Aid to Families with Dependent Children and replaces them with SNAP and TANF. The proposed rule also replaces references to "Bureaus" with the current term of "Offices". The proposed rule puts important time restrictions on when a hearing decision can be corrected, when the record can be re-opened, and specifies when a decision becomes final agency action. This eliminates language in the current rule that allowed for re-opening records or amending decisions, in accordance with Law Court cases that do not allow such actions after final agency action has been taken. The proposed rule also eliminates ambiguities on what actions a Hearing Officer can take after a Recommended Decision has been issued but before the Commissioner has taken final action. The proposed rule clarifies the process when and how a

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

hearing is reinstated after a party fails to appear. The proposed rule adds guidance to the Hearing Officer and the parties on how the Hearing Officer will address disruptive persons in a hearing. Finally, the proposed rule adds definitions and re-arranges the order of the rule to make it easier to comprehend.

The rule replaces references to "the Office of Administrative Hearings" with "the Division of Administrative Hearings" to reflect the current structure of the Department.

The rule updates statutory references and revises the subpoena issuance process to reflect 22-A M.R.S. § 207 and to clarify language.

The rule substitutes the term "appellant" for the term "claimant" so that the language more accurately describes the roles of the parties.

The rule adds or further defines the terms of Authorized Representative, Chief Administrative Hearing Officer, Commissioner, Irrelevant Evidence, Party, Preponderance of the Evidence, Stipulation, and Unduly Repetitious Evidence.

The rule adds language to clarify that hearings can be held remotely by telephone or by videoconferencing.

The rule adds language regarding deadlines for exchanging exhibits and revises deadlines for the Department to provide access to case files.

The rule adds language clarifying the process that the Hearing Officer should use to warn and control disorderly persons in a hearing.

The rule revises the process regarding how and when a good cause hearing will be held to reinstate a hearing after a party fails to appear.

The rule removes an unnecessary note regarding hearsay evidence.

In general, the rule revises grammar and re-arranges the order of the regulation to provide better clarity. The rule revises deadlines for requesting corrections and re-opening the record. The rule clarifies when a decision becomes final agency action.

In response to comments, the Department made the following changes:

The Department has further revised the definition of "irrelevant evidence" by replacing the phrase "determining the action" with "deciding the issues presented in the hearing".

The Department has made further revisions to replace the terms "he or she" or "his" with "he/she/they" and "his/her/their".

The Department has added the phrase "Providing for and scheduling any exchange of exhibits prior to hearing" to Section VI(G)(2).

The Department has added a reference to the Consent Judgment in *Mann v. Commissioner Department of Human Services*, No. CV-94-424, Me. Super. 1995 (February 14, 1995) to Section VI(H)(2).

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

The Department has added language about Department employees to Section VI(H)(2)(b) stating, "If a party requests the presence of a current employee of the Maine Department of Health and Human Services and the evidence or testimony sought reasonably appears to be relevant to any issue of fact in the proceeding, then the Maine Department of Health and Human Services shall secure the presence of the employee without issuance of a subpoena."

The Department has revised the heading of Section VIII(D)(2) by replacing the word "record" with "decision".

As a result of internal review, the Department has made a legal and policy determination to delete Section IX(E) regarding costs for Certification of Hearing Records so that there is a standardized procedure that the Department is responsible for the preparation of the record in all instances. The Department has determined this revision does not negatively impact any party and does not constitute a substantial change.

Fiscal impact of rule:

Since there will be a 10-day delay from when certain decisions are issued and when they become final agency action, there could be a minor increase in costs due to the delay in reducing or terminating benefits if benefits are being provided pending final agency action. Any increase in costs will likely be offset by savings to the Department from the reduction in travel costs for employees due to remote hearings.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, MaineCare Services, Division of Policy
Umbrella-Unit: **10-144**
Statutory authority: 22 M.R.S. §§ 42, 42(8); 3173; 22 M.R.S. 3173-J; 42 CFR § 440.70; P.L. 2021, ch. 398, Sec. A-17
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual:Ch. II Section 60, Medical Supplies and Durable Medical Equipment
Filing number: **2023-216**
Effective date: 10/31/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
See Basis Statement

Basis statement:

The Department of Health and Human Services finally adopts these rule changes in 10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Chapter II, Section 60, Medical Supplies and Durable Medical Equipment.

This adopted rule makes the following changes. The citations used below reflect the provisions in the adopted rule, unless otherwise specified.

- Adds a definition for “qualified provider” and indicates that qualified providers, rather than specific provider types, can prescribe and conduct face-to-face evaluations. This change aligns with Medicare’s requirements and will ensure the policy remains current with evolving federal and state requirements.
- Deletes the definition of “Providers of Medical Supplies and Durable Medical Equipment” and moved most of the definition into Section 60.04, Provider Requirements, because this is a substantive provision and more than a definition. The Department adds an exception to the requirement of having a storefront in Maine or within 15 miles of the border if the Department, in its sole discretion, determines that waiving that requirement is in the best interest of the MaineCare program. Additionally, Section 60.04(5) is taken from the former Section 60.01-12(C).
- Renumbers the current Section 60.05, Policies and Procedures, to 60.06, Policies and Procedures.
- Creates Section 60.06-1, Face-to-Face Encounter, which largely contains content from current Section 60.05. The Department adopts a few changes to the content, such as providing that the written order may be, but does not have to be, prescribed by the provider who performed the face-to-face encounter.
- Removes the requirement in 60.06-1, Face-to-Face Encounters, that DME providers must inform members prior to the provision of DME that is not covered by MaineCare that the member will be responsible for payment because this requirement is already included in 10-144 C.M.R., Chapter 101, Chapter I, Section 1.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

- Re-names and re-numbers Section 60.05-1, Requirements, to Section 60.06-2, Medical Supplies and DME Requirements.
- Allows qualified providers, rather than a physician or PCP, to prescribe medical supplies and DME in Section 60.06-2(B) because different provider types can prescribe medical supplies and DME within their scope of practice.
- Removes current Section 60.06-2(I) which contains information regarding prior authorization (PA) and the Department's Health PAS Portal because it is already included elsewhere in the policy.
- Adds the requirement in Section 60.06-2(I) that a physician or qualified provider must review a member's need for DME and supplies annually, as required by 42 CFR 440.70(b)(3)(iii).
- In Section 60.06-2(J), requires a "prescribing provider," rather than a "prescribing physician," to maintain the referenced documentation, including the name of the "qualified provider," rather than the "physician, nurse practitioner, physician assistant or clinical nurse specialist," who performed the face-to-face encounter.
- In Section 60.06-3(F), requires providers to retain, rather than submit, documentation that applicable equipment can freely pass through all entryways without the need for modification or, if applicable, that necessary modifications or structural changes occurred prior to the PA request. Medicare uses this policy, and it is reasonable for MaineCare to utilize this policy.
- Adds that the Department shall rent and/or purchase items consistent with Medicare practices in Section 60.06-4.
- In Section 60.06-7, Replacement of DME, moves the last sentence in the provision regarding when replacement will not be allowed, to the beginning of this provision and added a sentence that DME that is functioning properly will not be replaced unless a change in the member's condition requires a change of DME.
- In Section 60.06-8, to align with 42 CFR § 440.70, removes the requirement that medical supplies and DME may be provided to members residing in their own homes and clarifies that medical supplies and DME may be provided for use in any setting in which normal life activities take place, other than a hospital or any setting in which payment is or could be made under MaineCare for inpatient services that include room and board.
- In Section 60.06-9, clarifies that the regular rate of reimbursement for nursing facilities and intermediate care facilities for individuals with intellectual disabilities is intended to include DME upgrades and add-ons.
- Moves the content of former Section 60.06-2, Prior Authorization, into Section 60.07, Prior Authorization Requirements.
- Removes the current rule provision Section 60.06-2(2), Orthotics and Prosthetic DME, because it contains redundant requirements and unnecessary definitions.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

- Moves the content from Section 60.05-8, Prosthetics, and Section 60.12(L), Orthotics & Prosthetics, to new Section 60.08-2, Orthotics and Prosthetics, and makes a few changes to clarify language.
- Adds Section 60.08-3, Augmentative and Alternative Communication Devices, requiring members to trial augmentative and alternative communication devices before the Department will rent or purchase the devices. It is standard industry practice for patients to trial these devices before purchasing, and manufacturers and providers are accustomed to this. Currently, this is a PA-based requirement that is on the Department's website.
- Moves Section 60.12(Z) to Section 60.08-4, Specially Modified Foods and Formulas, which provides that specially modified foods and formulas are covered when the member has inborn errors of metabolism. The Department no longer allows members to receive specially modified foods and formulas when they have "a qualifying medical condition where the most effective and appropriate form of caloric or nutritional intake is orally" because it lacks specificity. Members will continue to be eligible for specially modified foods and formulas when they have inborn errors of metabolism.
- In Section 60.08-5, specifies that modifications and inserts for diabetic shoes are limited to a combined total of six units per member per rolling year, instead of per year.
- Adds coverage for breast milk bags with a limit of 120 units (bags) per member per rolling month in Section 60.08-14.
- Adds coverage for automatic blood pressure monitors with a limit of one unit per member per three calendar years in Section 60.08-15.
- Section 60.10, Reimbursement: The Department adopts the following changes to the reimbursement provision:
 - Retroactively to January 1, 2023, establishes reimbursement for all Medicare covered codes at 100% of the current Medicare fee schedule amount and adds an annual cost-of-living adjustment for the rates for all non-Medicare covered codes. These changes are permitted retroactively pursuant to 22 MRS 42(8) because they benefit MaineCare providers.
 - Clarifies that the Medicare rates are pulled from the Medicare DMEPOS Fee Schedule.
 - Moves the Incontinence Supplies reimbursement provision from the current Section 60.09-1(C) to Section 60.10-2. The Department adjusts the maximum amount allowed by MaineCare for incontinence supplies with an inflation adjustment based on the Consumer Price Index for All Urban Consumers for Medical Equipment and Supplies. This change will be retroactive to January 1, 2023, and is lawful pursuant to 22 M.R.S. 42(8) because the inflation adjustment benefits providers.
 - Adds Section 60.10-2 that contains criteria for providers to request incontinence supplies that are not on the MaineCare fee schedule.
 - Amends Section 60.10-6 provision related to the reimbursement of rental items, so that rental periods (except for oxygen) follow Medicare rental periods.
 - Modifies Section 60.10-7 to remove redundant information and to align oxygen rental requirements with current MaineCare practices.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

P.L. 2021, ch. 398, required the Department to align rate structures and fee schedules with Medicare. The current rule, which was effective in 2018, does already align most DME rate structures and fee schedules with Medicare; this final rule expands the alignment with Medicare, including adopting Medicare's rental period classifications and corresponding rental rates, and thus complies with P.L. 2021, ch. 398. These changes also ensure MaineCare's compliance with the Upper Payment Limit demonstration required by the Centers for Medicare & Medicaid Services and authorized by section 1903(i)(27) of the Social Security Act. This rulemaking also complies with P.L. 2021, ch. 639, *An Act to Codify MaineCare Rate System Reform*, codified in 22 M.R.S. Sec. 3173-J. The Department issued a Rate Determination Initiation Notice on September 27, 2022. The Department held a public rate forum on December 1, 2022, to collect stakeholder input and comments to inform the Rate Determination process for Medical Supplies and DME and accepted written comments through December 15, 2022. The Department determined that for medical supplies and DME for which there is a Medicare rate, the Medicare rate represents the most appropriate benchmark, and payment of 100% of current year Medicare is appropriate. The Department also determined that the rates for medical supplies and equipment that are not covered by Medicare should receive an annual inflation adjustment based on the Consumer Price Index for All Urban Consumers for medical equipment and supplies (CUUR0000SEMG). The Department complies with 22 M.R.S. Sec. 3173(3), by engaging in APA rulemaking to implement this amended reimbursement methodology. The expansion of the current Medicare reimbursement methodology, adding the COLA adjustment to the calculation of the costs of other state Medicaid agencies for non-Medicare DME, and rental period changes are applied retroactive to January 1, 2023, as the changes, consistent with 22 MRS 42(8), benefit DME providers.

Deletes most of Appendix I. Appendix I contains specific PA criteria for select items. The Department is moving most of these criteria to the MaineCare Health PAS Portal (<https://mainecare.maine.gov/Default.aspx>). The rulemaking removes references to Appendix I and refers providers to the Portal. The Department is proposing this change for purposes of efficiency and flexibility, as it will no longer utilize APA rulemaking to make changes to certain medical criteria/standards. Some medical criteria will remain in the APA rule: Appendix I, Section 60.12(L), Orthotics and Prosthetics, moves to new Section 60.08-2, Orthotics and Prosthetics; and Appendix I, Section 60.12(Z), Specially Modified Foods and Formulas, moves to Section 60.08-4, Specially Modified Foods and Formulas.

As described in the List of Changes to the Final Rule at the end of the Summary of Comments and Responses document, the Department made the following changes in the adopted rule (compared to the changes that were included in the proposed rule):

1. In response to a comment, the Department added language that clarifies members are responsible for paying required co-payments in Section 60.10-10
2. In response to a comment, the Department corrected incorrect headers that appeared after Section 60.07.
3. In response to a comment, the Department added breast milk storage bags and CPAP and Bi-PAP supplies to the list of items that can be dispensed in 90-day supplies in Section 60.08-13.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

4. As a result of final rule review, the Department removed “Power Operated Vehicles” from the title of Section 60.08-8 because “Power Mobility Devices” is inclusive of power operated vehicles.
5. Pursuant to P.L. 2023, ch. 216, as codified in 22 MRS 3174-KKK, the Department specified in Section 60.08-16 that electric breast pumps and supplies are covered under MaineCare without prior authorization or limitation when they are prescribed by a Qualified Provider. This provision in policy will be effective on October 25, 2023, the date the law becomes effective. Note that the Department already covers electric breast pumps and supplies without prior authorization or limitation.
6. As a result of final rule review, the Department removed “The Department shall submit to CMS and anticipates approval for a State Plan Amendment related to these provisions” from Section 60.10 because Centers for Medicare & Medicaid Services (CMS) approved the relevant state plan amendment.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$735,128 in SFY 2023, which includes \$248,422 in state dollars and \$486,707 in federal dollars, and \$1,470,256 in SFY 2024, which includes \$502,675 in state dollars and \$967,581 in federal dollars.

The reimbursement methodology changes will produce an overall increase in reimbursement for providers of medical supplies and DME. MaineCare members may experience increased access to medical supplies and DME.

Higher rates may increase access to certain medical supplies and DME that providers have chosen not to cover because of previously inadequate rates and may prevent providers from disenrolling from MaineCare.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, MaineCare Services, Division of Policy
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173; P.L. 2021, Ch. 291
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: Chapter I, Section 4, Telehealth Services
Filing number: **2023-225**
Effective date: 11/6/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
See Basis Statement

Basis statement:

The Department of Health and Human Services finally adopts these rule changes in 10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Chapter I, Section 4, Telehealth Services.

This adopted rule makes the following changes:

1. Removes the requirement that providers may only deliver covered services through telephonic telehealth if interactive telehealth services are unavailable. This change aligns the rule with P.L. 2021, Ch. 219, An Act Regarding Telehealth Regulations. The Department also removes Section 4.04-3, Telephonic Services, because the requirements for telephonic and interactive telehealth services are now the same. Services delivered via telephonic telehealth must still be medically necessary, pursuant to Chapter I, Section 1.06-1.
2. Allows members to provide written, verbal, or electronic consent to telehealth services; this change aligns the rule with P.L. 2021, Ch. 219, as codified in 22 M.R.S. Sec. 3173-H.
3. Removes the restriction in Sections 4.07-2(B)(8) and 4.05(E) that the originating facility fee may only be billed when the originating site is in a health care provider's facility. The Department allows a provider to bill the originating facility fee if the originating site is somewhere other than a provider's facility.
4. Removes language in Section 4.07-2(B)(1) that suggests the originating facility fee is billable only if the provider makes room and telecommunications equipment available and clarifies that it is billable when a provider supports access to telehealth services. The rule also clarifies what supporting access to telehealth services means.
5. Removes a list of services that may not be delivered through telehealth. Section 4.04, Covered Services, defines requirements for what can be delivered through telehealth: it is impractical to maintain an all-encompassing list of services that cannot be delivered through telehealth and keeping a partial list in the rule creates ambiguity.
6. Removes the table of codes and rates in Section 4.07-4, Reimbursement Rates, because codes and rates reside and are updated either in the appropriate Sections of the MBM or the MaineCare provider fee schedules on the MaineCare Health PAS Portal. The Department is retaining reference to the originating facility fee under Section 4.07-4,

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Reimbursement Rates, because it is reimbursed under this rule. The Department added a sentence explaining that the specific rate for the Telehealth Originating Facility Fee, per visit, is listed on the MaineCare provider fee schedule, which is posted on the Department's website in accordance with 22 MRSA Section 3173-J(7). Note that the specific rate for the Telehealth Originating Facility Fee can be changed or updated only through APA rulemaking, pursuant to 22 M.R.S. Sec. 3173-J(3).

7. Adds guidance to use the modifier "93" when billing for services delivered through telephonic telehealth.
8. Modifies the definition of Originating (Member) Site to clarify that it is not limited to a health care provider's office or a member's residence.
9. Removes references to the requirement that a primary care referral is needed to see a specialist because this requirement is no longer in effect.
10. Moves the content in Sections 4.06-2(A)(5-7) to new Sections 4.06-2(C-E) and makes edits to clarify the requirements.
11. Added the requirement, in Section 4.03-1, that health care providers must be appropriately licensed, accredited, certified, and/or registered in the State where the member is located during the provision of the telehealth service.
12. In Section 4.05(B)(2), adds examples of services that require direct physical contact and cannot be delivered through telehealth.
13. The Department also removed the definition for "Requesting Physician" as this is not a relevant term for this rule. The Department also made minor technical corrections.

As described in detail in the List of Changes to the Final Rule at the end of the Summary of Comments and Responses document, the Department made the following changes in the adopted rule (compared to the changes that were included in the proposed rule):

7. As a result of a comment, the Department changed "his or her" in Section 4.03-1(A) to "their."
8. As a result of a comment, the Department changed "videotaping or other recording" in Section 4.06-2(E) to "audio and/or visual recording."
9. As a result of Office of Attorney General (OAG) review, deleted the definition for "Established Patient" because it is not meaningfully different than the definition for "Member."
10. As a result of OAG review, the Department changed the definitions of "Telemonitoring" and "Telehealth" as those definitions were changed by P.L. 2021, ch. 291. The Department also added definitions for "Asynchronous Encounters" and "Synchronous Encounters" as those definitions were defined in P.L. 2021, ch. 291.
11. As a result of OAG review, the Department is retaining reference to the originating facility fee under Section 4.07-4, Reimbursement Rates, because it is reimbursed under this rule.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

The Department added a sentence explaining that the specific rate for the Originating Facility Fee, per visit, is listed on the MaineCare Provider fee schedule, which is posted on the Department's website in accordance with 22 MRSA Section 3173-J(7), and the specific reimbursement rate is legally enforceable as an APA rule, as it is properly incorporated by reference. Note that the specific rate for the Telehealth Originating Facility Fee can be changed or updated only through APA rulemaking, pursuant to 22 M.R.S. Sec. 3173-J(3).

Fiscal impact of rule:

The Department anticipates that this rulemaking will not have a fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, MaineCare Services, Division of Policy
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173; P.L. 2021, Ch. 398, Part A, Sec. A-17; 22 M.R.S. 3173-J
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: Chapter II, Section 71, National Diabetes Prevention Program Services
Filing number: **2023-226**
Effective date: 11/8/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This proposed rulemaking establishes MaineCare Benefits Manual Chapter II, Section 71, National Diabetes Prevention Program (NDPP) Services, which allows MaineCare to reimburse providers for delivering the National Diabetes Prevention Program Lifestyle Change Program (National DPP LCP).

The National DPP LCP is an evidence-based, intensive lifestyle behavior change program designed and overseen by the United States Centers for Disease Control and Prevention (CDC) to teach participants the skills to change and maintain physical activity levels and dietary habits to prevent or delay type 2 diabetes. Members are eligible for the National DPP LCP when they have a qualifying body mass index in addition to a positive screening for prediabetes or a qualifying blood test. To enroll as a MaineCare National DPP LCP Provider (Provider), providers must have recognition awarded by the CDC's Diabetes Prevention Recognition Program (DPRP) and adhere to the "Centers for Disease Control and Prevention Diabetes Prevention Recognition Program Standards and Operating Procedures," (DPRP Standards) published by the CDC on May 1, 2021 (OMB No. 0920-0909, Exp. Date: 04/30/2024), which outlines provider requirements for delivering the National DPP LCP. The DPRP Standards are incorporated by reference in the rule and are available on the CDC's National DPP webpage at: <https://www.cdc.gov/diabetes/prevention/requirements-recognition.htm>.

The National DPP LCP is comprised of twenty-two sessions delivered over the course of one year, and Providers must use the CDC's PreventT2 Curriculum or another CDC-approved curriculum. The first sixteen core sessions occur during the first six months and the final six maintenance sessions occur monthly during the last six months. Trained lifestyle coaches deliver sessions in-person and/or via telehealth for approximately sixty minutes per session. The allowed amount for each session is 100% of Medicare's current total reimbursement for all sessions without weight loss included in the Medicare Diabetes Prevention Program (MDPP), divided by the total number of sessions required by the DPRP Standards.

Providers are eligible for two performance payments if members achieve weight loss or HbA1C goals. The allowed amount for each performance payment is 100% of Medicare's current maximum reimbursement for payments related to weight loss included in the MDPP, divided by two.

This rulemaking complies with P.L. 2021, Ch. 639, *An Act to Codify MaineCare Rate System Reform*, codified in 22 M.R.S. Sec. 3173-J. The Department issued a Rate Determination Initiation Notice on December 16, 2022. The Department held a public rate forum on February 6, 2023, to collect stakeholder input and comments to inform the Rate Determination for the

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

NDPP and accepted written comments through February 27, 2023. The Department published responses to comments on April 25, 2023.

Basis statement:

The Department of Health and Human Services (the “Department”) finally adopts this new rule at 10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Chapter II, Section 71, National Diabetes Prevention Program Services, which allows MaineCare to reimburse providers for delivering the National Diabetes Prevention Program Lifestyle Change Program (National DPP LCP).

The National DPP LCP is an evidence-based, intensive lifestyle behavior change program designed and overseen by the United States Centers for Disease Control and Prevention (CDC) to teach participants the skills to change and maintain physical activity levels and dietary habits to prevent or delay type 2 diabetes. Members are eligible for the National DPP LCP when they have a qualifying body mass index in addition to a positive screening for prediabetes or a qualifying blood test. To enroll as a MaineCare National DPP LCP Provider (Provider), providers must have recognition awarded by the CDC’s Diabetes Prevention Recognition Program (DPRP) and adhere to the “Centers for Disease Control and Prevention Diabetes Prevention Recognition Program Standards and Operating Procedures,” (DPRP Standards) published by the CDC on May 1, 2021 (OMB No. 0920-0909, Exp. Date: 04/30/2024), which outlines provider requirements for delivering the National DPP LCP. The DPRP Standards are incorporated by reference in the rule and are available on the CDC’s National DPP webpage at: <https://www.cdc.gov/diabetes/prevention/requirements-recognition.htm>.

The National DPP LCP is comprised of twenty-two sessions delivered over the course of one year, and Providers must use the CDC’s PreventT2 Curriculum or another CDC-approved curriculum. The first sixteen core sessions occur during the first six months and the final six maintenance sessions occur monthly during the last six months. Trained lifestyle coaches deliver sessions in-person and/or via telehealth for approximately sixty minutes per session. The allowed amount for each session is 100% of Medicare’s current total reimbursement for all sessions without weight loss included in the Medicare Diabetes Prevention Program (MDPP), divided by the total number of sessions required by the DPRP Standards.

Providers are eligible for two performance payments if members achieve weight loss or HbA1C goals. The allowed amount for each performance payment is 100% of Medicare’s current maximum reimbursement for payments related to weight loss included in the MDPP, divided by two.

This rulemaking complies with P.L. 2021, Ch. 639, *An Act to Codify MaineCare Rate System Reform*, codified in 22 M.R.S. Sec. 3173-J. The Department issued a Rate Determination Initiation Notice on December 16, 2022. The Department held a public rate forum on February 6, 2023, to collect stakeholder input and comments to inform the Rate Determination for the NDPP and accepted written comments through February 27, 2023. The Department published responses to comments on April 25, 2023, which it then updated on August 22, 2023 to reflect final changes to the reimbursement methodology.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$834,087 in SFY 2024, which includes \$309,106 in state dollars and \$524,981 in federal dollars, and \$1,484,766 in SFY 2025, which includes \$555,235 in state dollars and \$929,531 in federal dollars.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, MaineCare Services, Division of Policy
Umbrella-Unit: **10-144**
Statutory authority: 22 M.R.S.A, Ch 855 § 3173
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: Chapter III, Section 67, Principles of Reimbursement for Nursing Facilities
Filing number: **2023-239**
Effective date: 11/26/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
See Basis Statement

Basis statement:

The Department adopts the following changes to 10-144 C.M.R., Chapter 101, Ch. III, Section 67, Principles of Reimbursement for Nursing Facilities:

- Removes language that stated the Department is seeking approval from CMS for changes where approval has been granted, and adds CMS approval language where the Department is seeking CMS approval.
- Changes the date of the most recently filed cost report for purposes of subsequent rebasing from the report available by April 1st of the re-basing year to the report available by June 1st of the re-basing year, to ensure the Department uses the most recent cost reports available.
- Principle 13.2 (Cost Reports): The Department made two changes: (1) To comply with the Social Security Act, 42 U.S.C. Section 1320a-7k(d), if a nursing facility determines from the cost report that the nursing facility owes moneys to the Department, it must submit 100% (changed from 50%) of the amount owed to the Department with its filed cost report; and (2) In compliance with Resolves 2021, ch. 121, added a requirement that if it is determined that the Department owes the facility money, the Department must reimburse at least seventy-five percent (75%) of the settlement pursuant to the facility's cost reports within ninety (90) days of receipt.
- Adds a list of twenty items that nursing facilities must submit as supporting documentation with the cost report to support a more accurate analysis of costs.
- Principle 13.4: The Department adopts changes that formalize the process for the Division of Audit to accept cost reports for completeness and adequacy of all supporting documentation. The acceptance review should be completed within 45 days of receipt of the cost report. The Division of Audit will continue to perform what were previously known as uniform desk reviews on each cost report that has been accepted. The term "audit" has been substituted for the previous term "uniform desk review." The Department deleted the rule requirement that such audits be completed within three hundred and sixty five (365) days after receipt of an acceptable cost report filing. The Department made changes to the final rule from the proposed rule, after receiving comments and also Office of Attorney General review, to clarify the provision.
- Adds health savings accounts and flexible spending accounts to the list of Direct Care Cost Components.
- Adds background checks and software costs and licensing fees to the list of allowable costs for the routine component of the rate.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

- Principle 17.4.2.6 (Purchased Central Office services): Adds “Purchased Central Office Services” to the list of Administration Functions under Routine Cost Components to clarify that Central Office services purchased from another provider are only allowable to the extent they are actual costs, as a service provided by a related party. After comments, the Department added clarifying language to the final rule, clarifying that the nursing facility providing this service to another nursing facility would not be reimbursed for the cost of providing the service.
- Clarifies the Motor Vehicle Allowance to state that only one vehicle per facility is allowed as a Routine Cost Component.
- Removes language stating that allowable costs not specified for inclusion in another cost category shall be included in the Fixed Costs Component as those costs fall under the Routine Cost Component, not the Fixed Costs Component.
- Principle 18.5.1(Interest Expense) The Department made two changes: (1) Added clarifying language that Interest Expenses must be for a purpose related to patient care; and (2) Added a new provision (f) with clarifying language that loan principal payments need to be applied to the allowable portion of debt first, consistent with *CMS The Provider Reimbursement Manual, Part I, Chapter 2 (Interest Expense), Publication #15-1*.
- Principle 18.12 (Payment for High MaineCare Utilization): The Department made two changes: (1) Clarifies that Payment for High MaineCare Utilization is based on the number of resident days and not the number of residents; and (2) Added a new provision, with a retroactive effective date of July 1, 2021, pursuant to Resolves 2021, ch. 171, so that any nursing facility whose MaineCare resident days constitute more than 80% of the nursing facility’s total number of resident days will receive a High MaineCare Utilization Payment of \$0.60 per resident day for each one percentage of MaineCare resident days above 80%, and this payment is not subject to cost settlement and must be retained by the nursing facility in its entirety.
- Principle 22.3.4.3 (Add On to Support Essential Support Worker): In compliance with 22 M.R.S. Section 7402 (Essential support worker reimbursement), the Department added a new provision which creates an Essential Support Worker Add-On reimbursement to the direct care rate to increase cost reimbursement caps as necessary to enable providers to cover labor costs for essential support workers as defined in 22 M.R.S. Section 7401(3) that equal at least 125% of the minimum wage established in 26 M.R.S. Section 664(1), and by increasing related taxes and benefits accordingly. This add-on is not case mix adjusted. Pursuant to P.L. 2021, ch. 398, Sec. AAAA-5, this additional reimbursement has a retroactive effective date of July 1, 2022.
- Changes the facility allowance to receive an annual inflation adjustment based on the Consumer Price Index under the Prospective Per Diem Rate for Rates for Facilities Recently Sold, Renovated or New Facilities.
- Eliminates the requirement that Remote Island Nursing Facilities must maintain Medicaid utilization of ninety-five percent or more.
- Principle 44 (Special Wage Allowances): The Department made the following changes: In compliance with P.L. 2019, ch. 533, the Department added a provision for Special Wage Allowances for January 1, 2020 to June 30, 2021 to provide for wages and wage-related benefits in both the direct care cost component and route care cost component. This reimbursement has been approved by CMS. The rule also notes that a Special Wage Allowance for the period January 1 through June 30, 2022, was authorized and reimbursed under the Section 67 Principle 34 Extraordinary Circumstances Allowance. Note that, consistent with P.L. 2019, ch. 533, Sections 1, 2 and 3, the Special Wage Allowance is not continued past the January 1 through June 30, 2022 period because

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

the rebasing required under 22 M.R.S. Section 1708(3)(F) is based on 2020 or a later calendar year as a base year and the rebased rates have incorporated the costs of contract labor, wages and allowable benefits and taxes that were reported on each nursing facility's cost report for its fiscal year ending in calendar year 2020.

- Makes other, non-substantive grammatical corrections.

Fiscal impact of rule:

The Department anticipates that these changes will cost \$11,088,966 in State Fiscal Year 2020; \$10,965,143 in State Fiscal Year 2021; \$7,001,887 in State Fiscal Year 2022; \$3,269,661 in State Fiscal Year 2023; and \$3,349,946 in State Fiscal Year 2024.

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS: The Department anticipates that the total cost of the proposed rule will cost approximately \$11,088,966 in SFY 2020, which includes \$3,326,690 in state dollars and \$7,762,276 in federal dollars; \$10,965,143 in SFY 2021, which includes \$3,969,382 in state dollars and \$6,995,761 in federal dollars; \$7,001,887 in SFY 2022, which includes \$2,541,221 in state dollars and \$4,460,666 in federal dollars; \$3,269,661 in SFY 2023, which includes \$1,227,129 in state dollars and \$2,042,532 in federal dollars; and \$3,349,946 in SFY 2024, which includes \$1,259,867 in state dollars and \$2,090,079 in federal dollars.

INDIVIDUALS OR GROUPS AFFECTED AND HOW THEY WILL BE AFFECTED: MaineCare members utilizing nursing facility services may have an indirect benefit from higher reimbursement rates to nursing facilities as those facilities will be better positioned to pay and retain staff.

BENEFITS OF THE RULE: Providers will benefit from increased reimbursement.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, MaineCare Services, Division of Policy
Umbrella-Unit: **10-144**
Statutory authority: 22 M.R.S. §§ 42, 3173
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: Chapter II, Section 89, MaineMOM Services and Reimbursement
Filing number: **2023-244**
Effective date: 12/6/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
See Basis Statement

Basis statement:

The adopted rulemaking establishes 10-144 CMR Ch. 101, MaineCare Benefits Manual (the “MBM”), Chapter II, Section 89, MaineMOM Services and Reimbursement.

The Department adopts this rule in order to create a new section of policy describing MaineMOM Services. The rulemaking addresses MaineMOM provider requirements, member eligibility, policies and procedures, covered services, and reimbursement methodology. The adopted MaineMOM Services rule is intended to expand Maine’s offering of substance use treatment services for pregnant and postpartum MaineCare members. This service is being created specifically to address and improve care for pregnant and postpartum people with Opioid Use Disorder (OUD) and their infants by integrating perinatal and substance use treatment services. The adopted rule establishes a new model of care which builds upon Opioid Health Home Services within the Health Home Services Medicaid State Plan benefit, designed to integrate and coordinate medical and behavioral health services and supports for people living with chronic conditions.

MaineMOM services are separate from Section 93, Opioid Health Home Services. MaineCare will not reimburse a MaineMOM provider for delivering MaineMOM services to a member if that member also receives Section 93 services.

The Department adopts service and provider requirements for MaineMOM Services that are consistent with Health Home Service requirements, to include core Health Home Services and Standards, and the delivery of person-centered, quality-driven health care services. These adopted core services include creating care plans that support individual needs of patients, identifying health-related social needs, connecting individuals to needed resources, providing education related to substance use and perinatal care, supporting transitions between inpatient and outpatient care settings, and offering access to recovery-focused services. The Department further adopts that MaineMOM Services be provided by an interdisciplinary care team that includes a clinical lead, a Medications for Opioid Used Disorder (MOUD) prescriber, a perinatal provider, a nurse care manager, a clinical counselor, a patient navigator, and a recovery coach.

The adopted rule establishes three (3) models of MaineMOM Services to accommodate various provider and member situations. The three (3) models are:

- the Integrated Model,
- the Partnership Model, and

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

- the Perinatal Navigation Model

In compliance with 22 M.R.S. Section 3173-J(3), this adopted rule establishes the reimbursement rate methodology for Section 89 services, as follows:

- For each of the three (3) models of MaineMOM Services, the adopted rule establishes a monthly Per Member Per Month (PMPM) reimbursement rate which incorporates quality of care incentives with the review of performance on two quality measures (access to postpartum services and screening for viral hepatitis C in pregnant patients).
- 4% of the PMPM payments is withheld and redistributed every six months in accordance with the Performance-Based Adjustments rule provision.
- In compliance with 22 M.R.S. Section 3173-J, the adopted reimbursement methodology applies an annual cost of living adjustment (COLA) equal to the percentage increase in the state minimum wage as set by the Department of Labor, pursuant to 26 M.R.S. Section 664(1), effective July 1, 2024, to the three MaineMOM PMPM rates.
- The PMPM rates and the annual COLA adjustments will be posted on the Department's website.

As described in detail in the Summary of Comments and Responses document, the Department made a few changes to the final rule based on public comment. First, the Department changed the phrase "Consent Forms" to "Documentation of Consent" in Section 89.04-2(D). Second, the Department changed Section 89.05-1(A)(3) to establish new timelines for the Plan of Safe Care that reflect variances in when a member enrolls in MaineMOM services. Providers shall ensure a Plan of Safe Care is created prior to the pregnancy due date for members who enroll in services at least thirty (30) days prior to the pregnancy due date. For a member who enrolls in services after thirty (30) days prior to the pregnancy due date, the plan is developed as soon as possible and appropriate, conditional on birth outcome. Third, the Department made two changes under Section 89.05-3. The first change replaced "hourly visit" with "billable hour." The second change was to clarify that while the counseling requirements will be at a minimum one hour in duration monthly, this may be delivered in multiple member contacts, as clinically appropriate, and documented in the member's record. Fourth, the Department replaced "long-term recovery" with "recovery" in Section 89.06. Fifth, the Department added "If a MaineMOM member has a primary care provider" to the beginning of Section 89.06-1(M). Finally, as a result of final rule review, the Department eliminated Section 89.08(A)(9) "Adequate clinical documentation to support the phase of treatment to which the MaineMOM provider is attesting." MaineMOM services do not include phases of treatment and this was erroneously included in the proposed rule.

The Department has received approval from the Centers for Medicare & Medicaid Services (CMS) for most of the new covered services and rates. The rule notates for which provisions the Department is seeking a State Plan Amendment.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$742,279 in SFY2023, which includes \$259,668 in state dollars and \$482,611 in federal dollars; \$1,065,012 in SFY 2024, which includes \$390,966 in state dollars and \$674,046 in federal dollars; and \$1,065,012 in SFY 2025, which includes \$390,966 in state dollars and \$674,046 in federal dollars.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, MaineCare Services, Division of Policy
Umbrella-Unit: **10-144**
Statutory authority: 22 M.R.S. §§ 42(8), 3173; 22 M.R.S. 3173-J; P.L. 2021, ch 635; P.L. 2023, ch 3, Sec. S-1
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: Chapter III, Section 45, Principles of Reimbursement for Hospital Services
Filing number: **2023-251**
Effective date: 12/18/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
See Basis Statement

Basis statement:

The Department of Health and Human Services finally adopts these rule changes in 10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Chapter III, Section 45, Principles of Reimbursement for Hospital Services.

The principal change the Department made in this rulemaking was to eliminate the current provider-specific rates for reimbursing distinct psychiatric units and distinct substance use disorder (SUD) units in hospitals, and to establish a new reimbursement methodology. In compliance with 22 M.R.S. Sec. 3173-J(2), the Department conducted a rate determination process: a Rate Determination Initiation Notice was issued on October 7, 2022; MaineCare presented the draft rate methodology and definitions to providers and interested stakeholders in January 2023; accepted public comments until February 3, 2023; and will respond in writing to comments with an explanation of whether and how feedback was incorporated into the final rate determination. The Department's resulting reimbursement methodology, generally aligns with Medicare's payment method for distinct psychiatric units. In compliance with P.L. 2023, ch. 3, Sec. S-1, the initial per diem base rates were set so the methodology will provide, in aggregate, one hundred percent (100%) cost reimbursement across all hospitals with these distinct units based upon 2022 data.

The adopted rule makes the following specific changes:

- Section 45.01- Definitions:

Change the definition of "Discharge" to add that a discharge occurs if a patient is transferred to a distinct psychiatric Unit or a distinct SUD unit. The Department proposes a retroactive application of July 1, 2023, for this change, as authorized by 22 M.R.S. Sec. 42(8), as this change benefits, and does not harm MaineCare members or providers.

