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Department of the Secretary of State

Bureau of Corporations, Elections and Commissions

Shenna Bellows
Secretary of State

Julie L. Flynn
Deputy Secretary of State

January 27, 2025

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, sub-§ 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 2024.

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 2024, there were a combined 299 routine technical rule adoption and major substantive rule filings, 44 more than in 2023.

Following is a list of the State of Maine agencies that shows the number of adopted and finally adopted rule filings each agency made in 2024; the number of those filings that related to routine technical or major substantive rules; and the number of those respective filings that were made on either an emergency or non-emergency basis:

Umbrella number	Agency	Total Adopt, Final Adopt	Routine Technical	Major Substantive	Emergency	Non-Emergency
01	Department of Agriculture, Conservation, and Forestry	39	37	2	12	27
02	Department of Professional and Financial Regulation	67	67	0	0	67
03	Department of Corrections	4	4	0	0	4
05	Department of Education	7	4	3	0	7
06	Department of Environmental Protection	12	9	3	1	11
09	Department of Inland Fisheries and Wildlife	10	10	0	0	10
10, 14	Department of Health and Human Services	54	53	1	5	48
12	Department of Labor	10	9	1	0	10
13	Department of Marine Resources	18	18	0	5	13
15	Department of Defense, Veterans and Emergency Management	2	2	0	0	2
16	Department of Public Safety	15	15	0	0	15
17	Department of Transportation	2	2	0	0	2
18	Department of Administrative and Financial Services	19	16	3	0	19
19	Department of Economic and Community Development	1	1	0	0	1
29	Secretary of State	2	2	0	0	2
65	Public Utilities Commission	7	7	0	0	7
90-590	Maine Health Data Organization	3	2	1	0	3
94-089	Maine Historic Preservation Committee	2	2	0	0	2
94-270	Maine Commission on Governmental Ethics and Election Practices	3	3	0	0	3
94-391	State Board of Property Tax Review	1	1	0	0	1
94-411	Maine Public Employees Retirement System	4	4	0	0	4
94-457	Finance Authority of Maine	3	3	0	0	3
94-649	Maine Commission on Public Defense Services (formerly Commission on Indigent Legal Services)	8	8	0	1	7
95-592	Small Enterprise Growth Board	1	1	0	0	1
95-648	Efficiency Maine Trust	1	1	0	0	1
99-346	Maine State Housing Authority	4	4	0	0	4
	Totals for 2024	**299**	**285**	**14**	**24**	**275**

In addition to the above information, attached to this letter please find reports, arranged by agency, that provide more detail about each adopted and finally adopted rule. The information included in the reports includes text excerpted in whole or part from rulemaking proposal- and adoption-related documents filed with the rules with the Secretary of State. If there is a rule about which you would like more information, my office would be happy to provide that to you.

Also attached to this letter is a table, arranged by agency, that lists the rules adopted and finally adopted by each agency during calendar 2024.

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

2024 ADOPTION & FINAL ADOPTION FILINGS

Agency name	Ch.	Rule title	Type	Emergency?	Filing No.	Effective date	Action
Department of Agriculture, Conservation, and Forestry	702	Rules for the Companion Animal Sterilization Program	RT	No	2024-124	6/18/24	Repeal and Replace
Department of Agriculture, Conservation, and Forestry	213	Rules for the Salmonella Enteritidis Risk Reduction and Surveillance Program for Commercial Egg-Type Flocks	MS	No	2024-144	7/20/24	New
Department of Agriculture, Conservation and Forestry	400	Administrative Cost Grants	RT	No	2024-052	3/17/24	New
Department of Agriculture, Conservation and Forestry	401	Income Replacement	RT	No	2024-053	3/17/24	New
Department of Agriculture, Conservation and Forestry	402	Support for No-Cost Technical Assistance	RT	No	2024-054	3/17/24	New
Department of Agriculture, Conservation and Forestry	403	Infrastructure Investment Grants	RT	No	2024-055	3/17/24	New
Department of Agriculture, Conservation and Forestry	404	Assistance Obtaining New Loans	RT	No	2024-056	3/17/24	New
Department of Agriculture, Conservation and Forestry	405	Real Estate Purchases	RT	No	2024-057	3/17/24	New
Department of Agriculture, Conservation and Forestry	406	Competitive Research Grants	RT	No	2024-058	3/17/24	New
Department of Agriculture, Conservation and Forestry	407	Financial Support for Blood Serum Testing	RT	No	2024-059	3/17/24	New
Department of Agriculture, Conservation and Forestry	408	Financial Support for Mental Health Care	RT	No	2024-060	3/17/24	New
Department of Agriculture, Conservation, and Forestry	8	Rules for Department Grant Awards and Appeals	RT	No	2024-182	8/18/24	New
Department of Agriculture, Conservation, and Forestry	35	Rules for Operation of the Maine Healthy Soils Fund	RT	No	2024-252	11/12/24	New
Department of Agriculture, Conservation and Forestry, Maine Milk Commission	61	Maine Milk Pool Cost of Administration	RT	No	2024-131	7/1/24	Amended
Department of Agriculture, Conservation and Forestry, Maine Milk Commission	3	Schedule of Minimum Prices	RT	Yes	2024-014	1/28/24	Emergency
Department of Agriculture, Conservation and Forestry, Maine Milk Commission	3	Schedule of Minimum Prices	RT	Yes	2024-044	3/3/24	Emergency
Department of Agriculture, Conservation and Forestry, Maine Milk Commission	3	Schedule of Minimum Prices, Order	RT	Yes	2024-080	3/31/24	Emergency
Department of Agriculture, Conservation and Forestry, Maine Milk Commission	3	Schedule of Minimum Prices	RT	Yes	2024-097	4/28/24	Emergency
Department of Agriculture, Conservation, and Forestry, Maine Milk Commission	3	Schedule of Minimum Prices	RT	Yes	2024-148	6/30/24	Emergency
Department of Agriculture, Conservation, and Forestry, Maine Milk Commission	3	Schedule of Minimum Prices	RT	Yes	2024-170	7/28/24	Emergency
Department of Agriculture, Conservation, and Forestry, Maine Milk Commission	3	Schedule of Minimum Prices	RT	Yes	2024-210	9/1/24	Emergency
Department of Agriculture, Conservation, and Forestry, Maine Milk Commission	3	Schedule of Minimum Prices	RT	Yes	2024-220	9/29/24	Emergency

2024 ADOPTION & FINAL ADOPTION FILINGS

Agency name	Ch.	Rule title	Type	Emergency?	Filing No.	Effective date	Action
Department of Agriculture, Conservation, and Forestry, Maine Milk Commission	3	Schedule of Minimum Prices	RT	Yes	2024-246	11/3/24	Emergency
Department of Agriculture, Conservation, and Forestry, Maine Milk Commission	3	Schedule of Minimum Prices	RT	Yes	2024-267	12/1/24	Emergency
Department of Agriculture, Conservation, and Forestry, Maine Milk Commission	3	Schedule of Minimum Prices	RT	Yes	2024-278	12/29/24	Emergency
Department of Agriculture, Conservation, and Forestry, Maine Milk Commission	3	Schedule of Minimum Prices	RT	Yes	2024-129	6/2/25	Emergency
Department of Agriculture, Conservation, and Forestry, Maine Milk Commission	26	Producer Margins	MS	No	2024-130	6/27/24	Repeal and Replace
Department of Agriculture, Conservation, and Forestry, Maine State Harness Racing Commission	1	Administration	RT	No	2024-136	6/8/24	Amended
Department of Agriculture, Conservation, and Forestry, Maine State Harness Racing Commission	7	Racing	RT	No	2024-137	6/8/24	Amended
Department of Agriculture, Conservation, and Forestry, Maine State Harness Racing Commission	11	Medications, Prohibited Substances and Testing	RT	No	2024-138	6/8/24	Amended
Department of Agriculture, Conservation, and Forestry, Maine State Harness Racing Commission	17	Rule Violations; Penalties	RT	No	2024-139	6/8/24	Amended
Department of Agriculture, Conservation, and Forestry, Board of Pesticides Control	20	Special Provisions	RT	No	2024-015	1/30/24	Amended
Department of Agriculture, Conservation, and Forestry, Board of Pesticides Control	31	Certification and Licensing/Commercial Applicators	RT	No	2024-016	1/30/24	Amended
Department of Agriculture, Conservation, and Forestry, Board of Pesticides Control	32	Certification and Licensing/Private Applicators	RT	No	2024-017	1/30/24	Amended
Department of Agriculture, Conservation, and Forestry, Board of Pesticides Control	31	Certification and Licensing Provisions/Commercial Applicators	RT	No	2024-237	10/21/24	Amended
Department of Agriculture, Conservation, and Forestry, Board of Pesticides Control	32	Certification and Licensing Provisions for Private Applicators	RT	No	2024-238	10/21/24	Amended
Department of Agriculture, Conservation, and Forestry, Board of Pesticides Control	50	Record Keeping and Reporting Requirement	RT	No	2024-239	10/21/24	Amended
Department of Agriculture, Conservation, and Forestry, Land for Maine's Future	1	Definitions	RT	No	2024-243	11/3/24	New
Department of Agriculture, Conservation, and Forestry, Land for Maine's Future	2	Rules of Program Administration	RT	No	2024-244	11/3/24	New

2024 ADOPTION & FINAL ADOPTION FILINGS

Agency name	Ch.	Rule title	Type	Emergency?	Filing No.	Effective date	Action
Department of Professional and Financial Regulation, Bureau of Financial Institutions	128	Loans to One Borrower Limitations	RT	No	2024-075	3/24/24	Amended
Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection	601	Establishment of Rules to Implement 9-A M.R.S. Article 14 and Requirement for Licensing of Student Loan Servicers Through the Nationwide Multistate Licensing System (NMLS)	RT	No	2024-126	5/25/24	New
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)	RT	No	2024-203	8/31/24	Repeal and Replace
Department of Professional and Financial Regulation, Bureau of Insurance	865	Standards for Fertility Coverage	RT	No	2024-114	5/11/24	New
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation	10	Establishment of License Fees	RT	No	2024-308	1/1/25	Amended
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Boiler and Pressure Vessel Safety Program	70	Definitions	RT	No	2024-297	1/1/25	New
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Boiler and Pressure Vessel Safety Program	71	Variances	RT	No	2024-298	1/1/25	New
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Boiler and Pressure Vessel Safety Program	72	Advisory Rulings	RT	No	2024-299	1/1/25	New
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Boiler and Pressure Vessel Safety Program	73	Safety Codes and Standards	RT	No	2024-300	1/1/25	New
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Boiler and Pressure Vessel Safety Program	74	Power Boilers	RT	No	2024-301	1/1/25	New

2024 ADOPTION & FINAL ADOPTION FILINGS

Agency name	Ch.	Rule title	Type	Emergency?	Filing No.	Effective date	Action
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Boiler and Pressure Vessel Safety Program	75	Low Pressure Boilers	RT	No	2024-302	1/1/25	New
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Boiler and Pressure Vessel Safety Program	76	Pressure Vessels	RT	No	2024-303	1/1/25	New
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Boiler and Pressure Vessel Safety Program	77	Repairs and Alterations	RT	No	2024-304	1/1/25	New
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Boiler and Pressure Vessel Safety Program	78	Duties and Responsibilities of All Owners of Boilers and Pressure Vessels	RT	No	2024-305	1/1/25	New
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Boiler and Pressure Vessel Safety Program	79	Inspectors	RT	No	2024-306	1/1/25	New
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Boiler and Pressure Vessel Safety Program	80	Boiler Operators and Stationary Steam Engineers	RT	No	2024-307	1/1/25	New
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Boiler and Pressure Vessel Safety Program	1	Definitions	RT	No	2024-285	1/1/25	Repeal
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Boiler and Pressure Vessel Safety Program	2	Variances	RT	No	2024-286	1/1/25	Repeal
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Boiler and Pressure Vessel Safety Program	3	Board Meetings	RT	No	2024-287	1/1/25	Repeal

2024 ADOPTION & FINAL ADOPTION FILINGS

Agency name	Ch.	Rule title	Type	Emergency?	Filing No.	Effective date	Action
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Boiler and Pressure Vessel Safety Program	4	Advisory Rulings	RT	No	2024-288	1/1/25	Repeal
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Boiler and Pressure Vessel Safety Program	11	National Codes Applicable to Boilers and Pressure Vessels	RT	No	2024-289	1/1/25	Repeal
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Boiler and Pressure Vessel Safety Program	12	Power Boilers	RT	No	2024-290	1/1/25	Repeal
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Boiler and Pressure Vessel Safety Program	13	Low Pressure Boilers	RT	No	2024-291	1/1/25	Repeal
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Boiler and Pressure Vessel Safety Program	14	Pressure Vessels	RT	No	2024-292	1/1/25	Repeal
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Boiler and Pressure Vessel Safety Program	15	Repairs and Alterations	RT	No	2024-293	1/1/25	Repeal
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Boiler and Pressure Vessel Safety Program	21	Duties and Responsibilities of All Owners of Boilers and Pressure Vessels	RT	No	2024-294	1/1/25	Repeal
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Boiler and Pressure Vessel Safety Program	31	Inspectors	RT	No	2024-295	1/1/25	Repeal
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Boiler and Pressure Vessel Safety Program	32	Boiler Operators and Stationary Steam Engineers	RT	No	2024-296	1/1/25	Repeal

2024 ADOPTION & FINAL ADOPTION FILINGS

Agency name	Ch.	Rule title	Type	Emergency?	Filing No.	Effective date	Action
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Accountancy	3	Examination Requirements	RT	No	2024-034	2/19/24	Amended
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	RT	No	2024-202	8/28/24	Repeal and Replace
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Real Estate Appraisers	230	Supervisory Appraiser Duties	RT	No	2024-001	1/9/24	Repeal and Replace
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Real Estate Appraisers	240	Standards of Professional Practice	RT	No	2024-002	1/9/24	Repeal and Replace
Department of Professional and Financial Regulation, Maine Board of Dental Practice	2	Qualifications for Dental Hygienist Licensure and Dental Hygienist Practice Authorities	RT	No	2024-106	5/12/24	Amended
Department of Professional and Financial Regulation, Maine Board of Dental Practice	3	Qualifications for Expanded Function Dental Assistant Licensure	RT	No	2024-107	5/12/24	Amended
Department of Professional and Financial Regulation, Maine Board of Dental Practice	4	Qualifications for Dental Radiography Licensure	RT	No	2024-108	5/12/24	Amended
Department of Professional and Financial Regulation, Maine Board of Dental Practice	5	Qualifications for Denturist Licensure	RT	No	2024-109	5/12/24	Amended
Department of Professional and Financial Regulation, Maine Board of Dental Practice	6	Qualifications for Dentist Licensure	RT	No	2024-110	5/12/24	Amended
Department of Professional and Financial Regulation, Maine Board of Dental Practice	11	Qualifications for Licensure by Endorsement; Requirements for Renewal, Late Renewal, and Reinstatement of Licensure and Authorities	RT	No	2024-111	5/12/24	Amended
Department of Professional and Financial Regulation, Maine Board of Dental Practice	12	Practice Requirements	RT	No	2024-112	5/12/24	Amended

2024 ADOPTION & FINAL ADOPTION FILINGS

Agency name	Ch.	Rule title	Type	Emergency?	Filing No.	Effective date	Action
Department of Professional and Financial Regulation, Maine Board of Dental Practice	13	Continuing Education	RT	No	2024-113	5/12/24	Amended
Department of Professional and Financial Regulation, OPOR, Electricians' Examining Board	180	Licensure by Endorsement	RT	No	2024-166	7/22/24	New
Department of Professional and Financial Regulation	120	Electrical Installation Standards	RT	No	2024-142	7/1/24	Repeal and Replace
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Licensure of Foresters	70	Qualifications for Forester License	RT	No	2024-032	2/13/24	Amended
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Licensure of Foresters	70-A	Licensure by Endorsement	RT	No	2024-031	2/13/24	New
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Licensure of Foresters	100	Code of Ethics	RT	No	2024-033	2/13/24	Repeal and Replace
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Nursing Home Administrator Licensing Board	20	Definitions	RT	No	2024-192	8/27/24	Repeal and Replace
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Nursing Home Administrator Licensing Board	21	Advisory Rulings	RT	No	2024-193	8/27/24	Repeal and Replace
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Nursing Home Administrator Licensing Board	22	Administrator-in-Training Program for Multi-level Long Term Care Facility Administrators	RT	No	2024-194	8/27/24	Repeal and Replace
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Nursing Home Administrator Licensing Board	23	Multi-level Long Term Care Facility Administrators: Licensure by Examination	RT	No	2024-195	8/27/24	Repeal and Replace

2024 ADOPTION & FINAL ADOPTION FILINGS

Agency name	Ch.	Rule title	Type	Emergency?	Filing No.	Effective date	Action
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Nursing Home Administrator Licensing Board	25	Licensure of Nursing Home Administrators	RT	No	2024-196	8/27/24	Repeal and Replace
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Nursing Home Administrator Licensing Board	26	Licensure of Residential Care Facility Administrators	RT	No	2024-197	8/27/24	Repeal and Replace
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Nursing Home Administrator Licensing Board	27	Temporary Licensure of Administrators	RT	No	2024-198	8/27/24	Repeal and Replace
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Nursing Home Administrator Licensing Board	28	License Renewal, Continuing Education and Inactive Status	RT	No	2024-199	8/27/24	Repeal and Replace
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Nursing Home Administrator Licensing Board	29	Approval of Preceptor Training Programs	RT	No	2024-200	8/27/24	Repeal and Replace
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Nursing Home Administrator Licensing Board	30	Code of Ethics	RT	No	2024-201	8/27/24	Repeal and Replace
Department of Professional and Financial Regulation, Board of Licensure in Medicine	12	Joint Rule Regarding Office Based Treatment of Opioid Use Disorder	RT	No	2024-036	2/26/24	Amended
Department of Professional and Financial Regulation, Board of Licensure in Medicine	21	Use of Controlled Substances for Treatment of Pain	RT	No	2024-039	2/26/24	Amended
Department of Professional and Financial Regulation, State Board of Nursing	12	Joint Rule Regarding Office Based Treatment of Opioid Use Disorder	RT	No	2024-037	2/26/24	Amended
Department of Professional and Financial Regulation, State Board of Nursing	21	Use of Controlled Substances for Treatment of Pain	RT	No	2024-040	2/26/24	Amended

2024 ADOPTION & FINAL ADOPTION FILINGS

Agency name	Ch.	Rule title	Type	Emergency?	Filing No.	Effective date	Action
Department of Professional and Financial Regulation, Board of Osteopathic Licensure	12	Joint Rule Regarding Office Based Treatment of Opioid Use Disorder	RT	No	2024-038	2/26/24	Amended
Department of Professional and Financial Regulation, Board of Osteopathic Licensure	21	Use of Controlled Substances for Treatment of Pain	RT	No	2024-041	2/26/24	Amended
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine Board of Pharmacy	7	Licensure and Employment of Pharmacy Technicians	RT	No	2024-282	1/1/25	Amended
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine Board of Pharmacy	41	Sale of Nonprescription Drugs Through Vending Machine Outlets	RT	No	2024-283	1/1/25	Amended
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine Board of Pharmacy	44	Pharmacist Authorization to Make Certain Contraception Accessible	RT	No	2024-284	1/1/25	New
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Plumbers' Examining Board	4	Installation Standards	RT	No	2024-047	3/6/24	Amended
Department of Professional and Financial Regulation, Board of Licensure of Podiatric Medicine	21	Use of Controlled Substances for Treatment of Pain	RT	No	2024-042	2/26/24	Amended
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine Fuel Board	6	Adoption of Standards	RT	No	2024-079	3/30/24	Amended
Department of Corrections	10	Policy and Procedures Manual - Adult	RT	No	2024-078	4/1/24	Amended
Department of Corrections	10	Policy and Procedures Manual - Adult	RT	No	2024-149	6/30/24	Repeal
Department of Corrections	10	Policy and Procedures Manual - Adult	RT	No	2024-159	7/20/24	Repeal
Department of Corrections	15	Domestic Violence Intervention Program Certification	RT	No	2024-217	9/28/24	Repeal and Replace
Department of Education, State Board of Education	61	Rules for Major Capital School Construction Projects	MS	No	2024-122	6/12/24	Amended
Department of Education	101	Maine Unified Special Education Rule Birth to Age Twenty	MS	No	2024-150	7/26/24	Amended

2024 ADOPTION & FINAL ADOPTION FILINGS

Agency name	Ch.	Rule title	Type	Emergency?	Filing No.	Effective date	Action
Department of Education	41	Offering Instruction Related to Cardiopulmonary Resuscitation and the Use of an Automated External Defibrillator in Maine Public Schools	RT	No	2024-003	1/9/24	Amended
Department of Education	83	School Transportation Operations Program	RT	No	2024-102	5/5/24	Amended
Department of Education	52	Grant Application and Award Procedure; Fund for School Meal Equipment and Program Improvement	RT	No	2024-048	3/5/24	New
Department of Education	84	School Bus Refurbishment Program	RT	No	2024-103	5/6/24	Repeal
Department of Education, Maine Municipal Bond Bank (Joint Rule)	64	Maine School Facilities Program and School Revolving Renovation Fund	MS	No	2024-123	6/13/24	Amended
Department of Environmental Protection	355	Coastal Sand Dunes	MS	No	2024-095	5/22/24	Amended
Department of Environmental Protection	80	Reduction of Toxics in Packaging	MS	No	2024-100	5/25/24	Amended
Department of Environmental Protection	200	Metallic Mineral Exploration, Advanced Exploration and Mining	MS	No	2024-128	6/22/24	Amended
Department of Environmental Protection	167	Tracking and Reporting Gross and Net Annual Greenhouse Gas Emissions	RT	No	2024-022	2/6/24	Amended
Department of Environmental Protection	80	Reduction of Toxins in Packaging	RT	No	2024-024	2/6/24	Amended
Department of Environmental Protection	140	Part 70 Air Emission License Regulation	RT	No	2024-157	7/8/24	Amended
Department of Environmental Protection	145	NOx Control Program	RT	No	2024-158	7/8/24	Amended
Department of Environmental Protection	305	Natural Resources Protection Act - Permit by Rule Standards	RT	Yes	2024-025	2/2/24	Emergency
Department of Environmental Protection	526	Cooling Water Intake Structures	RT	No	2024-035	2/20/24	New
Department of Environmental Protection	534	Wastewater Treatment Plant Operator Certifications - Revocation or Suspension	RT	No	2024-099	4/30/24	New
Department of Environmental Protection	428	Stewardship Program for Packaging	RT	No	2024-277	12/25/24	New
Department of Environmental Protection	2	Processing of Applications and Other Administrative Matters	RT	No	2024-212	9/15/24	Repeal and Replace
Department of Inland Fisheries and Wildlife	16	Hunting	RT	No	2024-101	4/30/24	Amended
Department of Inland Fisheries and Wildlife	16	Hunting	RT	No	2024-105	5/7/24	Amended
Department of Inland Fisheries and Wildlife	16	Hunting	RT	No	2024-116	5/14/24	Amended
Department of Inland Fisheries and Wildlife	16	Hunting	RT	No	2024-141	6/10/24	Amended
Department of Inland Fisheries and Wildlife	16	Hunting	RT	No	2024-161	7/20/24	Amended

2024 ADOPTION & FINAL ADOPTION FILINGS

Agency name	Ch.	Rule title	Type	Emergency?	Filing No.	Effective date	Action
Department of Inland Fisheries and Wildlife	29	Species of Special Concern	RT	No	2024-273	12/21/24	Amended
Department of Inland Fisheries and Wildlife	1	Open Water and Ice Fishing Regulations	RT	No	2024-180	1/1/25	Amended
Department of Inland Fisheries and Wildlife	1-A	State Heritage Fish Waters	RT	No	2024-181	1/1/25	Amended
Department of Inland Fisheries and Wildlife	16	Hunting	RT	No	2024-250	7/1/25	Amended
Department of Inland Fisheries and Wildlife	17	Trapping	RT	No	2024-251	7/1/25	Amended
Department of Health and Human Services, MaineCare Services, Division of Policy	101	MaineCare Benefits Manual, Ch. III, § 29, Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder	MS	No	2024-104	5/30/24	Amended
Department of Health and Human Services, MaineCare Services, Division of Policy	101	MaineCare Benefits Manual, Ch. II, § 43, Hospice Services	RT	No	2024-009	1/17/24	Amended
Department of Health and Human Services, MaineCare Services, Division of Policy	101	MaineCare Benefits Manual, Ch. II, § 29, Support of Adults with Intellectual Disabilities or Autism Spectrum Disorder	RT	No	2024-012	1/24/24	Amended
Department of Health and Human Services, Office for Family Independence	301	Supplemental Nutrition Assistance Program (SNAP) Rules	RT	No	2024-013	1/28/24	Amended
Department of Health and Human Services, Office for Family Independence	333	Low Cost Drugs for Elderly and Disabled (DEL) - Eligibility	RT	No	2024-018	2/4/24	Amended
Department of Health and Human Services, MaineCare Services, Division of Policy	101	MaineCare Benefits Manual, Ch. II, § 94, Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT)	RT	No	2024-087	4/22/24	Amended
Department of Health and Human Services, Office for Family Independence	301	Supplemental Nutrition Assistance Program (SNAP) Rules	RT	No	2024-117	5/14/24	Amended
Department of Health and Human Services, Office for Family Independence	609	Supplemental Nutrition Assistance Program - Employment and Training (SNAP E&T) Program Rules	RT	No	2024-118	5/14/24	Amended
Department of Health and Human Services, Office for Family Independence	330	Higher Opportunity for Pathways to Employment (HOPE) Program Rules	RT	No	2024-119	5/14/24	Amended
Department of Health and Human Services, Office for Family Independence	332	MaineCare Eligibility Manual	RT	No	2024-127	5/26/24	Amended
Department of Health and Human Services, Maine Center for Disease Control and Prevention	201	Health Inspection Program Administration Rule	RT	No	2024-134	6/3/24	Amended
Department of Health and Human Services, Office for Family Independence	331	Public Assistance Manual (TANF)	RT	No	2024-135	6/4/24	Amended
Department of Health and Human Services	101	MaineCare Benefits Manual, Ch. II, § 23, Developmental and Behavioral Clinic Services	RT	No	2024-154	7/3/24	Amended

2024 ADOPTION & FINAL ADOPTION FILINGS

Agency name	Ch.	Rule title	Type	Emergency?	Filing No.	Effective date	Action
Department of Health and Human Services, Office for Family Independence	332	MaineCare Eligibility Manual	RT	No	2024-184	8/18/24	Amended
Department of Health and Human Services, Office for Family Independence	332	MaineCare Eligibility Manual	RT	No	2024-185	8/18/24	Amended
Department of Health and Human Services, Office for Family Independence	332	MaineCare Eligibility Manual	RT	No	2024-183	8/18/24	Amended
Department of Health and Human Services, Office for Family Independence	301	Supplemental Nutrition Assistance Program (SNAP) Rules	RT	No	2024-186	8/18/24	Amended
Department of Health and Human Services, Maine Center for Disease Control and Prevention	269	Rules Governing Self-Contained Breath Alcohol Testing Equipment	RT	No	2024-191	8/27/24	Amended
Department of Health and Human Services, Office for Family Independence	331	Public Assistance Manual (TANF)	RT	No	2024-208	9/1/24	Amended
Department of Health and Human Services, Office for Family Independence	301	Supplemental Nutrition Assistance Program (SNAP) Rules	RT	No	2024-209	9/1/24	Amended
Department of Health and Human Services, MaineCare Services	101	MaineCare Benefits Manual, Ch. II, § 25, Dental Services and Reimbursement	RT	No	2024-215	9/25/24	Amended
Department of Health and Human Services, Office for Family Independence	333	Low Cost Drugs for Elderly and Disabled (DEL) - Eligibility	RT	No	2024-232	10/13/24	Amended
Department of Health and Human Services, Office for Family Independence	331	Public Assistance Manual (TANF)	RT	No	2024-233	10/13/24	Amended
Department of Health and Human Services, Maine Center for Disease Control and Prevention	265	Substance Use Testing for the Workplace	RT	No	2024-234	10/14/24	Amended
Department of Health and Human Services, Office for Family Independence	332	MaineCare Eligibility Manual	RT	No	2024-240	10/22/24	Amended
Department of Health and Human Services, Office of MaineCare Services, Policy Division	101	MaineCare Benefits Manual, Ch. II, § 43, Hospice Services	RT	No	2024-245	10/30/24	Amended
Department of Health and Human Services, Office of MaineCare Services	101	MaineCare Benefits Manual, MaineCare Benefits Manual, Ch. III, § 45, Hospital Services	RT	No	2024-248	11/6/24	Amended
Department of Health and Human Services, Office for Family Independence	301	Supplemental Nutrition Assistance Program (SNAP) Rules	RT	No	2024-258	11/17/24	Amended
Department of Health and Human Services, Office for Family Independence	301	Supplemental Nutrition Assistance Program (SNAP) Rule	RT	No	2024-257	11/17/24	Amended
Department of Health and Human Services, Maine Center for Disease Control and Prevention	223	Rules Relating to Tanning Facilities	RT	No	2024-260	11/18/24	Amended

2024 ADOPTION & FINAL ADOPTION FILINGS

Agency name	Ch.	Rule title	Type	Emergency?	Filing No.	Effective date	Action
Department of Health and Human Services, Office for Family Independence	301	Supplemental Nutrition Assistance Program (SNAP) Rules	RT	No	2024-272	12/17/24	Amended
Department of Health and Human Services, Maine Center for Disease Control and Prevention	269	Rules Governing Self-Contained Breath Alcohol Testing Equipment	RT	Yes	2024-132	5/28/24	Emergency
Department of Health and Human Services	101	MaineCare Benefits Manual, Ch. II, § 25, Dental Services and Reimbursement Methodology	RT	Yes	2024-155	6/28/24	Emergency
Department of Health and Human Services, MaineCare Services, Division of Policy	101	MaineCare Benefits Manual, Ch. III, § 25, Principles of Reimbursement for Hospital Services	RT	Yes	2024-179	8/9/24	Emergency
Department of Health and Human Services, Office for Family Independence	323	Maine General Assistance Manual	RT	Yes	2024-247	10/29/24	Emergency
Department of Health and Human Services, Division of Licensing and Certification	111	Temporary Nurse Agency Registration Rule	RT	No	2024-081	4/6/24	New
Department of Health and Human Services, Maine Center for Disease Control and Prevention	175	Amyotrophic Lateral Sclerosis Incidence Registry Rule	RT	No	2024-214	9/16/24	New
Department of Health and Human Services, Division of Licensing and Certification	5	Regulations for Licensing and Certifying of Substance Abuse Treatment Programs	RT	No	2024-029	2/11/24	Repeal
Department of Health and Human Services, MaineCare Services, Division of Policy	101	MaineCare Benefits Manual, MaineCare Benefits Manual, Ch. III, Section 43, Allowances for Hospice Services	RT	No	2024-010	1/17/24	Repeal
Department of Health and Human Services, Maine Center for Disease Control and Prevention	242	Rules for Conversion of Seasonal Dwelling Units into Year-Round Residences in the Shoreland Zone	RT	No	2024-019	2/4/24	Repeal
Department of Health and Human Services, Division of Licensing and Certification	6	Licensing Mental Health Facilities	RT	No	2024-027	2/11/24	Repeal
Department of Health and Human Services, Division of Licensing and Certification	6A	Licensing Mental Health Facilities: PNMI	RT	No	2024-028	2/11/24	Repeal
Department of Health and Human Services	101	MaineCare Benefits Manual, Ch. III, § 23, Developmental and Behavioral Clinic Services	RT	No	2024-153	7/3/24	Repeal
Department of Health and Human Services, Division of Licensing and Certification	500	Rules Governing the Maine Certification of Healthcare Cooperative Agreements	RT	No	2024-261	11/24/24	Repeal
Department of Health and Human Services, Division of Licensing and Certification	123	Behavioral Health Organizations Licensing Rule	RT	No	2024-026	2/11/24	Repeal and Replace
Department of Health and Human Services, Division of Licensing and Certification	129	Personal Care Agency Licensing Rule	RT	No	2024-188	8/20/24	Repeal and Replace
Department of Health and Human Services, Maine Center for Disease Control and Prevention	4	Disclosure Of and Access To Vital Statistics Data, Reports and Records Rule	RT	No	2024-226	10/7/24	Amended