Added definitions for "From Date" and Medicare Severity Diagnosis-Related Group (MS-DRG), terms utilized in Section 45.03-1(B), the new reimbursement methodology for distinct psychiatric Units and SUD units.

- Section 45.02-1- Inflation:

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Change the name of the entity producing the economic trend factor used by the Department for determining inflation, from Global Insight to IHS Markit due to a change in the name of the organization that publishes the “Healthcare Cost Review”.

- Section 45.03-1(B) New Reimbursement Methodology for Distinct Psychiatric Units and Distinct Substance Use Disorder (SUD) Units:

The Department eliminated the methodology for reimbursing distinct psychiatric units and distinct SUD units and established a new reimbursement methodology that the Department determined in accordance with 22 M.R.S. Sec. 3173-J(2). Under the new methodology, the Department calculates reimbursement for covered in-person stays in these units using the following formula: multiplying the per diem base rate (determined by whether the MS-DRG is a psychiatric or SUD MS-DRG) by the applicable MS-DRG relative weight and multiplying that figure by the applicable Length of Stay factor.

- Section 45.03-1(B)(1)(a):

The Department calculated per diem base rates to result in total reimbursement equal to one hundred percent (100%) of the costs of such discharges in the aggregate across all hospitals with distinct psychiatric units and distinct SUD units, utilizing 2022 data when adjusted for MS-DRG relative weights and Length of Stay factor.

- Section 45.03-1(B)(1):

The Department proposes to adopt the Medicare MS-DRG and Length of Stay factors for the new reimbursement methodology. The Medicare Length of Stay factor is a cumulative factor that takes into account how many days the patient stays in the distinct unit.

- Section 45.03-1(B)(1)(d):

The Department adopted the updated per diem base rate annually based on the inflation provision in this rule (Section 45.02-1): the economic trend factor from the most recent addition of the “Healthcare Cost Review” from IHS Markit. In accordance with 22 M.R.S. Sec. 3173-J(3), the per diem base rates are posted on the MaineCare Provider Fee Schedule, and the Department is not required to do rulemaking to make the annual inflation adjustments to the per diem base rate.

The new reimbursement methodology has a retroactive application date of July 1, 2023, as authorized by 22 M.R.S. 42(8), as the changes benefit, and do not harm MaineCare members or providers.

- Section 45.03-1(B)(2):

In order to prevent any adverse financial impact to any hospital with a distinct psychiatric unit, the Department adopted a time limited supplemental payment for hospitals with distinct psychiatric units that are located in zip codes that CMS designates as “super rural” and that also have a High Geographic Need Health Professional Shortage Area for mental health designation by the Health Resources and Services Administration.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

- In response to public comments:

In the adopted rule, the Department expanded the eligibility of hospitals who can claim for the distinct psychiatric units and distinct substance use disorder units to include acute care critical access hospitals.

- The adopted rule adds a new provision – Section 45.04-1(C)(Distinct Psychiatric and Substance Use Disorder Units) to the acute care critical access 45.04 provision
- Section 45.04-2 (Prospective Interim Payment) was also amended to exclude distinct psychiatric units and distinct substance use disorder units from the departmental prospective interim payment obligation.
- Additionally, the definition of Distinct Psychiatric Unit (Section 45.01-9) was amended to include acute care critical access hospitals.

- Appendix A(VIII):

The Department includes distinct psychiatric units and SUD units in this provision, so that hospitals can claim for two episodes of care if patients are transferred to distinct rehabilitation, psychiatric or SUD units. The Department adopted a retroactive application of July 1, 2023, for this change, as authorized by 22 M.R.S. Sec. 42(8), as this change benefits, and does not harm MaineCare members or providers.

- Remove website addresses and embed links to those websites in their place.
- Make minor technical edits and format corrections.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$18,286,649 in SFY 2024, which includes \$4,548,675 in state dollars and \$13,737,974 in federal dollars, and \$18,475,723 in SFY 2025, which includes \$4,732,057 in state dollars and \$13,743,666 in federal dollars.

The Department anticipates that this rulemaking will cost approximately \$18,286,649 in SFY 2024, which includes \$4,548,675 in state dollars and \$13,737,974 in federal dollars, and \$18,475,723 in SFY 2025, which includes \$4,732,057 in state dollars and \$13,743,666 in federal dollars.

The reimbursement methodology changes will produce an overall increase in reimbursement for hospitals with distinct psychiatric and substance use disorder units.

The new reimbursement methodology for the two distinct units is a generally higher rate of reimbursement, which is a benefit to the hospitals. Higher reimbursement rates may better enable units to ensure they are fully staffed and able to accept MaineCare members.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, Maine Center for Disease Control and Prevention
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(3), 42(3-A), 42(3-B); 30-A MRS §§ 4211, 4215, & 4452(A); and 22-A MRS § 205(2)
Chapter number/title: **Ch 241**, Subsurface Wastewater Disposal Rule
Filing number: **2023-172**
Effective date: 9/23/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Maine CDC is proposing amendments to the Maine Subsurface Wastewater Disposal Rules at 10-144 CMR Chapter 241, which contains the requirements for the subsurface wastewater permitting processes performed by municipalities and overseen by the Department. More specifically, this rule governs the siting, design, construction and inspection of subsurface wastewater disposal systems, in order to protect the health, safety and welfare of the residents and visitors of Maine.

Proposed changes include adding clarifying language to the requirements, adding definitions, rearranging and adding sections to the rule, and updating formatting elements, to align with Maine CDC rulemaking convention.

The Maine CDC is also proposing the addition of requirements for the conversion of seasonal dwelling units into year-round residences in Section 8(B). This proposed language, would make requirements in Rules for Conversion of Seasonal Dwelling Units into Year-Round Residences in the Shoreland Zone, 10-144 CMR Ch 242, no longer applicable and necessitates the repeal of that rule in a concurrent rulemaking.

In addition, Maine CDC proposes adding a new section that establishes minimum recommended standards for inspectors who conduct subsurface wastewater disposal system inspections, in order to promote reliable and consistent inspections when properties in Maine are transferred, to ensure higher environmental sanitation and safety levels, and to comply with 22 MRS § 42(3-A). This rule addition is intended to complement municipal planning, zoning, and land use control regulations.

Basis statement:

The Department of Health and Human Services, Maine Center for Disease Control and Prevention (Department), advertised rulemaking changes for its Subsurface Wastewater Disposal Rule on December 14, 2022, with a 30-day public comment period. The comment period ended on January 13, 2023. After all comments were reviewed, the Department revised the proposed rule in response to concerns raised by commenters. Two of these changes substantially differed from what was originally proposed. Therefore, Maine CDC conducted a second 30-day comment period on those two changes from April 19, 2023 through May 19, 2023.

The Department amended the rule by adding clarifying language to the requirements, adding new definitions, rearranging existing sections, adding new sections to the rule, and updating formatting elements, to align with Maine CDC rulemaking conventions. The Department has amended requirements regarding the use of soil fill material outside of a shoreland zone for septic systems, by removing the requirement for soil to be in place prior

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

to October 1, 1995 and replaced it with a requirement for soil fill material to be in place for at least 20 years. The Department also amended the required age for soil fill material in a shoreland zone to be at least 40 years old, rather than the previous requirement for the fill material to be in place before July 1, 1974. The Department determined that fill material in place for at least 20 years outside of the shoreland zone and 40 years inside the shoreland zone provide sufficient time for the fill material to resemble the stability of natural soil.

The Department also updated and clarified requirements for converting seasonal dwellings into year-round residences, given the outdated Rules for Conversion of Seasonal Dwelling Units into Year-Round Residences in the Shoreland Zone, (10-144 CMR Ch 242). The Department plans to propose a repeal of the Seasonal Conversion Rule, now that this Chapter 241 is updated. An additional section to this newly adopted rule establishes the minimum standards for inspectors who conduct subsurface wastewater disposal system inspections, in order to promote reliable and consistent inspections when properties in Maine are transferred, to ensure higher environmental sanitation and safety levels and comply with 22 MRS § 42 (3-A), which complements municipal planning, zoning, and land use control regulations.

Fiscal impact of rule:

There are no additional costs associated with this rule. The Department will utilize existing staff and resources.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, Maine Center for Disease Control and Prevention
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS § 567 and 38 MRS § 341-H
Chapter number/title: **Ch 263**, Maine Comprehensive and Limited Environmental Laboratory Accreditation Rule
Filing number: **2023-040**
Effective date: 3/15/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The principal reason for the proposed rule changes is to update federal references and update the laboratory accreditation fee schedule. The proposed changes will permit the use of laboratory methods most recently approved federally by the U.S. Environmental Protection Agency (EPA), which includes the recently EPA-approved LC/MS/MS method for analysis of the regulated contaminants carbofuran and oxamyl in drinking water. Additionally, DHHS and DEP may allow certain methods approved by the EPA after this rule is promulgated as an alternate method, as described in this rule. The benefits of using the newest method(s) for laboratories include the following: reduced analysis time, higher sensitivity and less hazardous waste, translating into reduced cost for analysis and disposal. Other proposed changes include adding a reference to Table IA, omitted from the current rule under the methods for the Wastewater Program test category as provided in 40 CFR Part 136. In order to align with the statute, a change is proposed to add ‘enterococcus’ to the list of pollutants for which laboratories operated by wastewater discharge facilities licensed pursuant to 38 MRS § 413 may analyze wastewater discharges and not require accreditation. Pursuant to 22 MRS §567(4), proposed changes to the current fee schedule are based on the cost of certifying or accrediting laboratories and reflect fees set for bordering states. The fees collected under this rule are deposited into the Health and Environmental Testing Laboratory Special Revenue Account to fund staffing and program operations. Additionally, changes are proposed to specify that the written management review and management team meeting will be completed within the first quarter of the following year; define ‘duplicate’ and ‘field duplicate;’ add actual mass/volume of sample analyzed to the components of test reports; clarify that, for the required analytical method SOP, the topic references must include method revision number or letter and publication date; and add a requirement for labs that fail a second PT to notify the appropriate department (DHHS or DEP). Proposed rule changes also include minor grammatical and technical changes to improve the rule.

Basis statement:

This rule is adopted jointly by the Department of Health and Human Services – Maine Center for Disease Control and Prevention (Maine CDC) and Maine’s Department of Environmental Protection (DEP). Maine Comprehensive And Limited Environmental Laboratory Accreditation Rule governs the accreditation of laboratories producing compliance data for programs administered by Maine CDC and DEP, as authorized by 22 MRS § 567 and 38 MRS § 341-H. Adopted amendments update requirements and revise fees for laboratory accreditation.

This rule adoption permits laboratories to use methods most recently approved federally by the U.S. Environmental Protection Agency (EPA), which includes the EPA-approved LC/MS/MS method for analysis of the regulated contaminants carbofuran and oxamyl in drinking water, as well as future alternative methods approved by EPA after the rule has been

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

promulgated that the Department may allow. The benefits of new method(s) for laboratories include the following: reduced analysis time, higher sensitivity and less hazardous waste, translating into reduced cost for analysis and disposal. The reference to Table IA corrects the omission of the Wastewater Program test category as provided in 40 CFR Part 136. The changes to the list of pollutants that wastewater discharge facility labs licensed under 38 MRS § 413 may analyze align with statute. The amended fee schedule is based on the cost of certifying or accrediting laboratories, and these updates are in line with costs set for bordering states (22 MRS §567(4)).

As laboratory owner/operators, approximately 11 utility districts will be impacted by the fee increase adopted for this rule. The Department does not consider the increase in fee(s) to be prohibitive. The biennial accreditation fee for laboratories with limited accreditation will increase from \$650 to \$850. The laboratories will experience a fee increase ranging from 5-50%, depending on the number of methods analyzed.

After consideration of comments about the potential administrative burden and anticipated cost for labs to implement the proposed change that would add actual mass/volume to components required for test reports, this proposed change is not included as a requirement in the final adopted rule. Additionally, in response to comments, non-substantive changes are adopted to further clarify in Section 7 that a lab may have some methods that are fully accredited, have others that are provisional, and then lose accreditation for others – all while being an “accredited lab”. In order to receive initial accreditation, the laboratory must have applied for and passed the assessment for at least one method and, for the purpose of this rule, be accredited for the specific method(s) run by the lab.

Fiscal impact of rule:

The Department of Health and Human Services determined that Maine Laboratory Accreditation Program operations are not sustainable with the current modest fee collection. The Department estimates that more than 40% of the cost of operating will continue to be unmet by the proposed fee collection increase and will require funding through other revenue account(s), including general funds. The revenue anticipated from the proposed fee structure will reduce, but not eliminate, the need for other funding to cover approximately 30% of program costs. The biennial accreditation fee for laboratories with limited accreditation will increase from \$650 to \$850. The laboratories will experience a fee increase ranging from 5-50%, depending on the number of methods analyzed. The average DHHS fee increase for labs is estimated to be 26%.

TEST METHOD CATEGORIES	CURRENT RULE (2018-Present)	PROPOSED RULE (Proposed Fees)
Bacteriology	\$50	\$75
Inorganic Chemistry	\$50	\$75
Metals	\$125	\$150
Organic Compounds	\$150	\$175
Radiochemistry	\$200	\$250

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, Maine Center for Disease Control and Prevention
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§802(1), (3)
Chapter number/title: **Ch. 264**, Immunization Requirements for Healthcare Workers
Filing number: **2023-149**
Effective date: 9/5/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department is proposing to amend *Immunization Requirements For Healthcare Workers*, to remove COVID-19 from the list of vaccine-preventable diseases for which Designated Healthcare Facilities must require all employees to provide proof of immunization or documentation of an authorized medical exemption. This proposed change is based on available clinical and epidemiological data about COVID-19, increased population immunity resulting from vaccination and prior infections, decreasing disease severity, improved treatments, and declining infection and death rates. In addition, the U.S. Centers for Medicare and Medicaid Services (CMS) in June 2023 withdrew the COVID-19 vaccine requirement for healthcare employees, following the May 11, 2023 end of the federal Public Health Emergency for COVID-19. CMS will continue to encourage healthcare worker COVID-19 vaccination through other mechanisms, including quality reporting and value-based incentive programs.

Basis statement:

The Department of Health and Human Services Maine Center for Disease Control and Prevention adopted a routine technical rule change that amends Chapter 264, Immunization Requirements for Healthcare Workers, by removing COVID-19 from the list of vaccine preventable diseases for which Designated Healthcare Facility employees must show proof of immunization or provide appropriate exemption documentation. The requirement was established in rule during the COVID-19 pandemic to protect Maine's most vulnerable populations and their care providers, to reduce the number of outbreaks, lower infection rates and lessen the severity of the impact of the disease.

Notice of rulemaking was published on July 19, 2023. A public hearing was held on August 7, 2023 at 109 Capital Street, Augusta, Maine at a DHHS Office. Written comments were accepted through August 17, 2023. The Department considered all comments before adopting the proposed changes. This rule change is based on available clinical and epidemiological data about COVID-19, increased population immunity resulting from vaccination and prior infections, decreasing disease severity, improved treatments, and declining infection and death rates. This rule change follows the U.S. Centers for Medicare and Medicaid Services' (CMS) withdrawal of its requirement for COVID-19 vaccination of health care workers on June 6, 2023.

The State of Maine has long required the immunization of employees of designated health care facilities to reduce the risk of exposure to and transmission of vaccine-preventable diseases and until this rulemaking, Maine was among four remaining states with some type of COVID-19 vaccine requirement. While COVID-19 vaccination remains an important tool to protect public health, the vaccination requirement for health care workers achieved the intended benefits of saving lives, protecting health care capacity, and limiting the spread of the virus in

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Maine during the height of the pandemic. Following the end of the federal and State declared health emergencies and the removal of the COVID-19 from the State's list of vaccine preventable diseases for which Designated Healthcare Facility employees must show proof of immunization or provide appropriate exemption documentation, health care providers may choose to implement COVID-19 vaccination requirements for their employees as a matter of public health and a measure to protect patients, care providers and communities.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, Maine Center for Disease Control and Prevention
Umbrella-Unit: **10-144**
Statutory authority: 26 MRS §§ 683(11) and 687(1)
Chapter number/title: **Ch. 265**, Substance Use Testing For the Workplace Rule
Filing number: **2023-196**
Effective date: 11/1/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule is intended to ensure that employees and applicants receive reliable and accurate testing for substances of use, and that privacy rights are protected. This rule change clarifies existing requirements related to substance use testing programs at the State of Maine Department of Labor, consistent with 26 MRS Chapter 7, Subchapter 3-A, which will promote greater technological advancement. Proposed rule changes include 1) updates to protocols for the collection of hair, oral fluids and sweat patches for specific substances based on mandated guidelines for federal workplace substance use testing programs; 2) revisions to cut-off levels for substance use tests to reflect current levels established by the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration; and 3) updates to the testing technology for screening tests. In Section 3, proposed changes alphabetize the lists of substances, and, where applicable, the Department proposes to add the following substances for which a Maine employer may require testing: *buprenorphine, fentanyl, hydrocodone, hydromorphone, oxycodone, oxymorphone, and propoxyphene*. The Department proposes to clarify *THC, codeine* and *morphine*, as well. In addition, the Department proposes to: 1) replace *substance abuse* with the term *substance use*, to be consistent with current usage and reduce stigma; 2) update protocols for sample storage; 3) clarify the Department's discretionary authority over inspections; and 3) revise the list of proficiency testing programs in Section 4 of the rule. Other proposed changes include a new title: *Substance Use Testing For The Workplace Rule*, as well as grammatical corrections, changes to format and other minor changes for consistency with agency standards and to improve readability.

Basis statement:

The Department of Health and Human Services has adopted routine technical rule changes amending Chapter 265, Substance Use Testing For The Workplace Rule (formerly Drug Testing Laboratory Rules), a rule administered by the Department's Maine Center for Disease Control and Prevention that governs programs and laboratories testing employees and applicants for substances of abuse. The adopted rule is consistent with the rule proposed for public comments.

In Maine, employers may establish drug testing programs, due to federal regulations or because of business or legal requirements. Drug testing may also legally occur through a voluntary drug-free workplace program instituted to reduce incident of substance use among an organization's employees. This rule is intended to ensure consistency in testing protocols and reliable and accurate testing for employees and applicants , and protection of privacy rights.

Changes adopted align with updates in technology, policies and best practices adopted by the Maine Department of Labor (DOL), Maine's Labor and Industry statute at 26 MRS ch. 7 (Employment Practices), subch. 3-A (Substance Use Testing), as well as cut-off levels for

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

substance-use tests established by the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration.

Fiscal impact of rule:

None anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, Maine Center for Disease Control and Prevention
Umbrella-Unit: **10-144**
Statutory authority: 29-A MRS §§ 2431, 2524 and 2527
Chapter number/title: **Ch 270**, Sample Collection and Drug Testing for Suspected Operating Under the Influences Cases
Filing number: **2023-050**
Effective date: 4/3/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This proposed rule updates requirements for law enforcement agencies and laboratories involved in testing of persons suspected of operating under the influence of intoxicating liquor or drugs pursuant to 29-A MRS 2431-2528, recently amended by Public Law 2019, c. 368. This rule change expands testing methods for more comprehensive and accurate results to ensure accurate and reliable testing for those who rely on legally defensible testing. The proposed rule:

- Revises the title to *Sample Collection and Drug Testing Rule for Suspected Operating Under the Influence Cases*;
- Adds the definition for Drug Recognition Expert (DRE);
- Replaces “substance of abuse” with the term “substance of use,” for consistency with related rules and regulations;
- Removes obsolete language and verbiage;
- Updates certification guidelines in Section 5 and testing standards and specify requirements for laboratory accreditation and analyst certification and for reporting for quality assurance purposes. Laboratories testing for substances of use under this rule must be accredited as a Forensic Testing Laboratory to ISO 17025 standards by an accrediting body, such as ANSI National Accreditation Board (ANAB);
- Removes “American Society of Crime Laboratory Director’s – Laboratory Accreditation Board (ASCLD-LAB),” in order to update the board’s former name with a current reference;
- Removes “ASCLD-LAB and the Society of Forensic Toxicologists (SOFT),” the specific names of approving bodies of proficiency testing programs listed under certification guidelines;
- Replaces “urine drug analysis” with the term “toxicology analysis,” where applicable, to allow for new testing method;
- Clarifies requirements related to procedure manuals and sample collection and storage, and further clarify release of samples; and
- Clarifies analysis of blood for alcohol level in Section 4.

Additionally, the proposed rule includes changes to formatting conventions and other minor non-substantive changes to language and grammar to improve and clarify the rule.

Basis statement:

This rule, formerly titled *Rules for Sample Collection and Drug Testing in Suspected O. U. I. Cases*, specifies certification requirements and testing standards for law enforcement agencies and laboratories involved in testing persons suspected of operating under the influence of intoxicating liquor or drugs, pursuant to 29-A MRS §§ 2431-2528. The adopted amendments update these requirements for compliance with law changes recently enacted by Maine’s 129th Legislature. (Public Law 2019, ch. 368.) Among other changes to Title 29-A enacted by the

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Maine Legislature, § 2524, sub-§ 2 now requires labs conducting analyses of blood-alcohol level or testing for the presence of other drugs to either be: 1) certified by the Department of Health and Human Services or 2) licensed to do so under the laws of this State or any other state and also certified by the United States Department of Health and Human Services under the federal Clinical Laboratory Improvement Amendments of 1988, 42 United States Code, Section 263a (2018).

The adopted amendments to Chapter 270 are necessary for consistency with legislative changes impacting certification, sample collection and testing for substances of use, to ensure accuracy for forensic purposes and to clarify requirements for compliance. This rule adoption is consistent with the proposed changes with the addition of language to further clarify and improve Section 2 (A)(1). The adopted rule clarifies certification requirements for labs conducting chemical tests other than alcohol. Laboratories testing for substances of use under this rule must be accredited as a Forensic Testing Laboratory to ISO 17025 standards by an accrediting body, such as ANSI National Accreditation Board (ANAB). This rule's allowance for current testing methods will enable the laboratory to expand testing methods for more comprehensive and accurate results, ensuring reliable results for those who rely on legally defensible testing. Rule language has been modernized, after considering the overwhelming research that supports the finding that replacing *substance of abuse* with *substance of use* lessens the negative and stigmatizing connotations associated with "abuse." This change aligns with other Maine rule and statutory updates.

Fiscal impact of rule:

None anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 M.R.S. §§ 42(1), and (8), 3104(13), and 3104-A(1)(C) and (D)
Chapter number/title: **Ch. 301**, Supplement Nutrition Assistance Program (SNAP), **FS Rule #223**, Omnibus Rule Change 2022
Filing number: **2023-026**
Effective date: 3/1/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

The adoption of this final rule effectuates many changes required by state statute or federal regulation. The adopted rule aligns Maine policy with various federal waivers and options. The adopted rule makes non-substantive changes to improve the readability and inclusivity of the manual and reduces the use of stigma inducing language.

Consistent with multiple extensions of SNAP Waiver 2055 received from Food and Nutrition Services (FNS), the Department proposed to extend the waiver of most interview requirements through December 31, 2022. Since the rule was proposed, an extension has been granted to the Department, to waive most interview requirements through March 31, 2023. The rule has been amended to reflect the new date of March 31, 2023. Changes to Sections 222-4(2)(A), 444-5(2)(B)(4)(a), and 666-9(1)(C)(1) are retroactive to January 1, 2022. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as the change affords this benefit to more residents of the State of Maine and does not adversely impact applicants, participants, beneficiaries, or providers.

Maine exercises an option for Broad Based Categorical Eligibility under 7 C.F.R. § 273.2(j)(2) which has included a 185% Federal Poverty Level (FPL) test. This figure is not included in the figures updated by FNS each federal fiscal year per 7 C.F.R. § 273.9(a)(4), it is updated as soon as the the FPLs are published. The 2022 year's FPLs were published at <https://aspe.hhs.gov/poverty-guidelines> on January 19. See also, Annual Update of the HHS Poverty Guidelines, Federal Register 87:14 (January. 21, 2022) p. 3315, <https://www.govinfo.gov/content/pkg/FR-2022-01-21/pdf/2022-01166.pdf>. The Department incorporated these figures effective January 12, 2022. Further, the Department increased this income limit from 185% of the FPL to 200% as permitted under 7 C.F.R. § 273.2(j)(2)(ii)(A) and required by 22 M.R.S. § 3104(13) effective July 1, 2022. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these changes afford this benefit to more residents of the State of Maine and do not adversely impact applicants, participants, beneficiaries, or providers. Changes to Section 444-8(2) and Section 999-3 Chart 4 make SNAP benefits and the related SNAP Employment and Training (E&T) services available to more Maine households.

The Department implemented various budgeting figures in Section 999-3 as required by 7 C.F.R. § 273.9(d). It requires that SNAP income and asset limits, maximum and minimum allotments, standard deductions, maximum shelter deductions, homeless shelter deductions, standard utility allowances (SUAs) and income change reporting thresholds are updated each year, effective October 1. This year, the United States Department of Agriculture (USDA)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

COLA Memos FY2022, issued August 9 and 16, 2022 provided more generous income limits, maximum and minimum allotments, standard deductions, maximum shelter deduction, homeless shelter deduction, asset limits, and income change reporting thresholds. Each state agency is charged with determining SUAs and having those approved by USDA. The utility allowance values were calculated using The Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor, and were submitted to and approved by USDA. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these changes afford this benefit to more residents of the State of Maine and do not adversely impact applicants, participants, beneficiaries, or providers. Changes to Section 999-3 are intended to make SNAP benefits and the related SNAP E&T services available to more Maine households and increase the benefit amounts for some.

The Department updated the open sections consistent with the recent change of the terms “Food Supplement” and “Food Supplement Program” to “Supplemental Nutrition Assistance Program” and, by extension, their associated abbreviations to “SNAP” or other substitutable terms. This update is consistent with the terminology used in federal law and regulation as well as signage and other materials seen throughout the state and nation. Further, P.L. 2021 c. 398 Part OO made this change throughout Maine’s revised statutes. This change is reflected in all uses of the terms and abbreviations in sections included in this adopted rule (unless they refer only to a time prior to the statutory change). The “FS” is removed from all section numbers. Similarly, references to “coupons” are updated to “benefits” as coupons are no longer issued.

The Department effectuates the following changes to improve the readability of the manual and improve the ease of making references and citations within the manual. Where practical, phrases are converted to active voice. To the extent possible, text is rephrased to provide an objective set of rules rather than instructions to Department staff. Some text is moved within a section to consolidate information, reduce redundancies, or improve the flow. Some terms are eliminated for consistency. (E.g. the term “agency” would be replaced with “Department” when referring to Maine’s Department of Health and Human Services.) Gender specific terms are converted to gender neutral terms in the interest of inclusivity. The enumeration of paragraphs, subparagraphs and so on, and the representation of numbers are updated as part of an ongoing, office-wide effort at standardization and clarity. Outdated abbreviations, such as JTPA, are eliminated or updated. Stigma inducing language has been updated. (E.g. “alcohol treatment centers” are changed to “centers for the treatment of Substance Use Disorders”.)

The Department has changed all references to “recertification form” to “renewal form” consistent with the renaming of this document in print and online.

The Department added consistency to the language related to the submission of applications, renewals, and six-month-reports, and meeting interview requirements. These forms can, now, be submitted on paper, electronically, or telephonically. Further, interviews may be completed in person, by phone, or, in some cases, through Department established video conferencing sites. Language that referenced “showing up” for an interview or submitting a form in a specific medium is updated accordingly.

The adopted rule provides more clarity around questionable information (which would require verification) and unclear information (which sometimes triggers the need for an interview). Instances of “questionable” information sections in this rulemaking are replaced with language

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

specifying “contradictory to information known to or received by the Department.” The definition of “questionable information” in Section 999-1 is modified to use “contradictory to” rather than “inconsistent with” in the same context. It is necessary to retain the definition as some sections not being reviewed as part of this rulemaking use the term “questionable information”. A definition of “unclear information” is added to Section 999-1.

The adopted rule clarifies Section 111-1(2) that a parent can be a separate household from their child(ren) for the duration of a court order granting a third-party guardianship of the child(ren). This change reduces confusion for applicants, participants and Department staff as the current rule does not specify a timeframe.

The Department updated language in Section 111-6 related to job quit penalties to clarify that not all work registration exemptions apply to job quit. Further edits clarify the minimum job characteristics to remedy a job quit disqualification and removed any language that could be interpreted to apply the disqualification to the entire household. These changes intend to reduce confusion for applicants, participants and Department staff.

The Department clarifies Section 444-10 that disqualifications for noncompliance with another means tested program are applied based on the policy in effect at the time of the infraction. Further, language is added to Section 555-3, consistent with 7 C.F.R. § 273.11(j), articulating that SNAP benefits may not be increased based on a decrease in other means tested benefits that results from noncompliance.

Per 7 C.F.R. § 273.9(d)(6)(iii)(E), the Department updates Section 555-5(7)(B) to use standard utility allowances (SUA) for all households with qualifying expenses. Further, the Department will apply each SUA in full to any household paying a portion of the qualifying expenses. This standardization reduces confusion for applicants, participants, and Department staff; reduce the burden on many households, including those with self-employment, to provide documentation; and increase benefit amounts for many households.

In addition to the other modifications detailed in this document, the adopted rule updates Section 444-2, Self-employment, Migrant Farm Workers, and Contract Employees. Language is clarified and standardized to “largest income source anticipated for the 12 month periods” rather than the less specific and inconsistent terms “major source of support,” “supplements,” etc. Clarification is added that verification is not only for income, but for self-employment related assets and expenses as well. The allowable expense for child or adult care meals is updated consistent with 7 C.F.R. § 273.11(b)(3)(i). Clarification is added that the application of shelter expenses in the case of business use of the home is at the household’s discretion. The method of determining business use of the home expenses is clarified. Clarification is added related to when rental income is treated as earned or unearned income. Although this clarification is redundant to information in Sections 555-2 and 555-3, the Department believes it warrants reiteration. The formulas for determining business use of the home expenses in rental situations are made more precise. Each of these changes add to the clarity of this section and streamline the process for applicants, participants and Department staff. Relatedly, a definition of “Roomer” is added to Section 999-1 to distinguish this situation from other rental income.

In addition to the other modifications to Section 444-8 detailed in this document, the Department removed references to the publication of the 130% and 100% Federal Poverty Level figures. These figures are not adopted upon publication in the Federal Register, but are

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

adopted at the start of the Federal Fiscal Year consistent with their adoption by Food and Nutrition Services.

In addition to the other modifications to Section 555-4, Excluded Income, detailed in this document, the Department removed the reference to the SCSEP program being administered by the ABLE network. As the ABLE network no longer administers this program.

In addition to the other modifications detailed in this document, the Department updated Section 555-5, Deductions. A summary, introductory paragraph and a description of the reason for some standard deductions have been added. The exclusion of premiums paid for Office for Family Independence health policies from the excess medical deduction is eliminated consistent with 7 C.F.R. § 273.9(d)(3). The paragraph on Dependent Care Deductions is significantly reworked to add clarity without making substantive changes. Clarification has been added as to what expenses related to service animals are deductible. When expenses related to a live-in attendant could be applied either as a medical or a dependent care expense, they will be counted as a dependent care expense as this application is to the recipients benefit. Verification requirements for Excess Medical Deductions are simplified consistent with 7 C.F.R. § 273.2(f)(8)(i)(A). Each of these changes adds to the clarity of this section and streamline the process for applicants, participants, and Department staff.

The adopted rule updated language around reporting of unissued benefits to comport the timelines with those in 7 C.F.R. § 273.17(a)(1). This change increased the amount of time participants have to notify the Department of issuance problems. Further, Section 777-4, Replacement of Benefits is simplified as follows: Reference to benefits being destroyed are removed as that language was specific to physical coupons and does not apply to electronic benefits; and separate processes related to a disaster declaration is eliminated as the disaster declaration constitutes the verification is required in the general process.

The adopted rule differs from the proposed rule as follows:

1. Section 222-4(2)(A): is amended to read “The Department shall process all applications and annual eligibility reviews without an interview until March 31, 2023” and removed “the earlier of December 31, 2022, or the end of the month after the month in which the public health emergency (PHE) declaration related to COVID-19 is lifted by the U.S. Secretary of Health and Human Services.” This change was made consistent with the extension granted by the Food and Nutrition Services (FNS) on December 12, 2022 and the Supplemental Nutrition Assistance Program (SNAP) – Temporary Administrative Waivers available to State Agencies to Support Unwinding from the COVID-19 Public Health Emergency memo from FNS dated August 15, 2022 (The Unwinding Memo) which allows for waiver of interviews beyond the end of the Public Health Emergency.
2. Section 444-5(2)(B)(4)(a): is amended to read “The Department shall process all application and annual eligibility reviews without an interview until March 31, 2023” and removed “the earlier of December 31, 2022, or the end of the month after the month in which the public health emergency (PHE) declaration related to COVID-19 is lifted by the U.S. Secretary of Health and Human Services.” This change was made consistent with the extension granted by FNS on December 12, 2022 and The Unwinding Memo.
3. Section 444-8(6): the following has been removed from the rule “Exception: Broad Based Categorically eligible households with three or more members who are eligible for zero

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

benefits will be denied, or if an ongoing case, will be closed.” These cases will remain “suspended: making them potentially eligible for SNAP E&T services.

4. Section 666-9(1)(C)(1) is amended to read “The Department shall process all annual eligibility reviews without an interview until March 31, 2023” and removed “the earlier of December 31, 2022, or the end of the month after the month in which the public health emergency (PHE) declaration related to COVID-19 is lifted by the U.S. Secretary of Health and Human Services.” This change was made consistent with the extension granted by FNS on December 12, 2022 and The Unwinding Memo.
5. Section 777-4(2)(A): is amended to read “The household must complete the SNAP Loss and Replacement Request form within 10 days of the initial report of the loss.” This update provides clarification consistent with 7 C.F.R. § 274.6(a)(4)(ii).

This rule will not have an adverse impact on municipalities or small businesses. The adopted rule is anticipated to result in an additional \$25,000 in federal SNAP benefits provided to Maine residents and spent at Maine businesses annually.

Fiscal impact of rule:

Direct costs to the Department include the cost of rulemaking activity, updates to training, and necessary technology changes such as changes to the Department’s Automated Client Eligibility System (ACES), (all of which are covered by the existing budget for such changes). The vast majority of the changes made by this rulemaking provide clarification and will have no impact on the amount of SNAP benefits issued.

The increases to the gross income test for broad based categorically eligible households may have a minor, indeterminate impact on the number of households receiving SNAP benefits. However, the majority of these households would be eligible for a \$0 benefit, with the primary benefit to the household being eligibility for the SNAP E&T program, the cost of which would not be impacted. Any increase in state funded SNAP benefits could be absorbed by current funding.

The clarification that SNAP benefits cannot be increased based on decreased income resulting from non-compliance with another program would result in minimal, indeterminate, savings to both the federal and state funded SNAP programs.

The modifications to the treatment of utility expenses, is not anticipated to result in any increased state funded benefits. It is expected to result in an additional \$25,000 in federal SNAP benefits being provided to Maine residents and spent at Maine businesses annually.

Very few SNAP cases include live in attendant expenses or child or adult care self-employment using a meal allowance expense. These changes may result in slight increases in federal benefits paid and an even smaller increase in state benefits provided. These minimal, indeterminate increases can be absorbed by current funding.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 M.R.S. §§ 42(1); 3104(13), and 3104-A
Chapter number/title: **Ch. 301**, Supplemental Nutrition Assistance Program (SNAP) Rules; Section 111-7 and 999-1, Rule 228-A – FRA 2023
Filing number: **2023-136**
Effective date: 8/25/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this rule is to amend the Able-Bodied Adult Without Dependents (ABA WD) work requirements in Section 111-7 pursuant to the Fiscal Responsibility Act of 2023 (FRA) and consistent with 7 U.S.C. 2015 (6)(0)2)-(3). The proposed rules, consistent with the FRA, increases the age of those subject to ABA WD time limits to age 52 on September 1, 2023, age 54 on October 1, 2023, and to age 56 on October 1, 2024. The FRA adds new exemptions for ABA WD time limits for homeless individuals, veterans, and individuals aged 24 or younger and in Foster Care up to the point that they would not be considered age eligible for Foster Care by the state that made the placement. In addition, the proposed rule would add definitions for Foster Care and Veteran in Section 999-1.

Basis statement:

The adopted rule incorporates the Able-Bodied Adult Without Dependents (ABA WD) work requirements in Section 111-7 pursuant to the Fiscal Responsibility Act of 2023 (FRA) and consistent with 7 U.S.C. 2015 (6)(0)2)-(3). The adopted rule is consistent with FRA 2023, which increased the age of those subject to ABA WD time limits to age 52 on September 1, 2023, age 54 on October 1, 2023, and to age 56 on October 1, 2024. FRA 2023 added new exemptions for ABA WD time limits for individuals experiencing homelessness, veterans, and individuals aged 24 or younger and in Foster Care up to the point that they would not be considered age eligible for Foster Care by the state that made the placement. In addition, the adopted rule added definitions for Foster Care and Veteran in Section 999-1.

The Department determined it necessary to make a non-substantial change to align this rule's definition of Veteran with the Fiscal Responsibility Act of 2023 and guidance provided by The U.S. Department of Agriculture, Food and Nutrition Services on June 30, 2023. The adopted rule changes the definition of Veteran to "as defined in Section 5126(f)(13)(F) of the James M. Inhofe National Defense Authorization Act of 2023, means an individual who served in the United States Armed Forces (such as Army, Marine Corps, Navy, Air Force, Space Force, Coast Guard, and National Guard), including an individual who served in a reserve component of the Armed Forces, and who was discharged or released therefrom, regardless of the conditions of such discharge or release."

In addition, the Department corrected a typographical error in Section 999-1, Trafficking (6) 7 C.F.R. § 271.2 by removing "U" from (7 C.F.R. § 271.2)U as present in the proposed rule.