2024 ADOPTION & FINAL ADOPTION FILINGS

Agency name	Ch.	Rule title	Type	Emergency?	Filing No.	Effective date	Action
Department of Health and Human Services	6	Child Care Affordability Program Rules	RT	Yes	2024-156	7/1/24	Emergency
Department of Health and Human Services, Office of Child and Family Services	30	Early Childhood Educator Workforce Salary Supplement System	RT	No	2024-050	3/11/24	New
Department of Health and Human Services	6	Child Care Affordability Program Rules	RT	No	2024-216	9/25/24	Repeal and Replace
Department of Health and Human Services, Office of Aging and Disability Services	5	Office of Aging and Disability Services Policy Manual	RT	No	2024-275	12/28/24	Amended
Department of Health and Human Services, Office of Aging and Disability Services	2	Adult Protective Services System	RT	No	2024-086	4/14/24	New
Department of Health and Human Services, Office of Aging and Disability Services	1	Adult Protective Services System	RT	No	2024-085	4/14/24	Repeal
Department of Health and Human Services, Office of Behavioral Health	20	Housing First Program Administrative Responsibility Rule	RT	No	2024-276	12/25/24	New
Department of Labor, Bureau of Labor Standards	9	Rules Governing Administrative Civil Money Penalties for Labor Law Violations	MS	No	2024-190	9/19/24	Amended
Department of Labor, Bureau of Labor Standards	15	Rules Relating to Severance Pay	RT	No	2024-061	3/18/24	Amended
Department of Labor, Bureau of Unemployment Compensation	8	Payments for Dependents	RT	No	2024-045	3/5/24	Amended
Department of Labor, Bureau of Unemployment Compensation	26	Waivers of Repayment of Erroneously Paid Benefits (Overpayments)	RT	No	2024-046	3/5/24	Amended
Department of Labor, Bureau of Unemployment Compensation	24	Approved Training	RT	No	2024-167	7/23/24	Amended
Department of Labor, Bureau of Unemployment Compensation	14	Education Institutional Employees	RT	No	2024-125	5/25/24	Repeal and Replace
Department of Labor, Bureau of Unemployment Compensation	27	WorkShare Program	RT	No	2024-096	4/27/24	New
Department of Labor, Board of Occupational Safety and Health	6	Recording Occupational Injuries and Illnesses in the Public Sector	RT	No	2024-189	8/25/24	Amended
Department of Labor, Bureau of Employment Services	2	Rule Governing the Competitive Skills Scholarship Program	RT	No	2024-051	3/16/24	Repeal and Replace
Department of Labor, Paid Family and Medical Leave	1	Rules Governing Paid Family and Medical Leave Program	RT	No	2024-268	1/1/25	New
Department of Marine Resources	4	Municipal Shellfish Conservation Warden Certification	RT	No	2024-063	3/19/24	Amended
Department of Marine Resources	7	Requirements for Municipalities Having Shellfish Conservation Programs	RT	No	2024-064	3/19/24	Amended

2024 ADOPTION & FINAL ADOPTION FILINGS

Agency name	Ch.	Rule title	Type	Emergency?	Filing No.	Effective date	Action
Department of Marine Resources	32	Eel Regulations	RT	No	2024-065	3/19/24	Amended
Department of Marine Resources	36	Atlantic Herring	RT	No	2024-066	3/19/24	Amended
Department of Marine Resources	40	Smelt Regulations	RT	No	2024-067	3/19/24	Amended
Department of Marine Resources	41	Menhaden	RT	No	2024-068	3/19/24	Amended
Department of Marine Resources	55	Gear Restrictions	RT	No	2024-069	3/19/24	Amended
Department of Marine Resources	115	Vibrio parahemolyticus Control Plan	RT	No	2024-070	3/19/24	Amended
Department of Marine Resources	34	Groundfish Regulations	RT	No	2024-225	10/6/24	Amended
Department of Marine Resources	26	Sea Urchins	RT	No	2024-223	10/6/24	Amended
Department of Marine Resources	11	Scallops	RT	No	2024-255	11/12/24	Amended
Department of Marine Resources	2	Aquaculture Lease Regulations	RT	No	2024-256	11/12/24	Amended
Department of Marine Resources	11	Scallops	RT	Yes	2024-020	1/28/24	Emergency
Department of Marine Resources	34	Groundfish Regulations	RT	Yes	2024-173	7/27/24	Emergency
Department of Marine Resources	36	Atlantic Herring	RT	Yes	2024-224	10/1/24	Emergency
Department of Marine Resources	41	Menhaden	RT	No	2024-169	7/21/24	Repeal
Department of Marine Resources	36	Atlantic Herring	RT	Yes	2024-134	5/31/24	Emergency
Department of Marine Resources	41	Menhaden	RT	Yes	2024-162	7/14/24	Emergency
Department of Defense, Veterans, and Emergency Management, Maine Emergency Management Agency	2	Rules for Establishing Fees for Reporting Under the Superfund Amendments and Reauthorization Act of 1986 and Title 37-B Sec. 801, MRSA, Chapter 13	RT	No	2024-021	2/4/24	Amended
Department of Defense, Veterans, and Emergency Management	4	Expanded Burial Eligibility in the Maine Veterans' Memorial Cemetery System	RT	No	2024-265	11/30/24	New
Department of Public Safety, Maine Emergency Medical Services	21	Immunization Requirements	RT	No	2024-004	1/10/24	Amended
Department of Public Safety, Maine Emergency Medical Services	2	Definitions	RT	No	2024-146	6/25/24	Amended
Department of Public Safety, Maine Emergency Medical Services	3	Ground Ambulance Service and Non-Transporting Service Licenses	RT	No	2024-147	6/25/24	Amended
Department of Public Safety, Maine Emergency Medical Services	21	Immunization Requirements	RT	No	2024-218	9/28/24	Amended

2024 ADOPTION & FINAL ADOPTION FILINGS

Agency name	Ch.	Rule title	Type	Emergency?	Filing No.	Effective date	Action
Department of Public Safety, Maine Emergency Medical Services	25	Implementing the Maine EMS Stabilization Program	RT	No	2024-062	3/18/24	New
Department of Public Safety, Maine Emergency Management Services	26	Community Grant Program	RT	No	2024-236	10/16/24	New
Department of Public Safety, Maine Emergency Medical Services	15	Maine EMS Regions and Regional Councils	RT	No	2024-082	4/7/24	Repeal and Replace
Department of Public Safety, Maine Criminal Justice Academy Board of Trustees	5	Training Standards	RT	No	2024-030	2/13/24	Amended
Department of Public Safety, Maine Criminal Justice Academy Board of Trustees	13	Minimum Standards for Mandatory Policy on Response to Domestic Abuse	RT	No	2024-049	3/10/24	New
Department of Public Safety, Maine Criminal Justice Academy Board of Trustees	15	Standards of Conduct	RT	No	2024-262	11/24/24	New
Department of Public Safety, Gambling Control Unit	32	Rules Relating to Games of Chance	RT	No	2024-043	3/2/24	Amended
Department of Public Safety, Gambling Control Unit	62	Geolocation and Remote Access	RT	No	2024-083	4/7/24	Amended
Department of Public Safety, Gambling Control Unit	28	Advanced Deposit Wagering	RT	No	2024-222	10/8/24	Amended
Department of Public Safety, Gambling Control Unit	32	Rules Relating to Games of Chance	RT	No	2024-263	11/24/24	Amended
Department of Public Safety, Gambling Control Unit	67	Involuntary Placement of Persons on the Unauthorized Persons List	RT	No	2024-084	4/7/24	New
Department of Transportation	602	Rules Relating to Maine State Ferry Service Tolls	RT	No	2024-168	8/1/24	Amended
Maine Pilotage Commission	2	Pilotage Rates	RT	No	2014-219	9/29/24	New
Department of Administrative and Financial Services, Maine Revenue Services	102	Electronic Funds Transfer (EFT)	RT	No	2024-089	4/27/24	Amended
Department of Administrative and Financial Services, Maine Revenue Services	104	Filing of Maine Tax Returns	RT	No	2024-090	4/27/24	Amended
Department of Administrative and Financial Services, Maine Revenue Services	110	Requests for Advisory Rulings	RT	No	2024-091	4/27/24	Amended
Department of Administrative and Financial Services, Maine Revenue Services	603	Maine Estate Tax After 2012	RT	No	2024-093	4/27/24	Amended

2024 ADOPTION & FINAL ADOPTION FILINGS

Agency name	Ch.	Rule title	Type	Emergency?	Filing No.	Effective date	Action
Department of Administrative and Financial Services, Maine Revenue Services	805	Composite Filing	RT	No	2024-094	4/27/24	Amended
Department of Administrative and Financial Services, Bureau of Revenue Services	803	Income Tax Withholding Reports and Payments	RT	No	2024-120	5/22/24	Amended
Department of Administrative and Financial Services, Bureau of Revenue Services	104	Filing of Maine Tax Returns	RT	No	2024-171	8/4/24	Amended
Department of Administrative and Financial Services, Maine Revenue Services	806	Nonresident Individual Income Tax	RT	No	2024-176	8/18/24	Amended
Department of Administrative and Financial Services, Maine Revenue Services	815	Dirigo Business Incentives Program	RT	No	2024-072	3/20/24	New
Department of Administrative and Financial Services, Maine Revenue Services	101	General Administrative Provisions	RT	No	2024-088	4/27/24	New
Department of Administrative and Financial Services, Bureau of Revenue Services	811	Student Loan Repayment Tax Credit	RT	No	2024-121	5/22/24	New
Department of Administrative and Financial Services, Maine Revenue Services	202	Tree Growth Tax Law Valuations - 2024	RT	No	2024-092	4/27/24	Repeal and Replace
Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations	20	Powerball Rules	RT	No	2024-249	11/12/24	Amended
Department of Administrative and Financial Services, Maine Board of Tax Appeals	100	Maine Board of Tax Appeals Practice and Procedure	RT	No	2024-211	9/14/24	Amended
Department of Administrative and Financial Services, Office of Cannabis Policy	5	Rules for the Certification of Cannabis Testing Facilities	RT	No	2024-253	11/12/24	Amended
Department of Administrative and Financial Services, Office of Cannabis Policy	10	Rules for the Administration of the Adult Use Cannabis Program	MS	No	2024-228	11/6/24	New
Department of Administrative and Financial Services, Office of Cannabis Policy	30	Compliance Rules for Adult Use Cannabis Establishments	MS	No	2024-229	11/6/24	New

2024 ADOPTION & FINAL ADOPTION FILINGS

Agency name	Ch.	Rule title	Type	Emergency?	Filing No.	Effective date	Action
Department of Administrative and Financial Services, Office of Cannabis Policy	20	Rules for the Licensure of Adult Use Cannabis Establishments	MS	No	2024-230	11/6/24	New
Department of Administrative and Financial Services, Office of Cannabis Policy	40	Rules for Testing of Adult Use Cannabis	RT	No	2024-231	11/6/24	New
Department of Economic and Community Development	300	Dirigo Business Incentives Program	RT	No	2024-071	3/20/24	New
Secretary of State, Bureau of Corporations, Elections, and Commissions	525	Rules for Administering the Central Issuance and Processing of UOCAVA Absentee Ballots	RT	No	2024-235	10/16/24	Amended
Secretary of State, Bureau of Motor Vehicles	6	Rules For the Suspension of Commercial Drivers' Licenses	RT	No	2024-271	12/17/24	Amended
Public Utilities Commission	317	Statewide Arrearage Management Program	RT	No	2024-008	1/15/24	Amended
Public Utilities Commission	840	Intervenor and Participant Funding	RT	No	2024-140	7/8/24	Amended
Public Utilities Commission	313	Customer Net Energy Billing Rule	RT	No	2024-143	7/8/24	Amended
Public Utilities Commission	895	Underground Facility Damage Prevention Requirements	RT	No	2024-254	12/11/24	Amended
Public Utilities Commission	815	Consumer Protection Standards for Gas Utilities and Electric Transmission and Distribution Utilities	RT	No	2024-187	8/29/24	Amended
Public Utilities Commission	397	Rule Governing Procurement of Renewable Energy Promoting the Use of Contaminated Land	RT	No	2024-172	8/10/24	New
Public Utilities Commission	328	Funding Source for Interconnection Ombudsman	RT	No	2024-264	12/11/24	New
Maine Health Data Organization	270	Uniform Reporting System for Quality Data Sets	MS	No	2024-098	5/23/24	Amended
Maine Health Data Organization	243	Uniform Reporting System for Health Care Claims Data Sets	RT	No	2024-145	6/25/24	Amended
Maine Health Data Organization	340	Uniform Reporting System for Reporting 340B Drug Program Data Sets	RT	No	2024-213	9/17/24	New
Maine Historic Preservation Commission	811	Historic Property Preservation and Restoration Grants	RT	No	2024-178	8/13/24	Amended
Maine Historic Preservation Commission	810	Maine Historic Restoration Standards	RT	No	2024-177	8/13/24	Repeal
Commission on Governmental Ethics and Election Practices	1	Procedures	RT	No	2024-073	3/24/24	Amended

2024 ADOPTION & FINAL ADOPTION FILINGS

Agency name	Ch.	Rule title	Type	Emergency?	Filing No.	Effective date	Action
Commission on Governmental Ethics and Election Practices	3	Maine Clean Election Act and Related Provisions	RT	No	2024-074	3/24/24	Amended
Commission on Governmental Ethics and Election Practices	1	Procedures	RT	No	2024-160	7/20/24	Amended
State Board of Property Tax Review	1	Rules of Practice and Procedure in Appeals before the State Board of Property Tax Review	RT	No	2024-227	10/12/24	Amended
Maine Public Employees Retirement System	803	Participating Local District Consolidated Retirement Plan	RT	No	2024-011	1/22/24	Amended
Maine Public Employees Retirement System	103	Qualified Domestic Relations Orders	RT	No	2024-163	7/31/24	Amended
Maine Public Employees Retirement System	506	Eligibility for Disability Retirement Benefits	RT	No	2024-164	7/31/24	Amended
Maine Public Employees Retirement System	513	Disability Retirement Compensation Limitations and Benefit Offsets	RT	No	2024-165	8/1/24	New
Finance Authority of Maine	612	Maine Dental Education Loan and Loan Repayment Programs	RT	No	2024-005	1/14/24	Amended
Finance Authority of Maine	617	Health Professions Loan Program	RT	No	2024-006	1/14/24	Amended
Finance Authority of Maine	618	Maine Veterinary Medicine Loan Program	RT	No	2024-007	1/14/24	Amended
Efficiency Maine Trust	3	Electric Efficiency and Conservation Programs	RT	No	2024-076	3/26/24	Amended
Maine Commission on Indigent Legal Services	301	Fee Schedule and Administrative Procedures for Payment of Court or Commission Assigned Counsel	RT	No	2024-023	2/6/24	Amended
Maine Commission on Indigent Legal Services	3	Eligibility Requirements for Specialized Case Types	RT	No	2024-077	3/25/24	Amended
Maine Commission on Indigent Legal Services	2	Standards for Qualifications of Contract and Assigned Counsel	RT	No	2024-115	5/14/24	Amended
Maine Commission on Public Defense Services	301	Fee Schedule and Administrative Procedures for Payment of Court or Commission-Assigned Counsel	RT	No	2024-204	9/1/24	Amended
Maine Commission on Public Defense Services	4	Caseload Standards for Assigned Counsel and Contract Counsel	RT	No	2024-205	9/1/24	Amended
Maine Commission on Public Defense Services	301-A	Payment for Attending and Reimbursement of Expenses Incidental to Attending Trainings	RT	No	2024-206	9/1/24	Amended
Maine Commission on Public Defense Services	302	Procedures Regarding Funds for Experts and Investigators	RT	No	2024-207	9/1/24	Amended

2024 ADOPTION & FINAL ADOPTION FILINGS

Agency name	Ch.	Rule title	Type	Emergency?	Filing No.	Effective date	Action
Maine Commission on Indigent Legal Services	3	Eligibility Requirements for Specialized Panels	RT	Yes	2024-174	7/31/24	Emergency
Small Enterprise Growth Board	701	Small Enterprise Growth Program	RT	No	2024-175	8/11/24	Amended
Maine State Housing Authority	36	Housing First Program Administrative Responsibility Rule	RT	No	2024-274	12/25/24	New
Maine State Housing Authority	24	Home Energy Assistance Program Rule	RT	No	2024-151	7/3/24	Repeal and Replace
Maine State Housing Authority	16	Low-Income Housing Tax Credit Rule	RT	No	2024-152	7/3/24	Repeal and Replace
Maine State Housing Authority	19	Homeless Solutions Rule	RT	No	2024-242	10/28/24	Repeal and Replace

01 Department of Agriculture, Conservation, and Forestry

01-015 Department of Agriculture, Conservation, and Forestry, Maine Milk Commission	
2024-014: Chapter 3, Schedule of Minimum Prices	
Statutory Authority:	22 M.R.S. §§ 42(1) and (8), 3104
Type:	Routine Technical
Emergency?:	Yes
Fiscal impact:	*None*
Principal purpose:	*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 2024 minimum Class I price is $21.24/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 $24.58/cwt., which includes a processor assessment of $0.20/cwt. Thus, the minimum retail price of a gallon of whole milk is set at $4.06.*
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 $16.04/cwt. and a Class IV price of $19.23/cwt. for December 2023.* *The Class II price for December 2023 is $19.88/cwt. as announced by the Federal Order One Northeast Market Administrator.* *The Commission, in setting their minimum prices, recognized the February 2024 Federal Order Class I price of $21.24/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 January 18, 2024 and therefore should be passed on in minimum prices effective January 28, 2024. 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.*

01-026 Department of Agriculture, Conservation, and Forestry, Board of Pesticides Control	
2024-015: Chapter 20, Special Provisions	
Statutory Authority:	22 M.R.S. Ch. 258-A
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*Moving language from the policy "Positive Identification of Proper Treatment Site by Commercial Applicators" into Chapter 20: Special Provisions may have fiscal impacts for companies or master applicators that violate these provisions in the form of consent agreements, legal fees, or license suspension. There are no fiscal impacts anticipated from implementation of Chapter 31, Chapter 32, which address clarity of rule to reduce confusion and federal rule incorporated by reference.*
Principal purpose:	*Chapter 20 – Amendments to this chapter address applicators properly identifying treatment sites. This rule is amended to address several violations of BPC's policy "Positive Identification of Proper Treatment Site by Commercial Applicators". This amendment will give the Board the ability to enforce violations once the requirements and penalties are outlined in rule.*
Basis Statement:	*Chapter 20 – Two amendments are proposed:* *1. Adopting current policy language into rule to make "Proper Identification of Treatment Sites" methods enforceable. Adding language from this policy under subsection 1-4 and creating a new subsection 5 that allows master applicators to submit their own methods for identifying treatment sites.* *2. Adding a section B that outlines penalties if violations occur over a 5-year period.* *Chapter 31 – Two amendments are proposed:* *1. Combining categories 7C(1) Disinfectant and Biocide Treatments, 7C(2) Swimming Pool & Spa, and 7C(3) Mold Remediation into one category 7C Disinfectant and Biocide and retaining language from the other categories under this new category.* *2. Combining competency standards for 7C(1) Disinfectant and Biocide Treatments, 7C(2) Swimming Pool & Spa, and 7C(3) Mold Remediation into one competency standard 7C Disinfectant and Biocide and retaining language from the other competency standard categories to align with language from the category descriptions in Section 2.* *Chapter 32 – One amendment is proposed:* *1. Adding requirements for certified applicators supervising noncertified applicators that align with federal standards outlined in 40 CFR 171.201 (2023). These standards are required by EPA for certification and training program updates.* *The amendments to the proposed rule are in response to several needs BPC has identified in its rules. The amendments to Chapter 20 are for enforcement purposes, as the current policy regarding proper identification of treatment sites is not sufficient for violations, additionally the Board has added provisions where licensure suspension can be considered for violations of the new rules. The amendments to Chapter 31 are for administrative purposes, combining 7C: Disinfectant and Biocide subcategories 1. Disinfectant and Biocide Treatments, 2. Swimming Pool & Spa Treatments, and 3. Mold Remediation into one category 7C: Disinfectant and Biocide will reduce confusion among applicators on what testing is need for their*

	licensure. This change also comes as a new manual for all three groups has been updated and will be easier to distribute if all are considered the same category. The amendments to Chapter 32 are requirements for updates to Maine's Certification and Training Plan, as mandated by the United States Environmental Protection Agency (EPA). *Eleven comments were received. Comments received for Chapter 20 included a concern for the strictness of the amendments, with an emphasis on the impact of small and large businesses. Many agreed that there is an issue of identifying the correct treatment sites in Maine. Commenters discussed the length of the penalties, asked for additional clarity and if there were licensure categories that would be exempt from these amendments, and discussed customer confidentiality. For Chapter 32, commenters wanted clarity in the rule that these federal requirements applied to restricted-use pesticides.*

01-026 Department of Agriculture, Conservation, and Forestry, Board of Pesticides Control	
2024-016: Chapter 31, Certification and Licensing/Commercial Applicators	
Statutory Authority:	22 M.R.S. § 1471-D
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*Moving language from the policy "Positive Identification of Proper Treatment Site by Commercial Applicators" into Chapter 20: Special Provisions may have fiscal impacts for companies or master applicators that violate these provisions in the form of consent agreements, legal fees, or license suspension. There are no fiscal impacts anticipated from implementation of Chapter 31, Chapter 32, which address clarity of rule to reduce confusion and federal rule incorporated by reference.*
Principal purpose:	*Chapter 31—Amendments to this chapter are to address the need for one comprehensive category that encompasses all of the 7C categories. Given that these categories all use one manual, combining all of the 7C categories and competency standards reduces confusion for prospective applicators that want to be licensed in one or all of these groups.*
Basis Statement:	*Chapter 20 – Two amendments are proposed:* *1. Adopting current policy language into rule to make "Proper Identification of Treatment Sites" methods enforceable. Adding language from this policy under subsection 1-4 and creating a new subsection 5 that allows master applicators to submit their own methods for identifying treatment sites.* *2. Adding a section B that outlines penalties if violations occur over a 5-year period.* *Chapter 31 – Two amendments are proposed:* *1. Combining categories 7C(1) Disinfectant and Biocide Treatments, 7C(2) Swimming Pool & Spa, and 7C(3) Mold Remediation into one category 7C Disinfectant and Biocide and retaining language from the other categories under this new category.* *2. Combining competency standards for 7C(1) Disinfectant and Biocide Treatments, 7C(2) Swimming Pool & Spa, and 7C(3) Mold Remediation into one competency standard 7C Disinfectant and Biocide and retaining language from the other competency standard categories to align with language from the category descriptions in Section 2.* *Chapter 32 – One amendment is proposed:* *1. Adding requirements for certified applicators supervising noncertified applicators that align with federal standards outlined in 40 CFR 171.201 (2023). These standards are required by EPA for certification and training program updates.* *The amendments to the proposed rule are in response to several needs BPC has identified in its rules. The amendments to Chapter 20 are for enforcement purposes, as the current policy regarding proper identification of treatment sites is not sufficient for violations, additionally the Board has added provisions where licensure suspension can be considered for violations of the new rules. The amendments to Chapter 31 are for administrative purposes, combining 7C: Disinfectant and Biocide subcategories 1. Disinfectant and Biocide Treatments, 2. Swimming Pool & Spa Treatments, and 3. Mold Remediation into one category 7C: Disinfectant and Biocide will reduce confusion among applicators on what testing is need for their*

	licensure. This change also comes as a new manual for all three groups has been updated and will be easier to distribute if all are considered the same category. The amendments to Chapter 32 are requirements for updates to Maine's Certification and Training Plan, as mandated by the United States Environmental Protection Agency (EPA). *Eleven comments were received. Comments received for Chapter 20 included a concern for the strictness of the amendments, with an emphasis on the impact of small and large businesses. Many agreed that there is an issue of identifying the correct treatment sites in Maine. Commenters discussed the length of the penalties, asked for additional clarity and if there were licensure categories that would be exempt from these amendments, and discussed customer confidentiality. For Chapter 32, commenters wanted clarity in the rule that these federal requirements applied to restricted-use pesticides.*

01-026 Department of Agriculture, Conservation, and Forestry, Board of Pesticides Control	
2024-017: Chapter 32, Certification and Licensing/Private Applicators	
Statutory Authority:	22 M.R.S. § 1471-D(2-D) and M(1)(C-1)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*Moving language from the policy "Positive Identification of Proper Treatment Site by Commercial Applicators" into Chapter 20: Special Provisions may have fiscal impacts for companies or master applicators that violate these provisions in the form of consent agreements, legal fees, or license suspension. There are no fiscal impacts anticipated from implementation of Chapter 31, Chapter 32, which address clarity of rule to reduce confusion and federal rule incorporated by reference.*
Principal purpose:	*Chapter 32 – Additions to this chapter are required by U.S. Environmental Protection Agency for Maine's certification and training plan update document to be accepted. This aligns Maine with federal standards for non-certified applicator requirements, which were not addressed in the previous plan. This incorporates 40 CFR 171.201 (2023) by reference.*
Basis Statement:	*Chapter 20 – Two amendments are proposed:* *1. Adopting current policy language into rule to make "Proper Identification of Treatment Sites" methods enforceable. Adding language from this policy under subsection 1-4 and creating a new subsection 5 that allows master applicators to submit their own methods for identifying treatment sites.* *2. Adding a section B that outlines penalties if violations occur over a 5-year period.* *Chapter 31 – Two amendments are proposed:* *1. Combining categories 7C(1) Disinfectant and Biocide Treatments, 7C(2) Swimming Pool & Spa, and 7C(3) Mold Remediation into one category 7C Disinfectant and Biocide and retaining language from the other categories under this new category.* *2. Combining competency standards for 7C(1) Disinfectant and Biocide Treatments, 7C(2) Swimming Pool & Spa, and 7C(3) Mold Remediation into one competency standard 7C Disinfectant and Biocide and retaining language from the other competency standard categories to align with language from the category descriptions in Section 2.* *Chapter 32 – One amendment is proposed:* *1. Adding requirements for certified applicators supervising noncertified applicators that align with federal standards outlined in 40 CFR 171.201 (2023). These standards are required by EPA for certification and training program updates.* *The amendments to the proposed rule are in response to several needs BPC has identified in its rules. The amendments to Chapter 20 are for enforcement purposes, as the current policy regarding proper identification of treatment sites is not sufficient for violations, additionally the Board has added provisions where licensure suspension can be considered for violations of the new rules. The amendments to Chapter 31 are for administrative purposes, combining 7C: Disinfectant and Biocide subcategories 1. Disinfectant and Biocide Treatments, 2. Swimming Pool & Spa Treatments, and 3. Mold Remediation into one category 7C: Disinfectant and Biocide will reduce confusion among applicators on what testing is need for their*

	licensure. This change also comes as a new manual for all three groups has been updated and will be easier to distribute if all are considered the same category. The amendments to Chapter 32 are requirements for updates to Maine's Certification and Training Plan, as mandated by the United States Environmental Protection Agency (EPA). *Eleven comments were received. Comments received for Chapter 20 included a concern for the strictness of the amendments, with an emphasis on the impact of small and large businesses. Many agreed that there is an issue of identifying the correct treatment sites in Maine. Commenters discussed the length of the penalties, asked for additional clarity and if there were licensure categories that would be exempt from these amendments, and discussed customer confidentiality. For Chapter 32, commenters wanted clarity in the rule that these federal requirements applied to restricted-use pesticides.*

01-015 Department of Agriculture, Conservation, and Forestry, Maine Milk Commission	
2024-044: Chapter 3, Schedule of Minimum Prices	
Statutory Authority:	5 M.R.S. § 8054; 7 M.R.S. § 2954
Type:	Routine Technical
Emergency?:	Yes
Fiscal impact:	*None*
Principal purpose:	*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 2024 minimum Class I price is $22.05/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 $25.39/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 $15.17/cwt. and a Class IV price of $19.39/cwt. for January 2024.* *The Class II price for January 2024 is $20.04/cwt. as announced by the Federal Order One Northeast Market Administrator.* *The Commission, in setting their minimum prices, recognized the March 2024 Federal Order Class I price of $22.05/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 22, 2024 and therefore should be passed on in minimum prices effective March 3, 2024. 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.*

01-001 Department of Agriculture, Conservation, and Forestry	
2024-052: Chapter 400, Administrative Cost Grants	
Statutory Authority:	7 M.R.S. Ch. 10-D §§ 320-K and 320-L; PL 2021, Ch. 635, § XX-3
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*These rules will help to effectuate Strategies I.A, I.B, I.D, I.E, I.F, II.A, III.A, IV.A, and IV.F of the Plan for Administration of the Fund to Address PFAS Contamination. The projected combined budget of these 9 strategies is $57,919,000 over 5 years. That is, approximately $58 million of the $60 million dollars allocated to the PFAS Fund through PL 2021, ch. 635, part XX could be distributed through the programs established in accordance with these rules.*
Principal purpose:	*These rules are being proposed to implement Title 7, chapter 10-D. More specifically, the rules are necessary to implement certain portions of the Plan for Administration of the Fund to Address PFAS Contamination. The plan was developed with the advice of the PFAS Fund Advisory Committee and four issue-focused subcommittees, consistent with the directive in PL 2021, chapter 635, section XX-3 (DACF "shall develop and implement an initial plan"). The rules are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. See 7 MRS § 320-K(6).*
Basis Statement:	*Basis Statement* *01-001 C.M.R. c. 400-408* *The nine new rules to be codified at 01-001 C.M.R. ch. 400-408 effectuate elements of the Plan for Administration of the Fund to Address PFAS Contamination. Both the plan and the rules are authorized by 7 MRS §§ 320-K - 320-L (2021) and P.L. 2021, ch. 635. The rules establish eligibility criteria, administrative procedures, evaluation criteria, and appeals procedures for programs to provide income replacement payments, no-cost technical assistance, infrastructure grants, assistance acquiring new loans, and administrative cost grants to PFAS-impacted commercial farms. Likewise, the rules establish eligibility criteria, administrative procedures, evaluation criteria, and appeals procedures for a competitive research grant program, and programs to provide financial support to enhance access to PFAS blood serum testing and mental health support for eligible persons.* *Elements of the adopted rules vary from the proposed rules because of comments received during the public comment period. Specifically,* *01-01 C.M.R. c. 400, Administrative Cost Grants* *• §1. Overview. In the third line, inserted "partially" in response to a comment from Adrienne Lee, New Beat Farm and PFAS Fund Advisory Committee member, that 80 hours' worth of compensation will not fully compensate all producers for the time they must devote to PFAS response.* *• §10. Waiver. This is a new section added in response to comments from Amanda Beal, Commissioner of DACF, and Bill Pluecker, State Representative and House Chair of the Agriculture, Conservation and Forestry Committee, urging that flexibility be built into the PFAS Fund's rules so that DACF can respond nimbly to evolving science and the needs of those seeking support while retaining guardrails to prevent abuse.*

01-001 C.M.R. c. 401, Income Replacement

• §3(9). Definitions. Added a definition for service providers. This change is a consequence of a revision to §9(2) requested by Meagan Hennessey, DACF PFAS Response Director, and Adam Nordell, Defend Our Health (see below).

• §8(3). Inflationary Factor. The method of calculating the inflationary factor was refined so that it can be applied more consistently based on a comment from Meagan Hennessey, DACF PFAS Response Director. Related clarifying language was added to §8(4) and §8(5) too.

• §8(4). Maximum Payments. In response to comments from Adam Nordell, Defend Our Health, and Heather Spaulding, MOFGA, the text was revised to clarify that income replacement payments are for up to 24 months and that the original baseline income calculation will be used for all applications from a given producer.

• §9(2). Cessation of Operations. Based on comments from Meagan Hennessey, DACF PFAS Response Director, and Adam Nordell, Defend Our Health, this section was revised to allow DACF more flexibility in determining when a livestock farm ceased operation.

• §9(3). Cessation of Operations. Replaced "business planner" with "service provider" as a consequence of changes made to §9(2) requested by Meagan Hennessey, DACF PFAS Response Director, and Adam Nordell, Defend Our Health.

• §13. Waiver. This is a new section added in response to comments from Amanda Beal, Commissioner of DACF, and Bill Pluecker, State Representative and House Chair of the Agriculture, Conservation and Forestry Committee, urging that flexibility be built into the PFAS Fund's rules so that DACF can respond nimbly to evolving science and the needs of those seeking support while retaining guardrails to prevent abuse.

01-01 C.M.R. c. 402, Support for No-Cost Technical Assistance

• §7(1). Application Review. Combined the original §7(1) ("When a commercial farm requests no-cost technical assistance, DACF will rely on all available information it has compiled on the farm to assess the request") with the original §7(2) (evaluation criteria) and changed "will include" to "may include but not be limited to" in the second sentence to emphasize that DACF will consider all available information when making funding determinations. This change was made in response to comments from Amanda Beal, Commissioner of DACF, and Bill Pluecker, State Representative and House Chair of the Agriculture, Conservation and Forestry Committee, urging that flexibility be built into the PFAS Fund's rules.

• §7(1). Application Review. Added the degree to which a farm has been impacted by PFAS contamination as an evaluation criterion based on a comment Adam Nordell, Defend Our Health, made on 01-001 C.M.R. c. 403. The same change was made to rules 402, 403, and 404 for consistency.

• §8(3). Payment Options and Restrictions. Based on a comment from Adrienne Lee, New Beat Farm and PFAS Fund Advisory Committee member, edited this sentence to allow for reimbursement for eligible costs that were incurred before these rules were finalized.

• §10. Waiver. This is a new section added in response to comments from Amanda Beal, Commissioner of DACF, and Bill Pluecker, State Representative and House Chair of the Agriculture, Conservation and Forestry Committee, urging that

flexibility be built into the PFAS Fund's rules so that DACF can respond nimbly to evolving science and the needs of those seeking support while retaining guardrails to prevent abuse.

01-001 C.M.R. c. 403, Infrastructure Investment Grants

- *§7(3). Application Review. Shifted "DACF will consider all available information it has compiled on the farm to assess the request" from the last sentence to the first sentence to be consistent with the format of the Application Review sections in 01-001 C.M.R. c. 402 and c. 404. In the second sentence, changed "will include" to "may include but not be limited to" to emphasize that DACF will consider all available information when making funding determinations. This change was made in response to comments from Amanda Beal, Commissioner of DACF, and Bill Pluecker, State Representative and House Chair of the Agriculture, Conservation and Forestry Committee, urging that flexibility be built into the PFAS Fund's rules.*
- *§7(3). Application Review. Added the degree to which a farm has been impacted by PFAS contamination as an evaluation criterion based on a comment from Adam Nordell, Defend Our Health. The same change was made to rules 402, 403, and 404 for consistency.*
- *§8(3). Payment Options and Restrictions. Based on a comment from Adrienne Lee, New Beat Farm and PFAS Fund Advisory Committee member, on 01-001 C.M.R. c. 402, edited this sentence to allow for reimbursement for eligible costs that were incurred before these rules were finalized.*
- *§9(6). Terms and Conditions. In response to comments from Heather Spaulding, MOFGA, Bill Pluecker, State Representative and House Chair of ACF Committee, Adam Nordell, Defend Our Health, and Mary Street, Ledgerock Farm, this section was revised to give DACF discretion about when to seek recovery when infrastructure purchased by the PFAS Fund is sold, traded, abandoned, or destroyed.*
- *§11. Waiver. This is a new section added in response to comments from Amanda Beal, Commissioner of DACF, and Bill Pluecker, State Representative and House Chair of the Agriculture, Conservation and Forestry Committee, urging that flexibility be built into the PFAS Fund's rules so that DACF can respond nimbly to evolving science and the needs of those seeking support while retaining guardrails to prevent abuse.*

01-001 C.M.R. c. 404, Assistance Obtaining New Loans

- *§7(1). Application Review. Combined the original §7(1) ("When a commercial farm requests assistance obtaining a new loan, DACF will rely on all available information it has compiled on the farm to assess the request") with the original §7(2) (evaluation criteria) and changed "will include" to "may include but not be limited to" in the second sentence to emphasize that DACF will consider all available information when making funding determinations. This change was made in response to comments from Amanda Beal, Commissioner of DACF, and Bill Pluecker, State Representative and House Chair of the Agriculture, Conservation and Forestry Committee, urging that flexibility be built into the PFAS Fund's rules.*
- *§7(1). Application Review. Added the degree to which a farm has been impacted by PFAS contamination as an evaluation criterion based on a comment from Adam Nordell, Defend Our Health.*
- *§10. Waiver. This is a new section added in response to comments from Amanda*

Beal, Commissioner of DACF, and Bill Pluecker, State Representative and House Chair of the Agriculture, Conservation and Forestry Committee, urging that flexibility be built into the PFAS Fund's rules so that DACF can respond nimbly to evolving science and the needs of those seeking support while retaining guardrails to prevent abuse.

01-001 C.M.R. c. 405, Real Estate Purchases

- *§3. Definitions. Heather Spaulding, MOFGA, commented that the definition of sludge did not reference compost. The absence of a reference to compost is of no consequence because §8(6) has been revised to eliminate the source of PFAS contamination as a prioritization criterion. Consequently, there is no need to define sludge or septage and these definitions have been eliminated from §3.*
- *§5(3). Eligibility. Based on a comment from Meagan Hennessey, DACF PFAS Response Director, and recognizing that farmland is often held by multiple generations of the same family, this section was modified to allow landowners who acquired property through an estate to be eligible for land purchases.*
- *§8(6)(f). Advisory Panel, Prioritization Criteria. Based on a comment from Heather Spaulding, MOFGA, the source of PFAS contamination was eliminated as a prioritization criterion. Consistent with the rules in chapters 400-404, it is the presence of PFAS and its impact on commercial farming that is of concern to DACF, not its source.*
- *§8(6)(f). Advisory Panel. Based on a comment from Adrienne Lee, New Beat Farm and PFAS Fund Advisory Committee member, this criterion was refined to state that overall property management costs and not just those related to buildings, structure or fixtures would be considered as a prioritization factor.*
- *§10. Waiver. This is a new section added in response to comments from Amanda Beal, Commissioner of DACF, and Bill Pluecker, State Representative and House Chair of the Agriculture, Conservation and Forestry Committee, urging that flexibility be built into the PFAS Fund's rules so that DACF can respond nimbly to evolving science and the needs of those seeking support while retaining guardrails to prevent abuse.*

01-001 C.M.R. c. 406, Competitive Research Grants

- *§5. Research Advisory Panel. Based on comments from Kody Varahramyan, University of Maine, and Heather Spaulding, MOFGA, the Proposal Review Panel was reconceived as a Research Advisory Panel that will recommend research priorities, propose peer review strategies, and identify peer reviewers. §5(4) was revised to reflect that members of the research advisory panel must recuse themselves from voting on matters in which they have a real or perceived conflict of interest.*
- *§6. Solicitation and Award Procedures. As a consequence of changes made to §5, this section was revised to replace references to the proposal review panel with references to peer reviewers.*
- *§10. Waiver. This is a new section added in response to comments from Amanda Beal, Commissioner of DACF, and Bill Pluecker, State Representative and House Chair of the Agriculture, Conservation and Forestry Committee, urging that flexibility be built into the PFAS Fund's rules so that DACF can respond nimbly to evolving science and the needs of those seeking support while retaining guardrails to prevent abuse.*

01-001 C.M.R. c. 407, Financial Support for PFAS Blood Serum Testing

- *§3(7). Definitions. Based on comments from Adam Nordell, Defend Our Health, and Heather Spaulding, MOFGA, struck, "This rule does not apply to unlicensed land applications of residuals." DACF will still rely on DEP's determination that exposure is reasonably related to land application of residuals.*
- *§3(13). Definitions. Based on comments from Adam Nordell, Defend Our Health, and Heather Spaulding, MOFGA, added a definition of sludge-derived products that references a federal definition of Class A sewage sludge (i.e., Class A compost).*
- *§5(3). Eligibility. Based on comments from Adam Nordell, Defend Our Health, and Bill Pluecker, State Representative and House Chair of the Agriculture, Conservation and Forestry Committee, revised this section to allow for a case-by-case determination by Maine CDC of eligibility of persons who lived or worked on PFAS-impacted property more than 10 years prior to the discovery of PFAS. Maine CDC will be asked to determine whether well water test results are sufficiently high that an elevated and actionable PFAS blood level is plausible.*
- *§5(4). Eligibility. Based on comments from Adam Nordell, Defend Our Health, Bill Pluecker, State Representative and House Chair of the Agriculture, Conservation and Forestry Committee, and Heather Spaulding, MOFGA, revised this section to allow DEP to consider its own records as well as "other information available to DEP". In the application for support for blood testing, DACF can ask a person claiming to have been exposed to a Class A material to provide DACF with documentation demonstrating that they know that they have a sludge-derived product, where the sludge they were exposed to came from, who land applied the material, general timeframe, etc. DACF would then share this information with DEP and ask DEP to determine whether the land application of residuals is reasonably the source of contamination. This process would be consistent with DEP's current practice when a person with potential exposure to Class A materials wants the State to pay for water/soil testing and their property is not already part of DEP's PFAS investigation.*
- *§7(3). Limitations. Based on comments from Adam Nordell, Defend Our Health, and Heather Spaulding, MOFGA, this section was revised to clarify that individuals whose initial test results indicate the need for enhanced medical monitoring will be eligible for further testing and that, to the extent that DACF received personally identifiable medical information, it will protect such information.*
- *§9. Waiver. This is a new section added in response to comments from Amanda Beal, Commissioner of DACF, and Bill Pluecker, State Representative and House Chair of the Agriculture, Conservation and Forestry Committee, urging that flexibility be built into the PFAS Fund's rules so that DACF can respond nimbly to evolving science and the needs of those seeking support while retaining guardrails to prevent abuse.*

01-001 C.M.R. c. 407, Financial Support for Mental Health Care

- *§3(7). Definitions. Based on comments from Adam Nordell, Defend Our Health, and Heather Spaulding, MOFGA, struck, "This rule does not apply to unlicensed land applications of residuals." DACF will still rely on DEP's determination that exposure is reasonably related to land application of residuals.*
- *§3(14). Definitions. Based on comments from Adam Nordell, Defend Our Health, and Heather Spaulding, MOFGA, added a definition of sludge-derived products that*

	references a federal definition of Class A sewage sludge (i.e., Class A compost). *• §5(4). Eligibility. Based on comments from Adam Nordell, Defend Our Health, Bill Pluecker, State Representative and House Chair of the Agriculture, Conservation and Forestry Committee, and Heather Spaulding, MOFGA, revised this section to allow DEP to consider its own records as well as "other information available to DEP". In the application for support for mental health services, DACF can ask a person claiming to have been exposed to a Class A material to provide DACF with documentation demonstrating that they know that they have a sludge-derived product, where the sludge they were exposed to came from, who land applied the material, general timeframe, etc. DACF would then share this information with DEP and ask DEP to determine whether the land application of residuals is reasonably the source of contamination. This process would be consistent with DEP's current practice when a person with potential exposure to Class A materials wants the State to pay for water/soil testing and their property is not already part of DEP's PFAS investigation.* *• §10. Waiver. This is a new section added in response to comments from Amanda Beal, Commissioner of DACF, and Bill Pluecker, State Representative and House Chair of the Agriculture, Conservation and Forestry Committee, urging that flexibility be built into the PFAS Fund's rules so that DACF can respond nimbly to evolving science and the needs of those seeking support while retaining guardrails to prevent abuse.*

01-001 Department of Agriculture, Conservation, and Forestry	
2024-053: Chapter 401, Income Replacement	
Statutory Authority:	7 M.R.S. Ch. 10-D §§ 320-K and 320-L; PL 2021, Ch. 635, § XX-3
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*These rules will help to effectuate Strategies I.A, I.B, I.D, I.E, I.F, II.A, III.A, IV.A, and IV.F of the Plan for Administration of the Fund to Address PFAS Contamination. The projected combined budget of these 9 strategies is $57,919,000 over 5 years. That is, approximately $58 million of the $60 million dollars allocated to the PFAS Fund through PL 2021, ch. 635, part XX could be distributed through the programs established in accordance with these rules.*
Principal purpose:	*These rules are being proposed to implement Title 7, chapter 10-D. More specifically, the rules are necessary to implement certain portions of the Plan for Administration of the Fund to Address PFAS Contamination. The plan was developed with the advice of the PFAS Fund Advisory Committee and four issue-focused subcommittees, consistent with the directive in PL 2021, chapter 635, section XX-3 (DACF "shall develop and implement an initial plan"). The rules are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. See 7 MRS § 320-K(6).*
Basis Statement:	*See* Basis Statement at 2024-052, *supra.*

01-001 Department of Agriculture, Conservation, and Forestry	
2024-054: Chapter 402, Support for No-Cost Technical Assistance	
Statutory Authority:	7 M.R.S. Ch. 10-D §§ 320-K and 320-L; PL 2021, Ch. 635, § XX-3
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*These rules will help to effectuate Strategies I.A, I.B, I.D, I.E, I.F, II.A, III.A, IV.A, and IV.F of the Plan for Administration of the Fund to Address PFAS Contamination. The projected combined budget of these 9 strategies is $57,919,000 over 5 years. That is, approximately $58 million of the $60 million dollars allocated to the PFAS Fund through PL 2021, ch. 635, part XX could be distributed through the programs established in accordance with these rules.*
Principal purpose:	*These rules are being proposed to implement Title 7, chapter 10-D. More specifically, the rules are necessary to implement certain portions of the Plan for Administration of the Fund to Address PFAS Contamination. The plan was developed with the advice of the PFAS Fund Advisory Committee and four issue-focused subcommittees, consistent with the directive in PL 2021, chapter 635, section XX-3 (DACF "shall develop and implement an initial plan"). The rules are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. See 7 MRS § 320-K(6).*
Basis Statement:	*See* Basis Statement at 2024-052, *supra.*

01-001 Department of Agriculture, Conservation, and Forestry	
2024-055: Chapter 403, Infrastructure Investment Grants	
Statutory Authority:	7 M.R.S. Ch. 10-D §§ 320-K and 320-L; PL 2021, Ch. 635, § XX-3
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*These rules will help to effectuate Strategies I.A, I.B, I.D, I.E, I.F, II.A, III.A, IV.A, and IV.F of the Plan for Administration of the Fund to Address PFAS Contamination. The projected combined budget of these 9 strategies is $57,919,000 over 5 years. That is, approximately $58 million of the $60 million dollars allocated to the PFAS Fund through PL 2021, ch. 635, part XX could be distributed through the programs established in accordance with these rules.*
Principal purpose:	*These rules are being proposed to implement Title 7, chapter 10-D. More specifically, the rules are necessary to implement certain portions of the Plan for Administration of the Fund to Address PFAS Contamination. The plan was developed with the advice of the PFAS Fund Advisory Committee and four issue-focused subcommittees, consistent with the directive in PL 2021, chapter 635, section XX-3 (DACF "shall develop and implement an initial plan"). The rules are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. See 7 MRS § 320-K(6).*
Basis Statement:	*See* Basis Statement at 2024-052, *supra.*

01-001 Department of Agriculture, Conservation, and Forestry	
2024-056: Chapter 404, Assistance Obtaining New Loans	
Statutory Authority:	7 M.R.S. Ch. 10-D §§ 320-K and 320-L; PL 2021, Ch. 635, § XX-3
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*These rules will help to effectuate Strategies I.A, I.B, I.D, I.E, I.F, II.A, III.A, IV.A, and IV.F of the Plan for Administration of the Fund to Address PFAS Contamination. The projected combined budget of these 9 strategies is $57,919,000 over 5 years. That is, approximately $58 million of the $60 million dollars allocated to the PFAS Fund through PL 2021, ch. 635, part XX could be distributed through the programs established in accordance with these rules.*
Principal purpose:	*These rules are being proposed to implement Title 7, chapter 10-D. More specifically, the rules are necessary to implement certain portions of the Plan for Administration of the Fund to Address PFAS Contamination. The plan was developed with the advice of the PFAS Fund Advisory Committee and four issue-focused subcommittees, consistent with the directive in PL 2021, chapter 635, section XX-3 (DACF "shall develop and implement an initial plan"). The rules are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. See 7 MRS § 320-K(6).*
Basis Statement:	*See* Basis Statement at 2024-052, *supra.*

01-001 Department of Agriculture, Conservation, and Forestry	
2024-057: Chapter 405, Real Estate Purchases	
Statutory Authority:	7 M.R.S. Ch. 10-D §§ 320-K and 320-L; PL 2021, Ch. 635, § XX-3
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*These rules will help to effectuate Strategies I.A, I.B, I.D, I.E, I.F, II.A, III.A, IV.A, and IV.F of the Plan for Administration of the Fund to Address PFAS Contamination. The projected combined budget of these 9 strategies is $57,919,000 over 5 years. That is, approximately $58 million of the $60 million dollars allocated to the PFAS Fund through PL 2021, ch. 635, part XX could be distributed through the programs established in accordance with these rules.*
Principal purpose:	*These rules are being proposed to implement Title 7, chapter 10-D. More specifically, the rules are necessary to implement certain portions of the Plan for Administration of the Fund to Address PFAS Contamination. The plan was developed with the advice of the PFAS Fund Advisory Committee and four issue-focused subcommittees, consistent with the directive in PL 2021, chapter 635, section XX-3 (DACF "shall develop and implement an initial plan"). The rules are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. See 7 MRS § 320-K(6).*
Basis Statement:	*See* Basis Statement at 2024-052, *supra.*

01-001 Department of Agriculture, Conservation, and Forestry	
2024-058: Chapter 406, Competitive Research Grants	
Statutory Authority:	7 M.R.S. Ch. 10-D §§ 320-K and 320-L; PL 2021, Ch. 635, § XX-3
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*These rules will help to effectuate Strategies I.A, I.B, I.D, I.E, I.F, II.A, III.A, IV.A, and IV.F of the Plan for Administration of the Fund to Address PFAS Contamination. The projected combined budget of these 9 strategies is $57,919,000 over 5 years. That is, approximately $58 million of the $60 million dollars allocated to the PFAS Fund through PL 2021, ch. 635, part XX could be distributed through the programs established in accordance with these rules.*
Principal purpose:	*These rules are being proposed to implement Title 7, chapter 10-D. More specifically, the rules are necessary to implement certain portions of the Plan for Administration of the Fund to Address PFAS Contamination. The plan was developed with the advice of the PFAS Fund Advisory Committee and four issue-focused subcommittees, consistent with the directive in PL 2021, chapter 635, section XX-3 (DACF "shall develop and implement an initial plan"). The rules are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. See 7 MRS § 320-K(6).*
Basis Statement:	*See* Basis Statement at 2024-052, *supra.*

01-001 Department of Agriculture, Conservation, and Forestry	
2024-059: Chapter 407, Financial Support for Blood Serum Testing	
Statutory Authority:	7 M.R.S. Ch. 10-D §§ 320-K and 320-L; PL 2021, Ch. 635, § XX-3
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*These rules will help to effectuate Strategies I.A, I.B, I.D, I.E, I.F, II.A, III.A, IV.A, and IV.F of the Plan for Administration of the Fund to Address PFAS Contamination. The projected combined budget of these 9 strategies is $57,919,000 over 5 years. That is, approximately $58 million of the $60 million dollars allocated to the PFAS Fund through PL 2021, ch. 635, part XX could be distributed through the programs established in accordance with these rules.*
Principal purpose:	*These rules are being proposed to implement Title 7, chapter 10-D. More specifically, the rules are necessary to implement certain portions of the Plan for Administration of the Fund to Address PFAS Contamination. The plan was developed with the advice of the PFAS Fund Advisory Committee and four issue-focused subcommittees, consistent with the directive in PL 2021, chapter 635, section XX-3 (DACF "shall develop and implement an initial plan"). The rules are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. See 7 MRS § 320-K(6).*
Basis Statement:	*See* Basis Statement at 2024-052, *supra.*

01-001 Department of Agriculture, Conservation, and Forestry	
2024-060: Chapter 408, Financial Support for Mental Health Care	
Statutory Authority:	7 M.R.S. Ch. 10-D §§ 320-K and 320-L; PL 2021, Ch. 635, § XX-3
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*These rules will help to effectuate Strategies I.A, I.B, I.D, I.E, I.F, II.A, III.A, IV.A, and IV.F of the Plan for Administration of the Fund to Address PFAS Contamination. The projected combined budget of these 9 strategies is $57,919,000 over 5 years. That is, approximately $58 million of the $60 million dollars allocated to the PFAS Fund through PL 2021, ch. 635, part XX could be distributed through the programs established in accordance with these rules.*
Principal purpose:	*These rules are being proposed to implement Title 7, chapter 10-D. More specifically, the rules are necessary to implement certain portions of the Plan for Administration of the Fund to Address PFAS Contamination. The plan was developed with the advice of the PFAS Fund Advisory Committee and four issue-focused subcommittees, consistent with the directive in PL 2021, chapter 635, section XX-3 (DACF "shall develop and implement an initial plan"). The rules are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. See 7 MRS § 320-K(6).*
Basis Statement:	*See* Basis Statement at 2024-052, *supra.*

01-015 Department of Agriculture, Conservation, and Forestry, Maine Milk Commission	
2024-080: Chapter 3, Schedule of Minimum Prices	
Statutory Authority:	5 M.R.S. § 8054; 7 M.R.S. § 295
Type:	Routine Technical
Emergency?:	Yes
Fiscal impact:	*None*
Principal purpose:	*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 2024** minimum Class I price is **$22.43cwt. plus $1.63/cwt**. for Producer margins and a **$1.04/cwt** Milk Commission premium that reflects premiums being offered and prevailing in Southern New England and **$0.47/cwt**. handling fee for a total of **$25.77/cwt**., which includes a processor assessment of **$0.20**/cwt. Thus, the minimum retail price of a gallon of whole milk is set at **$4.17**.*
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 $16.08/cwt. and a Class IV price of $19.85/cwt. for February 2024.* *The Class II price for February 2024 is $20.53 /cwt. as announced by the Federal Order One Northeast Market Administrator.* *The Commission, in setting their minimum prices, recognized the April 2024 Federal Order Class I price of $22.43/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 21, 2024 and therefore should be passed on in minimum prices effective January 28, 2024. 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.*

01-015 Department of Agriculture, Conservation, and Forestry, Maine Milk Commission	
2024-097: Chapter 3, Schedule of Minimum Prices	
Statutory Authority:	5 M.R.S. § 8054 and 7 M.R.S. § 2954
Type:	Routine Technical
Emergency?:	Yes
Fiscal impact:	*None*
Principal purpose:	*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 2024 minimum Class I price is $21.71/cwt. plus $1.63/cwt. for Producer margins and a $1.04/cwt Milk Commission premium that reflects premiums being offered and prevailing in Southern New England and $0.47/cwt. handling fee for a total of $25.05/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 $16.34/cwt. and a Class IV price of $20.09/cwt. for March 2024.* *The Class II price for March 2024 is $21.12 /cwt. as announced by the Federal Order One Northeast Market Administrator.* *The Commission, in setting their minimum prices, recognized the May 2024 Federal Order Class I price of $21.71/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 18, 2024 and therefore should be passed on in minimum prices effective April 28, 2024. 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.*

001-001 Department of Agriculture, Conservation, and Forestry	
2024-124: Chapter 702, Rules for the Companion Animal Sterilization Program	
Statutory Authority:	7 M.R.S. §§ 12, 3906-B, 3910-B, 3910-C
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*Expectation is that the Rules will increase efficiency of program delivery. Any potential impact expected to be negligible.*
Principal purpose:	*Rule changing to accommodate administration by third party and statutory changes in Companion Animal Sterilization Act enacted in 2023.*
Basis Statement:	*The revisions proposed to these rules via this repeal and replace will accommodate administration by a third party and clarify the expectations of the third-party administration per 7 MRS §3910-C Companion Animal Sterilization Fund enacted in 2023. These rules provide necessary guidelines for administering Help Fix ME (Companion Animal Sterilization Fund) to comply with the requirement of engaging a third-party administrator per the 7 MRS §3910-C) 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.* *Section I changes- The definition of a Dog License was removed as it appears nowhere in this Rule or affiliated statutes.* *Section 2 changes- Section 2 now clarifies the selection process for a third-party administrator.* *Section 3 changes- Section 3 now explains the administrator's role in ensuring participants are eligible to have their pet or feral cat spayed/neutered through this program. It removes rule-specific eligibility requirements, as these are now in the statute.* *Section 4 changes -Section 4 clarifies fees to be paid to veterinary providers and removes references to the manner of participation and payment, as those items are now explicitly included in the statute.*

01-015 Department of Agriculture, Conservation, and Forestry, Maine Milk Commission	
2024-129: Chapter 3, Schedule of Minimum Prices	
Statutory Authority:	5 M.R.S.A., Section 8054 and 7 M.R.S.A., Section 2954
Type:	Routine Technical
Emergency?:	Yes
Fiscal impact:	*None*
Principal purpose:	*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 2024 minimum Class I price is $23.33/cwt. plus $1.63/cwt. for Producer margins and a $1.04/cwt Milk Commission premium that reflects premiums being offered and prevailing in Southern New England and $0.47/cwt. handling fee for a total of $26.67/cwt., which includes a processor assessment of $0.20/cwt. Thus, the minimum retail price of a gallon of whole milk is set at $4.25.*
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 $15.50/cwt. and a Class IV price of $20.11/cwt. for April 2024.* *The Class II price for April 2024 is $21.23 /cwt. as announced by the Federal Order One Northeast Market Administrator.* *The Commission, in setting their minimum prices, recognized the June 2024 Federal Order Class I price of $23.33/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 23, 2024 and therefore should be passed on in minimum prices effective June 2, 2024. 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.*

01-015 Department of Agriculture, Conservation, and Forestry, Maine Milk Commission	
2024-130: Chapter 26, Producer Margins	
Statutory Authority:	7 M.R.S. § 3153-B(3)
Type:	Major Substantive
Emergency?:	No
Fiscal impact:	*See attachment for detail, estimated increase of $4,088,815 in FY25 and $7,675,219 in FY26 to the general fund.*
Principal purpose:	*The principal reason for this rule is the need to establish producer margins for milk sold within the State of Maine in accordance with 7 M.R.S.A. Section 2954.*
Basis Statement:	*BACKGROUND AND STATUTORY FRAMEWORK* *Pursuant to the Maine Milk Commission Law 7 M.R.S.A., Section 2951 et seq. the Commission entered into an agreement with Dr. Gary Anderson to investigate the cost of milk production under Maine conditions. Section 2954 (2)(A) of the Milk Commission law gives us our direction for setting producer prices. Because of its importance to these proceedings in enacting a rule recognizing the cost of production for producers, the provision is set forth below:* *"The minimum wholesale prices paid to producers are based on the prevailing Class I, Class II and Class III prices in southern New England. After investigation, the Maine Milk Commission may set minimum wholesale prices paid to producers to reflect the costs of producing milk in this State".* *In 1990, when Chapter 26 was first adopted, the statute read as below:* *"The minimum wholesale price paid to producers shall be based on the prevailing Class I and Class II prices in southern New England and after investigation by the Maine Milk Commission, shall reflect as accurately as possible the increased costs of production".* *The changes to the statute adopted in 1994 removed the mandatory language for this adjustment, giving the Commission discretion to recognize (or not) the full cost of producing milk in Maine, but only after investigating these costs.* *Changes to the statute by Public Law Chapter 648 adopted in 2004, instruct the Commission to adopt target prices with production ranges for three different levels of production at their breakeven cost of production when a new Maine producer cost-of-production study is completed.* *In this rulemaking the Commission is repealing and replacing Chapter 26 to recognize as instructed by statute, the cost of production and target prices with production ranges for four different levels of production at their breakeven cost of production.* *In using this rule in the future to set prices, the Commission will also weigh other factors. For example, section 2954 (2) requires the Commission to consider the*

public's health and welfare when insuring an adequate supply of milk; prevailing prices in neighboring states; seasonality and other conditions affecting costs of production, transportation and marketing, including a reasonable return to producer, dealer and retailer; taking into consideration the public need for the establishment of retail milk prices at the lowest practicable levels. And, in section 2954 (2)(D) of the Milk Commission law the Commission must also consider, among other things, the effect of pricing decisions on the ability of the Maine dairy industry to compete in supplying milk to Maine consumers, including the extent of any social and economic benefits of maintaining processing plants in different geographic regions or natural marketing areas of the State.

II. PRODUCER MARGIN

We recognize that the intent of the law is to reflect the cost of producing milk in Maine as accurately as possible in the minimum wholesale prices paid to producers. However, we note that the intent of the law also requires the Commission to consider the well being of the whole dairy industry in Maine. Thus, the conclusions of the study and updates thereto that are set forth in Section III below are hereby adopted as the cost of producing milk in Maine and will be used after the effective date of this rule as a guide in setting minimum producer prices. The entire study is attached as Appendix A.

III. CONCLUSIONS OF THE STUDY OF PRODUCING MILK IN MAINE

This project has determined average cost of production estimates for 4 different size configurations of Maine dairy farmers, as well a single average for the entire conventional dairy sector. This estimate is based upon responses from the 2022 Cost of Production survey and interviews conducted by Dr. Gary Anderson, consultant, principal investigator & University of Maine Cooperative Extension Emeritus for the Maine Milk Commission. The survey was used to develop typical farm units to represent the dairy farming population as a whole. The resulting demographic outline of Maine dairy farms determined the number of farms needed in each category to participate in a direct financial audit to accurately reflect the actual income and costs, as well as management and operational methods and practices that impact the financial sustainability of the entire dairy sector.

While a variety of factors of production were reviewed and analyzed, including variable operating expenses, overhead, depreciation and interest, and external financial trends, the average short-run break-even cost of producing milk is the benchmark to be used for assessing the needs of the Maine dairy production sector. The average short-run, break-even price discovered for calendar year 2022 was $28.49/cwt for Maine dairy producers.

Based on information provided at public hearing on November 22, 2023 and a subsequent 10 day written comment period which ended December 4, 2023 and reflected in the most recent study, "Determining the current cost of producing milk in Maine", the Commission hereby adopts the following 4 levels of target prices,

	each representing a range of annual production. These are in accordance with 7 M.R.S.A. Section 2952-A subsection 3 to estimate the short-run break-even point within each tier range of annual production.

01-015 Department of Agriculture, Conservation, and Forestry, Maine Milk Commission	
2024-131: Chapter 61, Maine Milk Pool Cost of Administration	
Statutory Authority:	7 M.R.S.A., Section 3154 (2)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*None*
Principal purpose:	*The principal reason for this rulemaking is to update 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 was approximately $60,000 in 2023. Based on the last twelve months expenses, it is estimated that the Pool costs for similar expenses for 2024 will be about $65,000.* *The total pounds in the Pool for calendar year 2023 were 538,315,281 . It is estimated that the total pounds in the Pool for 2024 will be approximately the same.* *Based on the above projected costs and pounds the Pool Administrator sets the rate per hundredweight of milk for the cost of administering the Pool for calendar year 2024 at $0.01/cwt. This represents no change from 2023.*

01-017 Department of Agriculture, Conservation, and Forestry, Maine State Harness Racing Commission	
2024-136: Chapter 1, Administration	
Statutory Authority:	8 MRS Sections 263-A; 268; 275-C; 279-A; 279-B; and 281
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*None*
Principal purpose:	*The proposed changes are to promote and ensure the efficiency and integrity of racing meets, to make the rules clearer for both participants and racing officials, and to protect the betting public as well as the horses that compete. The proposed changes to Chapter 1 include:* • *Sec.1 adding definitions for Purse, Recovery Slip, and Poor Performance;* • *Sec. 10 modifying and adding grounds for suspension, revocation, refusal, or denial of a license* • *Sec. 21 updating the Breath Analyzer Test rule to clarify the testing process and potential outcomes/discipline for violation of the rule;* • *Sec. 22 clarifying that it is a violation to fail to submit to testing*
Basis Statement:	*The Commission proposed rule changes for chapters 1, 7, 11, and 17 of the Maine State Harness Racing Commission rule book. Chapter 1 changes included adding definitions for Purse, Recovery Slip, and Poor Performance. The wording for the Breath Analyzer Test section was updated to clarify the testing process. Additionally, the changes added and clarified grounds under which the Commission may suspend, revoke, deny, or refuse to issue a license. Chapter 7 changes address rules pertaining to the steward's list and race secretary procedures. It also added language about the time a horse must be in the paddock prior to post time of their scheduled race. It also added language to horses leaving the course. Chapter 11 changes made the furosemide rule clearer and more defined to ensure the racing participants are getting an equal opportunity pertaining to the administration of furosemide. Chapter 17 changes updated the penalty guidelines so that they are more accurately reflect the current practices of the officials when they impose a penalty.* *The purpose of the changes are to benefit the licensees, including racing officials and participants, by making the rules clearer and aligning the rules with current practice. The changes also promote efficiency during race meets and ensure the integrity of the harness racing industry so the betting public maintains confidence in the sport. The changes are also geared to ensure the safety and welfare of the horses that participate. Prior to the formal rulemaking process, the Commission held a written comment period from March 6, 2024 to April 5, 2024. There was no public comment hearing 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 no changes to the proposed language of the rules.* *SPECIFIC FINDINGS REGARDING CHANGES IN PROPOSED AND ADOPTED RULES* *1. The Commission makes a specific finding that the changes listed below may not be consistent with relevant legal and policy frameworks, and the Commission does not adopt the following changes that were originally proposed:* *a. On the basis of legal advice, Chapter 11, § (1)(3)(F) regarding the trainer's responsibility for horses entered to race, are not adopted into the rule.*

b. Chapter 1, § 21(3), sentences 4 and 5 are not adopted into the rule.