This rule will not have an adverse impact on municipalities or small businesses.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Fiscal impact of rule:

The Able-Bodied Adult Without Dependents (ABAWD) work requirements are currently suspended, due to the Public Health Emergency (PHE). The implementation of these new work requirements and exemptions are anticipated to decrease potential savings when the requirements are restored. The decrease to potential savings for Federal Fiscal Year 2024 is estimated to total \$15,088,188 with \$14,410,878 in federal dollars and \$677,310 in state dollars and for Federal Fiscal Year 2025 is estimated to total \$18,245,592 with \$17,564,214 in federal dollars and \$681,378 in state dollars. It is also anticipated to bring an additional \$20,567,436 into the state for SFY 2026.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 M.R.S. §§ 42, 3104; 5 M.R.S. § 8054
Chapter number/title: **Ch. 301**, Supplemental Nutrition Assistance Program (SNAP) Rules; Section 999-3, Rule 231-E – FY 24 Budgeting Changes
Filing number: **2023-187**
Effective date: 9/29/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

Pursuant to 5 M.R.S. § 8054, the Department finds that emergency rulemaking is necessary to remain in compliance with Federal regulation 7 CFR. § 273.9 (d)(6)(iii)(B) which requires annual updates to the standard utility allowances (SUAs).

Basis statement:

Federal rule 7 CFR. § 273.9 (d)(6)(iii)(B) requires that standard utility allowances (SUAs) are updated each year, effective October 1. Food and Nutrition Services (FNS) annually approves standard utility allowances calculated by states. The calculations are based on the change in the Consumer Price Index for fuel and utilities, between June 2023 and June 2024.

The final values for Maine's standard/heating cooling, non-heat and phone allowances were not approved by the USDA Food and Nutrition Service until August 18, 2023. These approvals did not allow the Department to comply with the non-emergency rulemaking process and implement the changes by the required date of October 1, 2023.

Pursuant to 5 MRS § 8054, the Department finds that emergency rulemaking is necessary for the health, safety, and general welfare of SNAP recipients. Failure to make these changes by the CFR required deadline could result in individual families needing to pay back overpaid benefits and the Department being assessed financial penalties by FNS that would reduce the resources available to serve the people of Maine as a whole. By continuing to issue SNAP benefits appropriately and accurately these circumstances can be avoided.

This rule may have an adverse impact on municipalities or small businesses.

Fiscal impact of rule:

No fiscal impact is anticipated as these are primarily federally funded benefits. This change may result in a modest savings in state-funded benefits.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 M.R.S. § 42(1); 7 C.F.R. § 273.24(f)
Chapter number/title: **Ch. 301**, Supplemental Nutrition Assistance Program (SNAP) Rules; Section 999-2, Rule 230-A – ABAWD Geographic Exemptions
Filing number: **2023-238**
Effective date: 11/26/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

Federal Supplemental Nutrition Assistance Program (SNAP) regulations provide that certain able-bodied adults without dependents (ABAWDs) are subject to a maximum of three months of benefits over a 36-month period, unless they work 20 hours or more per week (averaged monthly) or participate in and comply with requirements of a work program. Individuals who reside in certain geographic areas can qualify for an exception to this time limit under 7 C.F.R. § 273.24(f).

The Department has submitted a request to the U.S.D.A. – Food and Nutrition Services (FNS) to waive these work requirements for certain ABAWDs residing in geographic areas that have unemployment rates at or above 10% or have insufficient jobs for recipients residing in those areas. The geographic areas include 260 qualifying cities, towns, unorganized territories, townships, and reservations that qualify individually or as part of a federally defined labor market area. Pending U.S.D.A. – FNS approval and the adoption of this rule, ABAWDs residing in those areas will no longer have to meet the work requirements to receive SNAP effective retroactive to October 1, 2023. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as this update provides a benefit to nearly 2,000 SNAP recipients who meet the ABAWD definition and does not adversely impact applicants, participants, beneficiaries, or providers.

Basis statement:

Federal Supplemental Nutrition Assistance Program (SNAP) regulations provide that certain able-bodied adults without dependents (ABAWDs) are subject to a maximum of three months of benefits over a 36-month period, unless they work 80 hours per month or participate in and comply with requirements of a work program. Individuals who reside in certain geographic areas can qualify for an exception to this time limit under 7 C.F.R. § 273.24(f).

The Department submitted a request to the U.S.D.A. – Food and Nutrition Services (FNS) to waive these work requirements for certain ABAWDs residing in geographic areas that have unemployment rates at or above 10% or have insufficient jobs for recipients residing in those areas. The geographic areas include 260 qualifying cities, towns, unorganized territories, townships, and reservations that qualify individually or as part of a federally defined labor market area. U.S.D.A. – FNS approved the Department's waiver request on September 27, 2023. ABAWDs residing in these areas will no longer have to meet the work requirements to receive SNAP effective retroactive to October 1, 2023. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as this update provides a benefit to nearly 2,000 SNAP recipients who meet the ABAWD definition and does not adversely impact applicants, participants, beneficiaries, or providers.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

This rule will not have an adverse impact on municipalities or small businesses.

Fiscal impact of rule:

SNAP benefits are federally funded. No fiscal impact is anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 M.R.S. §§ 42(1), 3104
Chapter number/title: **Ch. 301**, Supplemental Nutrition Assistance Program (SNAP) Rules; Section 999-3, SNAP Rule #231 – FFY24 Budgeting Changes
Filing number: **2023-242**
Effective date: 12/3/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:
See basis statement

Basis statement:

Maine exercises an option for Broad Based Categorical Eligibility under [7 C.F.R. § 273.2\(j\)\(2\)](#) which includes a 200% Federal Poverty Level (FPL) test. This figure is not included in the figures updated each federal fiscal year per [7 C.F.R. § 273.9\(a\)\(4\)](#), it is updated as soon as the the FPLs are published. This year's FPLs were published at <https://www.federalregister.gov/documents/2023/01/19/2023-00885/annual-update-of-the-hhs-poverty-guidelines> on January 19. See also, Annual Update of the HHS Poverty Guidelines, Federal Register 88:12 (January 19, 2023) p. 3424, <https://www.govinfo.gov/content/pkg/FR-2023-01-19/pdf/2023-00885.pdf>. The adopted rule incorporates these figures effective January 19, 2023. These changes would make SNAP benefits and the related SNAP Employment and Training (E&T) services available to more Maine households.

Federal rule [7 C.F.R. §§ 273.9\(a\)\(3\)](#), [273.10\(e\)\(4\)](#), and [273.11\(r\)\(2\)\(ii\)](#) require that income allowances, standard shelter deductions, and minimum and maximum benefit limits, are updated each year, effective October 1st. The U.S.D.A. - Food and Nutrition Services (FNS) provides updated income allowances, standard deductions, and minimum and maximum benefit standards to states and territories, annually. The final income allowance, standard deductions, and minimum and maximum benefit levels were distributed by the U.S.D.A. - FNS on August 3, 2023. The adopted rule incorporates these figures effective October 1, 2023.

Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these changes afford this benefit to more residents of the State of Maine and do not adversely impact applicants, participants, beneficiaries, or providers. These changes would make SNAP benefits and the related SNAP Employment and Training (E&T) services available to more Maine households.

Federal rule [7 C.F.R. § 273.9\(d\)\(6\)\(ii\)](#) and [\(iii\)\(B\)](#) require that standard heating/cooling, non-heat, and phone allowances as well as excess shelter deductions are updated each year, effective October 1st. The U.S.D.A. - Food and Nutrition Services (FNS) provides the updated excess shelter deduction to states and territories, annually. The final excess shelter deduction was distributed by the U.S.D.A. - FNS on August 3, 2023. FNS annually approves standard utility allowances (SUA) calculated by states. The calculations are based on the change in the Consumer Price Index for fuel and utilities, between June 2023 and June 2024. FNS approved Maine's SUAs for FFY 2024 on August 18, 2023. These figures were adopted in emergency rule SNAP 231E on September 29, 2023. The adopted rule extends the use of these figures beyond the emergency period.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Fiscal impact of rule:

State-Funded SNAP benefits are estimated to cost an additional \$978,000 for Federal Fiscal Year 2024. These same changes will result in an estimated additional \$3,260,000 in federal funds flowing to Maine residents and grocers.

Increases in the income thresholds for eligibility may result in additional households being eligible for state or federally funded benefits. The number of households and the amount of benefits cannot be determined. These potential increases will be absorbed by existing budgeting.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 M.R.S. §§ 42(1); 4301(8)(B); 4301(11-A)
Chapter number/title: **Ch. 323**, General Assistance Program Manual, Section IV, GA Rule #25 – Recovery Residence Participation
Filing number: **2023-192**
Effective date: 10/25/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this rule is to update the General Assistance (GA) Program Manual, Section IV to provide clarity and align this manual with Public Law 2023, Chapter 133. The Department proposes amending Section IV(O), Recovery Residence to clarify that General Assistance payments may be issued to a managing operator of a certified recovery residence.

Basis statement:

The adopted rule updated the General Assistance (GA) Program Manual, Section IV to provide clarity and align this manual with Public Law 2023, Chapter 133. The Department amended Section IV(O), Recovery Residence, to provide clarity that General Assistance payments may be issued to a managing operator of a certified recovery residence.

This rule will not have an adverse impact on municipalities or small businesses.

Fiscal impact of rule:

No fiscal impact is anticipated with the proposed rule changes.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 M.R.S. § 42(1); § 3790-A(2)(E); P.L. 2023 ch. 21
Chapter number/title: **Ch. 330**, Higher Opportunity For Pathways To Employment (HOPE), Rule #102A – Eligibility Criteria
Filing number: **2023-193**
Effective date: 10/25/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule change proposes to increase the income limit from 185% of the FPL to 225% of the FPL consistent with 22 M.R.S. § 3790-A(2)(E) (2017), amended by P.L. 2023, ch. 21 (effective June 29, 2023). The raise in FPL percentage expands program accessibility to help a broader population earn marketable credentials and help address Maine's workforce shortages. This year's FPLs were published at <https://aspe.hhs.gov/poverty-guidelines>. See also, Annual Update of the HHS Poverty Guidelines, Federal Register 88:12 (January 19, 2023), pages 3424-3425, <https://www.govinfo.gov/content/pkg/FR-2023-01-19/pdf/2023-00885.pdf>. The Department proposes to incorporate these figures effective June 29, 2023.

Basis statement:

The adopted rule change to Part 3 aligns with Public Law 2023 Chapter 2 and is consistent with 22 M.R.S. § 3790-A(2)(E) (2017), amended by P.L. 2023, ch. 21 to increase the income limit from 185% of the Federal Poverty Limit to 225% of the FPL. The adopted rule change expanded income eligibility. In addition, the increase to gross income test for HOPE allows some HOPE applicants and participants to remain income eligible when their wages increase, some due to changes to Maine's minimum wage and allows a wider group of parents to be deemed income eligible. This year's FPLs were published at <https://aspe.hhs.gov/poverty-guidelines>. See also, Annual Update of the HHS Poverty Guidelines, Federal Register 88:12 (January 19, 2023), pages 3424-3425, <https://www.govinfo.gov/content/pkg/FR-2023-01-19/pdf/2023-00885.pdf>.

The Department incorporates these figures effective October 25, 2023.

This rule will not have an impact on municipalities or small businesses.

Fiscal impact of rule:

No annual fiscal impact is anticipated. Any increase in cost related to the changes in eligibility criteria can be absorbed by current funding.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS § 42(1), § 3173-J
Chapter number/title: **Ch. 332**, MaineCare Eligibility Manual, MaineCare Rule #302 – Penalty Divisor Rule
Filing number: **2023-077**
Effective date: 6/5/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This proposed rule updates the average nursing care private rate, listed in Chart 4.3 of the MaineCare Eligibility Manual, to the most current figure available from the Department’s internal audit team. Effective June 1, 2023, the average nursing care private rate is determined from rates reported by nursing facilities on the MaineCare Cost Report. The rule also adds a description of how the rate is used to calculate penalty periods for disposing of assets for less than fair market value on or after the look-back period.

Basis statement:

The adopted rule updates the average nursing care private rate, listed in Chart 4.3 of the MaineCare Eligibility Manual, to the most current figure available from the Department’s internal audit team. Effective June 1, 2023, the average nursing care private rate is determined from rates reported by nursing facilities on the MaineCare Cost Report.

The adopted rule added a description of how the rate is used to calculate the penalty periods for disposing of assets for less than fair market value on or after the look-back penalty. The adopted rule ensures asset transfer penalties are based on the average of current facility rates. Because nursing care private rates increase over time, penalty periods will decrease. The adopted rule does not change any process for nursing facilities or members.

This rule will not have an impact on municipalities or small businesses.

Fiscal impact of rule:

Direct costs to the Department include the cost of rulemaking activity, updates to training, and necessary technology changes such as changes to the Department’s Automated Client Eligibility System (ACES), (all of which are covered by the existing budget for such changes).

The additional cost of this rule is anticipated to equal \$18,973 for SFY 2023, with \$12,957 in federal dollars and \$6,016 in state dollars. SFY 2024 fiscal impact is anticipated to equal \$227,675, with \$145,279 in federal dollars and \$82,396 in state dollars. FFY 2023 costs are anticipated to equal \$75,892, with \$50,878 federal dollars and \$24,014 state dollars. FFY 2024 costs are anticipated to equal \$227,675, with \$143,492 in federal dollars and \$84,183 in state dollars.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS § 42(1); and (8), 3174-G, and 3174-FFF
Chapter number/title: **Ch. 332**, MaineCare Eligibility Manual, MaineCare Rule #301A – Certain MAGI and CHIP Coverage Group Changes
Filing number: **2023-123**
Effective date: 8/15/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this rule is to provide continuing MaineCare coverage for parents, of children in the custody of the Office of Child and Family Services (OCFS), who are actively participating in family reunification. It also removes exclusions, lock-out periods, and premiums for Cub Care and increases the Federal Poverty Level (FPL) to 208% for all children. The proposed rule changes increase access to health insurance coverage.

The Department proposes to correct a typo in Part 2, Section 3.2(III)(B)(2)(a) and (b) from February 25, 2027 to February 25, 1927. In addition, the proposed rulemaking removes Part 2, Section 16 language regarding Cub Care ineligibility due to premium non-payment and references to a penalty for premium non-payment.

Part 3, Section 2.2, is changed to allow Parent/Caretaker Relatives to maintain coverage while actively working towards reunification with the OCFS. Parents with Substance Use Disorder (SUD) whose children have been removed from the home will maintain necessary health coverage to continue SUD treatment, which will increase the success of reunification efforts, and thus the overall health and wellness of Maine families. In addition, the Department proposes to correct a typo in Part 3, Section 3(I)(C) from quality to qualify.

Part 5, Section 4(A) removes “Federally Facilitated Marketplace” as Maine’s State Based Marketplace is utilized. In addition, Chart 7, Cub Care, is removed to align with the proposed rule changes to Cub Care.

The following changes shall be retroactive. Part 3, Section 3(III) aligns with federal requirements for coverage of Former Foster Care Children that are effective retroactive to January 1, 2023. Part 4, Section 4(D and E) updates the FPL limit for children under age 19 effective retroactive to March 1, 2023. Part 5, Section 3 removes exclusions and wait periods for Cub Care eligibility, and Part 5 is further amended to remove premium payments for Cub Care effective retroactive to March 1, 2023. Removing exclusions, wait periods, and premiums for Cub Care eases financial burdens for programs and beneficiaries.

Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these changes afford this benefit to more residents of the State of Maine and does not adversely impact applicants, participants, beneficiaries, or providers.

Basis statement:

This adopted rule provides continuing MaineCare coverage for parents, of children in the custody of the Office of Child and Family Services (OCFS), who are actively participating in family reunification. It also removes exclusions, lock-out periods, and premiums for Cub Care

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

and increased the Federal Poverty Level (FPL) to 208% for all children. The adopted rule changes increase access to health insurance coverage.

The Department corrected a typo in Part 2, Section 3.2(III)(B)(2)(a) and (b) from February 25, 2027 to February 25, 1927. In addition, the adopted rule removed Part 2, Section 16 language regarding Cub Care ineligibility due to premium non-payment and references to a penalty for premium non-payment. Further, the adopted rule corrected a typo in Part 3, Section 3(I)(C).

Part 3, Section 2.2, is changed to allow Parent/Caretaker Relatives to maintain coverage while actively working towards reunification with the OCFS. Parents with Substance Use Disorder (SUD) whose children have been removed from the home will maintain necessary health coverage to continue SUD treatment, which will increase the success of reunification efforts, and thus the overall health and wellness of Maine families.

Part 5, Section 1, Definitions replaced “Federally Facilitated Marketplace” with State-Based Marketplace as Maine’s State-Based Marketplace is utilized. In addition, website addresses have been added for the State-Based Marketplace and MyMaineConnection. Part 5, Section 2, CubCare added clarifying language. Part 5, Section 3, Basic Eligibility Requirements removed exclusions for children residing in a public institution or an inpatient psychiatric facility. In addition, Part 5 removed Section 3(B), Children with a Three Month Waiting Period, Section 8, Changes in Household, and Section 12, Premiums. Part 5, Section 6, Income Standard (A-C) increased the Federal Poverty Level to 208% of the FPL. Part 5, Section 9, Eligibility Periods added clarification regarding retroactive coverage and renewal notice time frames. Part 5, Section 10, Notices(D) added clarification regarding case closings. Further, Part 5, Section 10, Administrative Hearings directs readers to Part 1, Section 7 for rules regarding hearings.

In addition, Chart 7, CubCare, is removed to align with the adopted rule changes to CubCare.

The following adopted changes shall be retroactive. Part 3, Section 3(III) aligns with federal requirements for coverage of Former Foster Care Children effective retroactive to January 1, 2023. Part 4, Section 4(D and E) updates the FPL limit for children under age 19 effective retroactive to March 1, 2023. Part 5, Section 3 removed exclusions and wait periods for Cub Care eligibility, and Part 5 is further amended to remove premium payments for Cub Care effective retroactive to March 1, 2023. Removing exclusions, wait periods, and premiums for Cub Care eases financial burdens for programs and beneficiaries. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these changes afford this benefit to more residents of the State of Maine and does not adversely impact applicants, participants, beneficiaries, or providers.

This rule will not have an impact on municipalities or small businesses.

Fiscal impact of rule:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:

Premium Reductions are anticipated to cost an additional \$60,126 in General Funds for State Fiscal Year 2023 (4 months), \$207,775 for SFY 2024 and \$214,419 for SFY 2025. The additional cost of Premium Reductions for FFY 2023 (7 months) is anticipated to total \$478,492 with \$373,272 in federal dollars and \$105,220 in state dollars. The additional cost of Premium Reductions for FFY 2024 is anticipated to total \$820,272 with \$607,986 in federal dollars and \$212,286 in state dollars. It is also expected to bring in an additional \$213,298 in federal funds into the state for SFY 2023, \$612,497 for SFY 2024 and \$605,853 for SFY 2025.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

The 2025 Premium Reduction costs are anticipated to be \$820,272 with \$605,853 federal dollars and \$214,419 state dollars.

In addition, the anticipated costs in raising the FPL to 208% from 158% for uninsured individuals under 19 years old has an estimated fiscal impact of \$146,468 in General Funds for SFY 2023 (4 months), \$1,957,588 for SFY 2024 and \$2,580,002 in SFY 2025. The additional cost of raising the FPL to 208% from 158% for FFY 2023 (7 months) is anticipated to total \$1,305,668 with \$879,890 federal dollars and \$425,778 state dollars. It is, also, expected to bring an additional \$319,842 in federal funds into the state for SFY 2023, \$3,451,608 for SFY 2024 and \$4,206,862 for SFY 2025. Fiscal impact for FFY 2024 is estimated to total \$6,248,554, \$3,938,464 in federal dollars and \$2,310,090 in state dollars.

INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED AND HOW THEY WILL BE AFFECTED: It is not anticipated that individuals, major interest groups and businesses will be affected by this rule change.

BENEFITS OF THE RULE: This rule allows for continuing MaineCare coverage for parents, with children in the custody of OCFS, who are actively working towards family reunification. In addition, proposed changes remove exclusions, lock-out periods, and premiums for Cub Care and increases the Federal Poverty Level (FPL) to 208% for all children.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, Office for Family Independence, Division of Support Enforcement and Recovery

Umbrella-Unit: **10-144**

Statutory authority: 22 M.R.S. § 42(1); 19-A M.R.S. § 2011

Chapter number/title: **Ch. 351.** Chapter 6, Child Support Guidelines

Filing number: **2023-019**

Effective date: 1/30/2023

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

Federal regulations (45 C.F.R. § 302.56) require that each state review its child support guidelines at least every four years. The primary purpose of this requirement is to ensure that the guidelines result in the determination of appropriate child support award amounts. Federal requirements additionally specify that the review must include an assessment of the economic data on child-rearing costs and a review of case data to analyze the application of the guideline and to ensure that deviations from the guideline are limited. The Department contracted with the Center for Policy Research (CPR) to assist with the preparation of Maine's child support guideline review. In October 2022, the Department completed its written report which included an updated guidelines table that incorporates current economic data. This rule replaces the existing table with the updated table.

Basis statement:

These rules will not have an impact on municipalities or small businesses.

Fiscal impact of rule:

There will be minimal direct costs to the Department associated with this rulemaking activity. There are minor implementation costs (such as system or indirect costs) to implement the amended rule such updating calculations performed electronically by the Child Support Enforcement Maine (CSEME) system.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, Office for Family Independence
Umbrella-Unit: **10-144**
Statutory authority: 22 M.R.S. §§ 42(1) and (8), 3737(3)
Chapter number/title: **Ch. 609**, Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) #6 – Name Change and Other Clarifications
Filing number: **2023-116**
Effective date: 8/6/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The proposed rule would update the program name and references to the Supplemental Nutrition Assistance Program Employment and Training Program (SNAP E&T) from FSET to reflect recent updates for the SNAP program. The proposed changes are consistent with the terminology used in federal law, state laws and regulation. Further, P.L. 2021 c. 398 Part OO made this change throughout Maine’s revised statutes.

The proposed rule clarifies federal requirements for case management and job retention services and makes other minor updates to clarify wording. Each of these changes more closely aligns the rule with 7 C.F.R. § 273.7.

In addition, the proposed rule seeks to update Section 8(I) Support Service Limits - Mileage Reimbursement to .46 cents per mile to align with the rate afforded to those covered under the Maine State Employee Association (MSEA) contract. This change would be effective retroactive to March 1, 2023. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as this update provides a benefit to SNAP E&T recipients or beneficiaries and does not adversely impact applicants, participants, beneficiaries, or providers.

Basis statement:

The adopted rule updates the program name and references to the Supplemental Nutrition Assistance Program Employment and Training Program (SNAP E&T) from FSET to reflect recent updates for the SNAP program. The adopted rule is consistent with terminology used in federal law, state laws and regulation. Further, the adopted rule is consistent with Maine revised statutes pursuant to P.L. 2021 c. 398 Part OO.

The adopted rule clarifies federal requirements for case management and job retention services and other minor updates made to clarify wording. Each of these updates more closely aligns the rule with 7 C.F.R. § 273.3.

The adopted rule updates Section 8(I) Support Service Limits – Mileage Reimbursement to .46 cents per mile to align with the rate afforded to those covered under the Maine State Employee Association (MSEA) contract. This change is effective retroactive to March 1, 2023. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as this update provides a benefit to SNAP E&T recipients or beneficiaries and does not adversely impact applicants, participants, beneficiaries, or providers.

The Department determined it necessary to make a non-substantial change to the adopted rule to align the rule with age and work requirements for Able-bodied Adult

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

without Dependent (ABAWD) pursuant to the Fiscal Responsibility Act 2023 (FRA 2023). To ensure consistency with 10-144 C.M.R. Ch. 301 Supplemental Nutrition Assistance Program (SNAP) Rules Manual and this rule, a non-substantial change was made to the definition of Able-bodied Adult without Dependent (ABAWD), Section 1(I). The adopted rule changes the ABAWD definition to “a recipient as defined in 10-144 C.M.R. Ch. 301 Supplemental Nutrition Assistance Program (SNAP) Rules Manual, Section 111-7.”

This rule will not have an impact on municipalities or small businesses.

Fiscal impact of rule:

Direct costs to the Department include the cost of rulemaking activity and updates to training which are covered by the existing budget for such changes. The proposed rule changes provide clarification and will have no impact on the amount of SNAP benefits issued.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, **Office of Child and Family Services**
Umbrella-Unit: **10-148**
Statutory authority: 22 M.R.S. §§ 42, 3737
Chapter number/title: **Ch. 6**, Child Care Subsidy Rules
Filing number: **2023-121**
Effective date: 08/10/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Maine's Department of Health and Human Services (Department) administers the Child Care Subsidy Program (CCSP), which includes the administration of funds from the federal Child Care and Development Block Grant, state funds, and other federal funds. The purpose of CCSP is to increase the availability, affordability, and quality of Child Care Services. In order to maximize parental choice for purchasing child care, Maine provides a system of financial support for eligible families with low incomes and other designated client groups through the use of Child Care Subsidy.

The Department has maintained a Quality Rating and Improvement System (QRIS) since 2008. On February 13, 2023, the Department adopted 10-148 C.M.R. Chapter 31, Quality Rating and Improvement System (QRIS) Rules: Rising Stars for ME. Rising Stars for ME changed Maine's QRIS from a 4 level to a 5-star rating system. The proposed amendments to 10-148 C.M.R. ch. 6, Child Care Subsidy Program Rules (CCSP Rules) in this rulemaking aligns the CCSP Rules' provisions regarding reduction in parent fees for children attending higher quality child care programs and increased reimbursement for providers with higher quality rating with Rising Stars for ME. Moreover, Rising Stars for ME changed Maine's prior QRIS by including CCSP License-Exempt Providers. The proposed rule amends the CCSP Rules to reflect this change by requiring nonrelative License-Exempt Child Care Providers to enroll in, and maintain a minimal level under, Rising Stars for ME.

Basis statement:

In this rulemaking, the Department of Health and Human Services (the "Department") adopts the following amendments to 10-148 C.M.R. Chapter 6, Child Care Subsidy Program Rules (CCSP Rules).

The Department determines that adoption of this rulemaking is necessary to comply with Maine statute 22 M.R.S. §3737(3). The Department is adopting this rule now because the Department continues its efforts to meet all Federal and State rules and regulations.

Maine's Department of Health and Human Services (Department) administers the Child Care Subsidy Program (CCSP), which includes the administration of funds from the federal Child Care and Development Block Grant, state funds, and other federal funds. The purpose of CCSP is to increase the availability, affordability, and quality of Child Care Services. In order to maximize parental choice for purchasing child care, Maine provides a system of financial support for eligible families with low incomes and other designated client groups through the use of Child Care Subsidy.

The Department has maintained a Quality Rating and Improvement System (QRIS) since 2008. On February 13, 2023, the Department adopted 10-148 C.M.R. Chapter 31, Quality Rating and Improvement System (QRIS) Rules: Rising Stars for ME. Rising Stars for ME changed Maine's

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

QRIS from a 4 level to a 5-star rating system. The proposed amendments to CCSP Rules in this rulemaking aligns the CCSP Rules' provisions regarding reduction in parent fees for children attending higher quality child care programs and increased reimbursement for providers with higher quality rating with Rising Stars for ME. Moreover, Rising Stars for ME changed Maine's prior QRIS by including CCSP License-Exempt Providers. The proposed rule amends the CCSP Rules to reflect this change by requiring nonrelative License-Exempt Child Care Providers to enroll in, and maintain a minimal level under, Rising Stars for ME.

The rule proposed will:

- Align the CCSP Rules' provisions regarding reduction in parent fees for children attending higher quality child care programs and increased reimbursement for providers with higher quality rating with Rising Stars for ME.
- Consistent with Rising Stars for ME's addition of License-Exempt Child Care Providers to Maine's QRIS, the proposed rulemaking amends the CCSP Rules to require nonrelative License-Exempt Child Care Providers to enroll in, and maintain a minimal level under, Rising Stars for ME.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, Office of Child and Family Services
Umbrella-Unit: **10-148**
Statutory authority: 22 M.R.S. §§ 42, 3737-A, 5 M.R.S. Sec. 8054
Chapter number/title: **Ch. 30**, Early Childhood Educator Workforce Salary Supplement Program Rules
Filing number: **2023-245**
Effective date: 12/1/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This is a new rule and a new Department program. In 2022, the Maine Legislature enacted P.L. 2021, ch. 635, Sec. RR-1, codified as 22 M.R.S. Sec. 3737-A (Early childhood educator workforce salary supplements). Pursuant to the law, the Department was required to establish a new program to provide salary supplements to child care providers and early childhood educators who provide direct services to children in a licensed child care facility or who are licensed family child care providers. The Department implemented this program in 2022, but the standards and requirements were never established in rule. The law directs the Department to establish a rule beginning July 1, 2023. On October 11, 2023, the Department published a notice for a proposed rule for this program. On October 30, 2023, the Department held a public hearing and accepted public comments until November 9, 2023.

Pursuant to 5 M.R.S. Sec. 8054, the Department has determined it needs to adopt this emergency rule, as it continues to complete the rulemaking process on the proposed rule. This emergency rule implements the tiered system for supplemental payments the Legislature required. Raising the pay of child care workers in Maine is critical to recruit and retain essential child care workers and will allow Maine families to have the stability and support they need to be able to take jobs, start new businesses, move to rural communities and will also provide critical developmental care for children. The Department anticipates the Commissioner will finalize and adopt the final rule early in 2024, but the tiered system of payments provided by the emergency rule needs immediate implementation. Given the urgent need to address this critical need for child care workers in Maine, the Department has determined that immediate adoption is necessary to avoid an immediate threat to public health, safety or general welfare.

This emergency rule provides:

- Outlines procedures for Early Childhood Educator Workforce Salary Supplements;
- Provides that the Department will provide monthly Salary Supplements to the Programs.
- Complies with 22 M.R.S. Sec. 3737-A by providing a three tier system for salary supplements, based on the education and experience level of child care providers and early childhood educators.
- Complies with 22 M.R.S. 3737-A by providing that the 2nd tier provides a salary supplement that is 50% greater than the first tier, and the 3rd tier provides a salary supplement that is 50% great than the 2nd tier.
- Complies with 22 M.R.S. Sec. 3737-A by requiring that the child care facility or family child care provider is required to pay the supplement to the employee who provides direct services to children.
- Explains how a program can enroll in the Early Childhood Educator Workforce Supplement Program.
- Describes an appeal process for overpayments and underpayments.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

The Department will continue to process and finalize the proposed rulemaking and anticipates adopting a final rule early in 2024, prior to the expiration of this emergency rule. This emergency rule can be effective for up to 90 days.

Basis statement:

The Department of Health and Human Services (the “Department”) adopts this Emergency Rule, 10-148 C.M.R. Chapter 30, *Early Childhood Educator Workforce Salary Supplement System Rules*

This is a new rule, and a new Department program. In 2022 the Maine Legislature enacted P.L. 2021, ch. 635, Sec. RR-1, codified as 22 M.R.S. Sec. 3737-A (Early childhood educator workforce salary supplements). Pursuant to the law, the Department was required to establish a new program to provide salary supplements to child care providers and early childhood educators who provide direct services to children in a licensed child care facility or who are licensed family child care providers. The Department implemented this program in 2022, but the standards and requirements were never established in rule. The law directs the Department to establish a rule beginning July 1, 2023. On October 11, 2023, the Department published a notice for a proposed rule for this program. On October 30, 2023, the Department held a public hearing, and accepted public comments until November 9, 2023.

Findings of Emergency: Pursuant to 5 M.R.S. Sec. 8054, the Department has determined it needs to adopt this emergency rule, as it continues to complete the rulemaking process on the proposed rule. This emergency rule implements the tiered system for supplemental payments the Legislature required. Raising the pay of child care workers in Maine is critical to recruit and retain essential child care workers, and will allow Maine families to have the stability and support they need to be able to take jobs, start new businesses, move to rural communities and will also provide critical developmental care for children. The Department anticipates the Commissioner will finalize and adopt the final rule early in 2024, but the tiered system of payments provided by the emergency rule needs immediate implementation. Given the urgent need to address this critical need for child care workers in Maine, the Department has determined that immediate adoption is necessary to avoid an immediate threat to public health, safety or general welfare.

This emergency rule provides:

- Outlines procedures for Early Childhood Educator Workforce Salary Supplements;
- Provides that the Department will provide monthly Salary Supplements to the Programs.
- Complies with 22 M.R.S. Sec. 3737-A by providing a three tier system for salary supplements, based on the education and experience level of child care providers and early childhood educators.
- Complies with 22 M.R.S. 3737-A by providing that the 2nd tier provides a salary supplement that is 50% greater than the first tier, and the 3rd tier provides a salary supplement that is 50% great than the 2nd tier.
- Complies with 22 M.R.S. Sec. 3737-A by requiring that the child care facility or family child care provider is required to pay the supplement to the employee who provides direct services to children.
- Explains how a program can enroll in the Early Childhood Educator Workforce Supplement Program.
- Describes an appeal process for overpayments and underpayments.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

The Department will continue to process and finalize the proposed rulemaking and anticipates adopting a final rule early in 2024, prior to the expiration of this emergency rule. This emergency rule can be effective for up to 90 days.

Fiscal impact of rule:

The Department anticipates that the total cost of the proposed rule will be \$31,126,854 in SFY 2024 and \$31,126,854 in SFY 2025, all in state dollars.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, **Office of Child and Family Services**
Umbrella-Unit: **10-148**
Statutory authority: 22 M.R.S. §§ 42, 3737
Chapter number/title: **Ch. 31**, Quality Rating and Improvement System: Rising Stars for ME
Filing number: **2023-020**
Effective date: 2/13/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Signed into law June 10, 2021, P.L. 2021, ch. 138, An Act to Improve Maine's Quality Rating System for Child Care Services, to the extent permitted by federal law, requires the Maine Department of Health and Human Services (the Department) pay a differential rate for child care services that meets or that makes substantial progress toward meeting nationally recognized quality standards, such as those standards required by the Head Start program or required for accreditation by the National Association for the Education of Young Children, and shall do so from the Child Care Development Fund 25% Quality Set-aside funds or by other acceptable federal practices. 22 M.R.S. § 3737(3). Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 11 2-A. The rules must establish a child care quality rating system with a minimum of three (3) steps and must provide for graduated quality differential rates for steps that demonstrate that a child care provider meets or makes substantial progress toward meeting nationally recognized quality standards.

Nothing in this statute requires the Department to pay a quality differential rate for child care services provided through the Temporary Assistance for Needy Families block grant (TANF).

The Department proposes this rule, Quality Rating and Improvement System Rules: Rising Stars for ME, to recognize early care and education programs that provide quality care, encourage program owners to increase their level of quality, and provide parents with identifiable standards of quality. The rule:

- Outlines procedures for Early Care & Education Programs' enrollment with Rising Stars for ME,
- Establishes standards and requirements for each Star Rating by program type,
- Explains how a program can attain a Star Rating,
- Explains how a program can maintain its Star Rating or advance to the next Star Rating, and
- Explains how to appeal their Star Rating.

The QRIS Rules Rising Stars for ME will accomplish this by implementing the following strategies:

- Incorporating Rising Stars for ME Inclusive Practices Checklist into QRIS as a component of a program's annual continuous quality improvement plan;
- The electronic submission of Program portfolios of evidence;
- Conducting random on-site monitoring of portfolios by OCFS;

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

- Allowing License-Exempt nonrelative providers participating with the Child Care Subsidy Program (CCSP) to join Rising Stars for ME at Star 1;
- Ratings for licensed programs beginning at Star 2. To receive a Star 4 rating, a licensed program must first meet all requirements for Stars 2, 3, and 4;
- Continuing to require registry membership for all staff (including License-Exempt Providers); and
- A Star 5 Rating (the highest rating) will continue to require national accreditation through:
 - The National Association for Family Child Care (NAFCC);
 - The National Association for the Education of Young Children (NAEYC);
 - The American Montessori Society (AMS);
 - The Council on Accreditation (COA).

Basis statement:

The Department of Health and Human Services (the “Department”) adopts 10-148 C.M.R. Chapter 33, *Quality Rating and Improvement System Rules: Rising Stars for ME*.

The Department determines that adoption of this rule is necessary to comply with Maine statute 22 M.R.S. §3737(3). The Department is adopting this rule now in order to maintain compliance with all Federal and State rules and regulations.

Maine has operated a Quality Rating and Improvement System (QRIS) for child care providers and other early care and education programs since 2008, but the standards and requirements were never established in rule. Adopting a rule governing QRIS benefits families and providers by having a clear system that shows the importance of high-quality early care and education for all Maine children. The rule further shows the Department’s commitment and investments to the programs in early care and education and the families that utilize their service.

The Department launched a pilot project in the summer of 2020 with 41 participants across program types that included licensed child care facilities, family child care and licensed facilities serving only school-aged children. During the Rising Stars for ME Pilot, programs received the revised Standards appropriate to their setting and completed a version of the application process to receive a rating on the new system. The program owner, director, or designated staff person provided feedback on:

- The Standards;
- The application process;
- Potential barriers to participation and/or to moving up in the system; and
- Necessary supports for helping programs join and move up with Rising Stars for ME.

The Department solicited feedback and incorporated participants suggestions by:

- Revising language in the Standards;
- Including the revised language in the proposed rules; and
- Updating the application.

In 2021, the Department adopted routine technical provisions to its child care licensing rules (10-148 C.M.R. ch. 32, *Child Care Facility Licensing Rule - Child Care Centers, Nursery Schools, Small Child Care Facilities, Other Programs* and ch. 33, *Family Child Care Provider Licensing Rule*) requiring child care facilities and family child care providers to enroll with Maine’s Quality Rating and Improvement System. This rule, 10-148 C.M.R. Chapter 31, *Quality Rating*

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

and Improvement System Rules: Rising Stars for ME, is not a licensing rule, but establishes the standards and requirements of Maine's QRIS in rule for the first time.

The adopted rule will:

- Recognize Early Care & Education Programs that provide quality care;
- Encourage Program Owners to increase their level of quality;
- Provide parents with identifiable standards of quality;
- Outline procedures for Early Care & Education Programs' enrollment with Rising Stars for ME;
- Establish standards and requirements for each Star Rating by program type;
- Explain how a program can attain a Star Rating;
- Explain how a program can maintain its Star Rating or advance to the next Star Rating; and
- Explain to a program how to appeal their Star Rating.