2. The Commission makes a specific finding that a citation to the animal welfare laws referenced in Chapter 1, § 10(1-A)(16) will be helpful to apprise the regulated persons and for enforcement of this provision. Based on this specific finding the Commission will add the following citation: 17 M.R.S. Chapter 42 or 7 M.R.S. 4015. Additionally, the Commission makes a specific finding that it is necessary to clarify that the witnessed animal cruelty or the death of the horse must be observed on association grounds to be reportable. The Commission adopts the following language instead: A person has been found in violation of animal welfare laws in 17 M.R.S. Chapter 42 or 7 M.R.S. 4011 or is a witness to animal cruelty as defined by those laws or the death of a horse on association grounds and does not report it to state officials.

3. The Commission makes a specific finding that it intended to reference the appropriate breath analyzer measurements in Chapter 1, § 21(2)(b) and therefore adopts the following language instead: Breath analyzer results of .05 grams or higher of alcohol per 210 liters of breath shall constitute alcoholic impairment and constitute a violation of this chapter. A licensee may retake the breath analyzer test within a reasonable period of time to confirm or establish test results lower than .05 grams of alcohol per 210 liters of breath. If the second result is below .05 grams of alcohol per 210 liters of breath, the licensee will be allowed to participate.

4. The Commission makes a specific finding that it intended to include the word "administered" in Chapter 11, § 4(2)(B)(3)(c) and therefore adopts the following language instead:
(c) Permitted dosage. A horse eligible to use furosemide will be permitted a dosage equal to a minimum of 100 milligrams (2 cc.) and a maximum of 250 milligrams (5 cc.). The dosage must be administered no less than 3 hours and no more than 3 ½ hours prior to the published post time for that horse's race. Any horse that is past the 3 hour mark for furosemide will be considered late for Lasix. The horse will be allowed to receive furosemide up to 10 minutes past the 3 hour mark with a warning or fine. After 10 minutes the horse will be ineligible to start.

5. The Commission makes a specific finding that in Chapter 7, upon the addition of Poor Performance as a mandatory reason for a horse to be placed on the Steward's List, § 7(2)(G), it intended to remove § 7(2-A)(A) which permissively allows a horse to be placed on the Steward's List for "perform[ing] in a manner inconsistent with its previously demonstrated ability." The Commission therefore adopts the following language in § 7(2-A) instead:

2-A. A horse may be placed on the "Steward's List" because it:
A. Does not perform properly at the start, or
B. Falls to both knees or falls completely prior to the start.

01-017 Department of Agriculture, Conservation, and Forestry, Maine State Harness Racing Commission	
2024-137: Chapter 7, Racing	
Statutory Authority:	8 MRS Sections 263-A; 268; 275-C; 279-A; 279-B; and 281
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*None*
Principal purpose:	*The proposed changes are to promote and ensure the efficiency and integrity of racing meets, to make the rules clearer for both participants and racing officials, and to protect the betting public as well as the horses that compete. ....* *The proposed changes to Chapter 7 include:* • *Sec. 6 (9) a horse may be asked to go a qualifying mile;* • *Sec. 7 adding Poor Performance, scratching a horse in the post parade, or fails to finish a race for reasons other than broken equipment, as reasons for a horse to be placed on the Steward's List;* • *Sec. 7(4) requiring a sick horse or lame horse placed on the Steward's List to produce a Recovery Slip before being allowed to enter;* • *Sec. 8 adding clarifying language for preference;* • *Sec. 9 adding language regarding when hopples may be used;* • *Sec. 16 (C) allowing a Race Secretary to carry over an event to the next day;* • *Sec. 30 defining the draw procedure and that the Judges will conduct the draw when there is more than one division;* • *Sec. 46(3)(B) adding that the Trainer may be required to be in the paddock* • *Sec. 51 adding time that horses need to be in the paddock;* • *Sec. 52 (1) changing the minimum age to enter the paddock from 12 to 14;* • *Sec 54. (0) added language to Leaving the Course;* • *Sec. 60 added the word inside to the existing rule.*
Basis Statement:	*See* Basis Statement information at 2024-136, *supra.*

01-017 Department of Agriculture, Conservation, and Forestry, Maine State Harness Racing Commission	
2024-138: Chapter 11, Medications, Prohibited Substances and Testing	
Statutory Authority:	8 M.R.S. Sections 263-A; 268; 275-C; 279-A; 279-B; and 281
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*None*
Principal purpose:	*The proposed changes are to promote and ensure the efficiency and integrity of racing meets, to make the rules clearer for both participants and racing officials, and to protect the betting public as well as the horses that compete. ....* *The changes to Chapter 11 include:* • *Sec. 3(F) making the trainer responsible for any horse in his or her care;* • *Sec. 4 (2) (B) Changing eligibility for the use of Furosemide; Sec. 4 changes the procedure for the administration of Furosemide;*
Basis Statement:	*See* Basis Statement information at 2024-136, *supra.*

01-017 Department of Agriculture, Conservation, and Forestry, Maine State Harness Racing Commission	
2024-139: Chapter 17, Rule Violations; Penalties	
Statutory Authority:	8 MRS Sections 263-A; 268; 275-C; 279-A; 279-B; and 281
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*None*
Principal purpose:	*The proposed changes are to promote and ensure the efficiency and integrity of racing meets, to make the rules clearer for both participants and racing officials, and to protect the betting public as well as the horses that compete. ....* *The changes to Chapter 17 include:* • *Sec. 4 Updating the Penalty Schedules* • *Sec. 15 adding a reason for a horse not being allowed to compete.*
Basis Statement:	*See* Basis Statement information at 2024-136, *supra.*

01-001 Department of Agriculture, Conservation, and Forestry	
2024-144: Chapter 213, Rules for the Salmonella Enteritidis Risk Reduction and Surveillance Program for Commercial Egg-Type Flocks	
Statutory Authority:	7 MRS §1758
Type:	Major Substantive
Emergency?:	No
Fiscal Impact:	*None*
Principal purpose:	*The principal reason for proposing this rule is to bring Maine's commercial poultry producers into compliance with the Food and Drug Administration's Egg Safety Rule, Prevention of Salmonella Enteritidis in Shell Eggs During Production, Storage, and Transportation, 21 CFR Parts 16 and 118, July 9, 2009. The purpose of the rule is to prevent SE-contaminated eggs from entering the food chain, ensure SE-clean birds reside and produce in SE-clean houses, and control and eradicate SE contamination if it is found within a commercial egg-type flock.*
Basis Statement:	*Salmonella Enteritidis (SE) is a bacterial disease of poultry that can also cause illness in humans when they are exposed to the bacteria through uncooked, or undercooked eggs. Due to the high-risk of it causing foodborne illness in humans, SE is a notifiable animal disease in Maine.* *Maine was linked to a large-scale human SE outbreak associated with shell eggs in 2010. During the same year, the FDA released guidance that detailed the Prevention of Salmonella Enteritidis in Shell Eggs During Production, Transportation, and Storage. These rules align Maine with the FDA rules and promote human and animal health.* *The Secretary of State published a notice on November 29, 2023. On December 18, 2023, a public hearing was held in Augusta at the Deering building, which included remote access through Microsoft Teams. No one attended in person or virtually and no comments were provided during the public hearing. The comment period ended on December 28, 2023, with zero email/mail received.*

01-015 Department of Agriculture, Conservation, and Forestry, Maine Milk Commission	
2024-148: Chapter 3, Schedule of Minimum Prices	
Statutory Authority:	5 M.R.S. § 8054; 7 M.R.S. § 2954
Type:	Routine Technical
Emergency?:	Yes
Fiscal Impact:	*None*
Principal purpose:	*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 2024** minimum Class I price is **$24.36/cwt. plus $1.63/cwt**. for Producer margins and a **$1.04/cwt** Milk Commission premium that reflects premiums being offered and prevailing in Southern New England and **$0.47/cwt**. handling fee for a total of **$27.70/cwt**., which includes a processor assessment of **$0.20**/cwt. Thus, the minimum retail price of a gallon of whole milk is set at **$4.35**.*
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 **$18.55/cwt.** and a Class IV price of $**20.50/cwt.** for **May 2024.*** *The Class II price for **May 2024 is $21.50 /cwt.** as announced by the Federal Order One Northeast Market Administrator.* *The Commission, in setting their minimum prices, recognized the **July 2024** Federal Order Class I price of **$24.36/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 20, 2024 and therefore should be passed on in minimum prices effective June 30, 2024. 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.*

01-015 Department of Agriculture, Conservation, and Forestry, Maine Milk Commission	
2024-170: Chapter 3, Schedule of Minimum Prices	
Statutory Authority:	5 M.R.S.A., Section 8054 and 7 M.R.S.A., Section 2954
Type:	Routine Technical
Emergency?:	Yes
Fiscal Impact:	*None*
Principal purpose:	*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 2024** minimum Class I price is **$24.57/cwt. plus $1.63/cwt**. for Producer margins and a **$1.04/cwt** Milk Commission premium that reflects premiums being offered and prevailing in Southern New England and **$0.47/cwt**. handling fee for a total of **$27.91/cwt**., which includes a processor assessment of **$0.20**/cwt. Thus, the minimum retail price of a gallon of whole milk is set at **$4.37**.*
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 **$19.87/cwt.** and a Class IV price of $**21.08/cwt.** for **June 2024.*** *The Class II price for **June 2024 is $21.60 /cwt.** as announced by the Federal Order One Northeast Market Administrator.* *The Commission, in setting their minimum prices, recognized the **August 2024** Federal Order Class I price of **$24.57/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 July 18, 2024 and therefore should be passed on in minimum prices effective July 28, 2024. 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.*

01-001 Department of Agriculture, Conservation, and Forestry	
2024-182 Chapter 8, Rules for Departmental Grant Awards and Appeals	
Statutory Authority:	7 M.R.S. § 12; 12 M.R.S. § 5012
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The expectation is that the Rules will increase efficiency of program delivery. Any potential impact is expected to be negligible.*
Principal purpose:	*This rule establishes the procedures and criteria to be used in all of the Department of Agriculture, Conservation and Forestry grant program awards, including those funded through emergency relief funds, bequests, gifts, or contributions from any person, corporation, or government, for the purpose of economic opportunity, business growth, and other strategic investment. The rule describes procedures to be used in grant solicitations, award procedures, hearings and appeals, and how appellants will be notified of final agency action.*
Basis Statement:	*The Department of Agriculture, Conservation, and Forestry oversees several important grant programs that benefit a wide array of recipients in the agriculture and forestry industries. It also may implement new grant programs with legislative support. These rules provide necessary guidelines for administering these programs by setting baseline expectations for the content of grant solicitations, notice provisions, application reviews, and grant awards. They also set forth the process for appealing grant decisions.* *The Department believes that clear rules that apply uniformly across its divisions will improve the consistency of its grant program delivery and help applicants understand the processes for grant solicitation, review, and awards, as well as the requirements for filing and pursuing appeals.* *The Secretary of State published a notice on May 15, 2024. The public comment period ended on June 14, 2024, with no comments received.*

01-015 Department of Agriculture, Conservation, and Forestry, Maine Milk Commission	
2024-210 Chapter 3, Schedule of Minimum Prices	
Statutory Authority:	5 M.R.S.A., Section 8054 and 7 M.R.S.A., Section 2954
Type:	Routine Technical
Emergency?:	Yes
Fiscal Impact:	*None*
Principal purpose:	*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.*
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* ***$19.79/cwt.*** *and a Class IV price of* ***$21.31/cwt.*** *for* ***July 2024.*** *The Class II price for* ***July 2024 is $21.82 /cwt.*** *as announced by the Federal Order One Northeast Market Administrator.* *The Commission, in setting their minimum prices, recognized the* ***September 2024*** *Federal Order Class I price of* ***$24.85/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 22, 2024 and therefore should be passed on in minimum prices effective September 1, 2024. 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.*

01-015 Department of Agriculture, Conservation, and Forestry, Maine Milk Commission	
2024-220 Chapter 3, Schedule of Minimum Prices	
Statutory Authority:	5 M.R.S. § 8054, 7 M.R.S. § 2954
Type:	Routine Technical
Emergency?:	Yes
Fiscal Impact:	*None*
Principal purpose:	*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 2024** minimum Class I price is **$26.42/cwt. plus $1.63/cwt**. for the Producer Margin, a $1.04/cwt Milk Commission premium reflecting the premiums being offered and prevailing in Southern New England, and a $0.47/cwt. handling fee, for a total of **$29.76/cwt.**, which includes a processor assessment of **$0.20**/cwt. Thus, the minimum retail price of a gallon of whole milk is set at **$4.53**.*
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 **$20.66/cwt.** and a Class IV price of $**21.58/cwt.** for **August 2024.*** *The Class II price for **August 2024 is $22.05 /cwt.** as announced by the Federal Order One Northeast Market Administrator.* *In setting their minimum prices, the Commission recognized the **October 2024** Federal Order Class I price of **$26.42/cwt. plus $1.63/cwt. for cost of production and an over-order premium of $1.04/cwt. as prevailing in southern New England based on the evidence presented at the Commission hearing on September 19, 2024, and therefore should be passed on in minimum prices effective September 29, 2024. 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 price change at any level from last month reflects today's action by the Commission for Class I, Class II, Class III, and Class IV and Butterfat prices.*

01-026 Department of Agriculture, Conservation, and Forestry, Board of Pesticides Control	
2024-237: Chapter 31, Certification and Licensing Provisions/Commercial Applicators	
Statutory Authority:	22 M.R.S. § 1471-D
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*BPC does not anticipate any significant fiscal impact of the proposed rule amendments.*
Principal purpose:	*The proposed rule amendments were sought to address changes to Maine's pesticide certification and training program plan. This plan was accepted by EPA on August 18, 2023, under the condition that certain sections of rule would be amended to align with federal standards. In order for EPA to accept Maine's plan, Maine must incorporate several changes to reference sections of federal rule, align descriptions with federal rule, and breakout sections of subcategories to clarify competency standards.* *Chapter 31: Seven amendments are proposed:* 1. *Incorporation by reference of 40 CFR 171.201, which adds federal standards for direct supervision of non-certified applicators supervised by commercial applicators.* 2. *Addition of the word "soil" to option III of the 1B "Agricultural Plant" category, this clarifies that this category is for soil fumigation and aligns it with the federal category "Agricultural Crop Pest Control."* 3. *Addition of "maintenance of public roads" to the description for category 6A and B "Vegetation Management."* 4. *Incorporation by reference of 40 CFR 171.103(d)(13) and 40 CFR 171.103(c)(1)-(10) (2023), which adds federal competency standards for option III of 1B "Agricultural Plant" category related to soil fumigation.* 5. *Incorporation by reference of 40 CFR 171.103(d)(14) and 40 CFR 171.103(c)(1)-(10) (2023), which adds federal competency standards for the 7B category, "Industrial, Institutional, Structural and Health Related Pest – Fumigation," related to non-soil fumigation.* 6. *Incorporation by reference of 40 CFR 171.103(d)(15) and 40 CFR 171.103(c)(1)-(10) (2023), which adds federal competency standards for the 11 category, "Aerial Pest Control" related to aerial application of pesticides.* 7. *Additional breakouts of competency standard subcategories for 1B "Agricultural Plant" and 6A "Vegetation Management" to clarify the competency standards for each subcategory.*
Basis Statement:	*Chapter 31 – Seven amendments are proposed:* 1. *Incorporation by reference of 40 CFR 171.201, which adds federal standards for direct supervision of non-certified applicators supervised by commercial applicators.* 2. *Addition of the word "soil" to option III of the 1B "Agricultural Plant" category, this clarifies that this category is for soil fumigation and aligns it with the federal category "Agricultural Crop Pest Control".* 3. *Addition of "maintenance of public roads" to the description for category 6A*

and B "Vegetation Management".

4. *Incorporation by reference of 40 CFR 171.103(d)(13) and 40 CFR 171.103(c)(1)-(10) (2023), which adds federal competency standards for option III of 1B "Agricultural Plant" category related to soil fumigation.*
5. *Incorporation by reference of 40 CFR 171.103(d)(14) and 40 CFR 171.103(c)(1)-(10) (2023), which adds federal competency standards for the 7B category, "Industrial, Institutional, Structural and Health Related Pest – Fumigation" category related to non-soil fumigation.*
6. *Incorporation by reference of 40 CFR 171.103(d)(15) and 40 CFR 171.103(c)(1)-(10) (2023), which adds federal competency standards for the 11 category, "Aerial Pest Control" related to aerial application of pesticides.*
7. *Additional breakouts of competency standard subcategories for 1B "Agricultural Plant" and 6A and B "Vegetation Management" to clarify the competency standards for each subcategory.*

The amendments to the proposed rules are in response to the provisional adoption of Maine's Pesticide Certification and Training Program (C&T) by the Environmental Protection Agency. These changes were identified to add requirements to categories through federal incorporation by reference, adding key words to descriptions, and adding subcategory competency standards. Maine's C&T Plan was accepted on August 18, 2023, and Maine identified a timeline for implementation of changes to Chapter 31 as the end of 2024.

01-026 Department of Agriculture, Conservation, and Forestry, Board of Pesticides Control	
2024-238: Chapter 32, Certification and Licensing Provisions for Private Applicators	
Statutory Authority:	22 M.R.S. §1471-D
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*BPC does not anticipate any significant fiscal impact of the proposed rule amendments. While the true cost of the rule is unknown, the fiscal impact is thought to be less than $1,000,000.*
Principal purpose:	*The proposed rule amendments were sought to address changes to Maine's pesticide certification and training program plan. This plan was accepted by EPA on August 18, 2023 under the condition that certain sections of rule would be amended to align with federal standards. In order for EPA to accept Maine's plan, Maine must incorporate several changes to reference sections of federal rule, align descriptions with federal rule, and breakout sections of subcategories to clarify competency standards.* *Chapter 32: Five amendments are proposed:* 1. *Incorporation by reference of 40 CFR 171.201 and 40 CFR 171.105(a) (1)-(11), which adds federal standards for direct supervision of non-certified applicators supervised by private applicators.* 2. *Incorporation by reference of 40 CFR 171.105(d) (2023) to (a) Soil Fumigation, which adds federal standards for private applicators under the soil fumigation category.* 3. *Incorporation by reference of 40 CFR 171.105(e) (2023) to (b) Non-Soil Fumigation, which adds federal standards for private applicators under the non-soil fumigation category.* 4. *Incorporation by reference of 40 CFR 171.105(f) (2023) to (c) Aerial, which adds federal standards for private applicators under the aerial category.* 5. *Updating the date for federal standards referenced from (2017) to (2023) under Chapter 32 (5)(a)-(c).*
Basis Statement:	*Chapter 32 – Five amendments are proposed:* 1. *Incorporation by reference of 40 CFR 171.201 and 40 CFR 171.105(a) (1)-(11) (2023), which adds federal standards for direct supervision of non-certified applicators supervised by private applicators.* 2. *Incorporation by reference of 40 CFR 171.105(d) (2023) to (a) Soil Fumigation, which adds federal standards for private applicators under the soil fumigation category.* 3. *Incorporation by reference of 40 CFR 171.105(e) (2023) to (b) Non-Soil Fumigation, which adds federal standards for private applicators under the non-soil fumigation category.* 4. *Incorporation by reference of 40 CFR 171.105(f) (2023) to (c) Aerial, which adds federal standards for private applicators under the aerial category.* 5. *Updating the date for federal standards referenced from 2017 to 2023 under Chapter 32 (5)(a)-(c).* *The amendments to the proposed rules are in response to the provisional adoption*

	of Maine's Pesticide Certification and Training Program (C&T) by the Environmental Protection Agency. These changes were identified to add requirements to categories through federal incorporation by reference for non-certified applicators supervised by private applicators, soil fumigation category holders, non-soil fumigation category holders, and aerial category holders. Maine's C&T Plan was accepted on August 18, 2023, and Maine identified a timeline for implementation of changes to Chapter 32 as the end of 2024.

01-026 Department of Agriculture, Conservation, and Forestry, Board of Pesticides Control	
2024-239: Chapter 50, Record Keeping and Reporting Requirement	
Statutory Authority:	22 M.R.S. §§ 1471-G, 1471-M(1)(E); Resolves 2023, ch. 71.
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*This bill may require applicators and companies to implement electronic recordkeeping or review of records that will allow them to submit their annual use or sales reports electronically. This may have additional operational costs for some companies that do not currently use electronic systems to report annually.*
Principal purpose:	*The proposed rule amendments were sought to address the directives in the 131st Legislature, Resolves 2023, ch. 71: Resolve, Directing the Board of Pesticides Control to Transition to Electronic Submission of Pesticides Sales and Use Data. This resolve directs the Board of Pesticides Control to implement rules to require commercial applicators and dealers to submit annual summary use reports and annual sales reports to the Board electronically. The proposed amendments were written to incorporate these changes:* *Chapter 50 – three amendments are proposed:* 1. *Require electronic reporting for commercial applicators' annual use reports and dealers' annual sales reports. This requires these parties to electronically report to a Board-approved software solution.* 2. *Outlines a transition period in 2024 and 2025 with reports required to be submitted electronically by 2026 (reporting year 2025) or seek an exemption waiver.* 3. *Describes a waiver process for those who do not have access to an electronic device capable of submitting electronic reports.*
Basis Statement:	*Chapter 50 – Three amendments are proposed:* 1. *Require electronic reporting for commercial applicators' annual use reports and dealers' annual sales reports. This requires these parties to electronically report to a Board-approved software solution.* 2. *Outlines a transition period in 2024 and 2025 with reports required to be submitted electronically by 2026 (reporting year 2025) or seek an exemption waiver.* 3. *Describes a waiver process for those who do not have access to an electronic device capable of submitting electronic reports.* *The 131st Legislature passed LD 1770: Resolve, Directing the Board of Pesticides Control to Transition to Electronic Submission of Pesticides Sales and Use Data, which directed the BPC to transition annual sales and annual use reports to an electronic format. In order to comply with this resolution, the BPC has upgraded its MEPERLS system, which can accept these reports electronically. The proposed rule would impact commercial applicators and pesticide dealers that are already required to submit these reports to the Board annually. The content of the reports would not change, only the process by which they are submitted.*

	Additionally, for applicators or dealers that are not able to submit these reports electronically, a waiver process is outlined in these proposed rules that would allow for these reports to be physically submitted. A transitional period of electronic reporting is also proposed. Electronic reporting is encouraged and promoted in reporting year 2024 but not required until reporting year 2025 in early 2026. *Two comments were received during the public hearing and comment period. Some comments received asked for the Board to require more information and publish more information related to pesticide sales and use information for the public. BPC responded that it must consider confidentiality and is complying with LD 1770 by requiring reports to be submitted electronically. Another comment asked for clarification for how the Board determines what is confidential and reporting frequency requirements. The BPC responded that report content is not changing and confidential information will not be collected, and that these annual reports will be required annually.*

01-683 Land for Maine's Future	
2024-243: Chapter 1, Definitions **2024-244: Chapter 2, Rules of Program Administration**	
Statutory Authority:	5 M.R.S. §§6203-A, 6203-B, 6203-C, 6203-E, 6203-F, and 6205
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None anticipated.*
Principal purpose:	*The proposed rules are in response to directives in Title 5 M.R.S. Chapter 353 §§6203-A, 6203-B, 6203-C, 6203-E, and 6203-F that grants **are** or **must** be made according to rules adopted by the Board. Chapter 1 of these proposed rules defines common LMF Program terminology, Chapter 2 clarifies and standardizes certain procedures in connection with the issuance of Requests for Proposals; the processing of Proposals received in response to those Requests; the award of funds pursuant to 5 M.R.S. §§ 6203-A, 6203-B, 6203-C, 6203-E, and 6203-F and attendant obligations of recipients; and the delegation of certain authority by the Board to LMF staff.*
Basis Statement:	*The two new rules to be codified at 01-683 C.M.R. Chapters 1-2 are in response to directives in Title 5 M.R.S. Chapter 353 §§6203-A, 6203-B, 6203-C, 6203-E, and 6203-F that grants are or must be made according to rules adopted by the Board. Chapter 1 of these proposed rules defines common LMF Program terminology, Chapter 2 clarifies and standardizes specific procedures in connection with the issuance of Requests for Proposals; the processing of Proposals received in response to those Requests; the award of funds pursuant to 5 M.R.S. §§ 6203-A, 6203-B, 6203-C, 6203-E, and 6203-F and attendant obligations of recipients; and the delegation of certain authority by the Board to LMF staff.* *Elements of the adopted rules vary from the proposed rules because of comments received during the public comment period. Specifically:* ***01-683 C.M.R. Chapter 1, Definitions*** • ***1. Applicant**. Struck "that expects to hold title to the land or hold the conservation easement upon receipt of LMF funding" and added "for funding under any LMF Program" in response to a comment from Kaitlyn Nuzzo of The Nature Conservancy and Jeff Romano of Maine Coast Heritage Trust that the original definition was not sufficiently broad to capture potential applicants under §6203-F, the Conservation Land Management Fund.* ***01-683 C.M.R. Chapter 2, Rules of Program Administration*** • ***Section 2.03 (A)(4)**. Inserted "that may be," struck "is," and added "would be" in response to staff concerns that the intended effect of the rules for delegating authority to staff was not clear.* • ***Section 2.03(B)(1)**. Struck "delegates," added "has the authority to develop policy(ies) for delegating authority," and inserted "including" in the first clause of paragraph 1 in response to staff concerns that the intended effect*

of the rules for delegating authority to staff was not clear.

01-015 Department of Agriculture, Conservation, and Forestry, Maine Milk Commission	
2024-246: Chapter 3, Schedule of Minimum Prices	
Statutory Authority:	5 M.R.S.A., Section 8054 and 7 M.R.S.A., Section 2954
Type:	Routine Technical
Emergency?:	Yes
Fiscal Impact:	*None*
Principal purpose:	*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 2024** minimum Class I price is **$25.78/cwt. plus $1.63/cwt.** for Producer margins and a **$1.04/cwt** Milk Commission premium that reflects premiums being offered and prevailing in Southern New England and **$0.47/cwt.** handling fee for a total of **$29.12/cwt.**, which includes a processor assessment of **$0.20**/cwt. Thus, the minimum retail price of a gallon of whole milk is set at **$4.48**.*
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 **$23.34/cwt.** and a Class IV price of $**22.29/cwt.** for **September 2024.*** *The Class II price for **September 2024 is $22.40 /cwt.** as announced by the Federal Order One Northeast Market Administrator.* *In setting their minimum prices, the Commission recognized the **November 2024** Federal Order Class I price of **$25.78/cwt. plus $1.63/cwt. for cost of production and an over-order premium of $1.04/cwt. as prevailing in southern New England based on the evidence presented at the Commission hearing on October 24, 2024, and therefore should be passed on in minimum prices effective October 24, 2024. 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 price change at any level from last month reflects today's action by the Commission for Class I, Class II, Class III, and Class IV and Butterfat prices.*

01-001 Department of Agriculture, Conservation, and Forestry	
2024-252: Chapter 35, Rules for Operation of the Maine Healthy Soils Fund	
Statutory Authority:	12 M.R.S.A. §§ 351-353; 7 M.R.S.A. § 12
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The rule is not anticipated to impact the finances of Maine State Government. The Maine Healthy Soils Fund was appropriated $2,000,000 in the FY24-25 Biennial Budget by the Maine State Legislature. These funds will directly support farms via grants and incentives as well as build technical assistance capacity in the state.*
Principal purpose:	*This rule chapter defines the procedures and criteria for spending funds available from the Maine Healthy Soils Fund to improve soil health on Maine farms. These include incentives for practice adoption, reduction of on-farm barriers to improved soil health, and improvement of the soil health technical assistance capacity of Maine's agriculture service provider networks.*
Basis Statement:	*The new rule to be codified at 01 – 001 C.M.R. c. 35 provides guidelines for administering grant and incentive programs for the Maine Healthy Soils Program within the Department of Agriculture, Conservation, and Forestry. They establish four (4) new grant programs, and three (3) new payment-for-practice programs to improve farmers' access to soil-health technical and financial assistance. These rules establish eligibility requirements, criteria for selection, application requirements, and reporting requirements for each program per the objectives established by the creation of the Maine Healthy Soils Program. Additionally, the rules outline administrative responsibilities for the Department to ensure efficient administration of the new programs. These rules operate as a guide for the use of funds appropriated to the Maine Healthy Soils Fund. They clarify processes required to deliver soil health support to farmers, increasing procedural efficiency and consistency.* *The Secretary of State published a notice on July 31, 2024. There was a public hearing on August 19, 2024, from 2 – 4 PM in Deering Building Rm. 101 at 90 Blossom Lane, Augusta, ME 04333. Public comment closed on August 29, 2024. Five people attended the public hearing and provided comment on behalf of their respective organizations. Four of the five hearing attendees also provided written comment. We received seven additional written comments for a total of twelve comments. The comments were broadly supportive of the rule, and any requests for revisions were largely to increase rule clarity and to better align program rules with the state objectives.* *Some minor elements of the adopted rule vary from the proposed rule based on the comments received during the comment period, with a focus on definition specificity and eligibility requirements. Specifically,* • *Section 1.1 – Added fiber and horticultural/ornamental crops to the definition in response to comments from Nanne Kennedy and Gary Fish recommending these be specifically listed.* • *Section 1.2 – Added crop advisors to the definition in response to comments*

from Ellen Mallory recommending that for-profit service provider organizations be included.

- *Section 1.5 – Removed the word "contiguous" from the definition in response to comments from Heather Spalding, Shelley Megquier, Alexandra Gulachenski, and Chelsea Gazillo recommending that eligibility for some programs better address the statutory requirement to support new and underserved farmers through this program. This change was made in recognition that many new and underserved farmers may be farming on multiple non-contiguous parcels, which should not preclude them from eligibility.*

- *Section 1.6 – Clarified the definition of farm operation in response to comments from Chelsea Gazillo recommending expanding on eligibility specifics.*

- *Section 1.12 – Added agricultural lime to the definition of soil amendments in response to comments from Julie Ann Smith. This amendment fits the definition of a soil amendment for this chapter, but is not a plant or animal residue, so it is important to clarify.*

- *Section 1.13 – Clarified that soil health management plans should include plans to monitor the soil to demonstrate how practices are affecting the land in response to comments from Ellen Mallory.*

- *Section 2.1 – Added 'farmer-to-farmer learning' to objective C to maintain consistency with statutory language, as recommended by Chelsea Gazillo.*

- *Section 3.1 – Clarified language to ensure all fund recipients must be located in Maine. The proposed language left room for interpretation, as noted by Chelsea Gazillo.*

- *Section 3.2 – Increased the maximum award from $25k to $100k, as recommended by Chelsea Gazillo. Within this grant, eligible expenses such as equipment retrofits and purchases may cost much more than $25k. We further amended the limitations for this grant, allowing the Commissioner to increase or decrease the grant maximum based on available funding. Eligibility was further clarified for this program for the same reason listed for Section 1.5.*

- *Section 3.4 – Clarified the role of farm operations in this grant program as requested by Chelsea Gazillo.*

- *Section 4.1 – Clarified that funding must go to farms located in Maine, as suggested by Chelsea Gazillo, who noted that this is clear for Section 3 programs but not Section 4 programs.*

	• *Section 4.4 – Added the opportunity for farms to request funding for additional acres beyond 50 acres up to 180 acres based on a recommendation from Chelsea Gazillo that the acreage cap be eliminated entirely. Creating a flexible acreage cap based on available funding allows us to fully cover 77% of farms compared to 45% with a 50-acre cap. The changes state that any funding for a request over 50 acres is subject to available funding to protect long-term funding goals – meaning a farm operation will be funded fully for 50 acres, but any acres above that will only be paid out if there are available funds.*

01-015 Department of Agriculture, Conservation, and Forestry, Maine Milk Commission	
2024-267: Chapter 3, Schedule of Minimum Prices	
Statutory Authority:	5 M.R.S.A., Section 8054 and 7 M.R.S.A., Section 2954
Type:	Routine Technical
Emergency?:	Yes
Fiscal Impact:	*None*
Principal purpose:	*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 2024** minimum Class I price is **$24.68/cwt. plus $1.63/cwt**. for Producer margins and a **$1.04/cwt** Milk Commission premium that reflects premiums being offered and prevailing in Southern New England and **$0.47/cwt**. handling fee for a total of **$28.02/cwt**., which includes a processor assessment of **$0.20**/cwt. Thus, the minimum retail price of a gallon of whole milk is set at **$4.37**.*
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 **$22.85/cwt.** and a Class IV price of $**20.90/cwt.** for **October 2024.*** *The Class II price for **October 2024 is $21.01 /cwt.** as announced by the Federal Order One Northeast Market Administrator.* *In setting their minimum prices, the Commission recognized the **December 2024** Federal Order Class I price of **$24.68/cwt. plus $1.63/cwt. for cost of production and an over-order premium of $1.04/cwt. as prevailing in southern New England based on the evidence presented at the Commission hearing on November 21, 2024, and therefore should be passed on in minimum prices effective December 1, 2024. 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 price change at any level from last month reflects today's action by the Commission for Class I, Class II, Class III, and Class IV and Butterfat prices.*

01-015 Department of Agriculture, Conservation, and Forestry, Maine Milk Commission	
2024-278: Chapter 3, Schedule of Minimum Prices	
Statutory Authority:	5 M.R.S.A., Section 8054 and 7 M.R.S.A., Section 2954
Type:	Routine Technical
Emergency?:	Yes
Fiscal Impact:	*None*
Principal purpose:	*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 2025** minimum Class I price is **$23.63/cwt. plus $1.63/cwt**. for Producer margins and a **$1.04/cwt** Milk Commission premium that reflects premiums being offered and prevailing in Southern New England and **$0.47/cwt**. handling fee for a total of **$26.97/cwt**., which includes a processor assessment of **$0.20**/cwt. Thus, the minimum retail price of a gallon of whole milk is set at **$4.27**.*
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 **$19.95/cwt.** and a Class IV price of $21.12/**cwt.** for **November 2024.*** *The Class II price for **November 2024 is $21.52 /cwt.** as announced by the Federal Order One Northeast Market Administrator.* *In setting their minimum prices, the Commission recognized the **January 2025** Federal Order Class I price of **$23.63/cwt. plus $1.63/cwt. for cost of production and an over-order premium of $1.04/cwt. as prevailing in southern New England based on the evidence presented at the Commission hearing on December 19, 2024, and therefore should be passed on in minimum prices effective December 29, 2024. 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 price change at any level from last month reflects today's action by the Commission for Class I, Class II, Class III, and Class IV and Butterfat prices.*

02 Department of Professional and Financial Regulation

02-298 Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Real Estate Appraisers	
2024-001: Chapter 230, Supervising Appraiser Duties	
Statutory Authority:	32 M.R.S. §§ 14012, 14038, 14039
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*Minimal*
Principal purpose:	*The principal reason for this rulemaking is to have a rule that more clearly and explicitly sets forth the role and responsibilities of a supervisory appraiser. The replacement rule clarifies experience acceptable for credit, experience log content and submission requirements. Additionally, the rule aligns rule terminology with the statute.*
Basis Statement:	*The Maine Board of Real Estate Appraisers (the "Board") is charged by the Legislature with the regulation of real estate appraisers 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. § 14012.* *The proposed rulemaking would repeal and replace the following chapter(s)* *Chapter 230: Supervising Appraiser Duties* *Chapter 240: Standards of Professional Practice* *The principal reason for this proposed rulemaking Chapter 230: Supervisory Appraiser Duties was to have a rule that more clearly and explicitly sets forth the role and responsibilities of a supervisory appraiser. The replacement rule clarifies experience acceptable for credit, experience log content and submission requirements. Additionally, the rule aligns rule terminology with the statute.* *The principal reason for this proposed rulemaking Chapter 240: Standards of Professional Practice was to incorporate the Uniform Standards of Professional Appraisal Practice ("USPAP"), 2024 Edition, Copyright © 2024, The Appraisal Foundation, effective January 1, 2024, into the Board's rules by reference as the standard of practice for licensees.* *Notice of the proposed rulemaking was published in the Maine Secretary of State weekly notice on October 18, 2023, in the Portland Press Herald, the Kennebec Journal, the Bangor Daily News, and the Sun Journal on October 18, 2023, posted on the Board of Real Estate Appraisers webpage on October 16, 2023; interested parties were emailed a copy of the rulemaking package on October 16, 2023. The Fact Sheet was filed with the Legislative Council on October 10, 2023.* *The Board held a public hearing on November 7, 2023 at 9:00 am to take oral comments, and continued to accept written comments through 5:00 pm on November 17, 2023.*

02-298 Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Real Estate Appraisers	
2024-002: Chapter 240, Standards of Professional Practice	
Statutory Authority:	32 M.R.S. §§ 14012, 14038, 14039
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*Minimal*
Principal purpose:	*This rule incorporates the Uniform Standards of Professional Appraisal Practice ("USPAP"), 2024 Edition, Copyright © 2024, The Appraisal Foundation, effective January 1, 2024, into the Board's rules by reference as the standard of practice for licensees.*
Basis Statement:	*The Maine Board of Real Estate Appraisers (the "Board") is charged by the Legislature with the regulation of real estate appraisers 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. § 14012.* *The proposed rulemaking would repeal and replace the following chapter(s)* *Chapter 230: Supervising Appraiser Duties* *Chapter 240: Standards of Professional Practice* *The principal reason for this proposed rulemaking Chapter 230: Supervisory Appraiser Duties was to have a rule that more clearly and explicitly sets forth the role and responsibilities of a supervisory appraiser. The replacement rule clarifies experience acceptable for credit, experience log content and submission requirements. Additionally, the rule aligns rule terminology with the statute.* *The principal reason for this proposed rulemaking Chapter 240: Standards of Professional Practice was to incorporate the Uniform Standards of Professional Appraisal Practice ("USPAP"), 2024 Edition, Copyright © 2024, The Appraisal Foundation, effective January 1, 2024, into the Board's rules by reference as the standard of practice for licensees.* *Notice of the proposed rulemaking was published in the Maine Secretary of State weekly notice on October 18, 2023, in the Portland Press Herald, the Kennebec Journal, the Bangor Daily News, and the Sun Journal on October 18, 2023, posted on the Board of Real Estate Appraisers webpage on October 16, 2023; interested parties were emailed a copy of the rulemaking package on October 16, 2023. The Fact Sheet was filed with the Legislative Council on October 10, 2023.* *The Board held a public hearing on November 7, 2023 at 9:00 am to take oral comments, and continued to accept written comments through 5:00 pm on November 17, 2023.*

02-333 Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Licensure of Foresters	
2024-031: Chapter 70-A, Licensure by Endorsement	
Statutory Authority:	32 M.R.S. §§ 5506, 5516, and 10 M.R.S. § 8003-H
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*None anticipated.*
Principal purpose:	*The principal reason for this proposed rulemaking is 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.*
Basis Statement:	*The Board of Licensure of Foresters (the "Board") is charged by the Legislature with the regulation of foresters 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. § 5506.* *The proposed rulemaking would create, amend and repeal and replace the following chapter(s)* *Chapter 70-A: Licensure by Endorsement (new)* *Chapter 70 Qualifications for Forester License (amended)* *Chapter 100: Code of Ethics (repeal and replace)* *The principal reason for this proposed rulemaking is:* • *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* • *to repeal and replace Chapter 100 with a chapter that clarifies terminology and definitions in numerous sections. Additionally, the rules provides when a written agreement is required and what the agreement must include.* *The proposed rules were initially advertised on February 15, 2023, with a written comment period ending March 17, 2023. During this initial comment period, more than five (5) interested persons requested a public rulemaking hearing. In response, a public rulemaking hearing was advertised and scheduled to take place April 24, 2023. This public rulemaking hearing was cancelled and later set for May 25, 2023 at 9 am. The public was invited to attend and provide comments either in-person at 221 State Street in Augusta, Maine or appear remotely via a Teams link that was provided in advance of the meeting.* *Notice of the proposed rulemaking was published in the Maine Secretary of State weekly notice on February 15, April 5, May 3, and August 23, 2023, in the Portland Press Herald, the Kennebec Journal, the Bangor Daily News, and the Sun Journal on February 15, April 5, May 3 and August 23, 2023, posted on the Board webpage on February 14, April 5, May 3 and August 23, 2023; bill sponsors were provided a copy of the proposed rulemaking on February 14, 2023 and May 3, 2023 (licensure by endorsement); interested parties were emailed a copy of the rulemaking package on February 14, April 5, May 3 and August 23, 2023. The Fact Sheet was filed with the*

	Legislative Council on February 7, March 29, April 24, and August 15, 2023. *The Board held a public hearing on Thursday, May 25, 2023 at 9:00 a.m., to take oral comments, and continued to accept written comments through 5:00 pm on June 5, 2023.* *The Board received comments on the proposed rule requesting that the Board consider amending the proposed rule in several sections including Definitions; Obligations to Clients, Suppliers and Employers; and Obligations to the Public. The Board wanted to adopt several comments and solicited comments from the public on the changes to the rule that are necessary to adopt those comments. The Board held a second public hearing on Friday, September 15, 2023 to take oral comments, and continued to accept written comments through 5:00 pm on September 25, 2023.* *The Board received no comments on the content of the proposed rulemaking for Chapters 70-A (Licensure by Endorsement) or Chapter 70, Qualifications for Forester License; therefore the following summary of comments and responses pertain only to the proposed rulemaking to repeal and replace Chapter 100, Code of Ethics.*

02-333 Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Licensure of Foresters	
2024-032: Chapter 70, Qualifications for Forester License	
Statutory Authority:	32 M.R.S. §§ 5506, 5516, and 10 M.R.S. § 8003-H
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*None anticipated.*
Principal purpose:	*The principal reason for this proposed rulemaking is to align the rule with 32 M.R.S. § 5516 (2)(B) regarding the pathway for those applicants applying on the basis of a license in another jurisdiction.*
Basis Statement:	*The Board of Licensure of Foresters (the "Board") is charged by the Legislature with the regulation of foresters 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. § 5506.* *The proposed rulemaking would create, amend and repeal and replace the following chapter(s)* *Chapter 70-A: Licensure by Endorsement (new)* *Chapter 70 Qualifications for Forester License (amended)* *Chapter 100: Code of Ethics (repeal and replace)* *The principal reason for this proposed rulemaking is:* • *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* • *to repeal and replace Chapter 100 with a chapter that clarifies terminology and definitions in numerous sections. Additionally, the rules provides when a written agreement is required and what the agreement must include.* *The proposed rules were initially advertised on February 15, 2023, with a written comment period ending March 17, 2023. During this initial comment period, more than five (5) interested persons requested a public rulemaking hearing. In response, a public rulemaking hearing was advertised and scheduled to take place April 24, 2023. This public rulemaking hearing was cancelled and later set for May 25, 2023 at 9 am. The public was invited to attend and provide comments either in-person at 221 State Street in Augusta, Maine or appear remotely via a Teams link that was provided in advance of the meeting.* *Notice of the proposed rulemaking was published in the Maine Secretary of State weekly notice on February 15, April 5, May 3, and August 23, 2023, in the Portland Press Herald, the Kennebec Journal, the Bangor Daily News, and the Sun Journal on February 15, April 5, May 3 and August 23, 2023, posted on the Board webpage on February 14, April 5, May 3 and August 23, 2023; bill sponsors were provided a copy of the proposed rulemaking on February 14, 2023 and May 3, 2023 (licensure by endorsement); interested parties were emailed a copy of the rulemaking package on February 14, April 5, May 3 and August 23, 2023. The Fact Sheet was filed with the*

	Legislative Council on February 7, March 29, April 24, and August 15, 2023. *The Board held a public hearing on Thursday, May 25, 2023 at 9:00 a.m., to take oral comments, and continued to accept written comments through 5:00 pm on June 5, 2023.* *The Board received comments on the proposed rule requesting that the Board consider amending the proposed rule in several sections including Definitions; Obligations to Clients, Suppliers and Employers; and Obligations to the Public. The Board wanted to adopt several comments and solicited comments from the public on the changes to the rule that are necessary to adopt those comments. The Board held a second public hearing on Friday, September 15, 2023 to take oral comments, and continued to accept written comments through 5:00 pm on September 25, 2023.* *The Board received no comments on the content of the proposed rulemaking for Chapters 70-A (Licensure by Endorsement) or Chapter 70, Qualifications for Forester License; therefore the following summary of comments and responses pertain only to the proposed rulemaking to repeal and replace Chapter 100, Code of Ethics.*

02-333 Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Licensure of Foresters	
2024-033: Chapter 100, Code of Ethics	
Statutory Authority:	32 M.R.S. §§ 5506, 5516, and 10 M.R.S. § 8003-H
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*None anticipated.*
Principal purpose:	*The Board is proposing to repeal and replace Chapter 100 with a chapter that clarifies terminology and definitions in numerous sections. Additionally, forester roles are described as well as when a written agreement is required and what the agreement must include.*
Basis Statement:	*The Board of Licensure of Foresters (the "Board") is charged by the Legislature with the regulation of foresters 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. § 5506.* *The proposed rulemaking would create, amend and repeal and replace the following chapter(s)* *Chapter 70-A: Licensure by Endorsement (new)* *Chapter 70 Qualifications for Forester License (amended)* *Chapter 100: Code of Ethics (repeal and replace)* *The principal reason for this proposed rulemaking is:* • *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* • *to repeal and replace Chapter 100 with a chapter that clarifies terminology and definitions in numerous sections. Additionally, the rules provides when a written agreement is required and what the agreement must include.* *The proposed rules were initially advertised on February 15, 2023, with a written comment period ending March 17, 2023. During this initial comment period, more than five (5) interested persons requested a public rulemaking hearing. In response, a public rulemaking hearing was advertised and scheduled to take place April 24, 2023. This public rulemaking hearing was cancelled and later set for May 25, 2023 at 9 am. The public was invited to attend and provide comments either in-person at 221 State Street in Augusta, Maine or appear remotely via a Teams link that was provided in advance of the meeting.* *Notice of the proposed rulemaking was published in the Maine Secretary of State weekly notice on February 15, April 5, May 3, and August 23, 2023, in the Portland Press Herald, the Kennebec Journal, the Bangor Daily News, and the Sun Journal on February 15, April 5, May 3 and August 23, 2023, posted on the Board webpage on February 14, April 5, May 3 and August 23, 2023; bill sponsors were provided a copy of the proposed rulemaking on February 14, 2023 and May 3, 2023 (licensure by endorsement); interested parties were emailed a copy of the rulemaking package on February 14, April 5, May 3 and August 23, 2023. The Fact Sheet was filed with the*

	Legislative Council on February 7, March 29, April 24, and August 15, 2023. *The Board held a public hearing on Thursday, May 25, 2023 at 9:00 a.m., to take oral comments, and continued to accept written comments through 5:00 pm on June 5, 2023.* *The Board received comments on the proposed rule requesting that the Board consider amending the proposed rule in several sections including Definitions; Obligations to Clients, Suppliers and Employers; and Obligations to the Public. The Board wanted to adopt several comments and solicited comments from the public on the changes to the rule that are necessary to adopt those comments. The Board held a second public hearing on Friday, September 15, 2023 to take oral comments, and continued to accept written comments through 5:00 pm on September 25, 2023.* *The Board received no comments on the content of the proposed rulemaking for Chapters 70-A (Licensure by Endorsement) or Chapter 70, Qualifications for Forester License; therefore the following summary of comments and responses pertain only to the proposed rulemaking to repeal and replace Chapter 100, Code of Ethics.*

02-280 Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Accountancy	
2024-034: Chapter 3, Examination Requirements	
Statutory Authority:	32 M.R.S. §§ 12214(4), 12228(4)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The rule will extend the total amount of time an accountant has to pass all sections of the Uniform CPA Examination.*
Principal purpose:	*The rulemaking is being proposed to amend the rule regarding examination requirements by extending the number of months during which a certified public accounting license candidate must complete all sections of the Uniform CPA Examination.*
Basis Statement:	*The Board of Accountancy (the "Board") is charged by the Legislature with the regulation of certified public accountants and accounting firms 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. § 12214(4).* *The proposed rulemaking would amend the following chapter(s)* *Chapter 3: Examination Requirements* *The principal reason for this proposed rulemaking was to amend the rule regarding examination requirements by extending the number of months during which a certified public accounting license candidate must complete all sections of the Uniform CPA Examination.*

02-373 Department of Professional and Financial Regulation, Board of Licensure in Medicine	
2024-036: Chapter 12, Joint Rule Regarding Office Based Treatment of Opioid Use Disorder	
Statutory Authority:	32 M.R.S. §§ 3269(3), (7), 3300-F, 3300-EE; 32 M.R.S. §§ 2102(2-A), 2153-A(1), 2210, 2270; 32 M.R.S. §§ 2562, 2600-C, 2600-EE
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*Minimal*
Principal purpose:	*To make the rule consistent with changes to DEA registration requirements.*
Basis Statement:	*The Board of Licensure in Medicine, the Board of Osteopathic Licensure, and the State Board of Nursing (Boards) were created by the Legislature with the sole purpose of protecting the public. 10 M.R.S. § 8008 provides:* *§8008. Purpose of occupational and professional regulatory boards* *The sole purpose of an occupational and professional regulatory board is to protect the public health and welfare. A board carries out this purpose by ensuring that the public is served by competent and honest practitioners and by establishing minimum standards of proficiency in the regulated professions by examining, licensing, regulating and disciplining practitioners of those regulated professions. Other goals or objectives may not supersede this purpose.* *Background – The Existing OBOT Rule* *The impetuses for the development and adoption of the existing joint OBOT rule were varied. The Board of Licensure in Medicine (BOLIM) reviewed multiple complaints and investigations regarding Maine licensed physicians providing OBOT that raised concerns surrounding knowledge of and compliance with prevailing standards of care. In addition, due to the need for increased treatment in this State, many physicians providing OBOT in Maine transitioned in their practice from other treatment specialties and were not experts in addiction medicine, mental health, or prescribing of buprenorphine. Deficiencies regarding OBOT noted by the BOLIM during its investigations included:* • *Inadequate facilities: lack of patient privacy; lack of appropriate facilities for urine collection.* • *Inadequate medical record keeping: failure to query the prescription monitoring program (PMP); failure to document PMP checks; failure to attempt to obtain the patient's prior medical records; failure to document medical decision making.* • *Inadequate or no referral to counseling and other services.* • *Inadequate or no toxicological testing to confirm use of buprenorphine and exclude other non-prescribed legal and illegal substances.* • *Co-prescribing buprenorphine, amphetamines, hypnotics, and benzodiazepines.* • *Inadequate patient assessment for treatment needs.* *As a result of some of the significant (and basic) deficiencies observed by the BOLIM during these investigations, it suggested that a workgroup be assembled of the*

Boards with clinicians who have experience with and are authorized to prescribe buprenorphine in order to draft a rule regarding OBOT. The work group, which met three times, consisted of staff, Board members, and Board legal counsel.

The workgroup approached the drafting of the existing joint OBOT rule with two major objectives:

(1) To make the rule as basic as possible to minimize its potential regulatory impact upon clinicians who provide OBOT or are considering providing OBOT. The workgroup was well-aware that Maine and the United States are in the midst of an opioid epidemic, that there is an urgent need for clinicians who provide OBOT, and that a rule with too many requirements could act as a barrier to clinicians providing OBOT or who may consider providing OBOT. As a result, the draft rule establishes only the essential minimum standards for OBOT; and

(2) To provide OBOT clinicians who possess little experience or training in addiction medicine or OBOT with knowledge of the essential minimum standards.

The draft of the existing joint OBOT rule was based on a rule developed by the Vermont Department of Health, Division of Alcohol and Drug Abuse Programs entitled "Office Based Opioid Treatment (OBOT) Providers Prescribing Buprenorphine" that became effective on 7/15/2017 and is available online: https://www.healthvermont.gov/sites/default/files/documents/pdf/REG_opioids-medication-assisted-therapy-for-dependence.pdf. Importantly, the existing joint OBOT rule does not intrude into the clinical decision-making of the clinician nor proscribe the standards of care for induction, dosage determinations, etc. Instead, the rule provides clinicians with the fundamental expectations of the Boards for clinicians providing OBOT.

In addition, the existing joint OBOT rule was based upon the following information: The Federation of State Medical Boards (FSMB) "Model Policy on Data 2000 and Treatment of Opioid Addiction in the Medical Office" – 2013; Washington State Health Care Authority – "Clinical Guidelines and Coverage Limitations for Medication Assisted Treatment" – Effective January 17, 2018; Vermont Department of Health – "Medication Assisted Treatment (MAT) for Opioid Addiction"; State of Vermont "Rules Governing Medication-Assisted Therapy for Opioid Dependence for 1. Office-Based Opioid Treatment (OBOT) Providers Prescribing Buprenorphine 2. Opioid Treatment Providers (OTP)"; State of Vermont, Dep. Of Health, Div. of Alcohol and Drug Abuse Programs – "Medication Assisted Treatment Rules (MAT) – Frequently Asked Questions for Providers"; SAMHSA – "Medications for Opioid Use Disorder" – Treatment Improvement Protocol 63, HHS Publication No. (SMA) 18-5063 FULLDOC Printed 2018; Tennessee Nonresidential Buprenorphine Treatment Guidelines – Dec 21, 2017; American Society of Addiction Medicine (ASAM) – "Public Policy Statement on Office-Based Opioid Agonist Treatment (OBOT)" – January 17, 2018; Position Paper: American College of Physicians "Treating Substance Use Disorder" 2017 Ann Intern Med; Journal of the American Osteopathic Association: "Buprenorphine for Treatment of Opioid Addiction" – JOAO, Supp. 3, vol. 105 – June 2005; and Annals of Family Medicine (Ann Fam Med

2017; 15: 281) - "Providing Office-Based Treatment of Opioid Use Disorder."

The existing joint OBOT rule established: definitions; the purpose of the rule; qualifications for providing OBOT; prescription requirements; and principles of proper OBOT. In addition, the existing joint rule provides resource links for clinicians. The existing joint OBOT rule is organized into the following sections:

SECTION 1. Definitions
SECTION 2. Purpose
SECTION 3. Qualifications
SECTION 4. Prescription Requirements
SECTION 5. Principles of Proper OBOT
SECTION 6. Telemedicine Practice

The Current Rulemaking Initiative

On December 29, 2022, with the enactment of the Consolidated Appropriations Act of 2023, Congress eliminated the "DATA-Waiver Program." As a result, portions of the existing joint OBOT rule are no longer required because: (1) a DATA-Waiver registration is no longer required to treat patients with buprenorphine for opioid use disorder; (2) DATA-Waiver registration numbers are no longer required for any prescription; and (3) there are no longer any limits or patient caps on the number of patients a prescriber may treat for opioid use disorder with buprenorphine. The current rulemaking initiative is limited in nature and proposes to amend the existing joint OBOT rule by eliminating references to and the requirements of the repealed "DATA-Waiver" Program by:

1. Eliminating the definitions of "DATA 2000" and "DATA 200 Waiver" from Section 1, Definitions.

2. Eliminating references to "DATA 2000" waivers in the definition of "Office Based Opioid Treatment (OBOT)" from Section 1, Definitions.

3. Eliminating references to the "Drug Addiction Treatment Act of 2000 (DATA 2000)" and adds the words "federal laws and regulations" in Section 2, Purpose.
4. Eliminating reference to "DATA 2000 Waiver" in Section 3.1.C, Qualifications.

5. Adding the words "if any" to "Patient limits" in Section 3.2, Qualifications.

6. Eliminating reference to "DATA 2000 identification number(s)" in Section 4.6, Prescription Requirements.

In addition to the repeal of the "DATA-Waiver Program," as part of the current rule amendment, the Boards considered a peer-reviewed study in the Journal of the American Medical Association entitled Trends and Characteristics of Buprenorphine-Involved Overdose Deaths

	Prior to and During the COVID-19 Pandemic that found that overdose deaths did not increase with expanded access to and use of buprenorphine and which advocated for the expansion "of equitable and culturally competent access to and provision of buprenorphine-based treatment." JAMA Network Open. 2023;6(1):e2251856. doi:10.1001/jamanetworkopen.2022.51856

02-380 Department of Professional and Financial Regulation, State Board of Nursing	
2024-037: Chapter 12, Joint Rule Regarding Office Based Treatment of Opioid Use Disorder	
Statutory Authority:	32 M.R.S. §§ 3269(3), (7), 3300-F, 3300-EE; 32 M.R.S. §§ 2102(2-A), 2153-A(1), 2210, 2270; 32 M.R.S. §§ 2562, 2600-C, 2600-EE
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*Minimal*
Principal purpose:	*To make the rule consistent with changes to DEA registration requirements.*
Basis Statement:	*See* Basis Statement at 2024-036, *supra*.

02-383 Department of Professional and Financial Regulation, Board of Osteopathic Licensure	
2024-038: Chapter 12, Joint Rule Regarding Office Based Treatment of Opioid Use Disorder	
Statutory Authority:	32 M.R.S. §§ 3269(3), (7), 3300-F, 3300-EE; 32 M.R.S. §§ 2102(2-A), 2153-A(1), 2210, 2270; 32 M.R.S. §§ 2562, 2600-C, 2600-EE
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*Minimal*
Principal purpose:	*To make the rule consistent with changes to DEA registration requirements.*
Basis Statement:	*See* Basis Statement at 2024-036, *supra*.

02-373 Department of Professional and Financial Regulation, Board of Licensure in Medicine	
2024-039: Chapter 21, Use of Controlled Substances for Treatment of Pain	
Statutory Authority:	32 M.R.S. §§ 3269(3), (7), 3300-F; 32 M.R.S. §§ 2102(2-A), 2153-A(1), 2210; 32 M.R.S. §§ 2562, 2600-C; 32 M.R.S. § 3605-B, 3657
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*Minimal*
Principal purpose:	*To make the rule consistent with changes to DEA registration requirements.*
Basis Statement:	*This is an amendment to an existing joint rule (Chapter 21) regarding the use of controlled substances for the treatment of pain in Maine, which consists of four sections:* *Section 1 sets out the purpose of the joint rule.* *Section 2 defines terms used throughout the rule.* *Section 3 establishes exemptions from the rule.* *Section 4 establishes principles of proper pain management, including:* *Developing and maintaining competence* *Universal precautions* *Reportable acts* *Compliance with controlled substance laws and regulations* *Compliance with CDC guideline for prescribing opioids for chronic pain* *Section 5 requires continuing education regarding opioid prescribing.* *<u>The Current Rulemaking Initiative</u>* *On December 29, 2022, with the enactment of the Consolidated Appropriations Act of 2023, Congress eliminated the "DATA-Waiver Program." As a result, a section of the joint rule regarding methadone and buprenorphine was changed to reflect that: (1) a DATA-Waiver registration is no longer required to treat patients with buprenorphine for opioid use disorder; and (2) DATA-Waiver registration numbers are no longer required for any prescription. The current rulemaking initiative is limited in nature and proposes to amend the existing joint rule by eliminating references to and the requirements of the repealed "DATA-Waiver" Program.* *In 2022 the United States Centers for Disease Control (CDC) created updated clinical practice guideline for prescribing opioids for the treatment of pain. The updated guideline, entitled "CDC Clinical Practice Guideline for Prescribing Opioids for Pain — United States, 2022," includes 12 recommendations for clinicians providing pain care for outpatients aged 18 years or older with acute pain (duration less than 1 month), subacute pain (duration of 1-3 months), or chronic pain (duration of more than 3 months). The 12 recommendations are grouped into four areas of consideration for clinicians: (1) Determining whether or not to initiate opioids for pain; (2) Selecting opioids and determining opioid dosages; (3) Deciding duration of*

	initial opioid prescription and conducting follow-up; and (4) Assessing risk and addressing potential harms of opioid use. https://www.cdc.gov/opioids/healthcare-professionals/prescribing/guideline. The current rulemaking initiative also proposes to amend the existing joint rule to repeal references to the 2016 CDC Guideline for Prescribing Opioids for Chronic Pain and replace them with references to the updated 2022 CDC Guideline for Prescribing Opioids for Pain. *The current amendments to the joint rule would: Repeal references to the DATA 2000 Waiver requirements as well as the 2016 CDC Guideline for Prescribing Opioids for Chronic Pain and replace them with references to "federal laws and regulations and Board Rule Chapter 12" as well as the updated 2022 CDC Guideline for Prescribing Opioids for Pain throughout the joint rule.*

02-380 Department of Professional and Financial Regulation, State Board of Nursing	
2024-040: Chapter 21, Use of Controlled Substances for Treatment of Pain	
Statutory Authority:	32 M.R.S. §§ 3269(3), (7), 3300-F; 32 M.R.S. §§ 2102(2-A), 2153-A(1), 2210; 32 M.R.S. §§ 2562, 2600-C; 32 M.R.S. § 3605-B, 3657
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*Minimal*
Principal purpose:	*To make the rule consistent with changes to DEA registration requirements.*
Basis Statement:	*See* Basis Statement at 2024-039, *supra*.

02-383 Department of Professional and Financial Regulation, Board of Osteopathic Licensure	
2024-041: Chapter 21, Use of Controlled Substances for Treatment of Pain	
Statutory Authority:	32 M.R.S. §§ 3269(3), (7), 3300-F; 32 M.R.S. §§ 2102(2-A), 2153-A(1), 2210; 32 M.R.S. §§ 2562, 2600-C; 32 M.R.S. § 3605-B, 3657
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*Minimal*
Principal purpose:	*To make the rule consistent with changes to DEA registration requirements.*
Basis Statement:	*See* Basis Statement at 2024-039, *supra*.

02-396 Department of Professional and Financial Regulation, Board of Licensure of Podiatric Medicine	
2024-042: Chapter 21, Use of Controlled Substances for Treatment of Pain	
Statutory Authority:	32 M.R.S. §§ 3269(3), (7), 3300-F; 32 M.R.S. §§ 2102(2-A), 2153-A(1), 2210; 32 M.R.S. §§ 2562, 2600-C; 32 M.R.S. § 3605-B, 3657
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*Minimal*
Principal purpose:	*To make the rule consistent with changes to DEA registration requirements.*
Basis Statement:	*See* Basis Statement at 2024-039, *supra*.

02-395 Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Plumbers' Examining Board	
2024-047: Chapter 4, Installation Standards	
Statutory Authority:	32 M.R.S. §§ 3403-A, 3403-B(1), 3302; 10 M.R.S. §§ 9002, 9022; Resolves 2023, Ch. 65
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*It will cause the Maine plumbing code to be amended such that the minimum specifications for gender-neutral restroom facilities will be set forth in the code. Moreover, gender neutral restroom facilities will count toward the minimum restroom facility ratios set forth in the code, which previously had only permitted male/female designated facilities to qualify for satisfying those ratios. The rule will also allow dealers and mechanics licensed by the Manufactured Housing Board to obtain plumbing permits for the work permitted by the scope of their license, for connection to existing water supply and sewage systems necessary for the use of HUD-code homes or pre-HUD-code homes for dwelling purposes.*
Principal purpose:	*The rulemaking is being proposed to implement LD 675, codified as Resolves 2023, ch. 65, to update the plumbing code adopted by the board to include Chapter 4, Section 422 of the 2024 Uniform Plumbing Code, published by the International Association of Plumbing and Mechanical Officials (IAPMO), with modifications required by Title 22, sections 1686 and 1686-A. The rule amendment will result in toilet facilities designed for use by all genders to be considered towards meeting the minimum number of fixtures required by the plumbing code.* *The rulemaking will also add to the persons authorized to apply for and obtain plumbing permits a dealer or mechanic, duly licensed pursuant to 10 M.R.S. § 9022(1) or (3), for connection to existing water supply and sewage systems necessary for the use of HUD-code homes or pre-HUD-code homes for dwelling purposes in accordance with 10 M.R.S. § 9002(6).*
Basis Statement:	*The Plumbers' Examining Board (the "Board") is charged by the Legislature with the regulation of plumbers and plumbing installations 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. § 3403-A.* *The proposed rulemaking would amend the following chapter:* *Chapter 4: Installation Standards* *The principal reason for this rulemaking was to implement LD 675, codified as Resolves 2023, ch. 65, to update the plumbing code adopted by the board to include Chapter 4, Section 422 of the 2024 Uniform Plumbing Code, published by the International Association of Plumbing and Mechanical Officials (IAPMO), with modifications required by Title 22, sections 1686 and 1686-A. The rule amendment will result in toilet facilities designed for use by all genders to be considered towards meeting the minimum number of fixtures required by the plumbing code.* *The rulemaking will also add to the persons authorized to apply for and obtain*

	plumbing permits a dealer or mechanic, duly licensed pursuant to 10 M.R.S. § 9022(1) or (3), for connection to existing water supply and sewage systems necessary for the use of HUD-code homes or pre-HUD-code homes for dwelling purposes in accordance with 10 M.R.S. § 9002(6).