The adopted rule substantively improves on the current QRIS program by:

- Strengthening the alignment between Department's programs relating to child care, i.e. Childrens Licensing and Investigation Services (CLIS) and the Child Care Subsidy Program (CCSP).
- Holding both the Department and early care and education programs accountable by providing procedures for programs to appeal their Star Rating.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, Office of Child and Family Services
Umbrella-Unit: **10-148**
Statutory authority: 22 M.R.S. §§ 42(1), 4099-E, 4099-G, 7802(7); P.L. 2021, ch. 98
Chapter number/title: **Ch. 8**, Rules for the Licensure of Shelters for Homeless Children (Repeal); **Ch. 9**, Rules for the Licensing of Emergency Shelters for Children (Repeal); **Ch. 37**, Emergency Children's Shelter, Shelter for Homeless Children, and Transitional Living Program Licensing Rule.
Filing number: **2023-080 to 082**
Effective date: 6/14/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
See basis statement.

Basis statement:

The Department of Health and Human Services (the "Department") proposed rulemaking to repeal 10-148 C.M.R Ch. 8 Rules for the Licensure of Shelters for Homeless Children and 10-148 C.M.R. Ch. 9 Rules for the Licensing of Emergency Shelters for Children and replace the two rules with one consolidated rule, 10-148 C.M.R Ch. 37 Emergency Children's Shelter, Shelter for Homeless Children, and Transitional Living Programs that are Children's Homes Licensing Rule on February 8, 2023. A public hearing using the zoom platform was held on February 28, 2023, and written comments were accepted through March 10, 2023.

The Department has determined that adoption of this rule, 10-148 C.M.R Ch. 37 Emergency Children's Shelter, Shelter for Homeless Children, and Transitional Living Programs that are Children's Homes Licensing Rule is necessary to fully comply with the Family First Prevention Service Act (FFPSA) requirements for comprehensive background checks. The background check requirements include fingerprinting with a search of the Federal Bureau of Investigation (FBI) and State Bureau of Identification (SBI) and specify disqualifying offenses. Additionally, FFPSA requires checks of Maine's child abuse and neglect registry, as well as for each State in which prospective employees have resided during the preceding five years. Shelter providers have been adhering to the state and federal statutory requirements for the comprehensive background checks for over a year; the Department here adopts the requirement in rule.

The adoption of this rule is also necessary to meet the requirements of P.L 2021, ch.98, which directs the Department to amend its rule regarding notification requirements in current 10-148 C.M.R.Ch. 9 to make consistent with 10-148 C.M.R.Ch. 8 and specifically to allow the admission of a child into care for up to 3 hours without first notifying the child's guardian and to require a facility to allow the admission of a child into care at an Emergency Children's Shelter for up to 48 hours without the permission of the child's guardian. The rule significantly updates and consolidates provisions to reflect the current needs of today's population of homeless youth and adds requirements to afford greater health and safety protection. The rules were last updated in 1987 and 1989. Consolidating the rules provides consistency for all homeless youth programs. Further, the rule includes licensing requirements for Transitional Living Programs that are Children's Homes, currently licensed as Children's Residential Care Facilities (CRCF) but statutorily defined as a program for homeless youth and programmatically

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

more closely aligned with emergency and homeless shelters. This change will require routine technical rulemaking to remove Transitional Living Programs from 10-148 C.M.R Ch. 35 Children's Residential Care Facilities Licensing Rule. This will be a separate consecutive rulemaking.

Significant specific changes from repealed Chapter 8: Rules for the Licensure of Shelters for Homeless Children and Chapter 9: Rules for the Licensing of Emergency Shelters for Children in adopted Chapter 37: Emergency Children's Shelter, Shelter for Homeless Children, and Transitional Living Programs that are Children's Homes Licensing Rule include:

- Removing Introduction from Rules for the Licensing of Emergency Shelters for Children;
- Specifying exemptions or modifications applicable to specific program type (Emergency Shelters for Children, Shelter for Homeless Children, Transitional Living Programs) throughout the rule;
- Removing obsolete, outdated and unused terms from definitions;
- Adding and clarifying definitions;
- Removing the phrase "For the purpose of these rules the meaning of all adjectives and adverbs such as "adequate", "competent", "substantial", "qualified", "necessary", "reasonable", "satisfactory", "sufficient", "effective", "appropriate" or "suitable" used to qualify a person, procedure, equipment or building shall be determined by the licensing authority";
- Updating length of stay to 90 consecutive days instead of 30 consecutive days;
- Changing the term children to youth throughout rule and specifying in definition that they have the same meaning;
- Specifying staff members must be at least 21 years old;
- Updating language to be gender inclusive throughout the rule, changed "his/her" to "their";
- Reorganizing and updating language regarding program administration and organization;
- Removing requirement from Rules for the Licensure of Shelters for Homeless Children for the board of directors to conduct an annual evaluation on the director. Adding language regarding the program administrator demonstrating an ability to manage affairs of facility;
- Removing requirements for insurance/bonding;
- Removing list of non-waivable items;
- Clarifying requirements for licensure application to include the requirement for all policies to be submitted;
- Adding the requirement for facilities to comply with requests for records;
- Alphabetizing and consolidating all required policies into one location;
- Adding required policies, including: conflict of interest, diversion control, inclusion, infectious disease, record management, reportable event, rights, smoking, and weapons. Renaming admission policy to eligibility and access to services. Removing specific requirements for personnel policies. Adding language for policies to incorporate LGBTQ+ inclusive terminology;
- Consolidating and clarifying records required by the facility;
- Updating language regarding youth access to records;
- Adding requirement for Homeless Shelter and Emergency Shelter staff to sign a statement regarding adult abuse and neglect;
- Adding reporting requirements including requirement to report adult abuse and neglect;

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

- Adding section for youth rights for Homeless Shelters and Emergency Shelters;
- Adding requirement for release of information for Homeless Shelters;
- Removing requirement for policy in confidentiality from Homeless Shelters and Emergency Shelters as youth confidentiality is covered in other sections of rule;
- Updating requirements for intake assessment to better account for the needs of youth;
- Modifying requirements and timeframes for completion of assessments and care plans;
- Modifying requirements for discharge summary completion;
- Adding requirement to assess for human trafficking;
- Adding requirement for one CPR-trained staff per shift;
- Updating language regarding first aid kits and adding the requirement for a first aid kit in vehicles;
- Adding safety precautions to medication administration including requirement to keep medication locked at all times, securing staff medications and counting schedule II medications;
- Updating medication administration section to allow for youth to self-administer and to be able to store youth medication as appropriate;
- Removing isolation and restraint as approved practices;
- Changing terminology of detrimental practices to prohibited practices to include practices that are cruel, severe or unusual, verbal abuse, ridicule or humiliation, any type of physical punishment in any manner upon the body, administration of psychotropic medication as a means of punishment or discipline, group punishment, physical restraint, seclusion, and isolation;
- Adding water testing requirements;
- Updating and clarifying terminology regarding sleeping areas and bedding;
- Updating language regarding supervision and amending staff to youth ratios;
- Simplifying requirements regarding youth attending religious services;
- Adding requirements for searches to ensure safety of youth;
- Updating language regarding food service and safety. Removing requirement for Emergency Shelters to keep a menu;
- Adding requirement for seatbelts and child safety seats;
- Adding and updating requirement for emergency preparedness plan. Adding requirement for continuity of operation plan;
- Specifying requirements for each service type;
- Specifying requirements for daily notes;
- Specifying that certain items do not need to be locked in some transitional living programs;
- Updating guardian notification requirements;
- Adding health and safety requirements for transitional living programs serving pregnant and parenting youth;
- Updating language regarding staff qualifications, judgement, and boundaries;
- Specifying education requirements for program administrator and direct care workers;
- Changing specific requirements for employee evaluations;
- Adding requirements for comprehensive background checks and inclusion of specific disqualifying conditions aligning with Family First Prevention Services Act;
- Adding additional background check requirements to include professional registries and Adult Protective Services;
- Adding disqualifying driving offenses that prohibit a staff member from transporting residents;

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

- Removing requirement for employee physical examination and TB test;
- Removing medical statement required for staff prior to employment;
- Adding staff trainings to include medication administration (including psychotropic medications and naloxone), professionalism and boundaries, sexual orientation and expression, cultural competency and diversity, effects of alcohol and drug use, impact of trauma on homeless youth, human trafficking;
- Specifying training needs to be completed annually;
- Clarifying language regarding enforcement to reflect current practice; and
- Adding requirement to notify guardians of current and prospective residents of licensing action.

Fiscal impact of rule:

The Department does not anticipate any fiscal impact as the changes proposed are cost neutral.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, Office of Aging and Disability Services
Umbrella-Unit: **10-149**
Statutory authority: 22 M.R.S. §§ 42, 5106
Chapter number/title: **Ch. 5**, Introduction, Table of Contents, Rule History (Amend); **Ch. 5, Section 65**, Nutrition Services (Repeal); **Ch. 6, Section 5**, Nutrition Services Program (New, to replace 10-149, Ch. 5, Section 65)
Filing number: **2023-021, 2023-022**
Effective date: 2/14/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Repeal and Replace of 10-149 C.M.R. ch 5, § 65, Nutrition Services with 10-149 C.M.R. ch. 6 § 5, Nutrition Services Program

The Department proposes to repeal and replace 10-149 C.M.R. Chapter 5, Section 65 with 10-149 C.M.R. Chapter 6, Section 5. The purpose of this proposed rulemaking is to update the Department's nutrition services rule in accordance with the requirements outlined in the 2020 reauthorization of the Older Americans Act, 42 U.S.C. §§ 3001, *et seq.* This proposed rule also removes outdated references to the Bureau of Elder and Adult Services and provides additional clarity around eligibility requirements for older adults to receive nutrition services.

Nutrition services authorized by the rule are provided by Area Agencies on Aging (AAAs) that are under contract with the Department's Office of Aging and Disability Services (OADS), or by their subcontractors. Nutrition services regulated under this rule are funded by block grants from the Administration for Community Living ("ACL") in the U.S. Department of Health and Human Services.

The proposed rule states operational requirements for providers, including:

- maximizing the number of eligible individuals who are provided an opportunity to receive nutrition services;
- outreach, intake, and information and assistance/referral services in conformance with 10-149 C.M.R. ch. 5, § 67;
- the creation and maintenance of wait lists for nutrition services, if necessary;
- when and how providers may seek voluntary contributions from recipients for the cost of meals;
- why and how providers of nutrition services may deny, reduce, or terminate nutrition services for individuals;
- minimum nutritional requirements for meals and compliance with the State of Maine Food Code, 10-144 C.M.R. ch. 200;
- reporting of food borne illness;
- menu planning and the provision of special meals when possible to meet recipients' dietary, religious, and cultural requirements and preferences;
- recipient satisfaction surveys;
- group purchasing and other cost-saving measures;
- necessary contents of subcontracts for nutrition services;

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

- designation of full-time Nutrition Directors and consultation with registered dietitians;
- preparation and distribution of nutrition manuals establishing procedures relating to sanitation, food handling and storage, reporting of food borne illness and handling medical and other emergencies; and
- data collection and reporting.

Imposing these requirements on AAAs and their subcontractors enables OADS to comply with the Older Americans Act and with the Department's block grants from the ACL.

10-149 C.M.R. Chapter 5, Introduction, Table of Contents, Rule History:

The Department proposes to (1) update the Introduction; (2) delete the Section 65 Table of Contents from the Chapter 5 Table of Contents; and (3) update the Rule History.

Basis statement:

With this rulemaking, the Department of Health and Human Services (Department) is repealing its current Nutrition Services rule, codified as 10-149 C.M.R. ch. 5, Sec. 65, and replacing it with a new Nutrition Services Program rule, to be codified as 10-149 C.M.R. ch. 6, Sec. 5. Both the repealed and replacement rules are routine technical rules. The Department is also amending the Table of Contents for its Elder Services Policy Manual to reflect these changes.

Maine's Nutrition Services Program (NSP) are overseen by the Department's Office of Aging and Disability Services (OADS) and are administered through the Area Agencies on Aging (AAAs) and their subcontractors. The Nutrition Services Program, outlined in the Older Americans Act (42 U.S.C. §§ 3001, *et seq.*), assists older and other dependent or incapacitated adults in remaining healthy and active in their communities and in avoiding premature or inappropriate institutionalization, by providing nutrition services to adults with the greatest social and economic need, including low-income older individuals, low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas.

In 2020, Congress reauthorized the Older Americans Act. As part of this reauthorization, updates were made to the Nutrition Services Program. To comply with the reauthorized Older Americans Act, the Department is adopting a replacement rule to remove outdated guidance on nutrition programming and to better reflect current terminology and the practices of the programs.

The new, adopted rule defines key terms used in the rule and in the administration of the Nutrition Services Program; requires participating AAAs to provide Congregate Nutrition Services, Home Delivered Nutrition, Nutrition Counseling, and Nutrition Education; sets forth eligibility and prioritization standards; and states provider and program requirements. The rule states operational requirements for providers, including:

- Maximizing the number of eligible individuals who are provided an opportunity to receive nutrition services;
- Outreach, intake, and information and assistance/referral services in conformance with 10-149 C.M.R. ch. 5, § 67;
- The creation and maintenance of wait lists for nutrition services, if necessary;
- When and how providers may seek voluntary contributions from recipients for the cost of meals;

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

- Why and how providers of nutrition services may deny, reduce, or terminate nutrition services for individuals;
- Minimum nutritional requirements for meals and compliance with the State of Maine Food Code, 10-144 C.M.R. ch. 200;
- Reporting of food borne illness;
- Menu planning and the provision of special meals when possible to meet recipients' dietary, religious, and cultural requirements and preferences;
- Recipient satisfaction surveys;
- Group purchasing and other cost-saving measures;
- Necessary contents of subcontracts for nutrition services;
- Designation of full-time Nutrition Directors and consultation with registered dietitians;
- Preparation and distribution of nutrition manuals establishing procedures relating to sanitation, food handling and storage, reporting of food borne illness and handling medical and other emergencies; and
- Data collection and reporting.

Imposing these requirements on AAAs and their subcontractors enables OADS to comply with the Older Americans Act and with the Department's block grants from the Administration for Community Living in the U.S. Department of Health and Human Services.

OADS drafted the rule by relying on stakeholder input, the Department's knowledge of and experience with administering Nutrition Services Program, and the administration's guidance and vision for Nutrition Services for these populations.

The Department does not anticipate that this rule will have any impact on municipalities, counties, or small businesses.

Fiscal impact of rule:

There are no costs associated with this rule.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, Office of Aging and Disability Services
Umbrella-Unit: **10-149/14-197**
Statutory authority: 22 M.R.S. § 7303(2); 34-B M.R.S. § 5439(9); Resolves 2011, ch. 71
Chapter number/title: **Ch. 5**, Introduction, Table of Contents, Rule History; **Ch. 5, Section 63**, In-Home and Community Support Services for Elderly and Other Adults (Repeal); **Ch. 11**, Consumer Directed Personal Assistance Services (Repeal); **Ch. 5, Section 63**, Home Based Supports and Services for Older and Disabled Adults (new)
Filing number: **2023-12, 2023-096, 2023-097**
Effective date: 10/1/2023
Type of rule: Routine Technical/Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

The Department is proposing an effective date of July 1, 2023, for the amendment of the Chapter 5 Introduction rule, for the repeal of the current Chapter 11 and Section 63 rules, and for the replacement of those repealed rules with the new Section 63 rule. The current Chapter 11 rule and Section 63 rule will remain in effect through June 30, 2023.

10 149 C.M.R. Chapter 5, Introduction, Table of Contents, Rule History: The Department is updating the Introduction, delete the Section 63 Table of Contents from the Chapter 5 Table of Contents, and updates the Rule History.

Section 63 and Chapter 11 rulemakings:

Resolves 2011, ch. 71 directed the Department to adopt a long-term services and supports plan, known as the "Lean Implementation Plan," and make its action items a work priority. One of the action items listed in the plan required the Department to prioritize the consolidation of two state-funded in-home care and community support services programs for elderly and other adults, currently codified as Section 63 and Chapter 11.

Stakeholder Engagement: In May 2019, the Department hosted a "Convening on Aging and Long-Term Services and Supports" with stakeholders to establish priorities for aging and long-term services and supports (LTSS) reform. This rulemaking implements one of the priorities recommended by stakeholders which was to update LTSS policies to bring programmatic inconsistencies into alignment where appropriate.

In July 2022, the Department held a "listening session" with various stakeholders to receive comments and suggestions on the merging of the two rules. Stakeholders included providers, consumers, the service coordination agencies, prospective sub-contractors, and the Long-Term Care Ombudsman Program. Stakeholders expressed support for the Department's plan to merge the rules but recommended that the Department "grandfather" Chapter 11 consumers so that these consumers would not be subject to the household asset limits in Section 63. Furthermore, stakeholders shared concerns that merging the rules could negatively impact consumers and urged the Department to maintain the same services wherever possible.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

The differences between the proposed Section 63 rule and the current Section 63 and Chapter 11 rules include the following:

- 1) Updates the title of the rule to "Home Based Supports and Services (HBSS) for Older and Disabled Adults" to reflect current terminology;
- 2) Updates the definition of "Liquid Asset" in Section 63.02-25 to include revocable and irrevocable trusts;
- 3) Updates the eligibility section of the rule, Section 63.03-1(B), to require an eligible consumer to be "a resident of Maine";
- 4) Clarifies in rule that only the Department may terminate HBSS in Section 63.04-2;
- 5) Adds Section 63.04-4 which lists the reasons that an Assessing Service Agency, Service Coordination Agency or the Department can deny or terminate the consumer from receiving Consumer-Directed Services;
- 6) Removes diagnostic services under Section 63.05;
- 7) Clarifies the list of non-covered services in Section 63.06;
- 8) Creates a new subsection titled "Limits" (Section 63.07) to outline the total monthly costs of services for consumers receiving each level of care;
- 9) Creates a new subsection, Section 63.10, titled "Responsibilities of the Assessing Services Agency and the Service Coordination Agency" to organize all Assessing Services Agency and Service Coordination Agency responsibilities in one subsection of the rule;
- 10) Streamlines Section 63.10-4 to specify that program reports must align with the provisions in the contract between the Department and the Service Coordination Agencies;
- 11) § 63.03-1(C) continues the current Section 63 requirements for liquid assets, except that Chapter 11 Consumers who are receiving Chapter 11 services on June 30, 2023, are exempt from this liquid asset requirement.
- 12) § 63.12-2 (Consumer Payment Formula for Former Chapter 11 Consumers), proposes a separate consumer payment formula for those Chapter 11 Consumers who were receiving Chapter 11 services on June 30, 2023.
- 13) § 63.12-3(A)(1)(a) (Waiver of Consumer Payment) proposes a separate household asset amount for determining eligibility for waiver of consumer payment for those Chapter 11 Consumers who were receiving Chapter 11 services on June 30, 2023.
- 14) Removes unnecessary and unused definitions and references to the Office of Elder Services.

Basis statement:

In this rulemaking, the Department of Health and Human Services (DHHS) finally repeals the major substantive provisions of the Section 63 rule and the Chapter 11 rule, and finally adopts the major substantive provisions of the new Section 63 rule - all with a legal effective date of October 1, 2023.

On December 29, 2022, DHHS Commissioner Lambrew finally adopted the routine technical provisions of the Section 63 rule, the Chapter 11 rule, and the new Section 63 rule - all with a legal effective date of October 1, 2023. Also on December 29, 2022, Commissioner Lambrew provisionally adopted the major substantive provisions of the Section 63 rule, the Chapter 11 rule, and the new Section 63 rule.

The provisionally adopted three major substantive rules were submitted to the Maine Legislature in January 2023. The Maine Legislature authorized the final adoption of the three major substantive rules. The Governor approved the Resolve on April 24, 2023 as emergency legislation. *Resolves 2023, ch. 9.*

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

In 2011 DHHS was directed by the Legislature to consolidate the Section 63 rule and the Chapter 11 rule into a single rule. *Resolves 201 I, ch. 71*. This rulemaking accomplishes that Legislative directive. The benefits of consolidating Section 63 and Chapter 11 for consumers, Department staff and providers are: (1) centralized management of the waitlist; (2) one set of program rules; (3) consumer choice of service coordination agency; and (4) expansion of services for Chapter 11 consumers. The new Section 63 rule continues financial eligibility requirements for liquid assets. Chapter 11 consumers, however, who are receiving Chapter 11 services on September 30, 2023, are exempt from this liquid asset requirement. The new Section 63 rule also has a separate consumer payment formula for those Chapter 11 consumers who were receiving Chapter 11 services on September 30, 2023. The new Section 63 rule also proposes a separate household asset amount for determining eligibility for waiver of consumer payment for those Chapter 11 consumers who were receiving Chapter 11 services on September 30, 2022.

The Section 63 rule and Chapter 11 will remain in legal effect through September 30, 2023, and the new Section 63 rule will be legally effective on October 1, 2023.

Fiscal impact of rule:

The Department does not anticipate a fiscal impact of this rule because of the increased funding by the 2022 supplemental budget.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, Office of Aging and Disability Services
Umbrella-Unit: **14-197**
Statutory authority: 34-B M.R.S. §§ 5201(9), 5605
Chapter number/title: **Ch. 5**, Regulations Governing Behavioral Support, Modification and Management with Intellectual Disabilities or Autism in Maine
Filing number: **2023-044**
Effective date: 3/16/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

In January 2014, the federal Centers for Medicare and Medicaid Service (CMS) published new Medicaid requirements, in 42 C.F.R. § 441.301(c), regarding Section 1915(c) waiver Home and Community-Based Services (HCBS). The federal rule requires that people who receive HCBS funded through Medicaid must receive those services and supports in settings that meet specific standards. Though 14-197 C.M.R. ch. 5 (Chapter 5) is not a MaineCare rule, most or all of the persons protected by the rule receive MaineCare services – often in the form of HCBS waiver services. The Department adopted and CMS approved a State Transition Plan guiding Maine’s transition to compliance with the federal HCBS rule, and in that Plan the Department agreed to assure that Chapter 5 is not inconsistent with federal HCBS requirements because of its impact on some MaineCare HCBS waiver recipients. To come into compliance with this State Transition Plan, the Office of Aging and Disability Services is proposing to update Chapter 5 to acknowledge this rule’s interaction with 10-144 C.M.R. ch. 101 (MaineCare Benefits Manual), Ch. I, Section 6 – Global HCBS Waiver Person-Centered Planning and Settings Rule (Global HCBS Waiver Rule), which implements the new federal HCBS waiver requirements in MaineCare.

Specifically, the amended rule will clarify that when a Person experiencing Challenging Behavior receives MaineCare HCBS waiver services regulated, in part, under the Global HCBS Waiver Rule, the provision of supports authorized under this Chapter 5 shall comply with the Global HCBS Waiver Rule.

The Department plans to further amend Chapter 5 in 2023, with a comprehensive and stakeholder-informed update to the rule.

Basis statement:

In January 2014, the federal Centers for Medicare and Medicaid Service (CMS) released a new rule regarding Home and Community-Based Services waiver programs authorized under Section 1915(c) of the Social Security Act. The federal rule requires the Department of Health and Human Services (the “Department”) to assure that people who receive home and community-based waiver services and supports funded through Medicaid (MaineCare) must receive those services and supports in settings that meet specific standards no later than March 17, 2023. The Department implemented these new federal requirements in MaineCare by adopting a new rule, Global HCBS Waiver Person-Centered Planning and Settings Rule (the “Global HCBS Waiver Rule”) as Chapter I, Section 6 in the MaineCare Benefits Manual (“MBM”), 10-144 C.M.R. ch. 101, effective. “HCBS” refers to home- and community-based services provided to MaineCare waiver members.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Some persons with an Intellectual Disability or Autism Spectrum Disorder benefitted by the processes and protections of 14-197 C.M.R. ch. 5, Behavioral Support, Modification and Management (“Chapter 5”), also receive MaineCare waiver services subject to the Global HCBS Waiver Rule. The Department agreed, in its HCBS State Transition Plan, to amend Chapter 5 so as to assure it is not inconsistent with the Global HCBS Waiver Rule. To remind providers and other participants in behavioral support planning for MaineCare waiver members, the Office of Aging and Disability Services is adding a new subsection, § 5.01-3 in Chapter 5 to state explicitly when the Global HCBS Waiver Rule applies.

Specifically, the amended rule clarifies that when a Person experiencing Challenging Behavior receives MaineCare HCBS waiver services regulated, in part, under MBM, Ch. I, Sec. 6, the provision of supports authorized under this Chapter 5 shall comply with that Global HCBS Waiver Rule.

The Department is further amending Chapter 5 by stating, in § 5.01-1, that the principles underlying supports authorized under Chapter 5 must be in conformance with 34-B M.R.S. § 5605, Rights and Basic Protections of a Person with an Intellectual Disability, Autism or an Acquired Brain Injury.

Third, the Department has amended Appendix Three of the rule to assure that after a period of In-Home Stabilization, the Person is supported to have full access to the greater community; including opportunities to interact with people in the community, to seek employment and work in competitive, integrated settings; and to engage in community life to the same degree as individuals not receiving services.

Though not included in this rulemaking, the Department anticipates conducting a stakeholder-informed, comprehensive update of Chapter 5 in the near future.

OADS drafted the rule by relying on stakeholder input, CMS guidance, the Department’s knowledge of and experience with reviewing behavior management plans, and the administration’s guidance and vision for behavioral regulations for these populations.

The Department does not anticipate that this rule will have any impact on municipalities, counties, or small businesses.

Fiscal impact of rule:
None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Health and Human Services, Office of Aging and Disability Services
Umbrella-Unit: **14-197**
Statutory authority: 22 M.R.S. §§ 42(1); 34-B M.R.S. § 5609(3)
Chapter number/title: **Ch. 7**, Pilot Program for Transitional Services (Repeal)
Filing number: **2023-237**
Effective date: 11/22/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Chapter 7 is no longer in effect and will be repealed. The intent of the rule was to carry out a Pilot Program for Transitional Services, offering a method of funding for innovative services which were otherwise unavailable or not reimbursable under then-existing funding systems.

Basis statement:

This rule change repeals a pilot program that was established in 1988 to provide transitional services for adults aged 20-26 that were clients of the Office of Aging and Disability Services, formerly the Office of Adults with Cognitive and Physical Disabilities. The program offered a method of funding that was otherwise unavailable or not reimbursable under existing funding systems and has not been operational for several years as redundant and similar services have since been adopted and implemented federally and statewide to support the target population.

Fiscal impact of rule:

There will be no cost to municipalities or counties associated with this rule.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Labor, **Division for the Blind and Visually Impaired**
Umbrella-Unit: **12-150**
Statutory authority: 26 M.R.S.A. §1418-F – §1418-M
Chapter number/title: **Ch. 15**, Rules Governing the Business Enterprise Program
Filing number: **2023-247**
Effective date: 12/13/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This chapter outlines the procedures and standards governing the licensing by the Division for the Blind and Visually Impaired of blind persons as vending facility managers, pursuant to Title 34 CFR Section 395 and 26 M.R.S.A. § 1418-F to 1418-M. Modifications reflect changes that will clarify roles, responsibilities and the implementation of federal regulations and state statutory requirements.

Basis statement:

This chapter outlines the procedures and standards governing the licensing by the Division for the Blind and Visually Impaired of blind persons as vending facility managers, pursuant to Title 34 CFR Section 395 and 26 M.R.S.A. § 1418-F to 1418-M. Rule changes include updates to definitions related to the Business Enterprise Program (BEP). Rules also updated preferences for Blind individuals consistent with the Federal Randolph Sheppard Act and BEP laws. Duties, responsibilities, roles and opportunities of managers were expanded and clarified. This rule change is being done as a repeal and replace.

The Rule changes were approved by Rehabilitation Services Administration (RSA) Randolph-Sheppard (RS) Program.

After the close of the public comment period, the agency corrected minor grammatical errors and formatting issues.

Fiscal impact of rule:

None

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Labor, **Occupational Safety and Health Board**
Umbrella-Unit: **12-179**
Statutory authority: 26 M.R.S. § 565
Chapter number/title: **Ch. 3,** Occupational Safety and Health Standards for Construction Industry Employment in the Public Sector
Filing number: **2023-016**
Effective date: 1/29/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These rules make changes to standards in construction related to Beryllium as required by changes to federal regulations.

Basis statement:

Maine is an OSHA State Plan for State and Local Governments only. The Federal Occupational Safety & Health Administration (OSHA) has jurisdiction for enforcing safety and health regulations in the private sector, while the Maine Department of Labor, Workplace Safety & Health Division, has jurisdiction for enforcing safety and health regulations in the public sector. Being a State Plan requires the Board of Occupational Safety & Health (BOSH) to adopt rules applicable to public sector workplaces that are at least as effective as the standards promulgated by OSHA that apply to private sector workplaces. 26 M.R.S. §§ 564 and 565. BOSH is a 10-member board of which nine members are appointed by the Governor and the 10th member is the Bureau of Labor Standards Director. BOSH has rulemaking authority and is tasked with adopting reasonable rules for the public sector. 26 M.R.S. § 565.

The purpose of this Chapter is for BOSH to establish workplace safety and health standards and procedures to protect public sector employees in construction, aligning public sector standards with changes to federal safety and health standards and procedures for Beryllium. The most recent changes to the rules for Beryllium in Construction went into effect on February 24, 2021. Changes included items such as a requirement that the written exposure control plan for beryllium must contain a list of operations and job titles who are expected to work with beryllium; that written warning labels are no longer required on containers contaminated with beryllium; and employees are only required to be trained in beryllium safety if they are reasonably expected to have airborne exposure. For a complete copy of the required elements please see OSHA Construction 29 CFR 1926.1124. BOSH determined that updating the existing rule to incorporate the current federal regulations by reference ensured clarity and consistency.

BOSH voted to propose the rule on August 31, 2022. The notice was issued on November 9, 2022. No comments were received during the public comment period. BOSH voted to adopt the rule on December 7, 2022.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Labor, **Maine Labor Relations Board**
Umbrella-Unit: **12-180**
Statutory authority: 26 M.R.S. § 968(3)
Chapter number/title: **Ch. 10**, General Rules
Filing number: **2023-088**
Effective date: 7/1/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rulemaking is intended to clarify the service and proof of service requirements for a prohibited practice complaint. Current rules have confused some parties regarding the requirement to serve a physical copy of the complaint upon the respondent despite the ability to electronically file the complaint with the Board. The changes make this requirement clearer and would eliminate the need for parties to cross-reference the Board's rules in this respect. Along similar lines, the rules also clarify when service of a document may be effected exclusively by email.

The Board's new rules formalize a process for a party to request an extension of time, in order to provide better advanced notice to the Board and parties and to reduce needless Board advertising expenditures and scheduling challenges for all involved. Changes also specify that hand delivery of documents to the Board's office should not be made to individual Board members for the sake of streamlining electronic filings with the Board. Other minor changes are made in order to improve clarity and consistency.

Basis statement:

Chapter 10: General Rules

Chapter 11: Bargaining Unit Composition and Representation Matters

Chapter 12: Prohibited Practice Complaints; Interpretive Rulings

This rulemaking of the Maine Labor Relations Board is authorized by 26 M.R.S.A. § 968(3). A public rulemaking hearing was held at the Department of Labor headquarters in Augusta on May 22, 2023. The Board met and formally approved proposed rule changes on June 5, 2023. The rule changes will go into effect on July 1, 2023.

The vast majority of the rule changes are minor changes made simply to reflect the Board's desire to bring its rules up to modern drafting standards and to provide more clarity and consistency to parties engaging in the processes administered by the Board. One of the more substantive clarifications made was the rules around service and proof of service of a prohibited practice complaint. The Board heard concerns from a practitioner who had been confused about the requirement to physically serve a prohibited practice complaint. Even though delivery of the complaint through email is permitted, actual physical service is still required. The revisions make this more clear.

Another more substantive change to the rules is added requirements for parties wishing to request an extension of time for a filing or delay of a hearing. The basis for this regulatory tightening is the intention to reduce the inconvenience and last-minute scheduling for both Board members and the parties. The change to allow service of certain documents exclusively by email reflects the current reliance on electronic communication and was approved by the Attorney General's Office. Also recognizing the convenience and ubiquity of electronic

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

information, the new rules also allow the executive director or prehearing officer to permit the filing of electronic documentary evidence in lieu of physical copies to reflect the Board's increased reliance on electronic copies, particularly during remote proceedings. Another technology-based improvement to the rules is allowing the Board to meet remotely when determining whether to grant or deny a motion to defer to arbitration, to reflect the Board's use of remote videoconferencing technology over telephonic technology. Board member email addresses had inadvertently been left off the list of unacceptable places for electronic filing and the rule changes fix that oversight.

The new rules allow notification of prehearing conferences and hearings to parties by regular mail instead of by certified or registered mail, in order to save the Board an unnecessary expense. The executive director would be permitted under the new rules to decide on requests to defer to arbitration in order to expedite proceedings for the parties. The executive director's time to transmit a copy of a completed petition to the respondent has been changed from 24 hours to within 1 business day to reflect operational realities. Also along those lines, the new rules clarify that hand delivery of documents to the Board's office should be made by prior arrangement.

Fiscal impact of rule:

These changes will not have a significant fiscal impact on the agency or members of the regulated community.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Labor, **Maine Labor Relations Board**
Umbrella-Unit: **12-180**
Statutory authority: 26 M.R.S. § 968(3)
Chapter number/title: **Ch. 11**, Bargaining Unit Composition and Representation Matters
Filing number: **2023-089**
Effective date: 7/1/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rulemaking is intended to make minor changes to the rules for the purpose of clarity and consistency. More substantive changes include adding language that showing of interest and employee authorization forms must be physically received by the Board before the corresponding petition is considered complete, to improve clarity, and changing the executive director's time to transmit a copy of a completed petition to the respondent to within 1 business day instead of 24 hours in order to reflect operational realities. Other changes are minor and non-substantive, for the purpose of added clarity and consistency.

Basis statement:

Chapter 10: General Rules

Chapter 11: Bargaining Unit Composition and Representation Matters

Chapter 12: Prohibited Practice Complaints; Interpretive Rulings

This rulemaking of the Maine Labor Relations Board is authorized by 26 M.R.S.A. § 968(3). A public rulemaking hearing was held at the Department of Labor headquarters in Augusta on May 22, 2023. The Board met and formally approved proposed rule changes on June 5, 2023. The rule changes will go into effect on July 1, 2023.

The vast majority of the rule changes are minor changes made simply to reflect the Board's desire to bring its rules up to modern drafting standards and to provide more clarity and consistency to parties engaging in the processes administered by the Board. One of the more substantive clarifications made was the rules around service and proof of service of a prohibited practice complaint. The Board heard concerns from a practitioner who had been confused about the requirement to physically serve a prohibited practice complaint. Even though delivery of the complaint through email is permitted, actual physical service is still required. The revisions make this more clear.

Another more substantive change to the rules is added requirements for parties wishing to request an extension of time for a filing or delay of a hearing. The basis for this regulatory tightening is the intention to reduce the inconvenience and last-minute scheduling for both Board members and the parties. The change to allow service of certain documents exclusively by email reflects the current reliance on electronic communication and was approved by the Attorney General's Office. Also recognizing the convenience and ubiquity of electronic information, the new rules also allow the executive director or prehearing officer to permit the filing of electronic documentary evidence in lieu of physical copies to reflect the Board's increased reliance on electronic copies, particularly during remote proceedings. Another technology-based improvement to the rules is allowing the Board to meet remotely when determining whether to grant or deny a motion to defer to arbitration, to reflect the Board's use of remote videoconferencing technology over telephonic technology. Board member email

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

addresses had inadvertently been left off the list of unacceptable places for electronic filing and the rule changes fix that oversight.

The new rules allow notification of prehearing conferences and hearings to parties by regular mail instead of by certified or registered mail, in order to save the Board an unnecessary expense. The executive director would be permitted under the new rules to decide on requests to defer to arbitration in order to expedite proceedings for the parties. The executive director's time to transmit a copy of a completed petition to the respondent has been changed from 24 hours to within 1 business day to reflect operational realities. Also along those lines, the new rules clarify that hand delivery of documents to the Board's office should be made by prior arrangement.

Fiscal impact of rule:

These changes will not have a significant fiscal impact on the agency or members of the regulated community.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Labor, **Maine Labor Relations Board**
Umbrella-Unit: **12-180**
Statutory authority: 26 M.R.S. § 968(3)
Chapter number/title: **Ch. 12**, Prohibited Practice Complaints; Interpretive Rulings
Filing number: **2023-090**
Effective date: 7/1/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rulemaking is intended to make minor changes to the existing rules for the purpose of clarity and consistency. Changes include a deleted reference to multiple hard copies of the prohibited practice complaint and relevant collective bargaining agreement being filed in order to reflect the requirement of electronic filing of these documents with the Board. The new rules clarify prohibited practice complain service requirements, as well as when a prohibited practice complaint may be amended, and add appropriate cross-references.

The changes allow notification of prehearing conferences and hearings to parties by regular mail instead of by certified or registered mail, in order to save the Board an unnecessary expense. The changes also allow the executive director or prehearing officer to permit the filing of electronic documentary evidence in lieu of physical copies, to reflect the Board's practice of relying on electronic copies during remote proceedings. The executive director is permitted under the rule change to rule on requests to defer to arbitration in order to expediate proceedings for the parties. The rules also clarify that oral argument concerning deferral to arbitration may be permitted at the discretion of the executive director or prehearing officer, to allow for better-informed deferral decisions under appropriate circumstances. The changes also allow the Board to meet remotely when determining whether to grant or deny a motion to deter to arbitration, to reflect the Board's use of remote videoconferencing over telephone technology. In addition, the new rules contain multiple non-substantive changes for clarity and consistency.

Basis statement:

Chapter 10: General Rules

Chapter 11: Bargaining Unit Composition and Representation Matters

Chapter 12: Prohibited Practice Complaints; Interpretive Rulings

This rulemaking of the Maine Labor Relations Board is authorized by 26 M.R.S.A. § 968(3). A public rulemaking hearing was held at the Department of Labor headquarters in Augusta on May 22, 2023. The Board met and formally approved proposed rule changes on June 5, 2023. The rule changes will go into effect on July 1, 2023.

The vast majority of the rule changes are minor changes made simply to reflect the Board's desire to bring its rules up to modern drafting standards and to provide more clarity and consistency to parties engaging in the processes administered by the Board. One of the more substantive clarifications made was the rules around service and proof of service of a prohibited practice complaint. The Board heard concerns from a practitioner who had been confused about the requirement to physically serve a prohibited practice complaint. Even though delivery of the complaint through email is permitted, actual physical service is still required. The revisions make this more clear.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Another more substantive change to the rules is added requirements for parties wishing to request an extension of time for a filing or delay of a hearing. The basis for this regulatory tightening is the intention to reduce the inconvenience and last-minute scheduling for both Board members and the parties. The change to allow service of certain documents exclusively by email reflects the current reliance on electronic communication and was approved by the Attorney General's Office. Also recognizing the convenience and ubiquity of electronic information, the new rules also allow the executive director or prehearing officer to permit the filing of electronic documentary evidence in lieu of physical copies to reflect the Board's increased reliance on electronic copies, particularly during remote proceedings. Another technology-based improvement to the rules is allowing the Board to meet remotely when determining whether to grant or deny a motion to defer to arbitration, to reflect the Board's use of remote videoconferencing technology over telephonic technology. Board member email addresses had inadvertently been left off the list of unacceptable places for electronic filing and the rule changes fix that oversight.

The new rules allow notification of prehearing conferences and hearings to parties by regular mail instead of by certified or registered mail, in order to save the Board an unnecessary expense. The executive director would be permitted under the new rules to decide on requests to defer to arbitration in order to expedite proceedings for the parties. The executive director's time to transmit a copy of a completed petition to the respondent has been changed from 24 hours to within 1 business day to reflect operational realities. Also along those lines, the new rules clarify that hand delivery of documents to the Board's office should be made by prior arrangement.

Fiscal impact of rule:

These changes will result in minor cost savings to the Board due to reduced mailing costs, but it will not have significant fiscal impact on the agency or members of the regulated community.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Labor, **Maine Apprenticeship Board**
Umbrella-Unit: **12-181**
Statutory authority: 26 M.R.S. § 3212
Chapter number/title: **Ch. 3**, Rules Relating to Labor Standards for Certification of Pre-Apprenticeship Training Programs
Filing number: **2023-029**
Effective date: 3/1/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These rules are amended to Update and clarify standards related to pre-apprenticeship.

Basis statement:

This rulemaking is to repeal and replace a rule pertaining to pre-apprenticeship training programs. The proposed rules establish, define, and provide for the certification and decertification of Pre-Apprenticeship Agreements and Training Programs with the Maine Apprenticeship Program. They contain procedures for holding hearings and give the authority and the effective date.

The Maine Apprenticeship program oversees apprenticeships in accordance with federal law, including requirements to promote equality of opportunity in apprenticeship set forth in 29 CFR 30.

The statutory authority for this Rule is 26 M.R.S. § 3212. This rulemaking incorporates changes to the pre-apprenticeship training program set forth in P.L. 2022, Chapter 705.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Labor, **State Board of Arbitration and Conciliation**
Umbrella-Unit: **12-186**
Statutory authority: 26 M.R.S. § 931
Chapter number/title: **Ch. 1, General Rules**
Filing number: **2023-086**
Effective date: 7/1/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The primary purpose of this rule is to require the electronic filing of all correspondence and any other documents filed with the Board. This formal move to electronic filing will better facilitate the efficiency and ease of the Board's processes. This rulemaking also makes several minor changes for the purposes of clarity, consistency and to better reflect operational realities.

Basis statement:

Chapter 1: General Rules

Chapter 3: Logging Dispute Resolution Board Rules

This rulemaking of the State Board of Arbitration and Conciliation (BAC) is authorized by 26 M.R.S.A. § 931. A public rulemaking hearing was held at the Department of Labor headquarters in Augusta on May 22, 2023. The Board met and formally approved proposed rule changes on June 7, 2023. The rule changes will go into effect on July 1, 2023.

The vast majority of the rule changes are minor changes made simply to reflect the Board's desire to bring its rules up to modern drafting standards and to provide more clarity and consistency to parties engaging in the processes administered by the Board.

The most substantive change in the Board's procedural rules is a new electronic filing requirement. Informally, since the onset of the COVID-19 pandemic, the Board had been permitting electronic filing on an ad hoc basis. Now, electronic filing is required for all correspondence and any other documents filed with the Board by sending an email to sbac@maine.gov. Parties who are unable to submit documents electronically may submit documents by mail, hand delivery or delivery service if the party certifies it was unable to submit the documents electronically and the Board, in its discretion, accepts the filing. The rules also allow for electronic service of documents, except in the case of an arbitration request form or subpoena.

Informally, a longstanding practice of the Board has been to not process an arbitration request form unless it's accompanied by a copy of the grievance, contract or other pertinent documents. The new rules formalize this requirement. Similar to revisions to the Maine Labor Relations Board (MLRB) rules, the BAC rules will allow discretion to waive the requirement for parties to produce hard copies, in recognition of increased reliance on electronic information.

In addition to changes to the BAC's own procedural rules, in this rulemaking the Board also established rules for the newly created Logging Dispute Resolution Board. These rules largely mirror the BAC's own procedural rules. The only exceptions are the complaint process, which is modeled after the Maine Labor Relations Board's process, and when statute dictated otherwise, as in the change in fee structure which will be discussed more below.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Fiscal impact of rule:

During the course of the development and adoption of these rules, the Board considered all relevant information available to it. The Board does not anticipate any significant fiscal impact from these rules on the agency or on members of the regulated community, including the State, as an employer, and its counties and municipalities. These rule changes will have no adverse impact on small businesses.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Labor, **State Board of Arbitration and Conciliation**
Umbrella-Unit: **12-186**
Statutory authority: 26 M.R.S. § 3707
Chapter number/title: **Ch. 3**, Logging Dispute Resolution Board Rules
Filing number: **2023-087**
Effective date: 7/1/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rulemaking is intended to establish the procedural rules for the newly created Logging Dispute Resolution Board.

Basis statement:

Chapter 1: General Rules

Chapter 3: Logging Dispute Resolution Board Rules

This rulemaking of the State Board of Arbitration and Conciliation (BAC) is authorized by 26 M.R.S.A. § 931. A public rulemaking hearing was held at the Department of Labor headquarters in Augusta on May 22, 2023. The Board met and formally approved proposed rule changes on June 7, 2023. The rule changes will go into effect on July 1, 2023.

The vast majority of the rule changes are minor changes made simply to reflect the Board's desire to bring its rules up to modern drafting standards and to provide more clarity and consistency to parties engaging in the processes administered by the Board.

The most substantive change in the Board's procedural rules is a new electronic filing requirement. Informally, since the onset of the COVID-19 pandemic, the Board had been permitting electronic filing on an ad hoc basis. Now, electronic filing is required for all correspondence and any other documents filed with the Board by sending an email to sbac@maine.gov. Parties who are unable to submit documents electronically may submit documents by mail, hand delivery or delivery service if the party certifies it was unable to submit the documents electronically and the Board, in its discretion, accepts the filing. The rules also allow for electronic service of documents, except in the case of an arbitration request form or subpoena.

Informally, a longstanding practice of the Board has been to not process an arbitration request form unless it's accompanied by a copy of the grievance, contract or other pertinent documents. The new rules formalize this requirement. Similar to revisions to the Maine Labor Relations Board (MLRB) rules, the BAC rules will allow discretion to waive the requirement for parties to produce hard copies, in recognition of increased reliance on electronic information.

In addition to changes to the BAC's own procedural rules, in this rulemaking the Board also established rules for the newly created Logging Dispute Resolution Board. These rules largely mirror the BAC's own procedural rules. The only exceptions are the complaint process, which is modeled after the Maine Labor Relations Board's process, and when statute dictated otherwise, as in the change in fee structure which will be discussed more below.

Fiscal impact of rule:

These rules will not have a significant fiscal impact on the agency or the public.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name:	Department of Marine Resources
Umbrella-Unit:	13-188
Statutory authority:	§§ 6072, 6072-A, 6072-B, 6072-C
Chapter number/title:	Ch. 2 , Aquaculture Regulations
Filing number:	2023-124
Effective date:	8/13/2023
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The purpose of this proposed rule is to help improve processing efficiencies for LPA and lease applications, provide greater clarity across regulation for stakeholders and enforcement, and ensure that the experimental lease application fee structure is consistent with other application fees across the Aquaculture Division. It also establishes fees and protocols for contaminant reduction or other special studies to help protect public health.

Basis statement:

This rule increases the application fee for experimental leases from \$100 to \$750 and clarifies that this fee would also apply to experimental leases eligible for renewal. The rule also specifies that an experimental application, like a standard, must be one contiguous tract unless it meets exceptions already specified in rule. It requires that Limited Purpose Aquaculture (LPA) renewal applications be received by November 30 each year and removes the provision allowing for mid-term LPA amendments. The rule also specifies that stock for LPA sites must come from the wild, hatchery, or same health zone. Any person who applies for an LPA for seed in an area classified by DMR as prohibited, restricted, or conditionally restricted needs to hold a lease or own a company that holds a lease. The rule removes existing requirements to mark proposed lease areas in advance of public hearings. The rule also provides for contaminant reduction or other special studies, including fees, that may be necessary to ensure the safety of product for human consumption. The rule also makes several updates to existing sections for improved clarity, consistent with statutory changes, and enforcement.

In consideration of one comment, the Department removed, as a matter of clarification, the term ‘nursery’ and ‘nurseries’ from section 2.90(2)(B).

Fiscal impact of rule:

Enforcement of the proposed rule will not require additional activity in this agency. This proposal would increase the fee to apply for an experimental lease. New applicants would be subject to the higher fee, but it would not impact persons or businesses that currently hold an experimental lease or previously submitted a proposal that is at any stage of review. It also establishes fees and protocols for contaminant reduction or other special studies to help protect public health. Holders of aquaculture sites in those areas or otherwise required to conduct such studies would incur a fee for sample processing. In certain cases, a 60-day closure could be implemented in lieu of study fees.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(A)
Chapter number/title: Ch. 11, Scallops. 11.08, Targeted Closures: (8) East Moosabec Reach LAA, (9) Upper Chandler Bay and (10) Upper Narraguagus Bay
Filing number: 2023-005
Effective date: 1/8/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to establish scallop conservation closures for East Moosabec Reach LAA, Upper Chandler Bay and Upper Narraguagus Bay, all in Zone 2. The Department is concerned that continued harvesting for the remainder of the 2022-2023 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2022 scallop surveys that are essential to the ongoing recruitment, regrowth and recovery of the scallop resource. An immediate conservation closure necessary of reduce the risk of unusual damage and imminent depletion of the scallop resource in four important scallop harvest areas.

Basis statement:

The Department is taking emergency rulemaking action to include targeted conservation closures in Chapter 11.08, Targeted Closures: (8) East Moosabec Reach LAA; (9) Upper Chandler Bay, and (10) Upper Narraguagus Bay.

Additionally, there is an administrative update to the closure text in Western Casco Bay Closure in 11.09 for clarity.

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(A)
Chapter number/title: Ch. 11, Scallops. 11.08, Targeted Closures: (10) Narraguagus/Pigeon Hill Rotational Area; (11) Cobscook, Whiting and Denny's Bays; and (12) Lower Blue Hill Bay/Jericho Bay Rotational Area
Filing number: 2023-025
Effective date: 1/19/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to establish scallop conservation closures in the Narraguagus/Pigeon Hill and Lower Blue Hill/Jericho Bays Rotational Areas (Zone 2) and Cobscook, Whiting and Denny's Bays in Zone 3. The Department is concerned that continued harvesting for the remainder of the 2022-2023 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2022 Scallop surveys that are essential to the ongoing recruitment, regrowth and recovery of the scallop resource. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in four important scallop harvest areas.

Basis statement:

The Department is taking emergency rulemaking action to include targeted conservation closures in Chapter 11.08, Targeted Closures: (10) Narraguagus/Pigeon Hill Rotational Area; (11) Cobscook, Whiting & Denny's Bays; (12) Lower Blue Hill Bay/Jericho Bay Rotational Area

Narraguagus & Pigeon Bay Rotational Area

A partial closure of upper Narraguagus Bay was implemented January 8, 2023. Less than 5 vessels had continued to harvest south of the closure line with moderate success during the month of January. Currently, no vessels are active in the area due to low harvest opportunity and no additional effort should occur for the remainder of the season.

The 2022 spring scallop survey observed moderate levels of scallop biomass, with several stations highlighting hotspots of legal sized scallop resource intermixed with seed and sublegal scallops while a few nearby stations had zero scallops. Comparatively, there were more scallops observed overall during the most recent survey than in 2019.

Cobscook Bay, including Whiting & Denny's Bay

DMR pre-season scallop survey for Cobscook Bay occurred November 18-20, 2022. Overall, the survey reported a robust presence of sublegal and legal scallops. Comparison with the DMR pre-season scallop survey completed November 2021 indicated a moderate decrease in relative legal scallop density from 14.3 g/m² observed during the November 2021 survey to approximately 12.4 g/m² observed November 2022 (Figure 3). What was observed in November 2022 is similar to the pre-season abundance of legal scallops observed in November 2022.

Lower Blue Hill and Jericho Bay Rotational Area

This area opened for drag harvest only on December 5, 2023 and between 12 to 16 vessels were active in the area during the month of December with a peak of 31 vessels. Catch rates

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

were not as strong as previous years, even though legal scallop density was observed to be higher this season based on the April 2022 survey (Figure 6).

Additional observations from the spring survey did not indicate any significant abundance of seed or sublegal presence of scallops (Figure 7). This area was open for the full 70 days during the 2019-2020 season with a peak of 40 boats harvesting, however, it would be imperative to ensure some level of legal standing stock remain in the area to encourage recruitment and recovery for future seasons. During the last few weeks of January, less than 5 harvesters have been active in the area and recently have left to seek more efficient harvesting in other areas.

This closure is necessary to prohibit the reduction of the remaining legal broodstock scallop resource to allow for the maximum potential of recovery in this area for future seasons.

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name:	Department of Marine Resources
Umbrella-Unit:	13-188
Statutory authority:	12 M.R.S. §6171, §6722
Chapter number/title:	Ch. 11 , Scallops: 2023-2024 Season
Filing number:	2023-222
Effective date:	11/5/2023
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

Scallop regulations must be updated for each new season to adjust the schedules and closure lines based on data from the previous season.

Basis statement:

This rulemaking establishes the 2023-2024 scallop fishing season. Daily possession limits of 15 gallons for Zone 1 and Zone 2, and 10 gallons for Zone 3 remain unchanged. For Zone 1, a 60-day season for draggers begins on December 11, 2023 and the last day of the season is March 21, 2024. For Zone 1, a 60-day season for divers starts on December 5, 2023 and the last day of the season is April 27, 2024. For Zone 2, a 70-day season for draggers starts on December 1, 2023 and the last day of the season is March 27, 2024. For Zone 2, a 70-day season for divers starts on November 16, 2023 and the last day of the season is April 20, 2024. For Zone 3, a 50-day season for draggers begins on December 4, 2023 and the last day of the season is March 28, 2024. For Zone 3, a 50-day season for divers begins on December 7, 2023 and the last day of the season is March 30, 2024.

DMR is re-establishing limited access status for the Sheepscot and Damariscotta Rivers. DMR is maintaining existing Limited Access Areas: W. Casco Bay, Muscle Ridge, Whiting and Denny's Bays. Additionally, the following existing targeted closures based on depletion, high concentrations of seed/sublegal scallops and/or the presence of spat-producing scallops are maintained: Lower Muscle Ridge, Upper Sheepscot River, New Meadows River, Card Cove and Beals-Jonesport Bridge. Western Penobscot Bay is open for harvest based on Zone 1 harvest days.

Harvesting of scallops by hand (diving) is restricted to Rotation C (Third) only for the 2023-2024 season. Harvesting for scallops by dredge gear is restricted to Rotation A (First) only for the 2023-2024 season. Rotation B is closed to all harvest. A new juvenile conservation closure, Green Island/The Brothers, in the Englishmen's/Kennebec River Rotational Area in Zone 2 is established for the 2023-2024 season. This rulemaking also splits the Lower Penobscot Rotational Area, creating an annual open harvest based on Zone 2 calendars for state waters that surround Matinicus and outer islands in Zone 2. Lastly, this rulemaking allows scallop harvest to begin starting ½ hour before Augusta sunrise.

A correction was made to the text of the rule to include December 25, 2023 as a closed day in the Zone 2 season for draggers, to match the closure of that day in the Zone 2 calendar for draggers.

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name:	Department of Marine Resources
Umbrella-Unit:	13-188
Statutory authority:	12 MRS §6171(3)(A)
Chapter number/title:	Ch. 11 , Scallops. 11.08 , Targeted Closures: (8) Roque Island Harbor and Little Kennebec Bay in Englishman Bay Rotational Area, (9) Harrington River in Addison Rotational Area
Filing number:	2023-252
Effective date:	12/24/2023
Type of rule:	Routine Technical
Emergency rule:	Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to establish scallop conservation closures of the Harrington River in Addison RA and Roque Island Harbor and Little Kennebec Bay portion of the Englishman's Bay RA (Zone 2). The Department is concerned that continued harvesting for the remainder of the 2023-2024 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2023 Scallop surveys that are essential to the ongoing recruitment, regrowth and recovery of the scallop resource. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in four important scallop harvest areas.

Basis statement:

The Department is taking emergency rulemaking action to include targeted conservation closures in Chapter 11.08, Targeted Closures: (8) Roque Island Harbor and Little Kennebec Bay in Englishman Bay Rotational Area; (9) Harrington River in Addison Rotational Area.

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS 6171
Chapter number/title: Ch. 25, Lobster and Crag Regulations
Filing number: 2023-125
Effective date: 8/13/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This proposed rule corrects a reference point by providing the coordinate for the Hue and Cry buoy in its original location.

Basis statement:

This rule-making makes a technical correction that removes a USCG buoy as a boundary marker due to this buoy moving locations. The coordinates of its former location remain as a boundary marker for the purpose of this regulation.

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name:	Department of Marine Resources
Umbrella-Unit:	13-188
Statutory authority:	12 MRS 6171
Chapter number/title:	Ch. 25 , Lobster and Crag Regulations, 25.98 Electronic Tracking Requirements for Federally Permitted Lobster and Jonah Crab License Holders
Filing number:	2023-223
Effective date:	11/5/2023
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This rule is proposed to ensure compliance with Addendum XXIX (American Lobster) and Addendum IV (Jonah crab) that were approved by the Atlantic States Marine Fisheries Commission (ASMFC) in March 2022. Specifically, for compliance with the Interstate Fisheries Management Plans, this regulation would require all federally-permitted lobster and Jonah crab license holders with commercial trap gear area permits to have electronic tracking devices. This requirement extends to all federally-permitted license holders with commercial trap gear for Lobster Conservation Management Areas (LCMAs) 1, 2, 3, 4, 5, and the Outer Cape Cod.

Basis statement:

This rule-making incorporates the requirements in Addendum XXIX (American Lobster) and Addendum IV (Jonah crab) that were approved by the Atlantic States Marine Fisheries Commission (ASMFC) in March 2022. Specifically, for compliance with the Interstate Fisheries Management Plans, this regulation requires all federally-permitted lobster and Jonah crab license holders with commercial trap gear area permits to have approved electronic tracking devices. This requirement applies to all federally-permitted lobster and crab license holders with commercial trap gear for Lobster Conservation Management Areas (LCMAs) 1, 2, 3, 4, 5, and the Outer Cape Cod. The regulation identifies the specific requirements, as well as prohibitions and exemptions to the requirement. The regulation was amended from the original proposal in the following ways:

- It was amended in response to a comment requesting greater clarity regarding the ability of a federally permitted license holder to proceed with a fishing trip in the event of a device failure, and that this will not result in a violation;
- The definition of a “federally permitted lobster and crab fishing license holder” was amended to include a person who is eligible to purchase a commercial license, so that an individual who has not yet purchased their license for the year remains subject to the requirements;
- The definition of a “federally permitted lobster and crab fishing license holder” was amended to specify a commercial license, so that individuals with a federal permit but only a noncommercial lobster license would not be subject to the requirement to have an electronic tracking device.

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name:	Department of Marine Resources
Umbrella-Unit:	13-188
Statutory authority:	12 MRS §6749
Chapter number/title:	Ch. 26 , Sea Urchin 2023-24 Season
Filing number:	2023-126
Effective date:	8/20/2023
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This regulation would establish open harvest days and tote limits for the taking of sea urchins by divers, rakers, trappers, and draggers in Zones 1 and 2 for the 2023-2024 season. For Zone 1, seasons are proposed for divers, trappers, rakers and draggers in 2023-2024, from which harvesters may only fish up to 15 days of their choosing, the same number of days allowed during the 2022-2023 season. For Zone 1, the daily tote limit is nine (9), the same as in the 2022-2023 season. For Zone 2, 40-day seasons are proposed for divers, trappers, rakers and draggers in 2023-2024, from which harvesters may only fish up to 30 days of their choosing. This proposal has the same number of fishing days and opportunity days as the 2022-2023 season. For the Whiting & Dennys Bays Limited Access Area in Zone 2, a 15-day season is proposed for Zone 2 divers, trappers, rakers and draggers in 2023-2024. For Zone 2, the daily tote limit is six (6), the same as in the 2022-2023 season.

Basis statement:

This regulation establishes open harvest days and tote limits for the taking of sea urchins by divers, rakers, trappers, and draggers in Zones 1 and 2 for the 2023-2024 season. For Zone 1, a season is established for divers, trappers, rakers and draggers from which harvesters may only fish up to 15 days of their choosing, the same number of days allowed during the 2022-2023 season. For Zone 1, the daily tote limit is nine (9), the same as in the 2022-2023 season. For Zone 2, 40-day seasons are established for divers, trappers, rakers and draggers, from which harvesters may only fish up to 30 days of their choosing, the same number of fishing days and opportunity days as the 2022-2023 season. For the Whiting & Dennys Bays Limited Access Area in Zone 2, a 15-day season is established for Zone 2 divers, trappers, rakers and draggers in 2023-2024. For Zone 2, the daily tote limit is six (6), the same as in the 2022-2023 season.

Based on summary of comments, modifications were made to the Zone 2 Late Drag season to better balance the harvest practices between west and east within that zone:

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name:	Department of Marine Resources
Umbrella-Unit:	13-188
Statutory authority:	12 MRS § 6505-A
Chapter number/title:	Ch. 32 , Elver Quota System for the 2023 Season
Filing number:	2023-045
Effective date:	3/18/2023
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

Each year, the method of calculating annual elver quota must be specified for the upcoming season.

Basis statement:

This rule establishes the elver quota allocations for the 2023 season for individuals licenses under §§6505-A and 6302-A, and the method of calculating individual elver quota allocations for individuals licensed under §6505-A. The quota for the Passamaquoddy Tribe has been adjusted in accordance with their overage in the 2022 season. For individuals licensed under §6505-A, 2023 allocations for individuals will be the same as their 2022 allocations, plus any quota associated with licenses not renewed in 2022, or licenses suspended for the duration of the 2023 season, which will be distributed evenly to all existing license holders. DMR did not make any changes to the proposed rule.

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name:	Department of Marine Resources
Umbrella-Unit:	13-188
Statutory authority:	12 MRS § 6171
Chapter number/title:	Ch. 34 , Groundfish: Maximized Retention Monitoring
Filing number:	2023-046
Effective date:	3/18/2023
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The purpose of this proposed rule is to allow for the operation of the federal electronic monitoring maximized retention model in state waters, primarily by exempting participating vessels from the minimum size restrictions for allocated groundfish species. This change will align state and federal regulations, and eliminate the need for the Department of Marine Resources to issue Special Licenses to vessels participating in the electronic monitoring maximized retention model.

Basis statement:

This rule incorporates into state regulation the electronic monitoring maximized retention model, which is a monitoring tool approved by the NOAA to achieve sector monitoring coverage in the federal groundfish fishery. The rule defines “electronic monitoring maximized retention model” and “allocated groundfish species”. It adds an exemption from the minimum sizes for allocated groundfish species to vessels participating in the maximized retention model, subject to constraints specified in the rule.

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name:	Department of Marine Resources
Umbrella-Unit:	13-188
Statutory authority:	12 M.R.S. 6171(3)(C)
Chapter number/title:	Ch. 34 , Groundfish: 34.06 Emergency Rulemaking to Adjust Recreational Measures for Cod and Haddock
Filing number:	2023-131
Effective date:	8/18/2023
Type of rule:	Routine Technical
Emergency rule:	Yes

Principal reason or purpose for rule:

This rulemaking is intended to ensure consistent recreational fishing measures between state and federal waters for Gulf of Maine cod and haddock. This rule also maintains compliance with the federal fishery management plan for northeast groundfish.

Basis statement:

The Commissioner adopts this emergency rulemaking to modify the recreational fishing measures for Gulf of Maine cod and haddock in accordance with recent changes enacted by NOAA Fisheries. Cod and haddock are regulated under the Northeast Multispecies Fishery Management Plan at the New England Fishery Management Council (Council). The Council recommends recreational sub-annual catch limits (sub-ACLs) for both species as well as a suite of management measures so that catch stays below the respective sub-ACLs. NOAA Fisheries considers these Council recommendations but is ultimately charged with issuing a final rule to implement recreational measures. As a part of the Council's work to set recreational sub-ACLs, the Council voted to maintain the Gulf of Maine cod sub-ACL from 2022 to 2023. Stock assessment results for Gulf of Maine haddock were not favorable and indicated a significant reduction in catch was needed to prevent overfishing. As a result, the Council recommended an 83% reduction in the recreational sub-ACL for haddock from 2022 to 2023.

On August 14, NOAA Fisheries issued a final rule to set recreational measures for Gulf of Maine cod and haddock for the 2023 fishing year. For cod, the rule maintains the bag and size limit but modifies the fishing season so that cod can be possessed from September 1 through October 31. For haddock, the NOAA Fisheries final rule maintains a closure in the month of March but deviates from the Council recommendation by establishing separate bag and size limits for the party/charter and private recreational fishing sectors. For party and charter boats, the rule reduces the bag limit from 20 fish to 15 fish per day and increases the minimum size limit from 17-inches to 18-inches. For private anglers, the rule reduces the bag limit from 20 fish to 10 fish per day but maintains the existing minimum size limit of 17-inches. NOAA's rationale for the mode-split is that it restrains recreational catch of haddock to the significantly lower sub-ACL while acknowledging the differing needs of the sectors. Specifically, during Council discussions members of the party/charter industry expressed that a higher bag limit is integral to attracting clients and booking trips; a higher minimum size limit is needed to offset a higher bag limit. NOAA Fisheries expressed concern that increasing the minimum size limit may increase dead discards. As a result, NOAA Fisheries maintained the 17-inch minimum size limit for private anglers and implemented a greater reduction in the bag limit. In response to this federal rulemaking, ME DMR is implementing separate haddock bag and size limits for the recreational sectors to ensure consistency between recreational measures in state and federal waters.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Importantly, this action ensures compliance with the federal fishery management plan. It expands recreational fishing opportunities for Gulf of Maine cod in the fall, which should provide benefit to Maine anglers. It also places greater constraints on recreational fishing for haddock to maintain catch under the lower sub-ACL. For these reasons, the Commissioner hereby adopts an emergency regulation to modify the recreational groundfish measures for Gulf of Maine cod and haddock in accordance with 12 MRS §6171(3)(C).

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name:	Department of Marine Resources
Umbrella-Unit:	13-188
Statutory authority:	12 MRS § 6171
Chapter number/title:	Ch. 34 , Groundfish: Recreational Measures for Cod, Haddock and Halibut Clean-up
Filing number:	2023-224
Effective date:	11/5/2023
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This rulemaking is intended to maintain consistent recreational fishing measures between state and federal waters for Gulf of Maine cod and haddock. This rule also proposes to replace outdated language regarding the halibut endorsement on the commercial fishing license with reference to the new commercial halibut license.

Basis statement:

On August 18, 2023, DMR adopted an emergency rule to align state recreational fishing regulations for Gulf of Maine cod and haddock with those adopted by NOAA Fisheries in federal waters. DMR is now adopting these regulations as part of its regular rules. Consistent with the existing emergency rule, this regulation maintains the existing size and bag limit for cod but modifies the season so that cod can be possessed from September 1 through October 31. For haddock, the rulemaking maintains a closure in the month of March and establishes separate bag and size limits for the party/charter and private recreational fishing sectors. For party and charter boats, the rule reduces the bag limit from 20 fish to 15 fish per day and increases the minimum size limit from 17-inches to 18-inches. For private anglers, the rule reduces the bag limit from 20 fish to 10 fish per day but maintains the existing minimum size limit of 17-inches. This rule also replaces reference to the previously used halibut endorsement on the commercial fishing license with language regarding the new commercial halibut license.

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name:	Department of Marine Resources
Umbrella-Unit:	13-188
Statutory authority:	12 MRS § 6171
Chapter number/title:	Ch. 36 , Atlantic Herring: 2023 Administrative Update
Filing number:	2023-047
Effective date:	3/18/2023
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This proposed regulation amends language clarifying the seasonal structure of the Management Area 1A herring fishery. Additionally, section 36.01(B)(3) clarified the reporting timeframe as described in Chapter 8 Landings, section 8.20(R).

Basis statement:

This regulation amends language clarifying the seasonal structure of the Management Area 1A herring fishery. Additionally, section 36.01(B)(3) clarified the reporting timeframe as described in Chapter 8 Landings, section 8.20(R). No changes were made to the proposed rule.

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name:	Department of Marine Resources
Umbrella-Unit:	13-188
Statutory authority:	12 M.R.S. § 6171(3)(C)
Chapter number/title:	Ch. 36 , Atlantic Herring
Filing number:	2023-078
Effective date:	5/31/2023
Type of rule:	Routine Technical
Emergency rule:	Yes

Principal reason or purpose for rule:

The Days Out Commissioners have set zero landing days for June 1 through July 16, 2023 at 6:00 pm. The Days Out Commissioners have set five landing days for Season 1 (Trimester 2; June 1 – September 30) of the Atlantic herring fishery, Sunday at 6:00 p.m. through Friday at 6:00 p.m., beginning on Sunday, July 16, 2023 at 6:00 p.m. The weekly landing limit for Atlantic Herring Limited Access Category A vessels is 320,000 pounds (or 8 trucks). Harvesters may not transfer herring to carrier vessels while at-sea. Carrier vessels may not receive herring from a harvester vessel while at-sea. The Commissioner has determined that it is necessary to take emergency action to comply with the changes to the interstate management of the Atlantic herring resource and to reduce the risk of an overage in the Area 1A sub-ACL that could deplete the supply of Atlantic herring.

Basis statement:

The Days Out Commissioners have set zero landing days for June 1 through July 16, 2023 at 6:00 pm. The Days Out Commissioners have set five landing days for Season 1 (Trimester 2; June 1 – September 30) of the Atlantic herring fishery, Sunday at 6:00 p.m. through Friday at 6:00 p.m., beginning on Sunday, July 16, 2023 at 6:00 p.m. The weekly landing limit for Atlantic Herring Limited Access Category A vessels is 320,000 pounds (or 8 trucks). Harvesters may not transfer herring to carrier vessels while at-sea. Carrier vessels may not receive herring from a harvester vessel while at-sea. All herring harvesters are required to report electronically same day as landing through an agency approved electronic method (i.e. LEEDS or VESL app) or through a Federal electronic reporting method. The Commissioner has determined that it is necessary to take emergency action to comply with the changes to the interstate management of the Atlantic herring resource and to reduce the risk of an overage in the Area 1A sub-ACL that could deplete the supply of Atlantic herring. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. §6171(3)(C).

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name:	Department of Marine Resources
Umbrella-Unit:	13-188
Statutory authority:	12 M.R.S. § 6171(3)(C)
Chapter number/title:	Ch. 36 , 2023 Season 2 Open
Filing number:	2023-188
Effective date:	9/30/2023
Type of rule:	Routine Technical
Emergency rule:	Yes

Principal reason or purpose for rule:

The Days Out Commissioners have set zero landing days for October 1 through October 9, 2023 for Season 2 (Trimester 3; October 1-December 31) of the Atlantic herring fishery. Two landing days have been designated beginning Tuesday, October 10 at 12:01 a.m. through Wednesday, October 11 at 11 :59 p.m. followed by zero landing days through to Saturday, November 4. Four landing days have been designated starting Sunday, November 5 at 6:00 p.m. through Thursdays at 5:59 p.m., weekly. The fishery will only move to four landing days, starting on November 5, 2023 if there is remaining Season 2 quota available at that time. Quota availability will depend on how much is landed during the prior two designated landing days of October 10-11 and if the 1,000 mt reallocations from the Canadian weir fishery to the Area 1A sub-ACL occurs. The Commissioner has determined that it is necessary to take emergency action to comply with the changes to the interstate management of the Atlantic herring resource and to reduce the risk of an overage in the Area LA sub-ACL that could deplete the supply of Atlantic herring.

Basis statement:

The Days Out Commissioners have set zero landing days for October 1 through October 9, 2023 for Season 2 (Trimester 3; October 1 - December 31) of the Atlantic herring fishery. Two landing days have been designated beginning Tuesday, October 10 at 12:01 a.m. through Wednesday, October 11 at 11:59 p.m. followed by zero landing days through to Saturday, November 4. Four landing days have been designated starting Sunday, November 5 at 6:00 p.m. through Thursdays at 5:59 p.m., weekly.

The Eastern Maine spawning closure remains in effect until October 8, 2023. The Western Maine and Massachusetts/New Hampshire spawning closure remains in effect until November 3, 2023.

The fishery will only move to four landing days, starting on November 5, 2023 if there is remaining Season 2 quota available at that time. Quota availability will depend on how much is landed during the prior two designated landing days of October 10-11 and if the 1,000 mt reallocations from the Canadian weir fishery to the Area LA sub-ACL occurs.

The Commissioner has determined that it is necessary to take emergency action to comply with the changes to the interstate management of the Atlantic herring resource and to reduce the risk of an overage in the Area 1A sub-ACL that could deplete the supply of Atlantic herring. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. §6171(3)(C).

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name:	Department of Marine Resources
Umbrella-Unit:	13-188
Statutory authority:	12 M.R.S. § 6171; § 6502-C
Chapter number/title:	Ch. 41 , Atlantic Menhaden: 2023 Season
Filing number:	2023-0071
Effective date:	5/17/2023
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This proposed rulemaking specifies a separate start date of the commercial menhaden season for pound nets and fish weirs of June 1st, annually at a reduced daily limit until the broader commercial menhaden fishery opens. Licensed operators of pound nets and fish weirs must mark their gears with buoys that include their full name and DMR Landings number and only that license holder may harvest from that marked gear.

All other gears are proposed to begin commercial menhaden harvesting on the third Monday of June, annually. This rulemaking proposes daily and/or weekly trip limits and open harvest days for the commercial fishery in each fishery phase: State Allocation, Episodic Event set aside, and Incidental Catch and Small Scale. Permissible gear types have been specified for the general menhaden fishery and specifically for the Incidental Catch and Small Scale Fishery as well as the Noncommercial menhaden fishery. The proposed rule-making also includes a provision that would authorize the Commissioner to prohibit the commercial taking of menhaden for up to 14 days during the State Allocation fishery, if necessary to slow the rate at which the quota is caught.

Basis statement:

This rule specifies a separate start date of the commercial menhaden season for pound nets and fish weirs of June 1st, annually at a reduced daily limit until the broader commercial menhaden fishery opens. Licensed operators of pound nets and fish weirs must mark their gears with buoys that include their full name and DMR Landings number and only that license holder may harvest from that marked gear.

All other gears begin commercial menhaden harvesting on the third Monday of June, annually. This rule established daily and/or weekly trip limits and open harvest days for the commercial fishery in each fishery phase: State Allocation, Episodic Event set aside, and Incidental Catch and Small Scale. Permissible gear types have been specified for the general menhaden fishery and specifically for the Incidental Catch and Small-Scale Fishery as well as the Noncommercial menhaden fishery. The rule also includes a provision that would authorize the Commissioner to prohibit the commercial taking of menhaden for up to 14 days during the State Allocation fishery, if necessary to slow the rate at which the quota is caught.

Based on public comment regarding the authority to slow the rate at which the quota is taken, the rule was amended to clarify that the Commissioner may implement such a prohibition whenever it is determined warranted by the rate of catch (i.e. more than once during the state allocation fishery if needed).

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name:	Department of Marine Resources
Umbrella-Unit:	13-188
Statutory authority:	12 M.R.S. 6171(3)(C)
Chapter number/title:	Ch. 42 , Striped Bass. 42.01 , Emergency Rulemaking to Adjust Striped Bass Slot Limit
Filing number:	2023-076
Effective date:	5/18/2023
Type of rule:	Routine Technical
Emergency rule:	Yes

Principal reason or purpose for rule:

This action is intended to manage the striped bass fishery in compliance with the fishery management plan at the Atlantic States Marine Fisheries Commission.

Basis statement:

The Commissioner adopts this emergency rulemaking to modify the striped bass slot limit to come into compliance with recent action taken at the Atlantic States Marine Fisheries Commission (ASMFC). Striped bass are managed by the Atlantic Striped Bass Management Board (Board) at ASMFC. At its May 2 meeting, the Board voted to approve an emergency action to implement a 31-inch maximum size limit in the recreational striped bass fishery where a higher, or no, maximum size limit currently exists. Given Maine's existing slot limit is 28-inches to less than 35-inches, Maine must amend its regulations to come into compliance with this emergency action.

At its May 2 meeting, the Striped Bass Board reviewed 2022 catch information which showed a significant increase in recreational harvest as the 2015 year-class moved into the existing slot limit. As a result of this higher level of fishing mortality, updated projections showed significant declines in the stock's probability of rebuilding by 2029, dropping from 97% under the lower 2021 fishing mortality rate to less than 15% if the higher 2022 fishing mortality rate continues each year. Based on this information and the potential for high recreational harvest again in 2023, the Board took emergency action for the 2023 fishing year to implement a 31-inch maximum size limit in the recreational fishery where a higher (or no) maximize size limit currently exists. This action is intended to provide greater protection to the 2015 year-class as it moves through the ocean recreational fishery and support a higher probability of rebuilding by 2029.

Importantly, this action ensures compliance with the ASMFC fishery management plan for striped bass. It also provides greater protection to the striped bass stock which is overfished and in a 10-year rebuilding plan. For these reasons, the Commissioner hereby adopts an emergency regulation to modify the slot limit for striped bass to be 28-inches to 31-inches, inclusive, with 12 MRS §6171(3)(C).

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name:	Department of Marine Resources
Umbrella-Unit:	13-188
Statutory authority:	12 MRS 6171
Chapter number/title:	Ch. 42 , Changes to Striped Bass Slot Limit
Filing number:	2023-127
Effective date:	8/13/2023
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This proposal is intended to manage the striped bass fishery in compliance with the fishery management plan at the Atlantic States Marine Fisheries Commission.