02-029 Department of Professional and Financial Regulation, Bureau of Financial Institutions	
2024-075: Chapter 128, Loans to One Borrower Limitations	
Statutory Authority:	9-B M.R.S. §§ 215, 439-A(5)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*No expected fiscal impact.*
Principal purpose:	*The purpose of the proposed rule is to align definitions of total capital and surplus, and the calculation of credit exposure derived from derivatives transactions, with federal regulations promulgated by the FDIC and the OCC. Recent changes to federal regulations have created different methodology between state and federal law for how to determine a financial institution's capital and how to calculate credit exposure derived from derivatives transactions. Alignment with federal standards will ensure consistency in defined terms used in state and federal regulation, which will help financial institutions better understand how to calculate total capital and surplus relative to loans to one borrower limitations.*
Basis Statement:	*Factual and Policy Basis of amendments: The Bureau undertook revisions of Chapter 128, also referred to as "Regulation 28," to update the regulation's definition of "total capital and surplus" by aligning that definition with federal standards promulgated by the FDIC for when qualifying FDIC-supervised institutions elected to use the CBLR. The Bureau determined this modern approach to capital calculation would provide financial institutions subject to the Regulation a roadmap for how capital for purposes of loans to one borrower limitations would be reviewed and analyzed. The Bureau also utilized the 2023 rulemaking to make a minor change to the Conversion Factor Matrix Method under Section 8 (2)(A)(1) of the Regulation. The Superintendent has determined these changes to be necessary for protection of the public that deals with financial institutions using the CBLR framework.* *In adopting the amendments to Chapter 128, the Superintendent finds it advisable, in order to avoid confusion regarding the precise text of the rule that the Superintendent intended to propose and to adopt, to remove the explanatory rulemaking information that was originally posted with the rule text at the time of the notice of proposed rulemaking. The explanatory language is not part of the rule. The explanatory language followed Section 10 and began with the heading 'Basis Statement' and was previously included solely for historical informational purposes. The Superintendent also finds that minor changes to the rule were necessary to clarify terminology used so that the public can more effectively understand the rule and its contents.*

02-658 Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine Fuel Board	
2024-079: Chapter 6, Adoption of Standards	
Statutory Authority:	32 M.R.S. § 18123(2)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*With the change in vent termination clearances in the most recent version of the NFPA 54 adopted by the board, it is challenging to find a place to direct vent for appliances over 150,000 btu, in some cases leading to more roof penetrations which could lead to water damage over time. Homeowners may have to repair interior and exterior walls and modify the potable water piping. It is expected this change will alleviate added costs and eliminate some of those logistical issues.*
Principal purpose:	*In the 2021 edition of the NFPA 54, recently adopted and incorporated by reference into board rule Chapter 6, a new table was established for both direct vent and non-direct vent appliances requiring that the direct vent termination from appliances over 150,000 btu is required to be 4' from the side or below an opening or 1' above. Prior to the adoption of 2021 NFPA 54, the vent terminal of a direct vent appliance with an input of over 50,000 btu was required to be 12" from building openings. The proposed changes would amend the 2021 NFPA as adopted by the board and revert to the previously adopted standard, requiring direct vent terminal clearances for appliances greater than 150,000 btu to be in accordance with the manufacturer's instructions, and in no case less than 12".*
Basis Statement:	*The Maine Fuel Board (the "Board") is charged by the Legislature with the regulation of persons who install or service solid fuel burning equipment, including pellet-fired central heating appliances, or oil, propane or natural gas burning equipment, and facilities where propane or natural gas is dispensed, 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 proposed rulemaking would amend the following chapter(s):* *Chapter 6: Adoption of Standards* *The principal reason for this proposed rulemaking was to return to the prior venting clearance standard to alleviate a hardship for installers and homeowners, without compromising public safety.* *In the 2021 edition of the NFPA 54, recently adopted and incorporated by reference into board rule Chapter 6, a new table was established for both direct vent and non-direct vent appliances requiring that the direct vent termination from appliances over 150,000 btu is required to be 4' from the side or below an opening or 1' above. Prior to the adoption of 2021 NFPA 54, the vent terminal of a direct vent appliance with an input of over 50,000 btu was required to be 12" from building openings. The proposed changes would amend the 2021 NFPA as adopted by the board and revert to the previously adopted standard, requiring direct vent terminal clearances for appliances greater than 150,000 btu to be in accordance with the manufacturer's instructions, and in no case less than 12".*

02-313 Department of Professional and Financial Regulation, Maine Board of Dental Practice	
2024-106: Chapter 2, Qualifications for Dental Hygienist Licensure and Dental Hygienist Practice Authorities	
Statutory Authority:	32 M.R.S. §§ 18324, 18341, 18345, 18347-A, and 18376(1)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*[T]here may be a small financial impact to a limited number of licensees who need to obtain [basic life support] certification.*
Principal purpose:	*The purpose of the rulemaking proposal is to fully implement the various statutory changes pursuant to three public laws during the 131st First Special Legislative session - see P.L. 2023 ch. 165 (temporary licensure), P.L. 2023 ch. 351 (dental hygiene/dental therapy); and P.L. 2023 ch. 17 (Part P Dental's move into OPOR). The proposed change to Chapter 3 is to align the rule with the statutory requirements found in 32 M.R.S. §18344(1)(B).*
Basis Statement:	*Basis Statement: The Maine Board of Dental Practice ("the Board") is charged by the Legislature with the regulation of dentists, dental hygienists, denturists, dental radiographers, and expanded function dental assistants in the State of Maine for the sole purpose to protect the public health and welfare. The Legislature granted the Board rulemaking authority pursuant to 32 M.R.S. § 18324 to fully implement its statutory mandates.* *The purpose of this rulemaking proposal is to fully implement the various statutory changes pursuant to three public laws during the 131st First Special Legislative session - see P.L. 2023 ch. 165 (temporary licensure), P.L. 2023 ch. 351 (dental hygiene/dental therapy); and P.L. 2023 ch. 17 (Part P Dental's move into OPOR). The proposed change to Chapter 3 is to align the rule with the statutory requirements. Below is a summary of the proposed rulemaking changes:* *1. Chapters 2, 3, 5, and 6: Amend the temporary licensure sections to remove references to Title 10 and add language authorizing the board to waive the license fee. (P.L. 2023 ch. 165).* *2. Chapters 2, 3, 4, 5, and 6: Amend the life support certification requirement to BLS certification. (P.L. 2023 ch. 354).* *3. Chapter 2: Amend the public health dental hygiene section by removing the written practice agreement requirement and replace it with verification of services to be offered in a public health setting. (P.L. 2023 ch. 354).* *4. Chapter 3: Amend the EFDA qualifications by removing "and" and replace it with "or" as this was a technical error and aligns with the statutory requirements. (32 M.R.S. §18344(1)(B)).* *5. Chapter 11: Amend the practice authority section by removing public health dental hygiene authority and adding it to the section that does not require a written practice agreement to renew or reinstate a practice authority. (P.L. 2023 ch. 354).* *6. Chapter 12: Amend the IPDH practice requirements by removing references to requiring a written practice agreement with a dentist to review dental radiographs within 21 days from the date the radiograph was taken. (P.L. 2023 ch. 354).* *7. Chapter 13: Amend the sections identifying CPR certification and replace it with BLS*

	certification. (P.L. 2023 ch. 354). *8. Chapter 12: Amend citation in the summary to be 10 M.R.S. §8003(5-A). (P.L. 2023 ch. 17).*

02-313 Department of Professional and Financial Regulation, Maine Board of Dental Practice	
2024-107: Chapter 3, Qualifications for Expanded Function Dental Assistant Licensure	
Statutory Authority:	32 M.R.S. §§ 18324, 18341, 18344
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*[T]here may be a small financial impact to a limited number of licensees who need to obtain [basic life support] certification.*
Principal purpose:	*The purpose of the rulemaking proposal is to fully implement the various statutory changes pursuant to three public laws during the 131st First Special Legislative session - see P.L. 2023 ch. 165 (temporary licensure),* *P.L. 2023 ch. 351 (dental hygiene/dental therapy); and P.L. 2023 ch. 17 (Part P Dental's move into OPOR).* *The proposed change to Chapter 3 is to align the rule with the statutory requirements found in 32 M.R.S. §18344(1)(B).*
Basis Statement:	*See* Basis Statement at 2024-106, *supra*.

02-313 Department of Professional and Financial Regulation, Maine Board of Dental Practice	
2024-108: Chapter 4, Qualifications for Dental Radiography Licensure	
Statutory Authority:	32 M.R.S. §§ 18324, 18341, 18343, and 18347-A
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*[T]here may be a small financial impact to a limited number of licensees who need to obtain [basic life support] certification.*
Principal purpose:	*The purpose of the rulemaking proposal is to fully implement the various statutory changes pursuant to three public laws during the 131st First Special Legislative session - see P.L. 2023 ch. 165 (temporary licensure), P.L. 2023 ch. 351 (dental hygiene/dental therapy); and P.L. 2023 ch. 17 (Part P Dental's move into OPOR).* *The proposed change to Chapter 3 is to align the rule with the statutory requirements found in 32 M.R.S. §18344(1)(B).*
Basis Statement:	*See* Basis Statement at 2024-106, *supra*.

02-313 Department of Professional and Financial Regulation, Maine Board of Dental Practice	
2024-109: Chapter 5, Qualifications for Denturist Licensure	
Statutory Authority:	32 M.R.S. §§ 18324, 18341, 18346, and 18347-A
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*[T]here may be a small financial impact to a limited number of licensees who need to obtain [basic life support] certification.*
Principal purpose:	*The purpose of the rulemaking proposal is to fully implement the various statutory changes pursuant to three public laws during the 131st First Special Legislative session - see P.L. 2023 ch. 165 (temporary licensure), P.L. 2023 ch. 351 (dental hygiene/dental therapy); and P.L. 2023 ch. 17 (Part P Dental's move into OPOR).* *The proposed change to Chapter 3 is to align the rule with the statutory requirements found in 32 M.R.S. §18344(1)(B).*
Basis Statement:	*See* Basis Statement at 2024-106, *supra*.

02-313 Department of Professional and Financial Regulation, Maine Board of Dental Practice	
2024-110: Chapter 6, Qualifications for Dentist Licensure	
Statutory Authority:	32 M.R.S. §§ 18324, 18341, 18342, and 18347-A
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*[T]here may be a small financial impact to a limited number of licensees who need to obtain [basic life support] certification.*
Principal purpose:	*The purpose of the rulemaking proposal is to fully implement the various statutory changes pursuant to three public laws during the 131st First Special Legislative session - see P.L. 2023 ch. 165 (temporary licensure), P.L. 2023 ch. 351 (dental hygiene/dental therapy); and P.L. 2023 ch. 17 (Part P Dental's move into OPOR).* *The proposed change to Chapter 3 is to align the rule with the statutory requirements found in 32 M.R.S. §18344(1)(B).*
Basis Statement:	*See* Basis Statement at 2024-106, *supra*.

02-313 Department of Professional and Financial Regulation, Maine Board of Dental Practice	
2024-111: Chapter 11, Qualifications for Licensure by Endorsement; Requirements for Renewal, Late Renewal, and Reinstatement of Licensure and Authorities	
Statutory Authority:	32 M.R.S. §§ 18324, 18341, 18347, 18349, and 18350
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*[T]here may be a small financial impact to a limited number of licensees who need to obtain [basic life support] certification.*
Principal purpose:	*The purpose of the rulemaking proposal is to fully implement the various statutory changes pursuant to three public laws during the 131st First Special Legislative session - see P.L. 2023 ch. 165 (temporary licensure),* *P.L. 2023 ch. 351 (dental hygiene/dental therapy); and P.L. 2023 ch. 17 (Part P Dental's move into OPOR).* *The proposed change to Chapter 3 is to align the rule with the statutory requirements found in 32 M.R.S. §18344(1)(B).*
Basis Statement:	*See* Basis Statement at 2024-106, *supra*.

02-313 Department of Professional and Financial Regulation, Maine Board of Dental Practice	
2024-112: Chapter 12, Practice Requirements	
Statutory Authority:	32 M.R.S. §§ 18324, 18325, 18371, 18372, 18373, 18374, 18374, 18375, 18376, 18377, 18378, and 18393; and 10 M.R.S. §8003(5-A)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*[T]here may be a small financial impact to a limited number of licensees who need to obtain [basic life support] certification.*
Principal purpose:	*The purpose of the rulemaking proposal is to fully implement the various statutory changes pursuant to three public laws during the 131st First Special Legislative session - see P.L. 2023 ch. 165 (temporary licensure), P.L. 2023 ch. 351 (dental hygiene/dental therapy); and P.L. 2023 ch. 17 (Part P Dental's move into OPOR).* *The proposed change to Chapter 3 is to align the rule with the statutory requirements found in 32 M.R.S. §18344(1)(B).*
Basis Statement:	*See* Basis Statement at 2024-106, *supra*.

02-313 Department of Professional and Financial Regulation, Maine Board of Dental Practice	
2024-113: Chapter 13, Continuing Education	
Statutory Authority:	32 M.R.S. §§ 18308(4), 18324, 18350, and 18351
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*[T]here may be a small financial impact to a limited number of licensees who need to obtain [basic life support] certification.*
Principal purpose:	*The purpose of the rulemaking proposal is to fully implement the various statutory changes pursuant to three public laws during the 131st First Special Legislative session - see P.L. 2023 ch. 165 (temporary licensure), P.L. 2023 ch. 351 (dental hygiene/dental therapy); and P.L. 2023 ch. 17 (Part P Dental's move into OPOR).* *The proposed change to Chapter 3 is to align the rule with the statutory requirements found in 32 M.R.S. §18344(1)(B).*
Basis Statement:	*See* Basis Statement at 2024-106, *supra*.

02-031 Department of Professional and Financial Regulation, Bureau of Insurance	
2024-114: Chapter 865, Standards for Fertility Coverage	
Statutory Authority:	24-A M.R.S. §§ 212 and 4320-U
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*[N]one*
Principal purpose:	*The proposed rulemaking is necessary to implement the fertility care coverage requirements of 24-A M.R.S. § 4320-U.*
Basis Statement:	*Superintendent of Insurance Robert L. Carey hereby adopts Rule Chapter 865, "Standards for Fertility Coverage," pursuant to 24-A M.R.S. §§ 212 and 4320-U. The purpose of the Proposed Rule is to establish standards to implement the fertility care coverage requirements of 24-A M.R.S. § 4320-U.* *On May 22, 2023, the Bureau published a Notice of Rulemaking setting the public hearing at 1:30 p.m. on June 20, 2023, and closing the comment period at 4:30 p.m. on June 30, 2023. On May 22, 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 May 31, 2023, and with the Executive Director of the Legislative Council.* *The public hearing took place as scheduled by videoconference. On October 31, 2023, after determining that the adopted rule would be substantially different from the original Proposed Rule, the Bureau issued a Request for Additional Comments, with a supplemental comment period closed at 4:30 p.m. on December 15, 2023. The Request for Additional Comments included a Revised Proposed Rule and advised interested persons that the Bureau would find comments on the following points particularly helpful:* *• Whether the proposed limits on coverage reflect the best allocation of the funding resources the Legislature has provided for benefit defrayal;* *• Whether various technical changes we have proposed to the rule, including changes to definitions and medical terminology, are accurate, or whether they are worded in ways that might have unintended consequences;* *• If we were to modify or eliminate technology-specific requirements, to anticipate future advances in technology, what replacement language would best ensure a level of coverage that meets the statute, without expanding into services or procedures that do not represent an accepted standard of care or that are considered experimental;* *• Are there other methods of facilitating the defrayal reimbursement process that would be more efficient for the State, the policyholders, and the carriers? If we substitute a prospective reimbursement methodology in place of the proposed retrospective methodology, how would that mechanism be structured and implemented?* *• If the legislatively budgeted defrayal funds are, or are anticipated to be, fully expended, what options are there for reimbursing individuals or carriers as required by the ACA? Additional information on other states' experience in this area, including information on whether other state agency(ies) or other entities have successfully facilitated the defrayal process, would also be helpful.* *The rule is hereby adopted with the changes discussed below that have been made*

	in response to the initial and additional comments, and with a few additional non-substantive editorial corrections. Revisions made in the Revised Proposed Rule are depicted in red type, and further *revisions made in the Adopted Rule in response to the additional comments are depicted in blue type.*

02-030 Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection	
2024-126: Chapter 601, Establishment of Rules to Implement 9-A M.R.S. Article 14 and Requirement for Licensing of Student Loan Servicers Through the Nationwide Multistate Licensing System (NMLS)	
Statutory Authority:	9-A M.R.S. §§ 6-150-A(1) and 14-109(H)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The rule will have no fiscal impact as licensing of student loan servicers is already occurring.*
Principal purpose:	*Required by Title 9-A M.R.S. §14-109(H)*
Basis Statement:	***Factual and Policy Basis:*** *The BCCP adopts this rule as required by 9-A M.R.S.§ 14-109(H):* *To establish standardized procedures for the licensing of student loan servicers through NMLS, so as to provide improved oversight and simplify recordkeeping;* *To establish a schedule, requisite application content, and fees for both initial and renewal licensing;* *To establish the position of student loan ombudsman within the Bureau;* *To establish deadlines for an exempt organization to resolve and report on a complaint which the student loan ombudsman refers to it for assistance; and* *E. To establish the filing procedure for a person servicing a student loan under contract with the United States Department of Education who seeks exemption from 9-A M.R.S. § 14-107(A) & (B) and "automatic" licensure.*

02-318 Department of Professional and Financial Regulation	
2024-142: Chapter 120, Electrical Installation Standards	
Statutory Authority:	32 M.R.S. §§ 1153, 1153-A
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*Within the scope of the entire 2023 NEC and related amendments and exclusions, there are changes that may both increase and decrease the costs of electrical installations.*
Principal purpose:	*As required by 32 M.R.S. § 1153-A, all electrical installations must comply with the National Electrical Code, National Fire Protection Association standard #70 ("NEC") that is adopted by rule by the board, and the board must establish by rule technical standards for the proper installation of electrical equipment. These standards must conform as nearly as practicable to the NEC. The proposed rulemaking would repeal the current Chapter 120, Electrical Installation Standards which adopts and incorporates by reference the 2020 NEC and replace with a new rule with the same title and in the same location that adopts and incorporates by reference the 2023 NEC.*
Basis Statement:	***Basis Statement**: The Maine Electricians' Examining Board (the "Board") is charged by the Legislature with the regulation of electricians 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. § 1153.* *The rulemaking repeals 02-318, Chapter 120, "Electrical Installation Standards" and replaces it with a new rule with the same title and in the same location that adopts and incorporates by reference into board rule the 2023 National Electrical Code, National Fire Protection Association standard #70 ("2023 NEC"), subject to certain amendments and exclusions. The board's current Chapter 120 adopts and incorporates by reference the 2020 National Electrical Code, subject to certain amendments and exclusions. With the adoption of the 2023, the board found some of the amendments and exclusions that it had adopted in rule with regards to the 2020 NEC were no longer necessary.* *The proposed rule adopts the 2023 NEC with amendments to the following: Article 90.4(D) New Products, Constructions, or Materials; Article 100, Dormitory Unit; Article 210.8(A)(6), Dwelling Units; Article 210.8(B)(2), Other than Dwelling Units; Article 210.8(F), Ground-Fault Circuit-Interrupter Protection for Personnel, Outdoor Outlets; Article 230.2(E), Number of Services, Identification; Article 230.85(B), Disconnects; Article 334.10, Uses Permitted; Article 338.12(B)(1) and (2), Uses Not Permitted, Underground Service-Entrance Cable; Article 400.12(4), Uses Not Permitted; Article 406.9(C), Receptacles in Damp or Wet Locations, Bathtub and Shower Space; and Article 702.4(A)(2)(a), Capacity and Rating, System Capacity, Automatic Load Connection. The Board does not adopt Article 334.12(A)(2).*

02-318 Department of Professional and Financial Regulation, OPOR, Electricians' Examining Board	
2024-166: Chapter 180, Licensure by Endorsement	
Statutory Authority:	10 M.R.S. § 8003-H; 32 M.R.S. § 1201-B
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None anticipated.*
Principal purpose:	*The Electricians' Examining Board is proposing to adopt Chapter 180 that outlines a pathway for licensure if a person is licensed by another jurisdiction within the United States that maintains substantially equivalent licensing standards pursuant to 10 M.R.S. § 8003-H.*
Basis Statement:	*The Maine Electricians' Examining Board (the "Board") is charged by the Legislature with the regulation of electricians 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.* *§§ 1153 and 1206 and 10 M.R.S. § 8003-H. Additionally, the Legislature required in 10 M.R.S.* *§ 8003-H that the Board adopt rules implementing the procedure for licensure by endorsement.* *The proposed rule implements 10 M.R.S. § 8003-H, allowing persons licensed to work on electrical installations in other United States jurisdictions to receive electrician licenses in Maine, provided that their current licensing jurisdiction has substantially equivalent license requirements. The proposal describes the requirements for licensure by endorsement and sets forth specific criteria for determining if a jurisdiction has substantially similar licensing requirements.*

02-371 Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Nursing Home Administrator Licensing Board	
2024-192 to 2024-201: **Chapter 20, Definitions** **Chapter 21, Advisory Rulings** **Chapter 22, Administrator-in-Training Program for Multi-level Long Term Care Facility Administrators** **Chapter 23, Multi-level Long Term Care Facility Administrators: Licensure by Examination** **Chapter 25, Licensure of Nursing Home Administrators** **Chapter 26, Licensure of Residential Care Facility Administrators** **Chapter 27, Temporary Licensure of Administrators** **Chapter 28, License Renewal, Continuing Education and Inactive Status** **Chapter 29, Approval of Preceptor Training Programs** **Chapter 30, Code of Ethics**	
Statutory Authority:	5 M.R.S. § 9001; 10 M.R.S. § 8003(5-A)(D)(5) (inactive status); 32 M.R.S. §§ 63-B(2), (3), 65,
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None anticipated. Applicants for examination may incur costs to apply for and sit for the required examinations.*
Principal purpose:	*The proposed rulemaking will constitute a complete repeal and replacement of the Board's rules, which have not been updated since 2000.* *The proposed rulemaking will repeal the existing rules for the Board of Nursing Home Administrators, Chapters 1 through 11, and replace with the proposed Chapters 20 through 23, and Chapters 25 through 30.*
Basis Statement:	*The Nursing Home Administrators Licensing Board (the "Board") is charged by the Legislature with the regulation of nursing home administrators, administrators of long term care facilities, administrators of residential care facilities, and administors-in-training 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. § 63-B.* *The proposed rulemaking would repeal and replace the following chapter(s)* *New:* *Chapter 20: Definitions* *Chapter 21: Advisory Rulings* *Chapter 22: Administrator-in-Training Program for Multi-level Long Term Care Facility Administrators* *Chapter 23: Multi-level Long Term Care Facility Administrators: Licensure by Examination* *Chapter 25: Licensure of Nursing Home Administrators* *Chapter 26: Licensure of Residential Care Facility Administrators* *Chapter 27: Temporary Licensure of Administrators* *Chapter 28: License Renewal, Continuing Education and Inactive Status* *Chapter 29: Approval of Preceptor Training Programs*

	Chapter 30: Code of Ethics *Repeal:* *Chapter 1: Definitions* *Chapter 2: Nursing Home Administrators* *Chapter 3: Residential Care Facility Administrators* *Chapter 4: Multi-Level Long Term Care Facility Administrators* *Chapter 5: Licensing* *Chapter 6: Endorsement* *Chapter 7: Temporary Licenses* *Chapter 8: Continuing Education* *Chapter 9: Advisory Rulings* *Chapter 10: Fees* *Chapter 11: Code of Ethics* *The proposed rulemaking will constitute a complete repeal and replacement of the Board's rules, which have not been updated since 2000. It is expected that the rulemaking will clarify terms used throughout the rules, revise requirements for examination approval and qualifying for licensure, and align the Board's rules with the standards and protocols established by the National Association of Long-Term Care Administrator Boards ("NAB"), to better align the requirements in Maine with those in other states to ensure greater licensure mobility.*

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	
2024-202: Chapter 13, Licensure of Landscape Architects	
Statutory Authority:	32 M.R.S. §§ 214(1), 220(2)(B); P.L. 2023, c. 548
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None anticipated.*
Principal purpose:	*Public Law 2023, c. 548, An Act to Amend Licensing Requirements for Landscape Architects, effective March 19, 2024 removed the requirement that landscape architecture examination candidates complete their education and experience requirements prior to sitting for the Landscape Architect Registration Examination administered by the Council of Landscape Architectural Registration Boards (CLARB). Proposed changes to the rule are required to align the rule with the revised statute. The proposed rule also allows examination candidates to register directly with CLARB to take the exam without first submitting an application to the Maine State Board for Licensure of Architects, Landscape Architects and Interior Designers.*
Basis Statement:	*The Maine State Board for Licensure of 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 repeal and replace the following chapter(s)* *Chapter 13, Licensure of Landscape Architects* *Changes to this rule are required as a result of PL 2023, c. 548, An Act to Amend Licensing Requirements for Landscape Architects, effective March 19, 2024. The revised law allows landscape architect exam applicants to apply directly to the Council of Landscape Architectural Registration Boards (CLARB) without first paying a fee to the Maine State Board for Licensure of Architects, Landscape Architects and Interior Designers or completing education and experience requirements. Prior to adoption of PL 548, landscape architect examination candidates were required to meet education and experience requirements to qualify for admission to the exam.*

02-030 Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection 2024-203: Chapter 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)	
Statutory Authority:	10 M.R.S. § 1495-D(1-A)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*There will be a minor impact on the Bureau, in that revenues from fees should increase slightly as renewal fees for original and renewal licenses increase by $100 per year.* *Licensees will be impacted by the $100 per year increase in licensing fees and a yearly fee to NMLS, currently $100. As of the effective date of this rule, there will be slightly increased costs for credit reports and criminal background checks for new applicants (entities or individuals not already licensed and new individuals named to positions of control of current licensees.*
Principal purpose:	*The rule as adopted and currently in force resulted in some confusion as to licensing requirements. This repeal and replacement is intended to clarify requirements and extend timelines to address issues licensees have encountered in transitioning to the Nationwide Multistate Licensing System (NMLS). The rulemaking will also include a public hearing to allow licensees to address any continuing concerns personally.*
Basis Statement:	*I.* ***SUMMARY*** *The Bureau of Consumer Credit Protection (BCCP) hereby adopts Chapter 710, which repeals and replaces the current rule that governs payroll processor licensing in the State of Maine. The revised Rule clarifies the requirements for the types of records that can be used by an applicant for licensure as a payroll processor to show its financial condition. The rule is intended to make clear that evidence of financial condition must be submitted and that audited financial statements, although preferred, are not the only documents that may be used as evidence of financial condition. The rule also extends the period of transition to NMLS for payroll processors and modifies certain requirements for licensure.*

02-392 Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine Board of Pharmacy	
2024-282: Chapter 7, Licensure and Employment of Pharmacy Technicians	
Statutory Authority:	32 M.R.S.A. §§13720, 13721(1)(H), 13723
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None known, minimal if any*
Principal purpose:	*Chapter 7 is amended in accordance with Public Law 2023 Chapter 245, by setting standards by which a pharmacy technician may qualify to be certified to administer vaccines.*
Basis Statement:	*The Notice of Proposed Rulemaking was published on July 10, 2024, and a public hearing was held on August 1, 2024 at 8:30 a.m. with the option for the public to provide comments in-person or virtually at the rulemaking hearing. Written comments were also accepted with the public comment period ending on August 12, 2024 at 5:00 p.m. (EST).* *This proposed rule amends current Board Rule Chapter 7 in response to Public Law 2023 Chapter 245 (L.D. 899 An Act to Authorize Vaccine Administration by Pharmacy Technicians and Reduce Vaccine Administration Training Requirements for Pharmacists) by a) setting qualification standards for licensed pharmacy technicians to become certified to administer vaccines; and b) enabling currently licensed pharmacy technicians who are also currently certified to administer vaccines under the PREP Act the process to continue their certifications after the authorizations and immunizations in the federal Public Readiness and Emergency Preparedness ("PREP") Act end on December 31, 2024.* *The Board conveys its sincere appreciation for the feedback, comments, suggestions and questions regarding the amendments to the proposed rule.*

02-392 Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine Board of Pharmacy	
2024-283: Chapter 41, Sale of Nonprescription Drugs Through Vending Machine Outlets	
Statutory Authority:	32 M.R.S.A. §§ 13751, 13792(2)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None known, minimal if any*
Principal purpose:	*Public Law 2023 Chapter 160 repeals the 12-item limit for drug outlet vending machines. Chapter 41 is amended to for consistency with law.*
Basis Statement:	*The Notice of Proposed Rulemaking was published on July 10, 2024, and a public hearing was held on August 1, 2024 at 8:30 a.m. with option for the public to testify in-person or virtually. Written comments were also accepted with the public comment period ending on August 12, 2024 at 5:00 p.m. (EST).* *This proposed amendment to current Board Rule Chapter 41 removes the 12-item limit that may be stocked in any single vending machine to make the rule consistent with the statutory changes effectuated by Public Law 2023 Chapter 160 (L.D. 1615 An Act Regarding Limits on Medication in Vending Machines).* *The Board wishes to convey its sincere appreciation for the feedback, comments, suggestions and questions regarding the amendments to the proposed rule.*

02-392 Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine Board of Pharmacy	
2024-284: Chapter 44, Pharmacist Authorization to Make Certain Contraception Accessible	
Statutory Authority:	32 M.R.S.A. § 13826 (5)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None known, minimal if any*
Principal purpose:	*Chapter 44 is enacted in accordance with Public Law 2023 Chapter 115 to implement requirements to increase access to birth control by making certain contraception accessible from a pharmacist. This rule sets training for pharmacists to prescribe, dispense and administer contraceptives that reflect evidence-based medical eligibility guidelines for contraceptive use and best practices to counsel patients.*
Basis Statement:	*The Notice of Proposed Rulemaking was published on July 10, 2024, and a public hearing was held on August 1, 2024 at 8:30 a.m. with option for the public to testify in-person or virtually. Written comments were also accepted with the public comment period ending on August 12, 2024 at 5:00 p.m. (EST).* *This proposed rule is adopted in accordance with Public Law 2023 Chapter 115 (L.D. 351 An Act to Increase Access to Birth Control by Making Certain Contraception Accessible from a Pharmacist) to implement requirements to increase access to birth control by making certain contraception available from an appropriately trained pharmacist. This rule sets forth the training required that allow pharmacists to prescribe, dispense and administer contraceptives in reliance on evidence-based medical eligibility guidelines for contraceptive use and best practices to counsel patients.* *The Board wishes to convey its sincere appreciation for the feedback, comments, suggestions and questions regarding the amendments to the proposed rule.*

02-041, Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Boiler and Pressure Vessel Safety Program	
2024-285 to 2024-307: **Repeal:** **Chapter 1, Definitions** **Chapter 2, Variances** **Chapter 3, Board Meetings** **Chapter 4, Advisory Rulings** **Chapter 11, National Codes Applicable to Boilers and Pressure Vessels** **Chapter 12, Power Boilers** **Chapter 13, Low Pressure Boilers** **Chapter 14, Pressure Vessels** **Chapter 15, Repairs and Alterations** **Chapter 21, Duties and Responsibilities of All Owners of Boilers and Pressure Vessels** **Chapter 31, Inspectors** **Chapter 32, Boiler Operators and Stationary Steam Engineers** **New:** **Chapter 70, Definitions** **Chapter 71, Variances** **Chapter 72, Advisory Rulings** **Chapter 73, Safety Codes and Standards** **Chapter 74, Power Boilers** **Chapter 75, Low Pressure Boilers** **Chapter 76, Pressure Vessels** **Chapter 77, Repairs and Alterations** **Chapter 78, Duties and Responsibilities of Owners of Boilers and Pressure Vessels** **Chapter 79, Inspectors** **Chapter 80, Boiler Operators and Stationary Steam Engineers**	
Statutory Authority:	5 M.R.S. §§ 8051, 9001; 32 M.R.S. §§ 15101, 15102, 15103-A, 15104-B, 15105, 15109, 15110, 15119, 15120, 15121
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None anticipated.*
Principal purpose:	*The proposed rulemaking will entirely replace the Boiler and Pressure Vessel Safety Program's rules. The purpose of this rulemaking is to update outdated references (the regulatory agency is administered as a program through the Office of Professional and Occupational Regulation and not through a licensing board) and to adopt updated safety codes and standards, including the ASME Boiler and*

	Pressure Vessel Code, 2023 Edition with the exception of Section III, Rules for Construction of Nuclear Facility Components, and Section XI, Rules for Inservice Inspection of Nuclear Reactor Facility Components; the ASME Code for Pressure Piping, B31.1-2022; the National Board Inspection Code, ANSI/NB23 2023 Edition, parts 1, 2, 3 and 4 (Enforcement of Part I, Installation, delayed for a period of thirty-six months); Controls and Safety Devices for Automatically Fired Boilers ASME CSD-1-2021; and Guidelines for inspection and nondestructive testing of cast iron paper machine dryers, TIP 0402-16 (2015 Revision).
Basis Statement:	***Basis Statement****: The director of the Office of Professional and Occupational Regulation is charged by the Legislature with the regulation of the operation of boilers and pressure vessels in the State of Maine for the sole purpose of protecting the public health and welfare. The Legislature granted the director rulemaking authority pursuant to 32 M.R.S. § 15103-A(2).* *The proposed rulemaking would repeal and replace the following chapter(s)* *Repeal:* *Chapter 1, Definitions* *Chapter 2, Variances* *Chapter 3, Board Meetings* *Chapter 4, Advisory Rulings* *Chapter 11, National Codes Applicable to Boilers and Pressure Vessels* *Chapter 12, Power Boilers* *Chapter 13, Low Pressure Boilers* *Chapter 14, Pressure Vessels* *Chapter 15, Repairs and Alterations* *Chapter 21, Duties and Responsibilities of All Owners of Boilers and Pressure Vessels* *Chapter 31, Inspectors* *Chapter 32, Boiler Operators and Stationary Steam Engineers* *New:* *Chapter 70, Definitions* *Chapter 71, Variances* *Chapter 72, Advisory Rulings* *Chapter 73, Safety Codes and Standards* *Chapter 74, Power Boilers* *Chapter 75, Low Pressure Boilers* *Chapter 76, Pressure Vessels* *Chapter 77, Repairs and Alterations* *Chapter 78, Duties and Responsibilities of Owners of Boilers and Pressure Vessels* *Chapter 79, Inspectors* *Chapter 80, Boiler Operators and Stationary Steam Engineers* *The principal reason for this proposed rulemaking was to update outdated references (the regulatory agency is administered as a program through the Office of Professional and Occupational Regulation and not through a licensing board)*

and to adopt updated safety codes and standards.