Basis statement:

On May 18, 2023, DMR adopted an emergency rule to come into compliance with the Atlantic Striped Bass Fishery Management Plan at the Atlantic States Marine Fisheries Commission (ASMFC). DMR is adopting the change to the striped bass slot limit as part of its regular rules. This rule implements a 31-inch maximum size limit in the striped bass recreational fishery. As a result, it is unlawful to take or possess striped bass unless they are between 28-inches and 31-inches, inclusive. This action ensures continued compliance with the ASMFC fishery management plan.

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name:	Department of Marine Resources
Umbrella-Unit:	13-188
Statutory authority:	12 M.R.S. 6171(3)(A)
Chapter number/title:	Ch. 55 , Gear Restrictions; 55.99 Emergency Rulemaking Fishing in the Saco River
Filing number:	2023-084
Effective date:	6/10/2023
Type of rule:	Routine Technical
Emergency rule:	Yes

Principal reason or purpose for rule:

This action is intended to prevent unusual damage to the striped bass resource that will damage the likelihood of rebuilding, and manage the striped bass fishery in compliance with the fishery management plan at the Atlantic States Marine Fisheries Commission.

Basis statement:

The Commissioner adopts this emergency rulemaking to modify an area of the Saco River closed to fishing in order to protect the striped bass resource. Recently there has been a dramatic increase in recreational catch and release mortality on the Saco River below the Cataract Dam. Anglers are reporting large numbers of dead striped bass below this area and DMR has concluded that this is directly linked to targeting fish in a confined area with no way to properly release fish without causing a high discard mortality. This area must be closed to all fishing in order to effectively protect the striped bass resource.

Striped bass are managed by the Atlantic Striped Bass Management Board (Board) at ASMFC. At its May 2 meeting, the Striped Bass Board reviewed 2022 catch information which showed a significant increase in recreational harvest as the 2015 year-class moved into the existing slot limit. As a result of this higher level of fishing mortality, updated projections showed significant declines in the stock's probability of rebuilding by 2029, dropping from 97% under the lower 2021 fishing mortality rate to less than 15% if the higher 2022 fishing mortality rate continues each year. Based on this information and the potential for high recreational harvest again in 2023, the Board took emergency action for the 2023 fishing year to implement a 31-inch maximum size limit in the recreational fishery where a higher (or no) maximize size limit currently exists. This action was intended to provide greater protection to the 2015 year-class as it moves through the ocean recreational fishery and support a higher probability of rebuilding by 2029.

This emergency rule is part of the larger regulatory framework to ensure this stock rebuilds, and this action is necessary to prevent unusual damage to the striped bass resource. For these reasons, the Commissioner hereby adopts an emergency action to modify Maine's Gear Restriction Regulation, Chapter 55.99 to close the waters of the Saco River upstream of the Route 9/Main Street bridge between Factory Island, Saco and Mechanics Park, Biddeford, to the head of tide, as authorized by 12 M.R.S. §6171(3)(A).

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name:	Department of Marine Resources
Umbrella-Unit:	13-188
Statutory authority:	12 MRS 6171
Chapter number/title:	Ch. 55 , Fishing in the Saco River
Filing number:	2023-128
Effective date:	8/13/2023
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This proposal expands an existing closure to fishing in order to prevent catch and release mortality in an area where it is not possible to properly release fish.

Basis statement:

On June 10, 2023, DMR adopted an emergency rule to expand an existing area on the Saco River closed to fishing. DMR is adopting this same rule as regular rule-making. Consistent with the emergency rule, this rule modifies Maine's Gear Restriction Regulation, Chapter 55.99 to close the waters of the Saco River upstream of the Route 9/Main Street bridge between Factory Island, Saco and Mechanics Park, Biddeford, to the head of tide. This is necessary to prevent high levels of catch and release mortality observed this season and which negatively impacts the striped bass resource.

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name:	Department of Marine Resources
Umbrella-Unit:	13-188
Statutory authority:	12 MRS 6171
Chapter number/title:	Ch. 75 , Protected Resources
Filing number:	2023-129
Effective date:	8/13/2023
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This proposed rule-making makes a technical correction that removes three USCG buoys as boundary markers due to these buoys either being “de-established” or moving locations. The coordinates of their former locations will remain as boundary markers for the purpose of the State of Maine Exemption Line regulation.

Basis statement:

This rule-making makes a technical correction that removes three USCG buoys as boundary markers due to these buoys either being “de-established” or moving locations. The coordinates of their former locations remain as boundary markers for the purpose of the State of Maine Exemption Line regulation.

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Public Safety, **Maine Emergency Medical Services**
Umbrella-Unit: **16-163**
Statutory authority: 32 M.R.S. §84(1) 32 M.R.S. §98
Chapter number/title: **Ch. 24**, The Maine EMS Stabilization Program
Filing number: **2023-246**
Effective date: 12/13/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Board of EMS is proposing this rule to implement the provisions of 32 M.R.S. §89 regarding financial assistance to emergency medical services entities at immediate risk of failing and leaving their communities without access to adequate emergency medical services. This rule is being adopted in response to an emergency, specifically that the expedient adoption of this rule, which would provide for the disbursement of funds to stabilize and continue the essential services of EMS entities within the State of Maine at immediate risk of failure, is necessary to avoid a disruption of those essential services.

Basis statement:

The 130th Legislature, Second Regular Session's Blue Ribbon Commission To Study Emergency Medical Services in the State published a report in December of 2022, in which they record as findings and recommendations: "...members expressed grave concern that EMS in the State is not only at the edge of a cliff but that in many areas of the State, particularly rural areas, EMS is already over that cliff. The primary issue facing EMS is a lack of funding...emergency medical services provided by an ambulance service are essential services. Funding is necessary and vital to delivering those essential services ... " This report further includes in Recommendation A-2 that "The Legislature should initially allocate \$25 million of the recommended \$70 million appropriation to specifically target transporting EMS services at immediate risk of failing and leaving their service area without access to adequate EMS. 32 M.R.S. §98 describes the purpose of that section as "... to provide financial assistance to emergency medical services entities based in the State that are facing immediate risk of failure..." 32 M.R.S. §81(A) states that "... The Legislature finds that the provision of medical assistance in an emergency is a matter of vital concern affecting the health, safety and welfare of the public..."

The Board finds, based on the findings of the 130th Legislature, Second Regular Session's Blue Ribbon Commission To Study Emergency Medical Services in the State, that rulemaking is necessary to promptly accomplish the legislature's intent in promulgating 32 M.R.S. §98, to provide the necessary funding that would stabilize the Maine EMS System's ability to provide services to the citizens and visitors of the State of Maine, and to mitigate the immediate risk of failure of Emergency Medical Services Entities, thus ensuring that the provision of medical assistance in an emergency, which is a matter of vital concern affecting the health, safety and welfare of the public, is continued without interruption.

The Board further finds that the immediate adoption of the proposed rule is necessary to avoid an immediate threat to public health, safety, or general welfare. Specifically, the Board finds that the expedient adoption of this rule, which would provide for the disbursement of funds to stabilize and continue the essential services of EMS entities within the State of

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Maine for those entities at immediate risk of failure, is necessary to avoid a disruption of those essential services.

Fiscal impact of rule:

Maine EMS estimates that this rule will introduce \$12,000,000 into licensed eligible EMS entities throughout the State of Maine and that this funding will stabilize the operations of these entities, which currently operate at a net loss. Maine EMS estimates that this funding will have an impact on the wages of EMS clinicians, which will cause downstream effects within the communities in which these clinicians reside. Maine EMS estimates that these funds will be spent within the State of Maine, which will have an impact on the municipalities served by eligible entities.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Public Safety, **Gambling Control Board**
Umbrella-Unit: **16-633**
Statutory authority: 8 M.R.S. § 1003(1)(B)
Chapter number/title: **Ch. 5**, Internal Controls and Appendix A
Filing number: **2023-038**
Effective date: 3/7/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule package updates the minimum internal controls governing casino operations by the Board.

Basis statement:

This is an amendment to Board Rules Chapter 5, Appendix A, regarding updates to the general control over the ownership and operation of slot machines and table games, the distribution of slot machines and table games and slot machine facilities and casinos. These amendments include updates to internal control procedures that are necessary to reflect changes in technology and the casino industry that have taken place since 2004 when initial rules were promulgated.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Public Safety, **Gambling Control Unit**
Umbrella-Unit: **16-633**
Statutory authority: 8 M.R.S. § 1003(1)(B) and (3)(I)
Chapter number/title: **Ch. 13**, Exclusion
Filing number: **2023-190**
Effective date: 10/18/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule package updates the rules governing self-exclusions at casinos.

Basis statement:

The rule package updates the rules governing self-exclusions at casinos.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Public Safety, **Gambling Control Unit**
Umbrella-Unit: **16-633**
Statutory authority: 8 M.R.S. §§ 1102(1)(D) and 1103(5) & 8 M.R.S. §§ 1102(1)(D), 1102(1)(G) and 1103(3)(G)-(I).
Chapter number/title: **Ch. 36**, License Fee and Renewal; **Ch. 41**, Licensee Records, Annual Reporting and Audits
Filing number: **2023-227, 2023-228**
Effective date: 11/11/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule package is being updated to reflect the true costs to the Unit of investigations and review of first-time applicants. It also is being updated to ensure that Fantasy Contest Operators' systems ensure security, confidentiality, processing integrity, availability, and privacy consistent with current standards.

Basis statement:

The rule package is being updated to reflect the true costs to the Unit of investigations and review of first-time applicants. It also is being updated to ensure that Fantasy Contest Operators' systems ensure security, confidentiality, processing integrity, availability, and privacy consistent with current standards.

Fiscal impact of rule:

Both the audit and the investigative cost will increase for the licensees but are essential to complete investigations and have all platforms audited appropriately.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Public Safety, **Gambling Control Unit**
Umbrella-Unit: **16-633**
Statutory authority: 8 M.R.S. §1203(2)
Chapter number/title: ***Regulation of Sports Wagering***
Ch. 50, Introduction; **Ch. 51**, Definitions; **Ch. 52**, License Application, Fee and Renewal; **Ch. 53**, Internal Controls; **Ch. 54**, Facility Operator Operational Requirements; **Ch. 55**, Physical Premise Requirements; **Ch. 56**, House Rules; **Ch. 57**, Sports Wagering System Requirements; **Ch. 58**, Sports Wagers; **Ch. 59**, Sports Wagering Kiosks; **Ch. 60**, Sports Wagering Accounts; **Ch. 61**, Sports Wagering Revenue Reconciliations; **Ch. 62**, Geolocation and Remote Access; **Ch. 63**, Responsible Wagering Program; **Ch. 64**, Advertising and Promotions; **Ch. 65**, Management Service Contract Criteria; **Ch. 66**, Complaints and Disciplinary Actions
Filing number: **2023-197 to 2023-213**
Effective date: 10/29/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To establish rules required under 8 M.R.S. §1203(2) to regulate the conduct of sports wagering in Maine under the recently enacted Chapter 35 of Title of the Maine Revised Statutes. 8 M.R.S. §§ 1201-1219.

Basis statement:

These rule chapters establish the requirements for sports wagering licensing and compliance, pursuant to the recently enacted Chapter 35 of Title 8, Regulation of Sports Wagering. 8 M.R.S. §§1201-1219. The rules establish licensing criteria, technical and physical operational requirements, compliance standards related to wagering systems, accounts, responsible gaming, and advertising and promotions, and establish a complaint process for handling complaints against licensees.

Fiscal impact of rule:

Non applicable

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Administrative and Financial Services (DAFS),
Bureau of Revenue Services (Maine Revenue Services – MRS)
Umbrella-Unit: **18-125**
Statutory authority: 36 M.R.S. §§ 112 and 193
Chapter number/title: **Ch. 102**, Electronic Funds Transfer (EFT)
Filing number: **2023-061**
Effective date: 5/3/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Maine Revenue Services is proposing to amend Rule 102 ("Electronic Funds Transfer (EFT)") to reflect the current EFT methods available for payment of Maine taxes and to make other technical updates.

Basis statement:

Maine Revenue Services is amending Rule 102 ("Electronic Funds Transfer (EFT)") to reflect the current EFT methods available for payment of Maine taxes and to make other technical updates. Specifically, the rule removes references to the ACH Teledebit payment method, which has been discontinued, and adds references to the Maine Tax Portal ("MTP").

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Administrative and Financial Services (DAFS),
Bureau of Revenue Services (Maine Revenue Services – MRS)
Umbrella-Unit: **18-125**
Statutory authority: 36 M.R.S. § 576
Chapter number/title: **Ch. 202**, Tree Growth Tax Law Valuations – 2023
Filing number: **2023-062**
Effective date: 5/3/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

There is a statutory requirement that each year the State Tax Assessor determine the 100% valuation for an acre of forestland, according to forest type (softwood, mixed wood, or hardwood) by economic region for parcels classified under the Tree Growth Law. The State Tax Assessor must certify his determination and transmit rules to the municipal assessors of each municipality with forestland therein on or before April 1 of each year.

Basis statement:

Amended Rule 202 provides updated valuation rates for each forest type by region. 36 M.R.S. § 576 requires the State Tax Assessor to establish annually by rule current use valuations for classified forestlands after considering area timber stumpage sales during previous calendar years. Taxpayers with land classified under Tree Growth Tax Law and municipal assessors require guidance in appropriate valuation of forestland based on representative proportions of forest growth and products generated.

Fiscal impact of rule:

Annual establishment of valuations produces no additional cost to the State. The anticipated FY 2023-24 amount appropriated to reimburse anticipated municipal claims for “taxes lost” due to the use of Tree Growth Valuations on classified forestland is \$10,800,000.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Administrative and Financial Services (DAFS),
Bureau of Revenue Services (Maine Revenue Services – MRS)
Umbrella-Unit: **18-125**
Statutory authority: 36 M.R.S. § 112 & P.L. 2021, c. 681
Chapter number/title: **Ch. 325**, Sales to Tribes, Tribal Members, and Tribal Entities
Filing number: **2023-177**
Effective date: 9/30/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Rule 325 is being adopted to implement P.L. 2021, c. 681, *An Act To Enhance Tribal-State Collaboration, To Revise the Tax Laws Regarding the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation and To Authorize Casinos, Off-track Betting Facilities, Federally Recognized Indian Tribes and Certain Commercial Tracks To Conduct Sports Wagering*.

Basis statement:

This rule is being adopted to implement P.L. 2021, c. 681. It provides definitions, explanations, and examples of taxable and non-taxable transactions related to sales to Maine Indian tribes, tribal members, and tribal entities, including sales sourced to tribal lands. The rule also addresses other potential sales and use tax issues related to such parties, including: requirements for qualifying as a “tribal entity”; sourcing complexities related to transactions and the use of property located within both tribal and non-tribal land; specific requirements for the sale of vehicles and leases of automobiles for periods of one year or more; and the treatment and reporting of sales to non-tribal members on tribal land.

Fiscal impact of rule:

None

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Administrative and Financial Services (DAFS),
Bureau of Revenue Services (Maine Revenue Services – MRS)
Umbrella-Unit: **18-125**
Statutory authority: 36 M.R.S. § 112 & P.L. 2021, c. 681, Pt. H
Chapter number/title: **Ch. 803**, Income Tax Withholding Report and Payments
Filing number: **2023-178**
Effective date: 9/30/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Maine Revenue Services is proposing to amend Rule 803 ("Income Tax Withholding Reports and Payments") to reflect recently enacted legislation and to make other technical updates.

Basis statement:

Maine Revenue Services is proposing to amend Rule 803 ("Income Tax Withholding Reports and Payments") to reflect recently enacted legislation that provides for an income tax withholding exemption for enrolled tribal members residing on tribal land in Maine with income derived from or connected with sources on tribal land in Maine, an income tax withholding exemption for out-of-state supplier of spirits sold to the Bureau of Alcoholic Beverages and Lottery Operations (BABLO), and to make other technical updates.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

	Agency name: Department of Administrative and Financial Services (DAFS), Bureau of Revenue Services (Maine Revenue Services – MRS)
Umbrella-Unit:	18-125
Statutory authority:	36 M.R.S. § 112
Chapter number/title:	Ch. 805 , Composite Filing
Filing number:	2023-063
Effective date:	5/3/2023
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

Maine Revenue Services is proposing to amend Rule 805 ("Composite Filing") to reflect how a federal partnership audit administrative adjustment request ("AAR") or final federal adjustment ("FFA") affects the filing of a composite return, and to make other technical updates.

Basis statement:

Maine Revenue Services is proposing to amend Rule 805 ("Composite Filing") to reflect how a federal partnership audit administrative adjustment request ("AAR") or final federal adjustment ("FFA") affects the filing of a composite return, and to make other technical updates.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Administrative and Financial Services (DAFS),
Bureau of Revenue Services (Maine Revenue Services – MRS)
Umbrella-Unit: **18-125**
Statutory authority: 36 M.R.S. § 112
Chapter number/title: **Ch. 808**, Corporate Income Tax Nexus
Filing number: **2023-064**
Effective date: 5/3/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Maine Revenue Services is proposing to amend Rule 808 ("Corporate Income Tax Nexus") to reflect recently enacted legislation that provides for an exemption to the standard nexus rules for certain out-of-state suppliers of spirits to the Bureau of Alcoholic Beverages and Lottery Operations ("BABLO"), and to make other technical updates.

Basis statement:

Maine Revenue Services is proposing to amend Rule 808 ("Corporate Income Tax Nexus") to reflect recently enacted legislation that provides for an exemption to the standard nexus rules for certain out-of-state suppliers of spirits to the Bureau of Alcoholic Beverages and Lottery Operations ("BABLO"), and to make other technical updates.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Administrative and Financial Services (DAFS),
Bureau of Revenue Services (Maine Revenue Services – MRS)
Umbrella-Unit: **18-125**
Statutory authority: 36 M.R.S. § 112
Chapter number/title: **Ch. 810**, Maine Unitary Business Taxable Income, Combined Reports, and Tax Returns
Filing number: **2023-065**
Effective date: 5/3/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Maine Revenue Services is proposing to amend Rule 810 ("Maine Unitary Business Taxable Income, Combined Reports, and Tax Returns") to reflect recently enacted legislation that provides for an exemption to the standard nexus rules for certain out-of-state suppliers of spirits to the Bureau of Alcoholic Beverages and Lottery Operations ("BABLO"), and to make other technical updates.

Basis statement:

Maine Revenue Services is proposing to amend Rule 810 ("Maine Unitary Business Taxable Income, Combined Reports, and Tax Returns") to reflect recently enacted legislation that provides for an exemption to the standard nexus rules for certain out-of-state suppliers of spirits to the Bureau of Alcoholic Beverages and Lottery Operations ("BABLO"), and to make other technical updates.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Administrative and Financial Services (DAFS),
Bureau of Revenue Services (Maine Revenue Services – MRS)
Umbrella-Unit: **18-125**
Statutory authority: 36 M.R.S. § 112
Chapter number/title: **Ch. 812**, Credit for Educational Opportunity
Filing number: **2023-066**
Effective date: 5/3/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Maine Revenue Services is proposing to amend Rule 812 (“Credit for Educational Opportunity”) to reflect recently enacted legislation that limits the program to tax years beginning before January 1, 2022, and to make other technical updates.

Basis statement:

Maine Revenue Services is proposing to amend Rule 812 ("Credit for Educational Opportunity") to reflect recently enacted legislation that limits the program to tax years beginning before January 1, 2022, and to make other technical updates.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Administrative and Financial Services (DAFS),
Bureau of Revenue Services (Maine Revenue Services – MRS)
Umbrella-Unit: **18-125**
Statutory authority: 36 M.R.S. § 112
Chapter number/title: **Ch. 813**, Property Tax Fairness Credit
Filing number: **2023-067**
Effective date: 5/3/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Maine Revenue Services is proposing to amend Rule 813 ("Property Tax Fairness Credit") to reflect recently enacted legislation that provides for an additional income tax credit for veterans totally and permanently disabled, and to make other technical updates.

Basis statement:

Maine Revenue Services is proposing to amend Rule 813 ("Property Tax Fairness Credit") to reflect recently enacted legislation that provides for an additional income tax credit for veterans totally and permanently disabled, and to make other technical updates.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Administrative and Financial Services (DAFS),
Bureau of Revenue Services (Maine Revenue Services – MRS)
Umbrella-Unit: **18-125**
Statutory authority: 36 M.R.S. § 112 & P.L. 2021, c. 681, Pt. H
Chapter number/title: **Ch. 825,** Tribal Member Income from Sources on Tribal Land
Filing number: **2023-179**
Effective date: 9/30/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Maine Revenue Services is proposing to adopt Rule 825 ("Tribal Member Income from Sources on Tribal Land") to reflect recently enacted legislation that provides for income modifications for enrolled tribal members residing on tribal land in Maine with income derived from or connected with sources on tribal land in Maine.

Basis statement:

Maine Revenue Services is proposing to adopt Rule 825 ("Tribal Member Income from Sources on Tribal Land") to reflect recently enacted legislation that provides for income modifications for enrolled tribal members residing on tribal land in Maine with income derived from or connected with sources on tribal land in Maine.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Administrative and Financial Services (DAFS),
Bureau of Alcoholic Beverages and Lottery Operations, Maine State Liquor and Lottery Commission

Umbrella-Unit: **18-553**

Statutory authority: 8 MRSA §374 and 8 MRSA §372, sub-§2, ¶I

Chapter number/title: **Ch. 10**, Lottery Rules

Filing number: **2023-173**

Effective date: 9/24/2023

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To update the rules to address lottery vouchers, update definitions that have changed with technological advances, clarify language and fix typographical errors.

Basis statement:

This amendment updates the existing rules governing the rules of the Maine Lottery. This amendment makes necessary changes to allow terminal generated vouchers to be handled consistent with other game tickets. This amendment also updates and clarifies definitions that have changed with advances in technology, gives the director the authority to temporarily suspend a licensee until such time a hearing can be held. There are also technical changes to clarify language and fix typographical errors.

Fiscal impact of rule:

No known fiscal impact

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Administrative and Financial Services (DAFS),
Bureau of Alcoholic Beverages and Lottery Operations, Maine State Liquor and Lottery Commission

Umbrella-Unit: **18-553**

Statutory authority: 8 MRSA §374 and 8 MRSA §372, sub-§2, ¶I

Chapter number/title: **Ch. 30**, Cash Pop Game Rules

Filing number: **2023-232**

Effective date: 11/19/2023

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The Maine Lottery is going to offer a new game called Cash Pop. These rules will govern the game and establish the rules for which the game is played, retailers are compensated, costs to play, prize amount and all other requirements to operate the game.

Basis statement:

The Maine Lottery is going to offer a new game called Cash Pop. These rules will govern the game and establish the rules for which the game is played, retailers are compensated, costs to play, prize amount and all other requirements to operate the game.

Fiscal impact of rule:

No known fiscal impact

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name:	Department of Economic and Community Development
Umbrella-Unit:	19-100
Statutory authority:	P.L. 2021, ch. 635, Pt. U codified at 5 M.R.S. §13056-J(4)
Chapter number/title:	Ch. 4 , Rule Regarding Housing Opportunity Program Grants
Filing number:	2023-055
Effective date:	4/18/2023
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

P.L. 2021, ch. 635, Pt. U established the Housing Opportunity Program to encourage and support the development of additional housing units in the State, including housing units that are affordable for low-income and moderate-income individuals and housing units targeted to community workforce housing needs. The Housing Opportunity Program Grants are grants to service providers to support municipal ordinance development, planning services and policy amendments to support increased housing development. The purpose of this new proposed rule is to define the criteria and proposal process for applications for grant funding. The Department will solicit applications for grants through a competitive application process.

Basis statement:

P.L. 2021, ch. 635, Pt. U established the Housing Opportunity Program to encourage and support the development of additional housing units in the State, including housing units that are affordable for low-income and moderate-income individuals and housing units targeted to community workforce housing needs. The Housing Opportunity Program Grants are grants to service providers and municipalities to support municipal ordinance development, planning services and policy amendments, and community housing planning services to support increased housing development. The purpose of this new rule is to define the criteria and proposal process for applications for grant funding. The Department will solicit applications for grants through a competitive application process.

Fiscal impact of rule:

The Department was allocated funds to provide grant funding to service providers to support municipal ordinance development and community housing priorities.

The economic impact of the Housing Opportunity Program is positive. The program is designed to encourage and support communities to develop additional housing units in the State, including housing units that are affordable for low-income and moderate-income individuals and housing units targeted to community workforce housing needs. The allocated funds support communities to implement zoning and land use-related policies necessary to increase housing development.

The Housing Opportunity requires municipalities to amend and create ordinances to increase housing development, including the development of additional housing units that are affordable for low-income and moderate-income individuals and housing units targeted to community workforce housing needs.

The rule will support the production of additional housing units, specifically targeted to support low and moderate income residents.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Economic and Community Development
Umbrella-Unit: 19-100
Statutory authority: P.L. 2021, ch. 672 codified at 30-A M.R.S. §§ 4364, 4364-A, 4364-B
Chapter number/title: Ch. 5, Housing Opportunity Program: Municipal Land Use and Zoning Ordinance Rule
Filing number: 2023-056
Effective date: 4/18/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This new proposed rule sets forth provisions which require municipalities to create or amend local ordinances in accordance with P.L. 2021, ch. 672. P.L. 2021, ch. 672 requires municipalities to create or amend local ordinances to allow for (1) additional density for affordable housing developments in certain areas; (2) multiple dwelling units on lots designated for housing; and (3) one accessory dwelling unit located on the same lot as a single-family dwelling unit in any area where housing is permitted. P.L. 2021 also directs the Department to adopt rules to administer certain sections of the law.

Basis statement:

This new rule sets forth the provisions which require municipalities to create or amend local ordinances to allow for (1) additional density for affordable housing developments in certain areas; (2) multiple dwelling units on lots designated for housing; and (3) one accessory dwelling unit located on the same lot as a single-family dwelling unit in any area where housing is permitted.

Fiscal impact of rule:

This rule requires municipalities to update land use and zoning ordinances in accordance with P.L. 2021, ch. 672. The Department was allocated funding to award grants to service providers for municipal ordinance development to comply with P.L. 2021, ch. 672.

The economic impact of P.L. 2021, ch. 672 and the corresponding rule is positive. This legislation is primarily designed to encourage and support communities to develop additional housing units in the State, including housing units that are affordable for low-income and moderate-income individuals and housing units targeted to community workforce housing needs. The allocated funds support communities to implement zoning and land use-related policies necessary to increase housing development.

P.L. 2021, ch. 672 requires municipalities to amend and create ordinances to increase housing development, including the development of additional housing units that are affordable for low-income and moderate-income individuals and housing units targeted to community workforce housing needs.

The rule will support the production of additional housing units, specifically targeted to support low and moderate income residents.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Economic and Community Development
Umbrella-Unit: 19-100
Statutory authority: PL 2021 ch. 672, PL 2023, ch. 192, P.L. 2023, ch. 264, codified at 30-A MRS §§ 4364, 4364-A, 4364-B
Chapter number/title: **Ch. 5**, Housing Opportunity Program: Municipal Land Use and Zoning Ordinance Rule
Filing number: **2023-181**
Effective date: 10/1/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department is proposing the following changes to its rule because of new legislation, P.L. 2023, ch. 192:

- Extending the implementation date of July 1, 2023, to January 1, 2024, for municipalities that enact ordinances without further approval by voters in a municipality and July 1, 2024, for all other municipalities.
- Changing the definition of "affordable housing development" to provide that an affordable housing development is a development in which a household whose income does not exceed a certain level can afford 51 % or more of the units in the development without spending more than 30% of the household's monthly income on housing costs; and
- Clarifying that an accessory dwelling unit must comply with shoreland zoning requirements established by the Department of Environmental Protection (DEP) and municipal shoreland zoning ordinances, except that a municipality may not categorically prohibit accessory dwelling units in the shoreland zone that would otherwise meet shoreland zoning requirements established by Department of Environmental Protection and municipal shoreland zoning ordinances.
- Amending Section 2(B)(2) to clarify that not all municipalities grant a certificate of occupancy, but instead may utilize a different procedure;
- Amending Section 3(A) and Section 4(A)(l) to clarify that additional dwelling units and accessory dwelling units are permitted on lots where residential uses are allowed, including as a conditional use;
- Amending Section 3(B)(3)(a) to clarify that dimensional requirements include setback requirements;
- Adding Section 4(B)(2)(c) to state the following about nonconforming lots: An accessory dwelling unit is allowed on a lot that does not conform to the municipal zoning ordinance if the accessory dwelling unit does not further increase the nonconformity;
- Adding Section 4(B)(3)(e) to state the following about illegal structures: An accessory dwelling unit that was not built with municipal approval must be allowed if the accessory dwelling unit otherwise meets the requirements for accessory dwelling units of the municipality and under this Section; and
- Amending Section 4(C)(l) to add that municipalities may establish an application and permitting process for accessory dwelling units that does not require planning board approval.

The Department also proposes to amend this rule to exempt from the requirements of the rule a lot or portion of a lot located in Lewiston or Auburn that is within the watershed of a water source that has received a waiver from filtration pursuant to federal regulations pursuant to P .L. 2023, ch. 264.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Finally, the Department proposes to amend this rule to make minor changes for clarity including:

- Adding the definitions of municipality, duplex, triplex, and quadplex;
- Amending Section 3(B)(4) to fix a typing error; and
- Amending Section 4(B)(3)(b) to add the phrase "excluding lot area requirements."

Basis statement:

The Department amended 19-100 C.M.R. Chapter 5 because of recent legislation: P.L. 2023, ch. 192 and P.L. 2023, ch. 264. This amended rule sets forth the provisions which require municipalities to create or amend local ordinances to allow for (1) additional density for affordable housing developments in certain areas; (2) multiple dwelling units on lots designated for residential use; and (3) one accessory dwelling unit located on the same lot as a single-family dwelling unit in any area where residential uses are permitted. The revised implementation dates are January 1, 2024, for municipalities that enact ordinances without approval of voters of the municipality and July 1, 2024, for all other municipalities.

Development of the Rule:

The Department relied upon the professional judgment and staff input of the Department of Economic and Community Development, Governor's Office of Policy Innovation and the Future, as well as the provisions of P.L. 2023, ch. 192 to develop the amendments to this rule.

Fiscal and Economic Impact:

This rule requires municipalities to update land use and zoning ordinances in accordance with P.L. 2021, ch. 672 and P.L. 2023, ch. 192. The Department has funding to support municipalities with the costs of amending and implementing ordinances.

The economic impact of P.L. 2021, ch. 672, P.L. 2023, ch. 192 and the corresponding rule is positive. These two pieces of legislation are primarily designed to encourage and support communities with housing development, including housing that is affordable for low-income and moderate-income individuals and housing targeted to community workforce housing needs. The allocated funds support communities to implement zoning and land use-related policies necessary to increase housing development.

Fiscal impact of rule:

The economic impact of PL 2021, ch. 672 and PL 2023, ch. 192 is positive. PL 2021, ch. 672 and its amendment, encourages and supports communities to develop additional housing units in the State, including housing units that are affordable for low-income and moderate-income individuals and housing units targeted to community workforce housing needs. The allocated funds support communities to implement zoning and land use-related policies necessary to increase housing development.

P.L. 2021, ch. 672 and its accompanying amendment require municipalities to amend and create ordinances to increase housing development, including the development of additional housing units that are affordable for low-income and moderate-income individuals and housing units targeted to community workforce housing needs.

The rule will support the production of additional housing units, specifically targeted to support low and moderate income residents.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Economic and Community Development
Umbrella-Unit: 19-100
Statutory authority: 36 MRS §6759
Chapter number/title: Ch. 400, Employment Tax Increment Financing
Filing number: 2023-004
Effective date: 1/11/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The primary purpose of the rule change is to align the rule with recent changes to the Employment Tax Increment Financing (ETIF) statute from PL 2021, c. 602 (LD 1156).

Basis statement:

The basis for the proposed revision is to align the rule with recent changes to the Employment Tax Increment Financing (ETIF) statute from PL 2021, c. 602 (LD 1156). The law changes ETIF reimbursements to be based on a percentage of employee gross wages, as opposed to state income tax withholdings. The revision to the rule updates the definitions, application requirements, reimbursement procedures, and other relevant sections to reflect the statutory change.

Fiscal impact of rule:

The fiscal impact will likely be negligible and neutral. The new percentages applied by PL 2021, c. 602 were calculated to have as close to net neutral impact as possible.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Economic and Community Development, **Office of Business Development**
Umbrella-Unit: **19-499**
Statutory authority: 5 MRS §13056-I
Chapter number/title: **Ch. 303**, Rural Workforce Recruitment and Retention Grant
Filing number: **2023-006**
Effective date: 1/15/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this rule is to establish a grant program for local economic development initiatives in rural regions of the State of Maine that will assist rural businesses in those regions in locating, recruiting, and retaining qualified staff to meet workforce needs.

Basis statement:

The basis for the proposed rule is to set forth the procedures, criteria and program review governing the Rural Workforce Recruitment and Retention Grant Program as required by PL 2022, c. 420 (LD 492).

Fiscal impact of rule:

The fiscal impact will likely be negligible and neutral.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Office of the Attorney General
Umbrella-Unit: 26-239
Statutory authority: 5 MRS § 4753
Chapter number/title: **Ch. 500**, Rules for Law Enforcement Collection of Traffic Stop Data to Eliminate Profiling
Filing number: **2023-255**
Effective date: 12/31/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The proposed rules for traffic stop data collection are intended to identify and eliminate any profiling by law enforcement and are promulgated pursuant to 5 MRSA § 4753.

Basis statement:

The proposed rules for traffic stop data collection are intended to identify and eliminate any profiling by law enforcement and are promulgated pursuant to 5 MRSA § 4753.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Office of the State Treasurer
Umbrella-Unit: **28-248**
Statutory authority: 5 M.R.S.A. Section 131
Chapter number/title: **Ch. 104**, Certain Payments not Immediate
Filing number: **2023-059**
Effective date: 5/24/2023
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

5 M.R.S.A. Section 131 requires the Offices of the State Treasurer and Controller adopt rules.

Basis statement:

The purpose of this rule is to establish procedures for a department or agency to accept payments using automated processes and computer driven technology that is not immediately deposited into the State Treasury. Pursuant to 5 M.R.S.A Section 131 as enacted by H.P. 1482 – L.D. 1995, the Treasurer of State and the State Controller shall adopt rules.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Secretary of State, **Bureau of Motor Vehicles**
Umbrella-Unit: **29-250**
Statutory authority: 29-A MRS §§ 153 and 1258
Chapter number/title: **Ch. 3**, Physical, Emotional and Mental Competence to Operate a Motor Vehicle
Filing number: **2023-060**
Effective date: 5/3/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These rules are being amended to reflect the changes and/or updates in health care, to more closely align them with some recent research on medical conditions and their impact of safe operation of a motor vehicle, and to decrease the burden on drivers, healthcare providers and Bureau of Motor Vehicles staff in reviewing and processing certain medical conditions. They describe the standards to be used by the Secretary of State in determining physical, emotional and mental competence of persons to operate motor vehicles. The rules establish a reporting system that requires persons to submit medical information to the Secretary of State. Persons found incompetent to operate a motor vehicle in accordance with procedures outlined in these rules may have their driving privileges suspended, revoked, or restricted.

The original Fact Sheet filed with the proposed rule incorrectly stated that this was a “repeal and replace” rulemaking; in fact, the BMV is amending its current rules. Details about the changes to the rules are included in the Basis Statement. BMV determined to file an Amended Fact Sheet to more comprehensively reflect the circumstances of this rulemaking.

As a result of comments on the proposed rule, BMV determined to make changes in the Visual Conditions Preamble and Peripheral Vision Table (starting on p. 66 of the adopted rule). Many changes were made to the Exceptional Case review process and requirements. The changes are described in detail in the Basis Statement. BMV further determined that these changes made the rule substantially different than the proposed rule, per 5 MRS 8052(5)(B). As such, on February 22, 2023, the BMV noticed another thirty (30) day comment period, with a deadline to comment of March 24, 2023.

Basis statement:

These rules, first published in 1979 and last repealed and replaced in 2016, describe the standards to be used by the Secretary of State in determining physical, emotional and mental competence of persons to operate motor vehicles. The rules establish a reporting system that requires persons to submit medical information to the Secretary of State. Persons found incompetent to operate a motor vehicle in accordance with procedures outlined in these rules may have their driving privileges suspended, revoked, or restricted. These rules are being amended to reflect the changes and/or updates in health care, to more closely align them with some recent research on medical conditions and their impact of safe operation of a motor vehicle, and to decrease the burden on drivers, healthcare providers and Bureau of Motor Vehicles staff in reviewing and processing certain medical conditions. Changes were also made at the recommendation of the Medical Advisory Board, with consideration given to suggestions from healthcare providers, drivers and the public.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Secretary of State, **Bureau of Motor Vehicles**
Umbrella-Unit: **29-250**
Statutory authority: 29-A M.R.S.A. §153
Chapter number/title: **Ch. 16**, Rules for the Collection of Driver's License Reinstatement Fees
Filing number: **2023-120**
Effective date: 9/6/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These rules implement the provisions of 29-A M.R.S.A. §§2472(7) and 2486, which require the Secretary of State to collect a reinstatement fee prior to the termination of a suspension or revocation and subsequent reinstatement of a driver's license. These rules establish the definition of reinstatement and procedures for calculating and collecting reinstatement fees, in order to ensure consistency in agency practice and reduce administrative fiscal penalties.

Basis statement:

These rules implement the provisions of 29-A M.R.S.A. §§2472(7) and 2486, which require the Secretary of State to collect a reinstatement fee prior to the termination of a suspension or revocation and subsequent reinstatement of a driver's license. These rules establish the definition of reinstatement and procedures for calculating and collecting reinstatement fees, in order to ensure consistency in agency practice and reduce administrative fiscal penalties.

The rules identify the process for assessing the total reinstatement fee due and clarify other reinstatement fee procedures pursuant to statutory requirements.

Careful consideration was given to the purpose and nature of the reinstatement of a driver's license in order to charge appropriate fees and allow for the reinstatement of driver's licenses for customers who have met their statutory obligations.

Although the adopted rule will be filed on August 2, 2023, the agency has determined that the rule will become effective on September 6, 2023, not five days after filing per the default provision in 5 MRS § 8052(6). The agency finds that this additional time is necessary to allow for smooth implementation of the administrative changes that will be involved in changing the collection of reinstatement fees, including computer system modifications and staff training.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Secretary of State, **Bureau of Motor Vehicles**
Umbrella-Unit: **29-250**
Statutory authority: 29-A M.R.S.A. §651-A
Chapter number/title: **Ch. 101**, Electronic Lien Titling Program
Filing number: **2023-195**
Effective date: 10/30/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

29-A M.R.S.A. §651-A allows the Secretary of State, Bureau of Motor Vehicles to operate an electronic system for maintaining vehicle lien and title information. The Bureau of Motor Vehicles has created this system, known as the Electronic Lien Titling Program (“ELT”), which allows ELT Lienholders to perform select title transactions through a computerized interface. Because of the considerable costs involved if the Bureau were to create a stable and secure computerized interface with individual ELT Lienholders, the Bureau has decided to enter into a MOU with third party ELT Service Providers. The ELT Service Providers will be responsible for establishing a computerized interface between BMV and ELT Lienholders. If ELT Lienholders wish to use the ELT, they must engage the services of an ELT Service Provider.

As per §651-A, participation in the program is optional for ELT Lienholders.

The proposed Rule stipulates requirements for enrolling in the program as required by statute. Additionally, the Rule outlines expectations for participants regarding work to be performed, future development, and privacy.

Basis statement:

This Rule implements 29-A M.R.S.A. §651-A, which authorizes the Secretary of State to use, but not require the use of, an Electronic Lien Titling Program (ELT) for maintaining vehicle lien and title information. As per §651-A, the Rule specifies participation in the program is optional for ELT Lienholders and describes the requirements for enrolling in the program. Additionally, the Rule outlines expectations for ELT participants regarding work to be performed, future development, and privacy.

At present, nearly every step of the vehicle titling process in Maine—from a customer mailing in an application to the Bureau of Motor Vehicles issuing a certificate of title—relies on paper documents. These paper-based processes are slower and more labor intensive than their electronic counterparts. Developing an Electronic Lien Titling Program is the Bureau of Motor Vehicles’ first step toward creating an efficient electronic system for maintaining vehicle title records.

Because of the considerable costs involved if the Bureau were to create a stable and secure computerized interface with individual ELT Lienholders, the Bureau has decided to enter into a MOU with third party ELT Service Providers. The ELT Service Providers will be responsible for establishing a computerized interface between BMV and ELT Lienholders. If ELT Lienholders wish to use the ELT, they must engage the services of an ELT Service Provider.

In summary, the Bureau of Motor Vehicles is adopting this Rule to implement 29-A M.R.S.A §651-A and develop a more efficient vehicle titling system.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Fiscal impact of rule:

The BMV is not imposing new or additional fees on ELT participants. Further, there will be no payments from the BMV to the ELT Service Providers under the MOUs. BMV anticipates that the ELT Service Providers may charge fees to ELT Lienholders for use of the technology. As such, there is no fiscal impact on the Bureau of Motor Vehicles

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Secretary of State, **Bureau of Motor Vehicles**
Umbrella-Unit: **29-250**
Statutory authority: 29-A MRS § 1113(14)
Chapter number/title: **Ch. 173**, Rules for the Sale, Purchase, Removal, Transport, and Disposal of Catalytic Converters
Filing number: **2023-057**
Effective date: 4/17/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule implements 29-A M.R.S.A. §1113, subsection 14, which requires the Secretary of State to set forth a process for an individual to request a vehicle identification number for a catalytic converter be assigned for a catalytic converter whose vehicle identification number cannot be identified or that the catalytic converter is too damaged to mark in a manner that is permanent and legible.

Basis statement:

This rule implements 29-A M.R.S.A. §1113, subsection 14, which requires the Secretary of State to set forth a process for an individual to request a vehicle identification number for a catalytic converter whose vehicle identification number cannot be identified or that the catalytic converter is too damaged to mark in a manner that is permanent and legible.

Careful consideration was given to the development of adequate processes for the individuals, recyclers, and scrap metal dealers.

This rule is adopted in the interest of advancing public safety, peace, and civility.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Secretary of State, **Bureau of Corporations, Elections and Commissions**
Umbrella-Unit: **29-250**
Statutory authority: Title 4, section 1928 and Title 4, section 1915(13)- (Revised Uniform Law on Notarial Acts)
Chapter number/title: **Ch. 700**, Rules Governing Notaries Public, Notarial Officers, Notarial Acts and the Procedures for Electronic and Remote Notarization
Filing number: **2023-101**
Effective date: 7/5/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The rule will govern notaries public, notarial officers and notarial acts including establishing the standards and procedures for electronic and remote notarization pursuant to the Revised Uniform Law on Notarial Acts. This emergency rule will repeal and replace the current notary rule (chapter 700).

The Revised Uniform Law on Notarial Acts (RULONA) was effective on July 1, 2023, which was a Saturday, and granted the Secretary of State authority to adopt new administrative rules. As a result of comments made on the proposed rules, the Secretary of State determined that there were substantial changes needed to be made to the proposed rules (chapter 700). Therefore, to have rules in place for the adoption of the new law, we are filing these emergency rules to be effective on July 5, 2023.

Basis statement:

The Revised Uniform Law on Notarial Acts (RULON A) became effective on July 1, 2023. The rule is necessary to implement all aspects of RULON A, including changed qualifications for notaries public and an approval process by the Secretary of State for technologies for electronic and remote notarization. It will also establish the standards and procedures for electronic and remote notarization. This emergency rule will repeal and replace the current notary rule (chapter 700).

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Secretary of State, **Bureau of Corporations, Elections and Commissions**
Umbrella-Unit: **29-250**
Statutory authority: Title 4, section 1928 and Title 4, section 1915(13)- (Revised Uniform Law on Notarial Acts)
Chapter number/title: **Ch. 700**, Rules Governing Notaries Public, Notarial Officers, Notarial Acts and the Procedures for Electronic and Remote Notarization
Filing number: **2023-184**
Effective date: 10/2/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule will govern notaries public, notarial officers and notarial acts including establishing the standards and procedures for electronic and remote notarization pursuant to the Revised Uniform Law on Notarial Acts. This new rule will replace the current notary rule (chapter 700).

Basis statement:

The Revised Uniform Law on Notarial Acts (RULONA) became effective on July 1, 2023. The rule is necessary to implement all aspects of RULONA, including changed qualifications for notaries public and an approval process by the Secretary of State for technologies for electronic and remote notarization. It will also establish the standards and procedures for electronic and remote notarization. This rule will repeal and replace the current emergency rule that was effective on July 5, 2023 (chapter 700).

Fiscal impact of rule:

No fiscal impact expected.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Secretary of State, **Bureau of Corporations, Elections and Commissions**
Umbrella-Unit: **29-250**
Statutory authority: Title 5, section 90-G
Chapter number/title: **Ch. 720**, Rules Governing the Licensing of Marriage Officiants who are Authorized to Solemnize Marriages in Maine
Filing number: **2023-102**
Effective date: 7/5/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The new law governing the licensing of marriage officiants, Title 5, section 90-G, who are thereby authorized to solemnize marriages in Maine pursuant to Title 19-A, chapter 23.

The new law for marriage officiants was effective on July 1, 2023, which was a Saturday, and granted the Secretary of State authority to adopt new administrative rules. As a result of comments made on the proposed rules, the Secretary of State determined that there were substantial changes needed to be made to the proposed rules (chapter 720). Therefore, to have rules in place for the adoption of the new law, we are filing these emergency rules to be effective on July 5, 2023.

Basis statement:

The new law governing the licensing of marriage officiants, Title 5, section 90-G, who are thereby authorized to solemnize marriages in Maine pursuant to Title 19-A, chapter 23, became effective on July 1, 2023. The rule is necessary to implement all aspects of this new law, including the qualifications and the licensing of marriage officiants. This emergency rule will adopt a new marriage officiant rule (chapter 720).

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Secretary of State, **Bureau of Corporations, Elections and Commissions**
Umbrella-Unit: **29-250**
Statutory authority: Title 5, section 90-G
Chapter number/title: **Ch. 720**, Rules Governing the Licensing of Marriage Officiants who are Authorized to Solemnize Marriages in Maine
Filing number: **2023-185**
Effective date: 10/2/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule will govern the licensing of marriage officiants pursuant to Title 5, section 90-G who are thereby authorized to solemnize marriages in Maine pursuant to Title 19-A, chapter 23.

The new law for marriage officiants was effective on July 1, 2023, which was a Saturday, and granted the Secretary of State authority to adopt administrative rules. As a result of comments made on the first round of proposed rules, the Secretary of State determined that there were substantial changes that needed to be made to the proposed rules (chapter 720). Therefore, emergency rules were put in place to be effective on July 5, 2023. The proposed rules were made available for a second round of public comment with a comment deadline of August 28, 2023.

Basis statement:

The rule will govern the licensing of marriage officiants pursuant to Title 5, section 90-G who are thereby authorized to solemnize marriages in Maine pursuant to Title 19-A, chapter 23.

The new law for marriage officiants was effective on July 1, 2023. This rule is necessary to implement all aspects of the licensing of marriage officiants by the Secretary of State. This rule will repeal and replace the current emergency rule that was effective on July 5, 2023 (chapter 720).

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Secretary of State, **Maine State Archives**
Umbrella-Unit: **29-255**
Statutory authority: 5 MRSA, Chapter 6, §95-C, sub-1
Chapter number/title: **Ch. 2**, State Records Center Facilities and Services
Filing number: **2023-108**
Effective date: 7/17/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Statutory authority for this Rule is 5 MRSA, Chapter 6, §95-C, sub-1. The State Records Center now falls under Records Management. Changes in Chapter 2 reflect those changes.

Basis statement:

Statutory authority for this Rule is 5 MRSA, Chapter 6, §95-C, sub-1. The State Records Center now falls under Records Management. Changes in Chapter 2 reflect those changes.

CHAPTER 2 - STATE RECORDS CENTER FACILITIES AND SERVICES. This rule prescribes policies, standards, and procedures to govern the custody, use and withdrawal of agency records transferred to State Records Center facilities. The rule may be amended to comply with law and policy changes.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: **Maine Public Utilities Commission (PUC)**
Umbrella-Unit: **65-407**
Statutory authority: Public Law 2023, chapters 306 and 361 and; 35-A M.R.S. §§ 104, 111, 1301, 3203(9) and 3210
Chapter number/title: **Ch. 311**, Portfolio Requirements
Filing number: **2023-241**
Effective date: 12/2/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission amends its Portfolio Requirement rules (Chapter 311) to comply with the requirements of Public Law 2023, chapters 306 and 361.

Basis statement:

A. RPS Requirements

Section 3210 of Title 35-A directs the Commission to allow competitive electricity providers to satisfy the renewable portfolio requirements (RPS requirements) for Class I and Class IA resources through an alternative compliance payment. The Commission set the alternative compliance payment (ACP) rate in Chapter 311 of the Commission's rules. Chapter 311 currently does not have an ACP mechanism in place for Class II resources.

B. Legislation

During the 2023 legislative session, the Legislature enacted L.D. 399, An Act to Amend the Portfolio Requirements for Class II resources and Require Money Collected from Alternative Compliance Payments to be Used for Financial Assistance (Act). P.L. 2023, c. 361. The Act makes changes to Maine's RPS requirements. Specifically, the Act allows competitive electricity providers to satisfy the portfolio requirements for Class II resources through an ACP mechanism. The Act directs the Commission to set the ACP rate by rule, at an amount not to exceed \$10 per MWh.

The Act also extends the time period for the 300% multiplier for the output of a generator fueled by municipal solid waste in conjunction with recycling that has obtained a solid waste facility license from the Department of Environmental Protection.

Finally, the Act directs the Commission to use ACPs for Class I, Class IA, and Class II resources to provide financial assistance for low-income households in accordance with 35-A M.R.S. § 3214(2).

C. Inquiry (Docket No. 2023-00194)

On July 28, 2023, the Commission initiated an inquiry into Chapter 311. *Maine Public Utilities Commission Inquiry Regarding an Alternative Compliance Payment Rate for Class II Resources*, Docket No. 2023-00194 (July 28, 2023). The purpose of the Inquiry was to gather input from interested persons on the amount at which the Commission should set the ACP rate for Class II resources. Comments were filed by Maine Power LLC, the Office of the Public Advocate (OPA), Central Maine Power (CMP), C.N. Brown Electricity, LLC (C.N. Brown), Fox Island Electric Cooperative (FIEC), ecomaine, Great River Hydro, Maine Renewable Energy

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Association (MREA), and Brookfield Renewable Trading and Marketing (Brookfield). On August 18, 2023, the OPA and Maine Power LLC (Maine Power) filed reply comments.

RULEMAKING PROCESS

On August 30, 2023, the Commission issued a Notice of Rulemaking (NOR) and proposed amendments to Chapter 311. Consistent with rulemaking procedures, the Commission provided interested persons with the opportunity to provide oral comments on the proposed rule during a public hearing held on September 27, 2023. The Commission also provided two opportunities to file written comments: once on September 22, 2023, and final comments on October 13, 2023.

Fiscal impact of rule:

Minimal

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Maine Public Utilities Commission (PUC)
Umbrella-Unit: 65-407
Statutory authority: 35-A M.R.S. §§ 104, 111, 3474, P.L. 2021 Ch. 264
Chapter number/title: Ch. 324, Small Generator Interconnection Procedures
Filing number: 2023-233
Effective date: 11/20/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission amends its Small Generator Interconnection Procedures Rule (Chapter 324). This rulemaking implements the requirements of “An Act To Support the Continued Access to Solar Energy and Battery Storage by Maine Homes and Businesses” (L.D. 1100). In addition, this rulemaking makes additional changes to facilitate the interconnection process for all levels of generation facilities and adds provisions related to export control and energy storage.

Basis statement:

The factual and policy basis for this rule is set forth in the Commission’s Order Amending Rule and Statement of Factual and Policy Basis, Docket No. 2023-00103, issued on November 3, 2023. Copies of this Statement and Order have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 18 State House Station, Augusta, Maine 04333-0018.

Fiscal impact of rule:

No fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: **Maine Public Utilities Commission (PUC)**
Umbrella-Unit: **65-407**
Statutory authority: 35-A M.R.S. §§ 104, 111, 711, 2524, 7903, 8302
Chapter number/title: **Ch. 880**, Attachments to Joint-Use Utility Poles; Determination and Allocation of Costs; Procedure
Filing number: **2023-174**
Effective date: 9/25/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission amends Chapter 880 to require participation by pole attachers in any pole management database implemented by large owners of joint use utility poles. In addition, the Commission amends Chapter 880 to implement the provisions of a waiver ordered by the Commission that corrected an error in the portion of Chapter 880, § 2(A)(14)(a) that prescribes the order in which attaching entities must move attachments from a replaced joint use utility pole to a new pole.

Basis statement:

The factual and policy basis for this Chapter is set forth in the MPUC's Order Amending Rule and Statement of Factual and Policy Basis, Docket No. 2023-00058, issued on September 12, 2023. Copies of the Order have been filed with this Chapter at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 18 State House Station, Augusta, Maine 04333-0018.

Fiscal impact of rule:

Minimal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: **Workers' Compensation Board**
Umbrella-Unit: **90-351**
Statutory authority: 39-A MRS §312
Chapter number/title: **Ch. 4**, Independent Medical Examiner
Filing number: **2023-248**
Effective date: 12/16/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To emphasize the importance of independence when acting as an independent medical examiner.

Basis statement:

The rule adds a performance criteria and will emphasize to the independent medical examiners the importance of providing impartial and objective reports in cases assigned to them.

Fiscal impact of rule:

None

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: **Workers' Compensation Board**
Umbrella-Unit: **90-351**
Statutory authority: 39-A M.R.S.A. §§ 208 and 209-A; 39-A M.R.S.A. §§§ 312 and 315 and 611
Chapter number/title: **Ch. 5**, Medical Fees; Reimbursement Levels; Reporting Requirements
Ch. 17, Expenses and Fees
Filing number: **2023-147, 2023-148**
Effective date: 9/4/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To promote efficient and timely processing of claims arising under 39-A M.R.S.A. §201 (3-A) by improving the process of obtaining necessary medical information and for medical bills.

Basis statement:

Requiring the signature of an attorney or advocate to obtain medical records related to psychological matters resulted in the denial of cases arising under 39-A M.R.S.A. §201 (3-A) (Mental injury caused by stress). The rule removes that requirement and also changes the release for records related to psychological matters. The proposed amendment strikes a balance between protecting sensitive information with efficient processing of claims arising under §201 (3-A).

The rule also clarifies how bills that are missing required information must be processed. The proposed amendment ensures all parties have necessary information so bills for medical treatment can be processed in a timely and efficient manner.

Fiscal impact of rule:

None

Annual List of Rule-Making Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A(5)

Agency name: Maine Health Data Organization
Umbrella-Unit: 90-590
Statutory authority: 22 M.R.S. Section 8705-A and 24-A M.R.S. §6951
Chapter number/title: Ch. 100, Enforcement Procedures
Filing number: 2023-171
Effective date: 10/14/2023
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

This proposed rule change is necessary to align the enforcement requirements in Public Law 2021, Chapter 603 and in 90-590 C.M.R. Chapter 247, with the enforcement provisions described in 90-590 C.M.R. Chapter 100: Enforcement Procedures. These proposed changes add a new provision under Section 3. Penalties; fines, for a payor that fails to file supplemental health care data sets and/or to meet the standards for data as defined in 90-590 Chapter 247. Additionally, the definitions for manufacturer and wholesale drug distributor have been updated to align the definitions in 22 MRS Chapter 1683 and 90-590 C.M.R. Chapter 570.

Basis statement:

Chapter 100 establishes a schedule of fines and other enforcement actions for failure to file clinical, quality, financial, restructuring, health care claims and prescription drug price data; failure to pay the annual assessment; and for intentional or knowing failure to protect the disclosure of confidential or privileged data.

The proposed changes summarized below (except for updates to two definitions in Section 2) are a result of the new requirements in 24-A M.R.S. §6951, including those in PL 2021, c603, "An Act Regarding Reporting on Spending for Behavioral Health Care Services and To Clarify Requirements for Credentialing by Health Insurance Carriers".

The MHDO Board met on April 7, 2022, and authorized the MHDO to initiate rulemaking to Chapter 100, as required under 22 M.R.S. §8705-A. The proposed rule was publicly noticed on September 14, 2022, and a public hearing was held on October 6, 2022. No public comments were received at the public hearing or by the 10-day comment period deadline of October 17, 2022. The Board provisionally adopted the major substantive rule on December 1, 2022. Subsequently, the Board submitted the provisionally adopted rule to the Maine State Legislature for its review, in accordance with 5 MRS Sec. 8072.

Fiscal impact of rule:

N/A

Annual List of Rule-Making Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A(5)

Agency name:	Maine Health Data Organization
Umbrella-Unit:	90-590
Statutory authority:	22 MRSA, §§8703(1), 8704(4), 8708(6-A) and 8712(2)
Chapter number/title:	Ch. 243 , Uniform Reporting System for Health Care Claim Data Sets
Filing number:	2023-249
Effective date:	12/17/2023
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

Given the public health crisis the opioid epidemic has created and the need for comprehensive data to assist with identifying outbreaks, responding to overdoses and providing care in Maine's communities, this proposed rule adds fields to the data layout that will be needed to collect de-identified substance use disorder (SUD) data. We intend to prepare the data collection files so that when the federal government adopts the clarification that they have provided regarding 42 CFR Part 2, specifically related to the submission of deidentified SUD data, MHDO will be ready to respond with its payors in a timely manner. Additionally, we are adding fields for the collection of prescription drug rebate data, and dental claims information. The proposed changes modify fields in the medical claims file to better account for the payment arrangement type at the claim level and remove obsolete requirements, definitions, and sources.

Basis statement:

The Maine Health Data Organization is authorized by statute to collect health care data. This chapter governs the provisions for filing health care claims data sets from all third-party payors, third-party administrators, Medicare health plan sponsors and pharmacy benefits managers. The provisions include identification of the organizations required to report; establishment of requirements for the content, format, method, and time frame for filing health care claims data; establishment of standards for the data reported; and compliance provisions.

This proposed rule adds new fields to collect de-identified substance use disorder (SUD) data, prescription drug rebate data, and additional dental claims information. It modifies fields in the medical claims file to better account for the payment arrangement type at the claim level. It also removes obsolete requirements, definitions, and sources.

The MHDO Board met on February 2, 2023, and authorized the MHDO to initiate rulemaking to Chapter 243. This is a routine technical rule. The MHDO held a public hearing on August 3, 2023, with an August 14, 2023, deadline for written comments. The MHDO board met on December 7, 2023, and unanimously voted to adopt the changes as proposed and amended, as outlined in the Basis Statement (dated December 7, 2023).

Fiscal impact of rule:

There is no fiscal impact on state municipalities, counties or small businesses.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A(5)

Agency name: **Maine Health Data Organization**
Umbrella-Unit: **90-590**
Statutory authority: 22 M.R.S. §§8703(1); 8704(1)&(4); and 24-A M.R.S. §6951
Chapter number/title: **Ch. 247**, Uniform Reporting System for Non-Claims Based Primary Care Payments and Other Supplemental Health Care Data Sets
Filing number: **2023-250**
Effective date: 12/17/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This proposed rule adds new data fields and updates others to ensure collection of aggregated dollar amounts paid in relation to substance use disorder (SUD) and non-claims-based prescription drug rebate data.

Basis statement:

The Maine Health Data Organization is authorized by statute to collect health care data. This Chapter contains the provisions for filing non-claims-based payment information and other supplemental health care data sets.

This proposed rule adds new data fields and updates others to ensure collection of complete and accurate aggregated, claims-based substance use disorder (SUD) payment data and non-claims based prescription drug rebate data.

The MHDO Board met on February 2, 2023, and authorized the MHDO to initiate rulemaking to Chapter 247, as required under 22 MRSA §8705-A. A public hearing was held on August 3, 2023, with a comment deadline of August 14, 2023. The MHDO board met on December 7, 2023, and unanimously voted to adopt the changes as proposed and amended, as outlined in the Basis Statement (dated December 7, 2023).

Fiscal impact of rule:

There rule will not have a fiscal impact on municipalities or counties, or any adverse economic impact of small businesses.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A(5)

Agency name: **Maine Health Data Organization**
Umbrella-Unit: **90-590**
Statutory authority: 22 M.R.S. §§ 8703(1), 8704(1), 8705-A and 8705-A(3), 8731, 8732, 8733, 8734, 8735 and 8737.
Chapter number/title: **Ch. 570**, Uniform Reporting System for Prescription Drug Price Data Sets
Filing number: **2023-083**
Effective date: 7/8/2023
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

This rule change is necessary to align the requirements in PL 2021, c 305, "An Act To Increase Prescription Drug Pricing Transparency", with the requirements in 90-590 C.M.R. Ch. 570.

Basis statement:

The Maine Health Data Organization (MHDO) is authorized by statute to collect health care data, including prescription drug price data. The purpose of this Chapter is to explain the provisions for filing prescription drug price sets from prescription drug manufacturers, wholesale distributors and pharmacy benefits managers.

The MHDO Board met on April 7, 2022 and authorized the MHDO to initiate rulemaking to Chapter 570 (22 MRSA §8704, sub-§1; §8705-A; §8737), for the primary purpose of aligning Chapter 570 with PL 2021, c. 305. The proposed rule was publicly noticed on September 14, 2022, and a public hearing was held on October 6, 2022 with a 10 comment period deadline of October 17, 2022. The Board met on December 1, 2022, to discuss comments received and unanimously voted to provisionally adopt the rule changes as outlined. This rule was reviewed by the legislature and approved by the MHDO Board on June 1, 2023 for final adoption, with an amendment to Section 2(C)(1)(a) to correct a cross-reference.

The following represent the proposed changes to the rule and the rationale for these changes:

Section 1. Definitions

Non-substantive typographical and wording changes are included.

Rationale: The proposed changes clean up the typos and improve uniformity and consistency in language between MHDO statute and rules.

Amends current Section 1(C) as follows:

Drug Product Family. "Drug product family" means a group of one or more prescription drugs that share a unique non-proprietary name and dosage form.

Adds a definition to current Section I for Dosage Form

Dosage Form means the physical form in which a prescription drug is produced and dispensed, such as a tablet, a capsule, or an injectable.

Section 2. Registration and Submission Requirements

-Section 2(B) Public Notice of Substantial Drug Price Change or Introduction has revised language.

Rationale: PL 2021, c. 305 Sec. 5 and 22 MRSA §8732, sub-§1-A

Annual List of Rule-Making Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A(5)

Section 2(C) Disclosures by Manufacturers, Wholesale Drug Distributors and Pharmacy Benefits Managers has revised language.

Rationale: PL 2021, c. 305 Sec. 6 and 22 MRSA §8732, sub-§2

-Section 2(J)(3) Pharmacy Benefits Manager Report has revised language for several data elements regarding reporting for the State of Maine rather than the United States.

Rationale: The issue regarding the level of reporting for Pharmacy Benefit Managers was agreed to in the HCIFS committee work session in the 130th Maine Legislature, but inadvertently not included in the final version of the rule that the legislature voted on earlier this year.

Section 6. Confidentiality

-Sections 6(B) and 6(C) have revised language.

Rationale: PL 2021, c. 305 Sec. 7 and 22 MRSA §8733

Fiscal impact of rule:

There is no fiscal impact on state municipalities, counties, or small businesses.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Maine Retirement Savings Board
Umbrella-Unit: 90-699
Statutory authority: 5 MRS §174
Chapter number/title: Ch. 101, Maine Retirement Savings Program
Filing number: 2023-236
Effective date: 11/22/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The statute requires the Board to adopt rules establishing the operation of the Maine Retirement Savings Program.

Basis statement:

The Maine Retirement Savings Program Rule is adopted in compliance with 5 MRSA §174. The Rule is required to establish several elements of the Program, including:

- The default contribution amount: 5%
- The default investment option: A capital preservation account for the first 30 days, then a suite of target date funds, with default enrollments in the vintage that anticipates retirement at age 65
- The default auto-escalation provision: 1% annually, until the contribution reaches 10%

Additional policy matters the rule addresses are:

- Participating Employers are not required to enroll Covered Employees until they have worked for 120 days, addressing the question of how Seasonal Employees will be treated.
- Part-time employees must be enrolled and are included in the count of whether an employer employs 5 or more employees.
- Identifying the registration deadlines for Employers

The rule also identifies the basic operation of the Program, including the role of employers, the communications with employees.

The rules sets out an enforcement and appeal process.

Fiscal impact of rule:

The rule is not expected to have a fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Kim Wallace Adaptive Equipment Loan Program Fund Board
Umbrella-Unit: 94-178
Statutory authority: 10 MRS §§ 371 -377
Chapter number/title: Ch. 503, Kim Wallace Adaptive Equipment Loan Program Underwriting Guidelines
Filing number: 2023-110
Effective date: 7/26/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this new rule is to publish the loan underwriting guidelines, including interest rates, that have been proposed by the Financial Services Provider and reviewed and approved by the Kim Wallace Adaptive Equipment Loan Program Fund Board.

Basis statement:

The Kim Wallace Adaptive Equipment Loan Program Board, established pursuant to 10M.R.S. §373, administers the Kim Wallace Adaptive Equipment Loan Program, which provides funding for loans to qualified borrowers within the State in order to acquire adaptive equipment designed to assist persons with disabilities to improve their independence. The Board contracts with a financial services provider, which approves loan applications that are consistent with underwriting guidelines proposed by the financial services provider and approved annually by the board, pursuant to 10 M.R.S. §374. This rule sets forth those loan underwriting guidelines, including interest rates, in accordance with 10 M.R.S. § 375 to ensure that applicants are approved who have shown the ability to repay the loan. The Board established an appropriate interest rate consistent with the intention of the Program.

At its regular meeting on May 9, 2023, the Board voted to post the proposed rule for public comment, and the Secretary of State posted the notice on May 24, 2023. The public comment period ended on June 30, 2023, and no public comments were received. At its regular meeting on July 11, 2023, the Board voted to adopt the Rule as posted, with no changes.

Fiscal impact of rule:

N/A

Annual List of Rule-Making Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A(5)

Umbrella-Unit: 94-270
Statutory authority: 1 M.R.S. § 1003(1), 21-A M.R.S. § 1126
Chapter number/title: **Ch. 2**, Hearing Procedures; **Ch. 3**, Maine Clean Election Act and Related Provisions
Filing number: 2023-113, 2023-114
Effective date: 8/27/2023
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

The Commission wishes to conform its rules to statute and make minor administrative changes to the Maine Clean Election Act program.

Basis statement:

Chapter 2, §§ 2 & 6(1) – Procedures for Commission Hearings

Factual and policy basis for amendments: Chapter 2 of the Commission’s rules sets out procedures for conducting hearings. The Commission is authorized to hold hearings on complaints concerning legislative ethics and appeals of staff determinations on Maine Clean Election Act funding. 1 M.R.S. § 1013(2), 21-A M.R.S. § 1125(14)(B). In addition, when facts are disputed or a witness’ credibility is in question, the Commission has held discretionary hearings on matters of campaign finance compliance. The Commission’s hearings are considered “adjudicatory proceedings” as defined in the Maine Administrative Procedure Act (APA). 5 M.R.S. § 8002(1). Consequently, the hearing procedures in the APA apply to Commission hearings. 5 M.R.S. § 9051(1).

The Commission last amended its Chapter 2 rules in 1998. In this rulemaking, the Commission proposed updates to these rules to conform them to the Maine APA.

Chapter 2, § 2 addresses the Commission’s procedures for providing notices of hearings. The Commission proposed eliminating the mandatory newspaper publication for *all* hearings, and instead conforming its notice procedures to the APA. In practice, the Commission provides notices to persons whose legal rights, duties and privileges are at issue by U.S. Mail and electronic mail, and sends an email notice to all persons who have signed up to receive notifications of Commission meetings.

Chapter 2, § 6(1) addresses the standards for the admissibility of evidence in Commission hearings. Currently, this subsection sets out a standard that is slightly different than the APA. The proposed amendments were intended to eliminate the potential argument in future hearings that the Commission intentionally adopted a standard that is different than the APA. Adopting the APA language will provide the Commission with the latitude to accept verbal hearsay into evidence, which is permissible under the APA. For reasons of expediency or to expand the scope of information that may be considered, there are situations in which the Commission may wish to admit a statement that was made outside of a hearing as recounted by a hearing witness. This could eliminate the need to call additional witnesses when the sworn testimony of the hearing witness is viewed as reliable.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A(5)

Chapter 3, Maine Clean Election Act and Related Provisions
§ 2(4) - Qualifying Contributions

Factual and policy basis for amendment: Candidates collect \$5 qualifying contributions (QCs) and submit them to the Commission in order to qualify for Maine Clean Election Act (MCEA) funding. A QC is not a general campaign donation to the candidate. Rather, it is a payment by a Maine voter to the Maine Clean Election Fund to demonstrate the voter's support for the candidate's qualification to receive MCEA funding. The QCs are deposited in the Maine Clean Election Fund to partially underwrite the costs of the program.

Candidates may collect QCs by check, cash (which the candidate converts to a money order), or online. When the candidates are ready to qualify for the MCEA program or to receive supplemental payments, the candidate submits the QCs and accompanying documentation to the Commission. The department staff reviews the QCs and documents to make sure they meet technical requirements to be considered valid. Most QCs are found to be valid, but some are invalid for a variety of reasons.

As soon as the Commission staff reviews a candidate's submission of QCs, the checks and money orders are delivered to the State's central accounting office for deposit into the Maine Clean Election Fund. Many Maine residents balance their checkbooks. The Commission has found that if the Commission holds on to checks too long, candidates inquire why the department has not deposited their supporters' checks. Also, the Commission believes it is a responsible practice not to have the checks and money orders in its custody too long.

Every election year, a few candidates request that the checks or money orders be returned to them if these payments are not going to be counted toward MCEA funding. In 2022, the Commission received exactly two such requests. Because the Commission arranges for the prompt deposit of the checks and money orders after its review, the department's internal policy has been the Commission may not return the checks or money order to the candidates.

The Commission proposed a new § 2(4)(N) to its Chapter 3 rules that would formalize this policy. The current practice of promptly depositing checks and money orders maximizes the Commission's efficiency in making payments to candidates. To hold a subset of checks or money orders within the office after the staff's review for possible return to candidates would add a layer of administrative burden that would reduce the department's efficiency in performing its core duties. Given the tens of thousands of QCs the Commission receives, that investment of time would not be justified by a few requests from candidates for the return of their QCs. While \$5 is a meaningful amount to some contributors, it is still a small amount compared to the staff time of holding QCs within the Commission's office for possible return to candidates.

Fiscal impact of rule:

The Commission anticipates that the rule amendments will not have a fiscal impact on the State, the municipalities and counties of Maine, and will not impose an economic burden on small businesses.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A(5)

Agency name: Baxter State Park Authority
Umbrella-Unit: 94-293
Statutory authority: 12 MRS §903(1)
Chapter number/title: Ch. 1, Baxter State Park Rules and Regulations
Filing number: 2023-132
Effective date: 8/20/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To expressly codify the Baxter State Park Authority's interpretation of current Rule 2.2.

Basis statement:

Rule 2.2 (Hiking or Mountain Climbing may be restricted...) The Baxter State Park Authority interprets current Rule 2.2 as allowing the Park Director to issue special use permits, on a case-by-case basis, that authorize children under the age of six (6) to hike under their own power above timberline provided the applicant demonstrates to the Park Director's satisfaction the child's ability to hike under their own power above timberline. For example, the Park Director has issued special use permits to hike above timberline for children under the age of six who had previously hiked the entire length of the Appalachian Trail under their own power (e.g., not carried by an adult) before undertaking a hike of Katahdin. This proposed amendment to current Rule 2.2 would expressly codify in Rule 2.2. the Authority's interpretation of current Rule 2.2.

Fiscal impact of rule:

N/A

Annual List of Rule-Making Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A(5)

Agency name: Maine Public Employees Retirement System (MainePERS)
Umbrella-Unit: 94-411
Statutory authority: 5 MRS § 17103(4)
Chapter number/title: Ch. 506, Eligibility for Disability Retirement Benefits
Filing number: 2023-030
Effective date: 3/1/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This proposed new rule sets forth the standards and processes for determining eligibility for disability retirement benefits.

Basis statement:

This proposal for rule-making was noticed on December 21, 2022. A public hearing was held on January 12, 2023. One member of the public provided oral comments at the public hearing, and the same member of the public submitted written comments prior to the January 23, 2023 comment deadline. No other comments were received.

MainePERS has not previously had a single rule that addresses eligibility for disability retirement benefits. There are existing rules that address certain aspects of eligibility, and otherwise the System has followed the statutes as interpreted by court and Board decisions as well as System policies and practices. The proposed rule sets forth the standards and processes for determining eligibility pursuant to statutory law at both the initial application stage and upon review for continued eligibility. The proposed rule also addresses the determinations of whether a disability retirement recipient is unable to engage in any substantially gainful activity, and whether a disability applicant is unable to perform the essential functions of the employment position with reasonable accommodation. Those matters are currently addressed in Rule Chapter 507 and Rule Chapter 509, respectively. Staff believes including these aspects of the disability retirement program in the new rule addressing disability retirement benefits provides a more comprehensive rule. Rule Chapter 507 and Rule Chapter 509 are proposed for repeal with the adoption of this new disability retirement benefits rule.

One member of the public¹ made several recommendations regarding the proposed new rule. First, the commenter opined that the last sentence in the definition of “(c)onsistent with the persons’ training, education, or experience” should be deleted. Part of the continued eligibility determination when a disability retirement benefit recipient is reviewed is whether they can perform substantially gainful activity that would generate annual income in excess of the substantially gainful activity amount. The definition provided in the rule acknowledges that, although the individual has training, education or experience in a specific area, some additional training may be necessary to perform the activity. This is consistent with existing Rule Chapter 507 and the Superior Court’s decision in *Davidson vs. Maine State Retirement System*, 2000 Me. Super. LEXIS 115, which provide that transferrable skills and knowledge can make a position “(c)onsistent with the persons’ training, education, or experience” notwithstanding the need for additional position-specific training. For this reason, staff does

¹ Sarah Walton, Esq., Winthrop

Annual List of Rule-Making Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A(5)

not believe that any additional change to this section of the proposed rule is necessary in response to this comment, and the Board concurs.

Second, the commenter opined that the definition of “earnings” should be clarified to include only income generated by “...the retiree’s own productive work activity.” Further, that assuming that net rental income from real estate derives from work activity performed by the retiree is unfair. In oral comments, the commenter also opined that “income received in return for...goods...” should not be considered income. In response to these comments, staff agrees that the reference to goods and the suggestion of a presumption on real estate income should be removed. Staff recommends that these changes be made to the proposed definition of earnings, and the Board concurs.

Third, the commenter opined that the definition of “substantially gainful activity” is too broad and that MainePERS should consider “medical and vocational evidence in determining whether the beneficiary has the physical, mental, and vocational capabilities to perform substantially gainful activity.” Staff believes the proposed definition is consistent with statute and closely aligns with current Rule Chapter 507 and notes that evidence of the sort identified by the commenter may be considered by MainePERS under the proposed rule. Staff does not recommend any changes to the proposed rule based on this comment, and the Board concurs.

Fourth, the commenter opined that the term “whole-person approach” as used in the proposed rule should be defined. Staff believes that the proposed language in the rule is clear in that it requires that conditions and resulting functional limitations be considered “in totality” and no change is recommended to address this comment. The Board concurs.

Fifth, the commenter opined that the proposed rule should include additional information about the application of the disabled veteran presumption. In response to this comment, staff notes that the presumption is adequately set forth in statute and recommends amending the rule language to include the applicable statutory cites. The Board concurs with this change.

Sixth, the commenter suggests reconsideration of the definition of “earnings” as it relates to review for continuing eligibility. Changes to the definition of “earnings” are discussed above. The commenter also suggests a review of MainePERS’ practices regarding earnings review. This is outside of the scope of the current rulemaking. Staff recommends no changes to the proposed rule based on this comment, and the Board concurs.

Seventh, the commenter requests that the proposed rule be expanded to include additional sections regarding termination of benefits and the actively seeking work program. These topics are beyond the scope of the subject of this rule, eligibility for disability retirement. Staff recommends no changes in response to this comment, and the Board concurs.

In summary, based on consideration of the comments received, staff recommends changes to Section 1(4) to amend the definition of “earnings,” and Section 2(4) to insert statutory cites. The Board concurs with these recommendations.