02-041, Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation	
2024-308: Chapter 10, Establishment of License Fees	
Statutory Authority:	32 M.R.S. §§ 15224, 15225-A; 10 M.R.S. § 8003(2-A)(D)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*It is expected that the rule will increase the costs to the regulated community for plan review and initial inspection of passenger/freight elevators, temporary use elevator inspections, and other regulated equipment. It is anticipated that the rule will provide greater certainty as to the total fees charged for review and inspections of elevators and other regulated equipment. Currently, some fees depend on factors such as the valuation of an installation or "travel expenses" without setting an amount. The amended rule consolidates fees in the current rule and sets all fees at a flat rather than a variable rate.*
Principal purpose:	*The rule implements LD 2214, enacted by the 131st Legislature as P.L. 2023, c. 643. LD 2214 directed that the fee rule be amended to the extent necessary to cover ongoing costs of two additional Elevator Inspector positions, to allow for a future reclassification or reorganization of all Elevator Inspector positions, to take into account reimbursement for required travel and expenses associated with elevator inspections, and to consolidate fees charged by the program.*
Basis Statement:	***Basis Statement**: The Director of the Elevator and Tramway Safety Program is charged by the Legislature with the regulation of elevators and tramways in the State of Maine for the sole purpose of protecting the public health and welfare. The Legislature granted the Director rulemaking authority pursuant to 32 M.R.S. § 15205-A(2).* *The rulemaking amends the following chapter(s)* *Chapter 10 Establishment of License Fees* *The principal reason for this proposed rulemaking was to implement LD 2214, enacted by the 131st Legislature as P.L. 2023, c. 643. LD 2214 directed that the fee rule be amended to the extent necessary to cover ongoing costs of two additional Elevator Inspector positions, to allow for a future reclassification or reorganization of all Elevator Inspector positions, to take into account reimbursement for required travel and expenses associated with elevator inspections, and to consolidate fees charged by the program.*

03 Department of Corrections

03-201 Department of Corrections	
2024-078: Chapter 10, Policy and Procedures Manual – Adult	
Statutory Authority:	34-A M.R.S. § 3036-A
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*None*
Principal purpose:	*The Maine Department of Corrections amended Ch. 10, Supervised Community Confinement. The primary reason this rule is amended is to address a statutory change that makes a resident eligible for the supervised community confinement program (SCCP) if they have a worsening prognosis that is likely to result in a terminal or severely incapacitating medical condition. Other amendments clarify reasons for denying approval to SCCP as they relate to victim safety; add a requirement of notifying a domestic violence resource center if a resident who is in custody for a domestic violence crime is approved for transfer to SCCP; clarify that a client on SCCP is not allowed to travel out of state without the written permission of their probation officer; clarify that a client may be removed from SCCP without notifying the Director of Adult Community Corrections if a probation supervisor thinks it is necessary; and make other clarifications.*
Basis Statement:	*The Maine Department of Corrections amended Ch. 10, Supervised Community Confinement. The primary reason this rule is amended is to address a statutory change that makes a resident eligible for the supervised community confinement program (SCCP) if they have a worsening prognosis that is likely to result in a terminal or severely incapacitating medical condition. Other amendments clarify reasons for denying approval to SCCP as they relate to victim safety; add a requirement of notifying a domestic violence resource center if a resident who is in custody for a domestic violence crime is approved for transfer to SCCP; clarify that a client on SCCP is not allowed to travel out of state without the written permission of their probation officer; clarify that a client may be removed from SCCP without notifying the Director of Adult Community Corrections if a probation supervisor thinks it is necessary; and make other clarifications.*

03-201 Department of Corrections	
2024-149: Chapter 10, Policy and Procedures Manual - Adult	
Statutory Authority:	Formerly 34-A M.R.S. § 1205
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None*
Principal purpose:	*This rule was repealed because the statutory authority for the rule (Title 34-A, Section 1205) has been repealed and the rule is therefore moot.*
Basis Statement:	*Rule Ch. 10, Sec. 2.15: Agreements with Community Agencies - Fiscal Management was repealed because the statutory authority for the rule (Title 34-A, Section 1205) has been repealed and the rule is therefore moot.*

03-201 Department of Corrections	
2024-159: Ch. 10, Policy and Procedures Manual - Adult	
Statutory Authority:	34-A MRSA Section 1402(5)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None*
Principal purpose:	*This rule was repealed because the Department has adopted two comprehensive grievance rules pursuant to 34-A MRSA Section 1402(5), which allow grievances on this subject. These rules, Ch. 10, Subsections 29.1, Adult Resident Grievance Process, General and 29.2, Adult Resident Grievance Process, Health Care, are sufficient for addressing grievances covered in the rule that has been repealed.*
Basis Statement:	*This rule was repealed because the Department has adopted two comprehensive grievance rules pursuant to 34-A MRSA Section 1402(5), which allow grievances on this subject. These rules, Ch. 10, Subsections 29.1, Adult Resident Grievance Process, General and 29.2, Adult Resident Grievance Process, Health Care, are sufficient for addressing grievances covered in the rule that has been repealed.*

03-201 Department of Corrections	
2024-217: Chapter 15, Domestic Violence Intervention Program Certification (formerly Batterer Intervention Program Certification)	
Statutory Authority:	19-A M.R.S.A. §4116
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None*
Principal purpose:	*This rule is being proposed to be repealed and replaced in order to reflect the statutory name change from "batterer intervention program" to "domestic violence intervention program" and to otherwise clarify and update its provisions.*
Basis Statement:	*The primary reason this rule is repealed and replaced is to reflect the statutory name change from "batterer intervention program" to "domestic violence intervention program" and to otherwise clarify and update its provisions.*

05 Department of Education

05-071 Department of Education	
2024-003: Chapter 41, Offering Instruction Related to Cardiopulmonary Resuscitation and the Use of an Automated External Defibrillator in Maine Public Schools	
Statutory Authority:	20-A M.R.S. § 6304
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*None*
Principal purpose:	*As a result of the First Special Session of the 131st Maine Legislature, Public Law 2023, Chapter 460 was signed by Governor Mills on July 27, 2023. This law, An Act to Require Public Schools to Offer Training for Secondary Students on the Administration of Naloxone Hydrochloride requires all Maine public schools to offer training to secondary students in the administration of naloxone hydrochloride in nasal spray form. The law further requires the Maine Department of Education to adopt rules on how to train secondary students to administer naloxone hydrochloride in nasal spray form. The training may be provided as extracurricular instruction, is to be delivered by a qualified individual, and that the standards for instruction are based on those of a nationally recognized program, organization, or agency.* *Other revisions to the rule account for updates to terminology and practice in CPR and AED administration.*
Basis Statement:	*As a result of the First Special Session of the 131st Maine Legislature, Public Law 2023, Chapter 460 was signed by Governor Mills on July 27, 2023. This law, An Act to Require Public Schools to Offer Training for Secondary Students on the Administration of Naloxone Hydrochloride requires all Maine public schools to offer training to secondary students in the administration of naloxone hydrochloride in nasal spray form. The law further requires the Maine Department of Education to adopt rules on how to train secondary students to administer naloxone hydrochloride in nasal spray form. The training may be provided as extracurricular instruction, is to be delivered by a qualified individual, and that the standards for instruction are based on those of a nationally recognized program, organization, or agency.* *Other revisions to the rule account for updates to terminology and practice in CPR and AED administration.*

05-071 Department of Education	
2024-048: Chapter 52, Grant Application and Award Procedure; Fund for School Meal Equipment and Program Improvement	
Statutory Authority:	20-A M.R.S. § 6664
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*None*
Principal purpose:	*As a result of Public Law 2023, Chapter 457 (codified at 20-A MRSA §6664), the Maine Department of Education is proposing a new rule to govern the administration of the School Meal Equipment and Program Improvement Fund.*
Basis Statement:	*As a result of Public Law 2023, Chapter 457 (codified at 20-A MRSA §6664), the Maine Department of Education is proposing a new rule to govern the administration of the School Meal Equipment and Program Improvement Fund.*

05-071 Department of Education	
2024-102: Chapter 83, School Transportation Operations Program	
Statutory Authority:	29-A M.R.S. § 2311; 20-A M.R.S. § 5401(7)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*None*
Principal purpose:	*The purpose of Chapter 83 is to determine who is eligible for access to the School Transportation Operations Program and provide a process for eligible schools to access the software subsidy. This rule has been revised to clarify the role of the Department of Education in providing the subsidy, the technical start-up process, and the distribution of state payment of approved subsidies.*
Basis Statement:	*The purpose of Chapter 83 is to determine who is eligible for access to the School Transportation Operations Program and provide a process for eligible schools to access the software subsidy. This rule has been revised to clarify the role of the Department of Education in providing the subsidy, the technical start-up process, and the distribution of state payment of approved subsidies.*

05-071 Department of Education	
2024-103: Chapter 84, School Bus Refurbishment Program	
Statutory Authority:	29-A M.R.S. §2311 and 20-A M.R.S. §5401(17)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*Since 2021, SAUs have managed school bus body refurbishment locally. Expenditures for transportation are covered by the EPS formula. As such, refurbishment costs may, in part, be subsidized by the EPS formula.*
Principal purpose:	*This regulation established procedures for school administrative units (SAUs) to contract for school bus refurbishment services through the Maine School Bus Refurbishment Program.* *The program provided subsidy to school administrative units (SAUs) in order to offset the partial cost of refurbishment for school buses used to transport students to and from home and school and school events. This program was operated by the Maine State Military Authority which no longer refurbishes school buses. As a result, the Department of Education is proposing a full repeal of the rule.*
Basis Statement:	*This regulation established procedures for school administrative units (SAUs) to contract for school bus refurbishment services through the Maine School Bus Refurbishment Program.* *The program provided subsidy to school administrative units (SAUs) in order to offset the partial cost of refurbishment for school buses used to transport students to and from home and school and school events. This program was operated the Maine State Military Authority which no longer refurbishes school buses. As a result, the Department of Education is proposing a full repeal of the rule.*

05-071 Department of Education, State Board of Education	
2024-122: Chapter 61, Rules for Major Capital School Construction Projects	
Statutory Authority:	20-A M.R.S. §§ 3, 405(3)(J), 15905(4), PL 2023, Ch. 462
Type:	Major Substantive
Emergency?:	No
Fiscal impact:	*None*
Principal purpose:	*As a result of the First Special Session of the 131st Maine Legislature, The State Board of Education is engaging in rulemaking in response to Public Law 2023, Chapter 462, "An Act to Expand Access to School Construction Funding" effective October 25, 2023 which directs the State Board to amend their rule regarding administering funding for integrated, consolidated 9-16 educational facilities.* *As part of this update, The State Board of Education is opening Rule Chapter 61: State Board Of Education Rules For Major Capital School Construction Projects to complete the legislative changes required by law and is proposing several other changes.*
Basis Statement:	*As a result of the First Special Session of the 131st Maine Legislature, The State Board of Education is engaging in rulemaking in response to Public Law 2023, Chapter 462, "An Act to Expand Access to School Construction Funding" effective October 25, 2023 which directs the State Board to amend their rule regarding administering funding for integrated, consolidated 9-16 educational facilities.* *As part of this update, The State Board of Education is opening Rule Chapter 61: State Board Of Education Rules For Major Capital School Construction Projects to complete the legislative changes required by law and is proposing several other changes to enhance clarity. The definition of "emergency project" has been updated to provide greater clarity in the determination of project approval. Major capital construction project application form guidance has been updated to include consolidated 9-12 educational facilities. The school construction eligibility section has been updated to remove specifically identified school years from the graduation rate criteria. The movable equipment cost has been updated to 4% instead of the identified 9% listed in the rule to reflect State Board practice. The State Board reserves the right to review for potential increases on a case-by-case basis. Project management authority and contracted representatives has been updated in the section relating to final approval as a result of State Board practice. The Bureau of General Services has been removed from the language of the rule due to the elimination of that office.*

05-071 Department of Education/94-376 Maine Municipal Bond Bank [Joint Rule]	
2024-123: Chapter 64, Maine School Facilities Program and School Revolving Renovation Fund	
Statutory Authority:	20-A M.R.S. §§ 1, 4001, 5804, 5805, 15603, 15907, 15918; Resolves 2023, Ch. 44; 30-A M.R.S. §§ 5953-E, 6006-E, 6006-F; Resolve 2007, Ch. 174
Type:	Major Substantive
Emergency?:	No
Fiscal impact:	*None*
Principal purpose:	*Resolves 2023, Chapter 44, "Resolve, Directing the Department of Education and the Maine Municipal Bond Bank to Amend Their Rules Regarding the Maine School Facilities Finance Program and the School Revolving Renovation Fund" effective October 25, 2023 directs the Maine Department of Education and the Maine Municipal Bond Bank to amend their rules to require: (1) that the maximum total loans from the fund for repair, renovation, and improvement projects for Priority One, Priority Two, Priority Three, Priority Four and Priority Five be increased from $4,000,000 to $8,000,000, and (2) that the maximum loan amount from the fund to address each priority level in a school building be increased from $1,000,000 to $2,000,000 within any 5-year period.* *This amendment makes those two changes.*
Basis Statement:	*Resolves 2023, Chapter 44, "Resolve, Directing the Department of Education and the Maine Municipal Bond Bank to Amend Their Rules Regarding the Maine School Facilities Finance Program and the School Revolving Renovation Fund," effective October 25, 2023, directs the Maine Department of Education and the Maine Municipal Bond Bank to amend their rules to require: (1) that the maximum total loans from the fund for repair, renovation, and improvement projects for Priority One, Priority Two, Priority Three, Priority Four and Priority Five be increased from $4,000,000 to $8,000,000, and (2) that the maximum loan amount from the fund to address each priority level in a school building be increased from $1,000,000 to $2,000,000 within any 5-year period.* *This amendment makes those two changes.*

05-071 Department of Education	
2024-150: Chapter 101, Maine Unified Special Education Rule Birth to Age Twenty	
Statutory Authority:	20-A M.R.S. § 7005(1), 8054
Type:	Major Substantive
Emergency?:	No
Fiscal Impact:	*Per Maine Unified Special Education Regulations (MUSER) prior to the emergency rule enacted [July 7, 2023], school administrative units (SAUs) were only required to pay special purpose private schools (SPPS) a daily rate for program participation on days when students actually attended their programming. This rule change would require SAUs to pay regardless of whether the student is in attendance on a given school day. The Department estimates that prior to the change, SAUs were paying for approximately 60-75% of the program days, they will now be required to pay for 100% of the program days. The Department estimates the extra cost of paying for 100% of the program days to be approximately $90-135 per student per program day which is to be paid by the SAU.* *Regarding the fiscal note pertaining to the change in age to 22 years, extending the age of eligibility for special education and for participation in career and technical education courses by adults who are enrolled in special education from under 20 years of age to under 22 years of age will increase the total cost of public education from kindergarten to grade 12 and the state's share of that cost. The fiscal impact will depend on the number of eligible students each year. Public Law 2021, chapter 17, Part C allocates $375,000 in fiscal year 2023-24 to special education for an additional 20 students identified by the department through its student count data. Funding for the State's share of that cost in fiscal year 2024-25 is included in the General Fund appropriation approved for the General Purpose Aid for Local Schools program in chapter 17. Based on this information, no additional General Fund appropriations are provided in this bill (LD 98). Separate from the costs mentioned above, the department was unable to estimate a cost for the additional career and technical education students due to the student count data by age group being unavailable.*
Principal purpose:	*To align the rule with the changes made by Public Law 2023, Chapter 450 and to make permanent the emergency rule language relating to the funding of special purpose private schools.*
Basis Statement:	*Public Law 2023, Chapter 450 amends 20-A MRSA §7001, 7002, 7258, and 8305 to amend the upper age limit to under 22 years of age, changes hearing impairment to deafness, including hearing loss, changes serious emotional disturbance to emotional disability, and changes deafness and blindness to deaf-blindness. Public Law 2023, Chapter 450 also amends outdated language by changing the term pupil evaluation to individualized education program. These changes are now reflected in the revised MUSER.* *The Department of Education 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.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. This barrier was resolved in with the emergency rule filing of July 7, 2023. The Department seeks to make this change permanent in this rulemaking process. *These are the only changes included in this revision.*

06 Department of Environmental Protection

06-096 Department of Environmental Protection	
2024-022: Chapter 167, Tracking and Reporting Gross and Net Annual Greenhouse Gas Emissions	
Statutory Authority:	38 M.R.S. § 576-A(4)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The proposed rule updates do not impose a compliance requirement on any entity, and therefore do not directly impose any costs on any regulated entities. As explained above, the proposed rule updates establish methods for the calculation of gross and net annual greenhouse gas emissions in the State for the purpose of assessing attainment of the emissions reduction and carbon neutrality goals set out at 38 MRS §§576-A(1), (2) and (3). [see §8057-A(1)(C)]*
Principal purpose:	*As stated in 38 M.R.S. §576-A (4), "By July 1, 2021, the Department shall adopt rules to track and report to the Legislature on gross annual greenhouse gas emissions and net annual greenhouse gas emissions." Chapter 167: Tracking and Reporting Gross and Net Annual Greenhouse Gas Emissions was originally adopted in July 2021 to meet this requirement. Chapter 167 establishes methods for the calculation of annual greenhouse gas emissions as required, outlining the methods, data sources, and assumptions used to compile and report these inventories. Methods and data sources used to calculate greenhouse gas emissions and compile the inventory are regularly updated. The Department proposes updates to Chapter 167 to best align with these recent updates.*
Basis Statement:	*As stated in 38 M.R.S. §576-A (4), "By July 1, 2021, the Department shall adopt rules to track and report to the Legislature on gross annual greenhouse gas emissions and net annual greenhouse gas emissions." Chapter 167: Tracking and Reporting Gross and Net Annual Greenhouse Gas Emissions was originally adopted in July 2021 to meet this requirement. Chapter 167 establishes methods for the calculation of annual greenhouse gas emissions as required, outlining the methods, data sources, and assumptions used to compile and report these inventories. Methods and data sources used to calculate greenhouse gas emissions and compile the inventory are regularly updated. The Department proposes updates to Chapter 167 to best align with these recent updates.* *These emissions estimates are used to assess Maine's progress toward meeting the gross greenhouse gas reductions set out in 38 M.R.S. § 576-A (1) and (3). The net emissions estimate will be used to gauge Maine's progress toward the 2045 carbon neutrality goal as stated in 38 M.R.S. § 576-A (2-A). The Department will use these methods to measure progress toward these reductions and toward the goals of the climate action plan described in 38 M.R.S. § 577.* *On September 26, 2023, the Department opened a public comment period on the proposed revisions to Chapter 167. The Department received comments on the proposal from two interested parties during the public comment period and has summarized these comments and provided its responses below.*

06-096 Department of Environmental Protection	
2024-024: Chapter 80, Reduction of Toxins in Packaging	
Statutory Authority:	32 M.R.S. Ch. 26-A
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*No significant fiscal impact on municipalities or counties is anticipated. No significant economic impacts are anticipated as the majority of manufacturers are already shifting toward PFAS free alternatives.*
Principal purpose:	*The purpose of this rulemaking proposal is to update the existing Chapter 80 in accordance with changes in the law and to update language and formatting. The proposed changes include the incorporation of an existing statutory sales prohibition on the use of phthalates in food packaging. The proposal also adds a new section 5, establishing a sales prohibition on the use of specific applications of intentionally added PFAS to certain types of food packaging. The addition of the new section 5 is major substantive rulemaking.*
Basis Statement:	*The purpose of this rule is to establish sales prohibitions on the use of specific additives in packaging under the authority of 32 M.R.S. Chapter 26-A.* *Chapter 80 was first adopted in 1992, as Chapter 130 at the Maine Waste Management Agency, and has not been substantively amended since. This rulemaking process was undertaken to implement recent statutory changes of Public Law 2019, ch. 277, An Act To Protect the Environment and Public Health by Further Reducing Toxic Chemicals in Packaging, to implement recommendations from Department staff, and to update the structure and language of the Chapter.* *This amendment updates the existing Chapter 80 in accordance with applicable changes in Statute. The amendment also includes updated language and formatting, and the addition of an existing statutory sales prohibition on the use of phthalates in food packaging. The proposal adds a new Section 5, establishing a sales prohibition on the use of specific applications of intentionally added PFAS to certain types of food packaging. The addition of the Section 5 is major substantive rulemaking.* *Public notice of this rulemaking was initially posted on the Department's rulemaking page and published in the Secretary of State's rulemaking notices on October 23, 2023, to comply with the Maine APA notice requirements. A public hearing was held on November 16, 2023. And the period for submitting public comments closed on November 30, 2023. The Department received four public comments prior to the close of the comment period.*

06-096 Department of Environmental Protection	
2024-025: Chapter 305, Natural Resources Protection Act - Permit by Rule Standards	
Statutory Authority:	38 M.R.S. § 344(7)
Type:	Routine Technical
Emergency?:	Yes
Fiscal impact:	*None*
Principal purpose:	*This emergency rule revision puts into immediate effect the provisions of Public Law 2023, ch. 97, which directed the Department to allow the use of biodegradable stabilization materials in dune restoration projects through a Natural Resources Protection Act Permit by Rule. This emergency rulemaking is in response to the unprecedented erosion of coastal sand dune systems caused by this winter's storms.*
Basis Statement:	*FINDINGS OF EMERGENCY* *On January 10, 2024, and January 13, 2024, Maine experienced two severe storms that resulted in historic flooding along the coast. Coastal infrastructure, including homes, buildings, docks, and roads, were damaged and destroyed and significant erosion occurred, with some coastal sand dunes eroding by tens of feet. In response to these events, Governor Mills declared a State of Civil Emergency and requested the Federal Emergency Management Agency begin the assessment process for a Major Disaster Declaration.* *Coastal sand dune systems serve as natural barriers to protect the shoreline from storm events. Coastal erosion, specifically erosion of dune systems, caused by these storm events removed tens of feet of protective dunes in some areas, eliminating an important line of defense. This poses an immediate threat to public safety in cases where homes and other necessary structures supporting general welfare are currently, or may soon be, structurally undermined due to the erosion. The Department finds that these storm events, and the resulting erosion, constitute an emergency as described in 5 M.R.S. § 8054.* *BACKGROUND* *Public Law 2023, ch. 97 directed the Department to undertake rulemaking to amend Chapter 305 Natural Resources Protection Act (NRPA) – Permit By Rule to allow for the use of biodegradable stabilization materials in dune restoration projects. The Department consulted with coastal geologists at the Maine Geological Survey and internal subject matter experts during the development of these revisions. While drafting these revisions, the Department determined that additional changes to Chapter 305 are warranted to allow biodegradable stabilization materials to be used in other shoreline stabilization projects, outside of coastal sand dune systems. The Department expects to propose those additional changes to Chapter 305 to the Board of Environmental Protection later this year.* *Due to the erosion caused by the storm events earlier this month, some property owners located in coastal sand dune systems have lost an important line of defense. Their homes may be in danger of becoming structurally undermined in the next storm, constituting a threat to public safety. Therefore, in light of this emergency, the Department has undertaken emergency rulemaking as authorized by 5 M.R.S. § 8054 to put into effect the revisions to Chapter 305 described in P.L. 2023, ch. 97. This emergency rulemaking allows property owners to receive NRPA Permits by Rule for dune restoration and construction projects that use biodegradable stabilization materials. This gives property owners dealing with unprecedented*

coastal erosion an immediate new tool for protecting their homes.

The immediate nature of emergency rulemaking is especially important due to the timing constraints on dune restoration and construction projects. Because of the arrival and nesting activity of endangered Least Tern and Piping Plover birds, dune restoration and construction activities conducted through permit by rule must occur between October 1 and March 15 unless written approval from the Department of Inland Fisheries and Wildlife is obtained by the applicant. This leaves a narrow time window to complete such projects without disturbing endangered species. While the Department may authorize dune restoration and construction projects using biodegradable materials through an individual NRPA permit, the processing timeline for individual NRPA applications would place most approved permits beyond the March 15 construction window this year.

By law, the emergency rulemaking will expire after 90 days (5 M.R.S § 8054(3)). During this period, the Department will initiate a normal rule revision process to implement Public Law 2023, ch. 97 that the Department expects to be part of the larger Chapter 305 rulemaking package concerning shoreline stabilization described above.

PROCEDURAL MODIFICATIONS

In order to mitigate the threats to public safety and general welfare posed by the erosion of coastal sand dunes as a result of the storms this winter, the rulemaking procedures set forth in 5 M.R.S. § 8052 and § 8053 have been modified in the following ways:

- *Public Notice – Notice has been sent via email to those members of the public who have requested notice of the Department's rulemaking activities. This email was sent on January 29, 2024, three days prior to the February 1, 2024, Board meeting, at which the Board voted on the adoption of this emergency rulemaking. In addition, notice was posted on the Department's rulemaking website on January 29, 2024.*
- *Public Comment – No official public comment period or public hearing was held; however, members of the public in attendance at the February 1, 2024, Board meeting were given the opportunity to offer comments on the proposed emergency rulemaking.*

06-096 Department of Environmental Protection	
2024-035: Chapter 526, Cooling Water Intake Structures	
Statutory Authority:	38 M.R.S. §§ 341-H and 414-A(6)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The proposed rule does not contain any substantive changes to the existing rule as currently administered by USEPA. Therefore, there should be not fiscal impact to facilities subject to the proposed Chapter 526.*
Principal purpose:	*The purpose of the rulemaking proposal is to enable the Department to seek delegated authority under USEPAs Clean Water Act 316(b), as required by Maine's Memorandum of Agreement with USEPA.*
Basis Statement:	*The purpose of this rule is to enable the Department to request delegated authority under USEPA's Clean Water Act § 316(b), thereby reducing the time and effort required for regulated entities to comply. Chapter 526 is be based on the EPA rules found a 40 CFR part 125, subpart I and subpart J and does not include any substantive changes to the requirements of the EPA rules. Affected entities are obligated to comply with the standards regardless of which agency has authority to administer the rules. The federal rule includes text with specific deadlines for dates that are long past or are otherwise not applicable in the proposed draft, this text is replaced with [Reserved], in order to retain the overall outline structure of the rule to avoid unnecessary revisions to cross-references.* *Chapter 526 establishes requirements that apply to cooling water intake structures at new and existing facilities that are subject to section 316(b) of the Clean Water Act (CWA), 33 U.S.C. § 1326(b) These requirements include standards for minimizing adverse environmental impact associated with the use of cooling water intake structures and required procedures (e.g., permit application requirements, information submission requirements) for establishing the appropriate technology requirements at certain specified facilities as well as monitoring, reporting, and record keeping requirements to demonstrate compliance. In combination, these components represent the best technology available for minimizing adverse environmental impact associated with the use of cooling water intake structures. These requirements are to be established and implemented in Maine Pollutant Discharge Elimination System (MEPDES) permits issued under the State's delegated authority under the CWA.* *Public notice of this rulemaking was initially posted on the Department's rulemaking page on November 14, 2023, and published in the Secretary of State's rulemaking notices on November 15, 2023, to comply with the Maine APA notice requirements. The Board held a public hearing on the proposed rulemaking on December 7, 2023, and the period for submitting public comments closed on December 18, 2023.* *The Department received two letters with comments from interested persons or organizations prior to the close of the comment period. No testimony was presented at the Public Hearing. The Department made no substantive changes to the draft rule. The public comments and the Department's responses and changes to the proposed rule are provided below. Changes to sections 5.A and 12.A to clarify*

applicability of the rule are proposed. In addition, the Department also made grammatical, formatting, and other non-substantive revisions to the final proposal.