At the Board’s regular meeting held on February 9, 2023, Henry Beck made the motion, seconded by Ken Williams to adopt the amended rule and its basis statement. Voted unanimously by those trustees present.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A(5)

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A(5)

Agency name: Maine Public Employees Retirement System (MainePERS)
Umbrella-Unit: 94-411
Statutory authority: 5 MRS § 17103(4)
Chapter number/title: Ch. 507, Determination of Inability to Engage in Substantially Gainful Activity
Filing number: 2023-031
Effective date: 3/1/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule specifies that standards and definitions to be applied in determining under 5 MRS §§ 17907(2)(B), 17929(2)(B)(1), 18507(2)(B) and 18529(2)(B)(1) whether a disability retirement recipient is unable to engage in any substantially gainful activity.

Basis statement:

This proposal for rule-making was developed through a consensus-based process in accordance with 5 M.R.S. § 8051-B and noticed on December 21, 2022. A public hearing was held on January 12, 2023. No members of the public provided oral comments at the public hearing, and no members of the public submitted written comments prior to the January 23, 2023 comment deadline.

The proposal was to repeal the rule. The rule addresses the determination of whether a disability retirement recipient is unable to engage in any substantially gainful activity. This subject is addressed in new Rule Chapter 506, so this rule is no longer necessary.

At the Board's regular meeting held on February 9, 2023, Shirrin Blaisdell made the motion, seconded by Henry Beck to repeal the rule and to adopt the basis statement. Voted unanimously by those trustees present.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A(5)

Agency name: **Maine Public Employees Retirement System (MainePERS)**
Umbrella-Unit: **94-411**
Statutory authority: 5 MRS § 17103(4)
Chapter number/title: **Ch. 509**, Determination of Inability to Perform the Essential Functions of the Employment Position
Filing number: **2023-032**
Effective date: 3/1/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule specifies that standards and definitions to be applied in determining under 5 MRS §§ 17921 and 18251 in determining whether a disability applicant is unable to perform the functions of the employment position with reasonable accommodation.

Basis statement:

This proposal for rule-making was developed through a consensus-based process in accordance with 5 M.R.S. § 8051-B and noticed on December 21, 2022. A public hearing was held on January 12, 2023. No members of the public provided oral comments at the public hearing, and no members of the public submitted written comments prior to the January 23, 2023 comment deadline.

The proposal was to repeal the rule. This rule addresses the determination of whether a disability applicant is unable to perform the essential functions of the employment position with reasonable accommodation. This subject is addressed in new Rule Chapter 506, so this rule is no longer necessary.

At the Board's regular meeting held on February 9, 2023, Shirrin Blaisdell made the motion, seconded by Henry Beck to repeal the rule and to adopt the basis statement. Voted unanimously by those trustees present.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A(5)

Agency name: **Maine Public Employees Retirement System (MainePERS)**
Umbrella-Unit: **94-411**
Statutory authority: 5 MRS § 17103(4)
Chapter number/title: **Ch. 510**, Reduction of Disability Retirement Benefits because of Lump-Sum Settlements of Benefits payable under the Workers' Compensation of Similar Law or the United State Social Security Act
Filing number: **2023-033**
Effective date: 3/1/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule sets forth the methodology by which disability retirement benefits are reduced when a recipient receives a lump-sum settlement of benefits under the workers' compensation or similar law or the United State Social Security Act.

Basis statement:

This proposal for rule-making was developed through a consensus-based process in accordance with 5 M.R.S. § 8051-B and noticed on December 21, 2022. A public hearing was held on January 12, 2023. No members of the public provided oral comments at the public hearing, and no members of the public submitted written comments prior to the January 23, 2023 comment deadline.

This rule sets forth the methodology for determining the offset to disability retirement benefits when a recipient receives a lump-sum settlement of benefits under the workers' compensation or similar law or the United States Social Security Act. The proposed amendments align the rule with statute, where there is a distinction in methodology between the State-funded and PLD plans that is not reflected in the current rule. MainePERS has been applying the statutory distinction in its operations.

At the Board's regular meeting held on February 9, 2023, Mark Brunton made the motion, seconded by Dick Metivier to adopt the amended rule and its basis statement. Voted unanimously by those trustees present.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A(5)

Agency name: Maine Public Employees Retirement System (MainePERS)
Umbrella-Unit: 94-411
Statutory authority: 5 MRS § 17103(4)
Chapter number/title: Ch. 511, Standards for Actively Seeking Work
Filing number: 2023-034
Effective date: 3/1/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule sets out the standards and definitions to be applied in determining under 5 MRS §§ 1729(2)(B)(1) and 18529(2)(B)(1) whether a disability retirement benefit recipient is actively seeking work.

Basis statement:

This proposal for rule-making was developed through a consensus-based process in accordance with 5 M.R.S. § 8051-B and noticed on December 21, 2022. A public hearing was held on January 12, 2023. No members of the public provided oral comments at the public hearing, and no members of the public submitted written comments prior to the January 23, 2023 comment deadline.

This rule sets out the standards and process governing the actively seeking work program. When a recipient of disability retirement benefits is determined to no longer be disabled, the benefits continue as long as the recipient is actively seeking work. The proposed amendment establishes a rebuttable presumption that the recipient has not been actively seeking work if no work has been secured within five years. This presumption may be rebutted by a showing that the inability to secure work was out of the recipient's control. For current participants in the program, the five-year period would run from December 31, 2022.

At the Board's regular meeting held on February 9, 2023, Mark Brunton made the motion, seconded by Dick Metivier to adopt the amended rule and its basis statement. Voted unanimously by those trustees present.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A(5)

Agency name: Maine Public Employees Retirement System (MainePERS)
Umbrella-Unit: 94-411
Statutory authority: 5 MRS §§ 9051-9064, 17103(4), 17106-A, 17106-B and 17451
Chapter number/title: Ch. 702, Appeals of Decisions of the Executive Officer
Filing number: 2023-035
Effective date: 3/1/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule sets out the process for appeals of decisions of the Chief Executive Officer to the Board of Trustees. It provides for the appointment of a hearing officer to conduct the appeal and to prepare a recommended decision for action by the Board.

Basis statement:

This proposal for rule-making was developed through a consensus-based process in accordance with 5 M.R.S. § 8051-B and noticed on December 21, 2022. A public hearing was held on January 12, 2023. One member of the public provided oral comments at the public hearing, and the same member of the public submitted written comments prior to the January 23, 2023 comment deadline. No other comments were received.

This rule sets out the process for appeals of decisions of the Chief Executive Officer to the Board of Trustees. The proposed amendments update and clarify the appeals process, including: (1) how an appeal can be filed; (2) how employers can participate in an appeal; (3) when an appellant is entitled to receive the appeals packet; (4) when an appellant is entitled to an independent medical examination; (5) how appellants must be notified that their appeal may be considered abandoned; (6) how testimony may be provided; and (7) how much time the Chief Executive Officer has to reconsider decisions.

One member of the public² recommended that Section 8(3)(J) of the rule not be deleted as proposed. The commenter opined that leaving this section in place would permit the hearing officer to serve as a “neutral and independent decision maker” as required by statute and that the hearing officer “should not be limited to receiving only the medical information that MainePERS staff chooses to obtain and include” in the records that go to the hearing officer for consideration. The commenter suggested that the medical review service provider could assist the hearing officer in framing a referral for an independent medical examination.

Staff believes that the removal of Section 8(3)(J) as proposed does not impede the ability of hearing officers to be independent decision makers. Hearing officers are not limited to information that MainePERS staff provides. Appellants also have the opportunity to submit evidence, and the proposed amended rule provides the hearing officer with authority to order an independent medical examination if one has not already been obtained.

The medical review service provider’s role in the disability eligibility process is to provide recommendations and opinions to the Chief Executive Officer. 5 M.R.S. § 17106-B. Hearing officers in practice have not used their authority in the existing rule to refer cases to the

² Sarah Walton, Esq., Winthrop

Annual List of Rule-Making Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A(5)

medical review service provider or previously to the medical board, at least for many years. Neither hearing officers nor the Chief Executive Officer use the medical review service provider to frame referrals for independent medical examinations.

Based on the above, staff does not believe that any additional changes to the proposed rule are necessary in response to the comments received, and the Board concurs.

At the Board's regular meeting held on February 9, 2023, Mark Brunton made the motion, seconded by Dick Metivier to adopt the amended rule and its basis statement. Voted unanimously by those trustees present.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A(5)

Agency name: Maine Public Employees Retirement System (MainePERS)
Umbrella-Unit: 94-411
Statutory authority: 5 MRS §§ 17103(4), 18801
Chapter number/title: Ch. 803, Participating Local District Consolidated Retirement Plan
Filing number: 2023-011
Effective date: 1/24/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule governs the Consolidated Plan for Participating Local Districts.

Basis statement:

Under the current rule, cost-of-living adjustments (COLA) are paid to eligible retirees based on the Consumer Price Index for All Urban Consumers (CPI-U), up to a maximum of 2.5%. The CPI-U for the twelve-month period ending June 30, 2022 was 9.1%. The proposed amendment to the rule authorizes the payment of an additional 1.0% cost-of-living adjustment effective September 2022 to eligible retirees.

The PLD Advisory Committee was provided with information about the cost-of-living adjustment provision and discussed various options to address the unusually high inflation. By a vote of 6-3, Committee members voted to recommend an additional 1.0% COLA to eligible retirees, and MainePERS staff brought this recommendation to the Board of Trustees for consideration through the proposed rule amendment.

No members of the public provided comments at the public hearing. One individual submitted written comments prior to the December 19, 2022 comment deadline. The individual³ commented in favor of the proposal and also opined that the increase should mirror that provided for Social Security benefits.

After considering the comment, the Board adopts the proposed change without modification, except to correct the end date of the period covered by the additional COLA, which was incorrectly stated as August 31, 2022 rather than August 31, 2023. The Board declined to change the basis on which cost-of-living adjustments are established to mirror that of Social Security without a recommendation of the PLD Advisory Committee because of cost and funding implications. Federal law provides for an un-capped Social Security COLA equal to the Consumer Price Index for All Urban Wage Earners and Clerical Workers (CPI-W). The Social Security Administration has announced an 8.7% COLA for the year beginning January 1, 2023. An additional COLA beyond the proposed change would adversely affect plan funding and require increased contributions.

At the Board's regular meeting held on January 12, 2023, Ken Williams made the motion, seconded by Dick Metivier to adopt the amended rule. Voted unanimously by all trustees present.

Fiscal impact of rule:

None.

³ Bette Thibeault, Lewiston

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Saco River Corridor Commission
Umbrella-Unit: **94-412**
Statutory authority: 38 MRS §954-C
Chapter number/title: **Ch. 103**, Standards to Address the Environmental Factors
Filing number: **2023-001**
Effective date: 1/10/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To make simple technical changes to the rule

Basis statement:

This proposal includes simple technical changes to the rule to coincide with other performance standards. These proposed changes will not alter the operation of this rule.

The Commission received two highly favorable comments, a Resolution from Biddeford approving the changes and an equally favorable concurrence from Robinson Public Relations and Outreach.

Biddeford commented that the rule changes were appropriate regarding the City's development and expansion plans. It enclosed a resolution memorializing its official approval of the rules changes as proposed.

Robinson Public Relations and Outreach commented that it, too, approved the changes as written.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Saco River Corridor Commission
Umbrella-Unit: **94-412**
Statutory authority: 38 MRS §954-C
Chapter number/title: **Ch. 104-A**, Performance Standards for Multi-Unit Uses, including Condominium and Cluster Development within the General Development District
Filing number: **2023-002**
Effective date: 1/10/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To provide performance standards for multi-unit uses in alignment with the respective corridor Municipal Zoning Ordinance or Shoreland Zoning ordinance when the use is connected to a Municipal Sewer System within areas of the General Development District of the corridor.

Basis statement:

This proposed new performance standard is solely for multi-unit uses, which are included but not limited to apartments, condominiums, accessory dwelling units, and cluster developments. The Commission recognizes that in these instances multi-unit uses are appropriate in the Corridor when the use is connected to Municipal sewer, dependent on the design and available land within the General Development District.

The Commission received two highly favorable comments, a Resolution from Biddeford approving the changes and an equally favorable concurrence from Robinson Public Relations and Outreach.

Biddeford commented that the rule changes were appropriate regarding the City's development and expansion plans. It enclosed a resolution memorializing its official approval of the rules changes as proposed.

Robinson Public Relations and Outreach commented that it, too, approved the changes as written.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Saco River Corridor Commission
Umbrella-Unit: **94-412**
Statutory authority: 38 MRS §954-C
Chapter number/title: **Ch. 107**, Performance Standards Governing Expansions of existing Nonconforming Uses, including Structures
Filing number: **2023-003**
Effective date: 1/10/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These performance standards provide a more consistent document that is easier for applicants to comprehend and more effective for the Saco River Corridor Commission to enforce.

Basis statement:

DETAILED SUMMARY: This proposal accomplishes five (5) primary revisions to Chapter 107, resulting in standards that are, in some areas, more restrictive, while in others, less restrictive. This proposal provides a more consistent document that is easier for the applicant to comprehend and more effective for the Saco River Corridor Commission to enforce. Importantly, the proposals do not compromise the Commission's ability to attain its mission of lessening the environmental impacts to the Saco River Corridor.

- 1) 30% Expansion Calculations.** This proposal changes the current calculation method for a 30% expansion from a volume and/or square footage measurement to a simple footprint measurement with height parameters consistent with the Maine Department of Environmental Protection (DEP) calculation methods.

Currently, the terms footprint, floor area, square footage, land area, height (indicating volume), and dimension are used interchangeably. The rule changes include consistent and clear standards that will be easier for applicants to understand and more effective for the Commission to apply and enforce. Additionally, the current expansion standards for basements are complicated by the square footage expansion standards leading to a large amount of time and consideration over how those areas are calculated for an expansion. The use of the building footprint for expansions eliminates the need to consider criteria such as interior floor area or non-living space. Last, the rule changes better define how accessory structures count toward expansions.

Approximately five years ago, the Maine DEP, having experienced the same issues while struggling to provide consistent recommendations across Maine's communities, simplified their 30% expansion rules to be based on footprint and height exclusively. Thus far, the DEP staff indicates that the new rules are less confusing, provide more consistency, and, importantly, achieve the same goal. This proposal will enable the Commission to oversee 30% expansion projects more efficiently and consistently. In some cases, this proposal will permit a taller expansion than previously allowed, but height restrictions will still govern these projects.

- 2) Height Restrictions.** This proposal establishes clear height restrictions for expansions, reconstructions, and relocations of nonconforming structures within the

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Saco River Corridor, based on setback measurements from the mean or normal high water lines. Currently, expansions are limited to a 30% increase in height and can be perceived as inconsistent and limiting for the applicant. The new proposed standards are consistent with DEP's Shoreland Zoning restrictions, resulting in more consistency and easier understanding for the applicant while still accomplishing the Commission's goal.

- 3) Revegetation requirements.** This proposal enhances and clarifies the Commission's standards to ensure that an adequate vegetation plan is supplied for any expansions, reconstructions, or relocations of structures within the Corridor. The current standards focus on trees, while this proposal addresses all vegetation. These standards will provide more clarity for the applicant and a more effective policy for the Commission.
- 4) Lot Coverage.** This proposal increases the maximum percentage of non-vegetated surfaces on lots within the Shoreland Zone from 15% to 20%. Additionally, this proposal clarifies what is considered non-vegetated and provides consistency with DEP's Shoreland Zoning regulations. Since this proposal includes a broader definition of non-vegetated surfaces, the increase from 15% to 20% will not be a significant change.
- 5) Minor grammatical changes.** This proposal includes a few minor grammatical and verbiage changes that enhance the readability and clarity of the document without affecting the document's intent.
- 6) Public Comment.** The Commission received three public comments, including two highly favorable comments, a Resolution from Biddeford approving the changes and an equally favorable concurrence from Robinson Public Relations and Outreach, and a more complicated comment from Maine's Department of Environmental Protection.

Biddeford commented that the rule changes were appropriate regarding the City's development and expansion plans. It enclosed a resolution memorializing its official approval of the rules changes as proposed.

Robinson Public Relations and Outreach commented that it, too, approved the changes as written.

Maine's Department of Environmental Protection submitted several comments, including one that incorporated their new standard approved under PL2021 C504 (on August 8, 2022 to allow exceptions from height limitations under Shoreland Zoning), and their view that the Commission's proposed changes differed from those required by the Maine DEP Chapter 1000 model zoning ordinance. While the Commission accommodated the Maine DEP standards in regard to the first comment, it believes more stringent requirements within the Saco River Corridor are necessary to preserve the unique and exceptional natural resources within the corridor.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name:	Finance Authority of Maine (FAME)
Umbrella-Unit:	94-457
Statutory authority:	10 M.R.S.A. § 969-A; 20-A M.R.S.A. §§ 11617(2); P.L 2023, ch. 23
Chapter number/title:	Ch. 601 , Maine State Grant Program
Filing number:	2023-234
Effective date:	11/20/2023
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The rule implements technical changes to the Maine State Grant Program as enacted by the Legislature through P.L 2023, ch. 23. Following enactment of federal legislation related to the Free Application for Federal Student Aid (FAFSA) simplification, the governing program statute and rule need to be updated to reflect usage of the new term Student Aid Index (SAI) instead of Expected Family Contribution (EFC).

Basis statement:

This Rule implements changes made during the First Regular Session of the 131st Legislature via L.D. 32, *An Act to Update the Maine State Grant Program*, and now set forth in law as P.L. 2023, chapter 23. The change in program terminology from "Expected Family Contribution" or "EFC" to "Student Aid Index" or "SAI" is necessary following changes at the federal level as part of simplification of the Free Application for Federal Student Aid (FAFSA). The Rule also makes clear that the total financial aid received by a program participant from all sources may not exceed the cost of attendance at the institution the student attends.

In summary, FAME is adopting this Rule to implement P .L. 2023, chapter 23 and conform the Maine State Grant Program to federal changes.

Fiscal impact of rule:

The rule is not anticipated to have any fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Finance Authority of Maine (FAME)
Umbrella-Unit: 94-457
Statutory authority: P.L. 2009, Ch. 488; 20-A M.R.S.A. §12124; P.L. 2021, Ch. 725
20-A M.R.S.A. §§ 12121-12125
Chapter number/title: Ch. 618, Maine Veterinary Medicine Loan Program, *Amendment*
2
Filing number: 2023-007
Effective date: 1/10/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This proposed rule conforms the governing program rule with statutory changes made by the 130th Legislature to the program.

Basis statement:

The rule is promulgated for the Authority to implement the Maine Veterinary Medicine Loan Program as amended by the Legislature through LD. 1885, *An Act to Increase Maine's Veterinary Workforce*, now P.L. 2021, ch. 725.

No public hearing was held on the draft rule amendment and the Authority did not receive any comments on the proposed amendment.

In accordance with 5 M.R.S. 8052(4) and Executive Order No. 4 FY 19/20, the Authority has considered:

1. the environmental and social impacts of the rule amendment, with the goal of prioritizing the health safety and welfare of Maine people, and find that the rule amendment will have no negative environmental or social impacts requiring such prioritization; and
2. the economic and fiscal impacts of the rule amendment, including the extent to which other laws and regulations address the rule subject matter and the impact on employers in retaining and attracting a skilled workforce, and find that (a) the rule amendment will have no adverse economic or fiscal impact; (b) no other laws or regulations address the rule subject matter; and (c) the rule amendment will have no adverse effect on employers' ability to retain and attract a skilled workforce.

Fiscal impact of rule:

ECONOMIC IMPACT STATEMENT – SMALL BUSINESSES

The rule amendment is not expected to have any adverse impacts on small businesses.

FISCAL IMPACT NOTE

The rule amendment will not impose any costs on municipalities or counties.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Finance Authority of Maine (FAME)
Umbrella-Unit: 94-457
Statutory authority: 10 MRS § 969-A; 10 MRS § 1100-AA
Chapter number/title: Ch. 619, Foreign Credentialing and Skills Recognition Revolving Loan Program
Filing number: 2023-235
Effective date: 11/20/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule amendments implement recent changes by the Legislature to the governing program statute. These changes include changing the program from a loan to a grant and increasing maximum available grant amounts from up to \$700 to up to \$1,000 per eligible recipient.

Basis statement:

This Rule implements changes made during the First Regular Session of the 131st Legislature via L.D. 1169, *An Act to Amend the Laws Governing the Foreign Credentialing and Skills Recognition Revolving Loan Program*, and now set forth as P.L. 2023, chapter 456. The law changes the program from a zero-interest loan to a grant program. It also increases the maximum allowable distribution of funds per applicant from \$700 to \$1,000. In summary, FAME is adopting this Rule to implement P.L. 2023, chapter 456.

Fiscal impact of rule:

The amendment is not anticipated to have any fiscal impact aside from changing the program from one involving loans to grants, as well as increasing maximum allowable grant awards from up to \$700 to up to \$1,000 per eligible recipient.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: **Maine Commission on Indigent Legal Services**
Umbrella-Unit: **94-649**
Statutory authority: 4 M.R.S.A. §§ 1804 (2)(C), (2)(G), and (4)(D)
Chapter number/title: **Ch. 4, Caseload Standards for Assigned Counsel and Contract Counsel**
Filing number: **2023-135**
Effective date: 1/1/2024
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this rule is to implement 4 MRS § 1804(2)(C) by prescribing “standards for assigned counsel and contract counsel caseloads” for attorneys accepting assignments to represent consumers of indigent legal services. The objective is to ensure that attorneys are not overscheduled or overworked and are able to provide effective, high quality, representation to each client.

Basis statement:

The Commission is charged with providing “... high-quality representation to indigent criminal defendants, juvenile defendants and children and parents in child protective cases, consistent with federal and state constitutional and statutory obligations.” 4 M.R.S. § 1801. MCILS is statutorily obligated to develop standards for the caseloads of assigned and contract counsel. 4 M.R.S. § 1804(2)©. The right to effective counsel is protected by the United States Constitution and the Constitution of Maine. For counsel to provide high-quality, effective representation, their caseloads must be at a level that allows them to dedicate sufficient time and resources to every case. Chapter 4 is promulgated to ensure that the Commission fulfills its statutory and constitutional obligations by setting maximum caseload standards to ensure the delivery of highquality representation to indigent persons.

The implementation of this Chapter will further reduce the number of attorneys available to accept indigent cases during a time when Maine is experiencing a critical shortage of such attorneys. Additionally, there are technical and administrative barriers which the Commission needs to overcome to enforce this Chapter. Therefore, the Commission has voted to pass this Chapter with an effective date of January 1, 2024. The intent of the Commission is to provide attorneys, Commission staff, courts, and other interested parties sufficient time to prepare for the implementation of this Chapter.

After the Commission voted to pass Chapter 4 on July 21, 2023, the Commission received feedback from the Attorney General’s Office. Based on that feedback, the Commission made the following non-substantive changes to ensure that consistent language was used throughout the Rule: changed “MCILS” to “Commission” throughout the Rule, changed “PC” to “child protective”, added the word “Judicial” to “Supreme Court of Maine”, added “Maximum Active” to “Caseload Limit”, and “Maximum Annual” to “Hours Limit”. The Commission also deleted “than the 12 months indicated in Section 4(8)” from Section 7E)(vi), which was inadvertently left in the Rule after the former Section 4(B) was deleted from an earlier draft. Finally, the Commission corrected a typographical error in the statutory authority, which included an extra letter “A”.

Fiscal impact of rule:

None

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: **Maine Commission on Indigent Legal Services**
Umbrella-Unit: **94-649**
Statutory authority: 4 MRS §§ 1804(2)(F), (3)(B), (3)(F), (4)(D); PL 2021 ch. 398 §A-22
Chapter number/title: **Ch. 301**, Fee Schedule and Administrative Procedures for Payment of Commission Assigned Counsel
Filing number: **2023-028**
Effective date: 2/24/2023
Type of rule: Major Substantive
Emergency rule: Yes

Principal reason or purpose for rule:

Pursuant to 4 M.R.S.A. § 1804(3)(F), the Commission is required to establish the rate of compensation for assigned counsel. Currently, assigned counsel are paid \$80.00 per hour. This emergency amendment raises the hourly rate paid to attorneys as authorized by the Legislature. Basis statement:

Since July 1, 2021, MCILS Rules Chapter 301, Section 2, has authorized a rate of Eighty Dollars (\$80.00) per hour for time spent on an assigned case. Court appointed counsel operating under the MCILS system have been withdrawing from that system in part because the rate of payment for work on assigned cases did not permit counsel to operate cost efficiently. MCILS relies on appointed counsel to discharge its constitutional and statutory obligations. In Sec. Q-1 of the supplemental appropriations bill passed by the Legislature for fiscal year 2023, the Legislature authorized MCILS to engage in rulemaking to raise the rate up to \$150.00 per hour. Section 2 must be amended to permit MCILS to pay appointed counsel the \$150.00 per hour authorized by the Legislature. Without immediate action to implement the legislatively authorized rate increase, the Commission is in jeopardy of losing additional lawyers off the roster and imperiling the continued operation of the assigned counsel system.

Fiscal impact of rule:

As compared to the existing rule, the rate increase contained in this emergency rulemaking will increase the cost of providing indigent legal services by approximately \$6 million in fiscal year 2023.

Nearly all of the attorneys who provide indigent legal services operate small businesses that employ people and spend money in their local economy. The hourly rate paid to attorneys supports these small businesses and economic activity in their localities, and the increase in the hourly rate will enhance the economic impact of these businesses on the local and state economies.

Attorneys providing indigent legal services will be affected by the increase in the hourly rate of compensation. People receiving indigent legal services will be affected to the extent that the increased rate of pay provides additional resources to attorneys providing representation and helps retain and attract experienced and skilled attorneys able to provide quality representation. This emergency rulemaking will benefit the State by ensuring that MCILS acts in accordance with the directive of the Legislature to set the rate of pay for assigned counsel in accordance with the amounts appropriated for that purpose.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: **Maine Commission on Indigent Legal Services**
Umbrella-Unit: **94-649**
Statutory authority: 4 MRS §§ 1804(2)(F), (3)(B), (3)(F), (4)(D)
Chapter number/title: **Ch. 301**, Fee Schedule and Administrative Procedures for Payment of Commission Assigned Counsel
Filing number: **2023-122**
Effective date: 9/1/2023
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

Pursuant to 4 M.R.S.A. § 1804(3)(F), the Commission is required to establish the rate of compensation for assigned counsel. This proposed rule amendment makes permanent the emergency rule adopted in 2023 which raised the hourly rate paid to counsel to \$150.00 per hour.

Basis statement:

Since July 1, 2021, MCILS Rules Chapter 301, Section 2, has authorized a rate of Eighty Dollars (\$80.00) per hour for time spent on an assigned case. Court appointed counsel operating under the MCILS system have been withdrawing from that system in part because the rate of payment for work on assigned cases did not permit counsel to operate cost efficiently. MCILS relies on appointed counsel to discharge its constitutional and statutory obligations. In Sec. Q-1 of the supplemental appropriations bill passed by the Legislature for fiscal year 2023, the Legislature authorized MCILS to engage in rulemaking to raise the rate up to \$150.00 per hour. Section 2 must be amended to permit MCILS to pay appointed counsel the \$150.00 per hour authorized by the Legislature. Without immediate action to implement the legislatively authorized rate increase, the Commission is in jeopardy of losing additional lawyers off the roster and imperiling the continued operation of the assigned counsel system.

Fiscal impact of rule:

This permanent rule will increase the cost of providing indigent legal services by approximately \$6 million in fiscal year 2023.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: **Maine Commission on Indigent Legal Services**
Umbrella-Unit: **94-649**
Statutory authority: 4 M.R.S.A. §§ 1804(2)(F), (3)(B), and(4)(D)
Chapter number/title: **Ch. 301-A**, Payment for Attending and Reimbursement of Expenses
Incidental to Attending Trainings
Filing number: **2023-186**
Effective date: 10/2/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Commission is statutorily obligated to develop, “Standards for the reimbursement of expenses incurred by assigned counsel and contract counsel, including attendance at training events provided by the commission ... “ 4 M.R.S. §1804(2)(F). Chapter 301-A is promulgated to satisfy the Commission’s statutory duty to develop said standards.

Basis statement:

The Commission is charged with providing “... high-quality representation to indigent criminal defendants, juvenile defendants and children and parents in child protective cases, consistent with federal and state constitutional and statutory obligations.” 4 M.R.S. § 1801. The right to effective counsel is protected by the United States Constitution and the Constitution of Maine. For counsel to provide high-quality, effective representation, they must continue their legal education and stay current with changes in the law. The Commission is statutorily obligated to develop, “Standards for the reimbursement of expenses incurred by assigned counsel and contract counsel, including attendance at training events provided by the commission ... “ 4 M.R.S. §1804(2)(F). Chapter 301-A is promulgated to satisfy the Commission’s mandates to ensure the delivery of high-quality legal services and develop standards for the reimbursement of expenses counsel incur incidental to attending trainings provided by the Commission.

Fiscal impact of rule:

\$300,000

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Efficiency Maine Trust
Umbrella-Unit: 95-648
Statutory authority: 35-AMRSA §10203(4), §10203(5), §10204(1)
Chapter number/title: Ch. 5, Commercial Property Assessed Clean Energy (C-PACE) Program Regulations
Filing number: 2023-023
Effective date: 2/18/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

In June 2021, the Legislature passed Maine's C-PACE enabling legislation: L.D. 340 - An Act To Allow for the Establishment of Commercial Property Assessed Clean Energy Programs. Pursuant to 35-A MRSA § 10203(1), the Efficiency Maine Trust (the Trust), a third party contracted by the Trust, or a municipality that has adopted a C-PACE ordinance may establish a C-PACE program. The Trust intends to launch such a program in the coming months, adding to its suite of financing initiatives for energy project investment. 35-A MRSA § 10203(4) states that the Trust shall adopt by rule a quality assurance system for the C-PACE program, and 35-A MRSA §10204(1) states that a C-PACE agreement entered into pursuant to a C-P ACE program must comply with underwriting requirements established by rule by the Trust. The Trust is proposing this rule to satisfy the statutory directives above, and to describe certain key elements of how the C-PACE Program will be administered.

Basis statement:

I. Summary

This presents the factual and policy basis for Chapter 5-a new rule of the Efficiency Maine Trust (the Trust) governing the administration and implementation of a Commercial Property Assessed Clean Energy (C-PACE) program in Maine.

II. Background

In June 2021, the legislature passed Maine's C-PACE enabling legislation: L.D. 340 - *An Act To Allow for the Establishment of Commercial Property Assessed Clean Energy Programs* (the "C-PACE Act"). Pursuant to 35-A MRSA 5 10203(1), the Efficiency Maine Trust (the Trust), a third party contracted by the Trust, or a municipality that has adopted a C-PACE ordinance may establish a C-PACE program. The Trust intends to add such a program to the suite of financing initiatives for energy project investment under the Efficiency Maine Green Bank.

A C-PACE program allows qualifying commercial real property owners to access an attractive type of financing to undertake qualifying energy efficiency and clean energy improvements on their buildings and repay the investment over time. Like other project financing, C-PACE relies on borrowed capital from a lender to pay for the upfront costs associated with energy efficiency or renewable energy improvements. Unlike other project financing, the borrowed capital is secured by a property tax assessment with an associated lien on the subject property. The security provided by the lien results in several compelling features, including longer terms, lower interest rates, and transferability of the repayment obligations to subsequent owners of the property. In turn, C-PACE strengthens the business case for investment in more extensive building improvements having longer paybacks compared to what may be possible with traditional financing.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Maine's C-PACE Act outlines several program parameters (e.g., administration, eligibility, underwriting criteria, assessment, collection, priority) and it calls on the Trust to establish certain program design elements and rules. Specifically, the Act states that the Trust *shall adopt by rule* a quality assurance system for the C-PACE program, and states that a C-PACE agreement entered into pursuant to a C-PACE program must comply with underwriting requirements *established by rule* by the Trust. The Act also provides that the Trust *may* establish rules for participation in a C-PACE program, which may include, but are not limited to, terms and conditions related to program design, implementation and administration, cost sharing, collection of C-PACE assessments and recording of liens.

The Trust's staff (Staff) has researched and vetted program design options in preparation for the launch of its C-PACE program. To that end, Staff has reviewed materials from other jurisdictions, met with national experts, and discussed the program with Maine-based stakeholders. Staff presented an overview of its draft program materials and proposed process workflow during a stakeholder workshop on July 26, 2022. The workshop was open to the public and provided a forum for the Trust to solicit constructive input from a broad range of participants. Staff then reviewed that feedback, fine-tuned its materials, and set about drafting a formal rule.

The general purpose of the proposed rule is to establish elements of a C-PACE program in Maine. As required by statute, the rule enumerates underwriting standards and quality assurance provisions. It also clarifies how the program will be administered. The rule explains the basic procedural and substantive standards and requirements for application, application review, and decisions, and defers treatment of certain operational details to a separate document called the "Program Guidelines".

Fiscal impact of rule:

No change.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: **Maine State Housing Authority (MSHA)**
Umbrella-Unit: **99-346**
Statutory authority: 30-A M.R.S.A. §§4722(1)(W), 4741 (1) and (15), and 4991 *et seq.*;
42 U.S.C.A. §§8621, *et seq*
Chapter number/title: **Ch. 24**, Home Energy Assistance Program Rule
Filing number: **2023-099**
Effective date: 7/3/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This replacement rule repeals and replaces in its entirety the current Home Energy Assistance Program Rule. The rule establishes standards for administering fuel assistance, emergency fuel assistance, TANF Supplemental Benefits, weatherization, heat pumps, and heating system repair and replacement funds to low-income households in the State of Maine. This replacement rule: establishes new annual end date for taking HEAP applications; provides clarity that providing Program services is contingent upon availability of HEAP funding; establishes the Design Heat Load Calculation as the sole method of determining a Benefit; allows Benefit levels to be determined using the Home Energy type requested by the Primary Applicant; and provides Payments of Benefits directly to Primary Applicants who receive their Benefit for firewood.

Basis statement:

This replacement rule repeals and replaces in its entirety the current Home Energy Assistance Program Rule. The rule establishes standards for administering fuel assistance, emergency fuel assistance, TANF Supplemental Benefits, weatherization, heat pumps, and heating system repair and replacement funds to income eligible households in the State of Maine. This replacement rule: establishes new annual end date for taking HEAP applications; provides clarity that providing Program services is contingent upon availability of HEAP funding; establishes the Design Heat Load Calculation as the sole method of determining a Benefit; allows Benefit levels to be determined using the Home Energy type requested by the Primary Applicant; and provides Payments of Benefits directly to Primary Applicants who receive their Benefit for firewood. Other changes correct errors or provide clarification to the previous version of the rule.

Fiscal impact of rule:

None

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Maine State Housing Authority (MSHA)
Umbrella-Unit: 99-346
Statutory authority: 30-A MRS § 4741(1)
Chapter number/title: Ch. 27, Transfer of Ownership Interests
Filing number: 2023-017
Effective date: 1/30/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The reason for proposing this Rule is to replace the existing Transfer of Ownership Interests Rule with more clearly set forth policies and procedures for approving changes in ownership of multifamily and supportive housing projects that are subject to MaineHousing financial and regulatory oversight.

Basis statement:

This Rule, which replaces the prior rule, sets forth the policies and procedures for approving changes in ownership of multifamily and supportive housing projects that are subject to MaineHousing financial or regulatory oversight. The changes in this Rule reinforce protections against the transfer of ownership interests in projects or the owners of projects that could undermine the public benefit of the projects during the period committed by the owners when they received assistance from MaineHousing. This Rule applies to projects that have an allocation of federal or state tax credits from MaineHousing as well as projects with financing or grants from MaineHousing. The application of the Rule to transfers of ownership interests in an entity that owns a project is expanded to include any direct or indirect change in the entity, not just controlling interests in the entity. This Rule also eliminates all exceptions contained in the prior rule, but does maintain simplified procedures for certain transfers, such as transfers to affiliates, transfers of investor interests in tax credit projects to the project sponsors, and transfers of certain non-controlling interests.

Fiscal impact of rule:

None

Annual List of Rule-Making Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A(5)

Agency name: Maine Turnpike Authority
Umbrella-Unit: 99-420
Statutory authority: 23 MRSA §§ 1965
Chapter number/title: Ch. 1, Rules Governing the Use of the Maine Turnpike
Filing number: 2023-009
Effective date: 1/23/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To adjust the speed limit on the southernmost seventh tenths of a mile of the Maine Turnpike.
To set specific parking time limits for MTA concession areas.
To clarify and strengthen the rules on prohibited conduct at MTA concession areas.
To simplify the regulations on over limit night moves on the Maine Turnpike.

Basis statement:

This statement has been prepared pursuant to 5 MRSA § 8052(5), which requires a written statement explaining the factual and policy basis for adopted rules, a summary of comments received, and the MTA's responses to those comments. This statement also satisfies the requirements of 5 MRSA § 8057-A, which requires the MTA to describe sources of information relied upon in developing an adopted rule.

I. Background and Description of Rule

This amendment to the MTA's rules, a copy of which is attached to this Basis Statement, was noticed for public comment by the Maine Secretary of State's office on October 26th, 2022, with a comment deadline of November 28th. The rule amendment was adopted by the MTA as proposed on December 22nd.

This rule change does the following:

- (1) Lowers the speed limit from 65 miles per hour to 55 miles per hour south of mile marker .7 on the Maine Turnpike. This is necessary due to shortened approaches to the Piscataqua River Bridge southbound during time periods when the breakdown lane on the bridge is used as a travel lane. This change will also make the speed limit north of the bridge consistent with the speed limit south of the bridge.
- (2) Clarifies the MTA rules on parking by including specific time limits for parking at MTA concession areas. Including these time periods in the rule will provide greater notice to the public of the MTA's policy on parking.
- (3) Strengthens the rule on loitering and soliciting at MTA service plazas. This change is made to ensure the comfort and convenience of the service plazas for the MTA's customers.
- (4) Amends the requirements on over limit vehicle movements at night to allow greater flexibility in authorizing these movements. The primary purpose of this change is to enable MTA contractors working on the turnpike at night to safely remove their equipment from the highway before daylight hours.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A(5)

II. Primary Sources of Information Relied Upon in Formulation of Rule

Pursuant to 5 MRSA § 8057-A (4), the following sources of information were relied upon in development of this rule amendment:

- Professional judgment of MTA engineering department staff
- Technical memorandum on speed limits dated July 5, 2022 from consulting engineering firm, HNTB.

Fiscal impact of rule:

None