06-096 Department of Environmental Protection	
2024-095: Chapter 355, Coastal Sand Dunes	
Statutory Authority:	38 M.R.S. §§ 341-H and 480-A - 480-J
Type:	Major Substantive
Emergency?:	No
Fiscal impact:	*None*
Principal purpose:	*The purpose of this rulemaking is to update Chapter 355 Coastal Sand Dune Rules to replace outdated references by citing the most recent Coastal Sand Dune Geology Maps prepared by the Maine Geological Survey and dated 2023. This reflects our best scientific understanding of where coastal sand dunes, which are protected natural resources, exist in the State.*
Basis Statement:	*Coastal sand dune systems are a protected natural resource under Maine's Natural Resources Protection Act (NRPA), 38 M.R.S. §§480-A–480-JJ. They are fragile, dynamic resources that serve as natural barriers to protect the shoreline from storm events. They also provide vital habitat for wildlife, including endangered Least Terns and Piping Plovers. NRPA permitting within this protected natural resource is governed by the Department's Chapter 355 Coastal Sand Dune Rules. In 38 M.R.S. §480-B and Chapter 355, coastal sand dune systems are defined based on their sediment characterization, locations, and the depositional processes that created them. The definition of coastal sand dune systems in Chapter 355 also states that:* *Most coastal sand dune systems have been identified by the Maine Geological Survey and are shown on photos entitled Beach and Dune Geology Aerial Photos dated 2001. Coastal Sand Dune Maps, previously produced by MGS and dated 1990, have been discontinued.* *The purpose of this rulemaking is to update this reference to cite the most recent Coastal Sand Dune Maps prepared by the Maine Geological Survey dated 2023. This does not change the defining features set forth in the rule but it reflects the best scientific understanding of where these protected natural resources exist in Maine and will provide clarity to the regulated public by pointing them to a more helpful reference to understand this resource.* *These revisions to Ch. 355 require major substantive rulemaking because they relate to development in coastal sand dune systems (38 M.R.S. §480-AA).*

06-096 Department of Environmental Protection	
2024-099: Chapter 534, Wastewater Treatment Plant Operator Certifications - Revocation or Suspension	
Statutory Authority:	32 M.R.S. §§ 4179, 4175-A; 5 M.R.S. §§ 8001 - 11008
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The Department does not anticipate any increased cost due to this rule. Revocation and suspension of Operator Certification is very rare. This rule would not change the decision criteria and provides procedures to ensure operators rights under MAPA are protected. This rule will save staff time in the event of revocation or suspension by having established procedures.*
Principal purpose:	*This rule sets forth procedures that may be used by the Commissioner to consider revoking or suspending a wastewater treatment plant operator certification.*
Basis Statement:	*Public Law 2021, Chapter 173, An Act to Amend the Laws Governing Wastewater Treatment Plant Operator Certification amended 32 M.R.S. Chapter 62 to include 32 M.R.S. §4175-A, Compliance and enforcement. This new section provides for revocation, suspension, and reinstatement of operator certification. This rule establishes procedures that may be used by the Department to consider revoking or suspending a wastewater treatment plant operator certification. The purpose of this rule is to provide a specific procedure that is compliant with the Maine Administrative Procedures Act.* *Public notice of this rulemaking was initially posted on the Department's rulemaking page on February 8, 2024, and published in the Secretary of State's rulemaking notices on February 14, 2024, to comply with the Maine APA notice requirements. No public hearing was scheduled nor requested during the public comment period. The period for submitting public comments closed on March 18, 2024. The Department received no public comments prior to the end of the public comment period. The Department made grammatical, formatting, and other non-substantive revisions highlighted in the mark-up version of the rule.*

06-096 Department of Environmental Protection	
2024-100: Chapter 80, Reduction of Toxins in Packaging	
Statutory Authority:	32 M.R.S. Ch. 26-A
Type:	Major Substantive
Emergency?:	No
Fiscal impact:	*No significant fiscal impact on municipalities or counties is anticipated. No significant economic impacts are anticipated as the majority of manufacturers are already shifting toward PFAS free alternatives.*
Principal purpose:	*The purpose of this rulemaking proposal is to update the existing Chapter 80 in accordance with changes in the law and to update language and formatting. The proposed changes include the incorporation of an existing statutory sales prohibition on the use of phthalates in food packaging. The proposal also adds a new section 5, establishing a sales prohibition on the use of specific applications of intentionally added PFAS to certain types of food packaging. The addition of the new section 5 is major substantive rulemaking.*
Basis Statement:	*The purpose of this rule is to establish sales prohibitions on the use of specific additives in packaging under the authority of 32 M.R.S. Chapter 26-A.* *Chapter 80 was first adopted in 1992, as Chapter 130 at the Maine Waste Management Agency, and has not been substantively amended since. This rulemaking process was undertaken to implement recent statutory changes of Public Law 2019, ch. 277, An Act To Protect the Environment and Public Health by Further Reducing Toxic Chemicals in Packaging, to implement recommendations from Department staff, and to update the structure and language of the Chapter.* *This amendment updates the existing Chapter 80 in accordance with applicable changes in Statute. The amendment also includes updated language and formatting, and the addition of an existing statutory sales prohibition on the use of phthalates in food packaging. The proposal adds a new Section 5, establishing a sales prohibition on the use of specific applications of intentionally added PFAS to certain types of food packaging. The addition of the Section 5 is major substantive rulemaking.* *Public notice of this rulemaking was initially posted on the Department's rulemaking page and published in the Secretary of State's rulemaking notices on October 23, 2023, to comply with the Maine APA notice requirements. A public hearing was held on November 16, 2023. And the period for submitting public comments closed on November 30, 2023. The Department received four public comments prior to the close of the comment period.*

06-096 Department of Environmental Protection	
2024-128: Chapter 200, Metallic Mineral Exploration, Advanced Exploration and Mining	
Statutory Authority:	PL 2023, c. 398, 38 M.R.S. § 341-H
Type:	Major Substantive
Emergency?:	No
Fiscal impact:	*None*
Principal purpose:	*This rule revision is proposed in accordance with P.L. 2023 ch. 398, which directs the Department to undertake rulemaking to implement changes to the Maine Metallic Mineral Mining Act. In accordance with the law, this rulemaking creates a process for a person to apply for an exemption from the requirements of Chapter 200 for certain activities involving certain metallic mineral deposits and provides criteria for the Department's decision on such applications.*
Basis Statement:	*This rulemaking is in response to P.L. 2023, ch. 398 (An Act to Support Extraction of Common Minerals by Amending the Maine Metallic Mineral Mining Act). The amendments enacted by P.L. 2023, ch. 398, now codified at 28 M.R.S. §§490-MM(11)(A) and 490-NN(4)&(5), directed the Department to revise its rules to allow a person to apply for exclusion from the requirements of Chapter 200 for the physical extraction, crushing, grinding, sorting, or storage of metallic minerals provided certain criteria are met. Importantly, the law does not allow chemical processing of metallic minerals to be excluded from the requirements of Chapter 200. The law also requires that, for a project to be excluded from the requirements of Chapter 200, it must be regulated under another existing law: either by the performance standards for quarrying, the performance standards for excavations, the Site Location of Development Law, or by the Land Use Planning Commission's statutes.* *The Maine Metallic Mineral Mining Act (the Act) (38 M.R.S. §§ 490-LL - 490-TT) and Chapter 200 were primarily designed to protect Maine's natural resources from the risks of acid rock drainage resulting from the mining of sulfide minerals. The strong environmental and financial protections of the Act are appropriately protective considering the high environmental risks associated with sulfide mining. The Act and rule were not designed with other, non-sulfide minerals in mind, such as silicate minerals or carbonate minerals, which do not pose the same level of environmental risks. However, until passage of P.L. 2023, ch. 398, all metallic mineral mining was subject to the requirements of Chapter 200 regardless of the environmental risks posed by a particular deposit.* *This rule revision creates a framework to govern the Department's exclusion determinations and further develops the criteria that must be met for an exclusion to be granted. Exclusion may only be granted if the disturbed material does not have the potential to create acid rock drainage or alkali rock drainage, expose radioactive or other materials that could endanger human health or the environment, or violate water quality standards, with the exception of sedimentation and turbidity, which are otherwise regulated. Other criteria and conditions are also included in the rule revision.*

06-096 Department of Environmental Protection	
2024-157: Chapter 140, Part 70 Air Emission License Regulation	
Statutory Authority:	38 M.R.S. §§ 590 and 585-A
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*Removal of the emergency affirmative defense provisions will have no fiscal impact on facilities that are operating in compliance with their Part 70 operating permits.* *None of the other proposed changes are expected to increase costs to either the public or regulated facilities, and some may result in cost savings such as the ability to publish public notices online rather than in a newspaper.*
Principal purpose:	*The U.S. Environmental Protection Agency (EPA) requires major stationary sources of air pollutants to obtain operating permits. Maine operates an EPA-approved Operating Permits Program (also known as Part 70 or Title V permitting) pursuant to 40 C.F.R. Part 70. The Department implements this program through its rule Part 70 Air Emission License Regulation, Chapter 140.* *Chapter 140 includes provisions that establish an affirmative defense that sources can use in an enforcement case to avoid liability for noncompliance with licensed emission limits. To rely on affirmative defense and avoid liability, the source must demonstrate that any excess emissions occurred as the result of an "emergency" as defined in the regulations, and must also make several other demonstrations.* *On July 21, 2023, EPA published a final rule that removed the emergency affirmative defense provisions from 40 C.F.R. Part 70. EPA removed these provisions because they are inconsistent with the EPA's interpretation of the enforcement structure of the Clean Air Act in light of prior court decisions from the U.S. Court of Appeals for the D.C. Circuit.*[1] *As a state with an EPA-approved Operating Permits Program, Maine must have licensing rules that align with federal requirements. As discussed in EPA's final rule,*[2] *EPA has directed states to remove impermissible affirmative defense provisions from their rules by August 21, 2024.* *In addition to the change described above, the Department is taking this opportunity to make minor changes that are considered clarifications, that correct grammar, that codify longstanding practices, or that are necessary to utilize an expected future electronic application system.*
Basis Statement:	*The U.S. Environmental Protection Agency (EPA) requires major stationary sources of air pollutants to obtain operating permits. Maine operates an EPA-approved Operating Permits Program (also known as Part 70 or Title V permitting) pursuant*

[1] *See Natural Res. Def. Council v. Envtl. Prot. Agency*, 749 F.3d 1055 (D.C. Cir. 2014).
[2] "Removal of Title V Emergency Affirmative Defense Provisions From State Operating Permit Programs and Federal Operating Permit Program." 88 Fed. Reg. 47029 (July 21, 2023).

to 40 C.F.R. Part 70. The Department implements this program through its rule Part 70 Air Emission License Regulation, Chapter 140.

Chapter 140 includes provisions that establish an affirmative defense that sources can use in an enforcement case to avoid liability for noncompliance with licensed emission limits. To rely on affirmative defense and avoid liability, the source must demonstrate that any excess emissions occurred as the result of an "emergency" as defined in the regulations, and must also make several other demonstrations.

On July 21, 2023, EPA published a final rule that removed the emergency affirmative defense provisions from 40 C.F.R. Part 70. EPA removed these provisions because they are inconsistent with the EPA's interpretation of the enforcement structure of the Clean Air Act in light of prior court decisions from the U.S. Court of Appeals for the D.C. Circuit.[3]

As a state with an EPA-approved Operating Permits Program, Maine must have licensing rules that align with federal requirements. As discussed in EPA's final rule,[4] *EPA has directed states to remove impermissible affirmative defense provisions from their rules by August 21, 2024.*

In addition to the change described above, the Department is taking this opportunity to make minor changes that are considered clarifications, that correct grammar, that codify longstanding practices, or that are necessary to utilize an expected future electronic application system.

In accordance with 38 M.R.S. § 585, the formal rulemaking process began on March 7, 2024, when the Department presented its proposal to the Board of Environmental Protection (Board). The proposed rulemaking did not establish new emission standards or make changes to existing emission standards; therefore, a public hearing was not required pursuant to 38 M.R.S. § 585. However, this rule implements a federal program, and federal regulations require the opportunity for a public hearing, so a hearing was held on April 18, 2024. No persons attended the hearing to provide testimony. Comments were received during the written comment period, which closed on April 29, 2024.

The Department received comments on the proposed rule from two interested parties during the public comment period. The final proposed rule incorporates minor changes from what was posted. It reinstates a paragraph that was originally proposed to be removed and adds a note clarifying the Commissioner's authority pursuant to 38 M.R.S. § 349(9).

[3] *See Natural Res. Def. Council v. Envtl. Prot. Agency*, 749 F.3d 1055 (D.C. Cir. 2014).
[4] "Removal of Title V Emergency Affirmative Defense Provisions From State Operating Permit Programs and Federal Operating Permit Program." 88 Fed. Reg. 47029 (July 21, 2023).

06-096 Department of Environmental Protection	
2024-158: Chapter 145, NOx Control Program	
Statutory Authority:	38 M.R.S. § 585-A
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*Clarifying the rule's applicability will have no fiscal impact on Maine's sources. The affected sources located outside of the current OTR boundaries have consistently been covered by a NO_x waiver and considered by the Department not to be subject to this regulation. This clarification confirms that they will continue to not be subject to the regulation.* *Removal of obsolete provisions also has no fiscal impact.*
Principal purpose:	*The Department is initiating rulemaking to revise its rule NO_x Control Program, 06-096 C.M.R. ch. 145 (Chapter 145) to clarify applicability and to remove obsolete requirements.*
Basis Statement:	*When promulgated in 2001, NOx Control Program, 06-096 C.M.R. ch. 145, (Chapter 145) applied to affected sources located in areas of the state that were not covered by a waiver of NO_x control requirements pursuant to Section 182(f) of the 1990 Clean Air Act (CAA) Amendments. Section 182(f) applies to ozone nonattainment areas and areas within the Ozone Transport Region (OTR). At the time, the entire state was part of the OTR. The NO_x waiver provisions of the CAA recognized that requiring additional NO_x emission reductions was not appropriate in certain cases. Chapter 145 acknowledged this and limited applicability to areas of the state that were not covered by such a waiver. Maine applied for and received a Section 182(f) NO_x waiver on several occasions, including a state-wide waiver in 2014.* *In February 2020, the State of Maine petitioned EPA to remove the majority of the state from the OTR. EPA granted the State's petition, and the change became effective on March 14, 2022. The approval of the State's petition made the question of a Section 182(f) NO_x waiver irrelevant for much of the state, in that it permanently removed portions of the state from the OTR.* *This rulemaking clarifies that the provisions of Chapter 145 apply to affected sources that are located both within the OTR and in a county that has not received a NO_x waiver. This was always the intent of the rule. The affected sources located outside of the current OTR boundaries have consistently been covered by a NO_x waiver and considered by the Department not to be subject to this regulation. They have historically not been subject to the requirements of Chapter 145; thus, this clarification has no effect on any actual or potential emissions from those sources.* *In addition to the applicability clarification, the rule contains several provisions for interim standards for which the compliance date has passed. These obsolete provisions have been removed.* *In accordance with 38 M.R.S. § 585, the formal rulemaking process began on March 7, 2024, when the Department presented its proposal to the Board of Environmental Protection (Board). The proposed rulemaking did not establish new*

	emission standards or make changes to existing emission standards; therefore, a public hearing was not required under 38 M.R.S. § 585. However, this rule is included in Maine's State Implementation Plan, and federal regulations require the opportunity for a public hearing, so a hearing was held on April 18, 2024. No persons attended the hearing to provide testimony. The written comment period closed on April 29, 2024. No comments were received.

06-096 Department of Environmental Protection	
2024-212 Chapter 2, Processing of Applications and Other Administrative Matters	
Statutory Authority:	22 M.R.S. §§ 8703(1), 8704(1) & (4) and PL 2023, Ch. 276 [22 M.R.S. § 1728]
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The proposed rule is not expected to have an adverse fiscal impact on persons subject to the Chapter 2 requirements.*
Principal purpose:	*The purpose of this amended rulemaking proposal is to incorporate changes to the Board's responsibilities and duties pursuant to P.L. 2024, ch. 512 (L.D. 865, An Act to Clarify the Roles and Responsibilities of the Board of Environmental Protection.*
Basis Statement:	*In accordance with 38 M.R.S. § 341-H and 5 M.R.S. § 8051-8064 (the Maine Administrative Procedure Act or MAPA), on December 7, 2023, the Department of Environmental Protection (Department or DEP) initiated rulemaking to repeal and replace its previous Chapter 2 rule, Rule Regarding the Processing of Applications and Other Administrative Matters. That Department rule was initially adopted in 1994 and has since been amended several times, most recently on June 9, 2018. For clarity, this Response to Comments document will refer to the previous Chapter 2 rule as "the 2018 version of Chapter 2" and the proposed repeal and replace version as "the proposed Chapter 2 rule" or "the proposed rule."* *Chapter 2 governs the administrative procedures of the Department, including the Board of Environmental Protection (Board), for actions including the processing of license applications, appeals of Commissioner license decisions and insurance claim-related decisions made pursuant to 38 M.R.S. § 568-A, administrative consent agreements, license revocations, suspensions, and surrenders, and other administrative matters, such as requests for advisory rulings.* *The primary purposes of this rulemaking are to improve the clarity, organization and grammar of the rule and to incorporate recent legislative changes to the Board's responsibilities and duties. Additionally, the Department is utilizing this rulemaking action to revise its procedures based on the Department's experience applying Chapter 2 across a wide range of programs since the rule was last amended in 2018.* *Due to the large number of proposed organizational changes to the rule, the Department chose to repeal and replace, rather than amend, the 2018 version of Chapter 2, consistent with the principles set forth by the Department of the Secretary of State in 29-250 C.M.R. ch. 800, § (2)(1)(A), Procedures for the Electronic Filing of Rules.*[5] *Considering the broad scope and applicability of the Department's Chapter 2 rule, Department staff recommended that the Board hold a public hearing on the proposed rule in addition to posting the proposed rule for public comment. The*

[5] "Rather than amend small parts of a chapter, agencies are encouraged to repeal and replace the entire chapter. Many potential errors are avoided by working with the entire chapter."

	Board exercised its statutory discretion to hold a public hearing on the proposed rule and held that hearing on January 18, 2024. Public notice of the hearing was made in accordance with the rulemaking requirements of the Maine Administrative Procedure Act, 5 M.R.S. §§ 8051–8064, the Board's rulemaking authority in 38 M.R.S. § 341-H, and the notice of public proceedings requirements in 1 M.R.S. § 406 (the Freedom of Access Act). Notice of the hearing was posted on the Department's rulemaking and comment opportunity webpage (https://www.maine.gov/dep/rules/index.html) on December 21, 2023. Notice also was published on the Secretary of State's website (https://www.maine.gov/sos/cec/rules/notices.html) on December 27, 2023, and in the Bangor Daily News, Kennebec Journal, Lewiston Sun Journal, Morning Sentinel, and Portland Press Herald, and also was sent to each person who previously had submitted a request for notice of Department rulemaking activities. Ron Huber of Penobscot Bay Watch, Jillian Howell of Upstream Watch, and Greg Robie testified on the proposed rule at the public hearing. The Board accepted written comments on the proposed rule from December 19, 2023, through January 29, 2024, and the Board received written comments from the following 19 persons during this initial comment period.

06-096 Department of Environmental Protection	
2024-277: Chapter 428, Stewardship Program for Packaging	
Statutory Authority:	38 M.R.S. § 2146. Stewardship program for packaging
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The proposed rule imposes direct costs to producers of packaging material that is sold, offered for sale, or distributed for sale in or into the State. The rule provides payments to municipalities that choose to participate, and all municipalities will likely see indirect cost savings as a result of a reduction in the amount of packaging material, improved packaging material design and recyclability, and improvements to the State's waste management system.*
Principal purpose:	*The Department is proposing the new rule: Chapter 428: Stewardship Program for Packaging, which will allow the Department to implement, administer, and enforce Stewardship program for packaging, 38 M.R.S. § 2146. It characterizes packaging material, provides a method for determining municipal reimbursement and producer fees, provides a method and criteria for investing in infrastructure and education, details alternative collection programs, establishes a cap for the packaging stewardship fund, and provides mechanisms for ongoing assessment and updates to the program. The rule is being re-posted with changes based on the first round of public input.*
Basis Statement:	*In 2019 the Legislature passed L.D. 1431, Resolve, To Support Municipal Recycling Programs, directing the Department of Environmental Protection (Department) to present draft legislation to the Committee on Environmental and Natural Resources to establish a stewardship program for packaging. In 2021, the Legislature passed Public Law 2021 c. 455, An Act to Support and Improve Municipal Recycling Programs and Save Taxpayer Money, now codified as Stewardship Program for Packaging, 38 M.R.S. § 2146. The overall goals of 38 M.R.S. § 2146 are to reduce the burden to municipalities for managing packaging material and to improve the design and management of packaging material. The legislation enumerated certain topics to be covered in routine technical rulemaking and others to be covered in major substantive rulemaking in 38 M.R.S. § 2146(13)(A) and 38 M.R.S. § 2146(13)(D), respectively.* *The Board held a meeting on January 18, 2024, during which it voted to post the proposed draft rule for public comment. Public notice of this rulemaking was initially published on February 5, 2024, on the Department's website and in the Secretary of State's rulemaking notices on February 14, 2024, to comply with the Maine Administrative Procedure Act, 38 M.R.S. § 8052(1) notice requirements. During the public hearing held on March 7, 2024, the Board heard testimony from the regulated community, interested parties, and the public. The 30-day public comment period closed on March 18, 2024. The Department received and reviewed comments from 118 interested persons and parties. The Department and the Board then held two deliberative sessions: one on May 16, 2024, and another on June 20, 2024. In response to public comments and direction from the Board, the Department made substantive changes to the proposed draft rule which required reposting. The reposted draft rule was published on July 10, 2024, for a 45-day public comment period that closed on August 26, 2024. The reposted draft rule incorporated*

significant changes to the proposed draft rule suggested during the public hearing, public comment periods, and deliberative sessions with the Board, including:

- *Changes to the definition of toxics*
- *Inclusion of a new goal for recycling access*
- *Changes to litter audits*
- *Simplification of packaging material types*
- *Addition of a relative cost measure to the criteria used to determine whether a packaging material type is readily recyclable*
- *Changes to the transitional period*
- *Removal of references to reimbursable from Section 6, Defining Cost by Packaging Stream*
- *Removal of alternative management from Section 7, Calculation of the Per Ton Cost by Commodity*
- *Allowance for estimation of sales data for producer start up registration*
- *Clarification that producers must report on packaging material that may have been received by the consumer of the product if they cannot verify it was not*
- *Changes to producer reporting requirements that remove brand-specific reporting*
- *Simplification of packaging material type fees*
- *Change to reduction of litter incentive fee*
- *Addition of a fee for proposing an alternative collection program*
- *Reduction in the annual fee for an alternative collection program*
- *Changes to municipal reimbursement*
- *Clarification on cost studies*
- *Relaxation of audit requirements*
- *Addition of a detailed procedure for the calculation of median per ton costs*
- *Removal of reporting on and calculation of the tons of material managed through alternative management*
- *Clarification of the point at which packaging material is considered recycled*
- *Changes to the process of fulfilling major investment needs*
- *Allowance for the Department to treat information on investment proposals that is identified as proprietary in accordance with Confidential information, 38 M.R.S. § 1310-B (1979)*
- *Changes to the size of the cap on the Packaging Stewardship Fund*

The Department received and reviewed 47 comments regarding the reposted draft rule. In addition to the change based on the legislative history, which is discussed at length in the Department's memo to the Board, the Department made minor clarifying changes, resulting in the rule for adoption.

The rule for adoption will allow the Department to implement, administer, and enforce 38 M.R.S. § 2146. It addresses all rulemaking topics specified in 38 M.R.S. § 2146(13)(A) and some additional topics the Department deemed necessary to implement the law. The rule for adoption characterizes packaging material, provides a method for determining municipal reimbursement and producer fees, provides a method and criteria for investing in infrastructure and education, details alternative collection programs, and provides mechanisms for ongoing assessment and updates to the program. Notable additions to the rule that are not required by

	the statute include a definition of consumer, clarifying adjustments to the definition of producer, a process for the identification and funding of major investment needs, and a cap on the Packaging Stewardship Fund. *Public comments and the Department's responses to those comments are provided below.* *Commenters have been assigned numbers, and comments received during the second comment period have been identified with the letter "R".* *The Department's responses refer to three versions of the draft rule: 1) the proposed draft rule, which was published on February 14, 2024; 2) the reposted draft rule, which was published on July 10, 2024; and 3) the rule for adoption, included in this Board packet.*

09 Department of Inland Fisheries and Wildlife

09-137 Department of Inland Fisheries & Wildlife	
2024-101: Chapter 16, Hunting	
Statutory Authority:	12 M.R.S. §§ 11551, 11552
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*No fiscal impact anticipated.*
Principal purpose:	*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 2024 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 6, 2024, and recommended issuing 4,105 permits statewide to meet moose harvest objectives. This included a total of 2,645 antlered moose permits, and 1,460 antlerless permits. The proposal also included 550 permits for the Adaptive Management Unit hunt referred to as WMD 4a which was implemented beginning in 2021. The only change of note from the 2023 season is for the WMD 4a adaptive hunt. Initially, the first two years of the adaptive hunt we had three one-week seasons. For the 2023 season, an additional fourth week was implemented where any hunters that were unsuccessful in each of the first three weeks could come back during the fourth week and have an additional six days of opportunity. We saw very minimal harvest resulted from the fourth week. There were 15 moose harvested out of potentially up to 400 hunters that were eligible to come back and hunt. Due to the effort required on the Department to host that moose hunt, we felt the added effort to host the fourth week wasn't worth the small increase in harvest. The rule eliminates the fourth week of the adaptive hunt and reverts back to the three one-week seasons with a total of 550 antlerless permits.*

	A public hearing on the proposal was held on March 26, 2024, and no members of the public attended. One written comment was received on the proposal (attached). The comment was acknowledged and forwarded to the Commissioner's Advisory Council and staff for consideration. *The Commissioner brought forward the original proposal and the Advisory Council met on April 17, 2024, and of the six (6) members participating voted unanimously to adopt the proposal as presented.*

09-137 Department of Inland Fisheries & Wildlife	
2024-105: Chapter 16, Hunting	
Statutory Authority:	12 M.R.S. §§ 10104, 11855
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*There is a potential fiscal impact to registered Maine guides who guide sea duck hunters. By reducing the eider daily bag limit from 3 to 2, potential clients may decide to go to nearby states that retain the 3 eider per day limit.*
Principal purpose:	*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 2024/25 migratory bird hunting seasons by selecting season dates and bag limits for ducks, coots, mergansers, geese, crows and woodcock. The rule is similar to the previous year's final season framework with two notable changes. The first notable change is reducing the daily bag limit for eiders from 3 to 2. This change comes from concerns of seeing fewer eiders along the coast in the winter over the last few years. The second notable change is for the first segment of the coastal waterfowl hunting zone to begin on Saturday, October 5th. Traditionally, the season would start on October 1st. Starting the season on October 5th and ending on the following Saturday will provide two Saturdays of waterfowl hunting in this zone in the first segment.* *A public hearing on the proposal was held on March 12, 2024, with 15 citizens attending (minutes attached). The Department presented the proposal and discussed the season frameworks and bag and possession limits. Five members of the public provided testimony. Those providing testimony were registered Maine guides expressing concern with the proposed reduction in the eider bag limit. A member of the Waterfowl Council also provided testimony and explained the concern with seeing fewer eiders and being proactive in helping the population recover by reducing the bag limit. Eight (8) written comments were received on the*

proposal (attached). The majority of the comments were in opposition to the proposed reduction in the eider daily bag limit and concerns that hunters would go to nearby states that retained the 3 bird limit. Two of the written comments were in reference to the crow season dates.

Department response:
Looking at Ebird data, surveys and bird counts the eider population has been trending down. Reviewing data from 2011-2022 there appeared to be a max decline of 30% in some areas. Based on this and expressed concern from members of the Waterfowl Council of reduced sightings on the coast, the Department moved forward with the original proposal of the reduction in the daily bag limit of eiders from 3 to 2. Crow season dates were also unchanged as the USFWS restricted the season to occur outside of the breeding season.

One amendment was made to the original proposal and that was the addition of the Brant season dates. The federal framework for the season was not available when the rule was proposed which was indicated in the advertisement. This is a 30-day season with a 1 bird limit.

The Commissioner moved forward with the amended proposal and the Commissioner's Advisory Council met on April 17, 2024, and of the six (6) members participating, voted unanimously to accept the proposal as amended.

09-137 Department of Inland Fisheries & Wildlife	
2024-116: Chapter 16, Hunting	
Statutory Authority:	12 M.R.S. §§ 10104, 110952
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*No fiscal impacts anticipated.*
Principal purpose:	*This rule aligns MDIFW rules regarding crossbow use with state statutes. Bows and arrows and crossbows are now both considered to be "archery equipment" in statute, and the rule incorporates this change in terminology and makes changes to allow crossbow use in most situations where only bows and arrows were previously permitted. Notably, this rule change allows for the use of crossbows broadly during the expanded archery season for deer and the fall turkey season. The rule impacts several town-specific hunting closures and modifies the rule regarding special closures to reflect the preferences of impacted towns. A section detailing the Eastport special hunt is repealed as this hunt no longer occurs.*
Basis Statement:	*This rule aligns MDIFW rules regarding crossbow use with state statutes. Bows and arrows and crossbows are now both considered to be "archery equipment" in statute (Public Law 2023 Chapter 239), and the rule incorporates this change in terminology and makes changes to allow crossbow use in most situations where only bows and arrows were previously permitted. Notably, this rule change allows for the use of crossbows broadly during the expanded archery season for deer and the fall turkey season. The rule impacts several town-specific hunting closures and modifies the rule regarding special closures to reflect the preferences of impacted towns.* *Previously, bows and arrows and crossbows were considered different classes of weapon, and as such, different rules and laws applied to each weapon type. With the increasing popularity of crossbow hunting and a desire to simplify regulations, rules and statutes were changed for a period of years to allow the use of crossbows more broadly and examine the impacts of this increased usage. Prior to these changes, a very small percentage of harvested animals were taken with a crossbow. Despite increased harvest, the regular archery season still accounts for just 4% of the total deer harvest, and the greater impact of the archery season due to increased use of crossbows does not pose any problems to deer management in Maine. IFW retains the authority to limit antlerless harvest in designated wildlife management districts during the regular archery season if concerns arise about excessive harvest of antlerless deer. This rule will allow for crossbow use during the expanded archery season for deer. Expanded archery hunting occurs primarily in developed areas of the state where firearms discharge ordinances prohibit hunting with firearms and where additional deer removal is desired. As seen during the regular archery season when crossbows were made widely useable, a significant increase in the expanded archery deer harvest is expected with this change. It is our desire to maintain lower deer numbers in these developed areas of the state, and an increase in expanded archery harvest would be beneficial.* *In the special hunts section, the rule impacts several town specific hunting closures and modifies the rule regarding the special closures to reflect the preference of the impacted towns. Language regarding the Eastport special hunt has been removed*

	because the hunt no longer occurs. The section describing special hunting requirements for archery hunters on Marsh Island in Old Town has also been repealed because the hunt no longer occurs. The City of Old Town was consulted along with local wildlife biologists as well as regional game wardens and they all concurred it should continue to allow the use of handheld bow and arrow only and not expand to the use of crossbows. The section also includes several special hunt locations that were currently in statute (12MRS, §11402). The Department will repeal the sections in statute next year in a law proposal as they are now consolidated within MDIFW rules. *A public hearing on the proposal was held on March 25, 2024, and no members of the public attended. No written comments were received.* *After advertising, staff were made aware of minor edits that were overlooked. The proposal was amended under section 7. Deer Hunting Special Regulations and Closures, C. to include the following: The whole of Long Island in Long Island Plantation shall have a continual closed season on deer. This closure is currently listed in statute 12MRS, §11402 (3.)(H.) and was inadvertently left out of the original proposal. A grammatical error in section 7.E. and 16.08 Moose Hunting was also amended.* *The Commissioner brought forward the amended proposal and the Advisory Council met on April 17, 2024, and of the six (6) members participating voted unanimously to adopt the proposal as amended.*

09-137 Department of Inland Fisheries & Wildlife	
2024-141: Chapter 16, Hunting	
Statutory Authority:	12 M.R.S. §§ 11551, 11552
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*No fiscal impact anticipated*
Principal purpose:	*Cole crops (specifically broccoli) are grown on leased fields throughout Wildlife Management Districts 3 and 6 annually. Crop field locations change annually as required for commercial farming of this crop and thus damage to cole crops by moose changes to where the crop is planted. Expanding the location where the hunt can occur beyond the 10 towns previously listed in rule allows for continued response to moose damage throughout the entire growing area and remains critical to reducing wildlife-agricultural conflicts.*
Basis Statement:	*The Department of Inland Fisheries and Wildlife has amended Chapter 16 rules as they apply to the Depredation Hunt for moose. Depredation hunt locations were previously limited to ten (10) towns listed in the rule. Extending the locations to WMDs 3 and 6 will provide greater flexibility and increased ability to respond to immediate crop depredation by moose where it is happening outside the towns that were previously established in rule.* *Cole crops (specifically broccoli) are grown on leased fields throughout Wildlife Management Districts 3 and 6 annually. Crop field locations change annually as required for commercial farming of this crop and thus damage to cole crops by moose changes to where the crop is planted. Extending depredation moose hunt locations from the 10 specific towns to the entire area of WMDs 3 and 6 will provide greater flexibility and increased ability to respond to immediate crop depredation by moose where it is happening, and allows for continued response to moose damage throughout the entire growing area and remains critical to reducing wildlife-agricultural conflicts.* *No public hearing was held and no written comments were received on the proposed rule.* *The Commissioner brought forward the original proposal and the Advisory Council met on May 21, 2024, and of the seven (7) members participating voted unanimously to adopt the proposal as presented.*

09-137 Department of Inland Fisheries & Wildlife	
2024-161: Chapter 16, Hunting	
Statutory Authority:	12 MRS 10104, 11152
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*No fiscal impact anticipated.*
Principal purpose:	*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.*
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). Antlerless deer permit recommendations are based on removal rates of adult does that will stabilize, increase, or decrease deer densities.* *For 2024, we are increasing antlerless deer permits to 128,030 permits to be issued across 25 WMDs and one deer management subunit to meet our doe harvest objective of 16,532 does, which is 6.8% higher than 2023 due to lower harvest and higher winter survival. Doe harvest recommendations were largely unmet where needed in 2023 and increases across these districts are the result of steady population growth, under-harvest of does, and very mild winter conditions during the 2023-24 winter.* *WMDs 1, 2, 4, and 5 will be open to buck harvest only (aside from the Youth Hunt and regular archery season) as they remain under population objective and have low growth potential. In remaining WMDs, we recommend increases in antlerless deer permits in nearly all districts that had permits in 2023. We continue to issue additional permits in one deer management subunit in WMD 26. Deer management subunit 26a consists of portions of the towns of Brewer, Bucksport, Castine, Dedham, Holden, Orland, Orrington, Penobscot, and Verona. For subunit 26a, we are issuing 400 antlerless deer permits. We are removing deer management subunit 25a, which includes the towns of Arrowsic and Georgetown. Conflict levels in these towns no longer meet our criteria for permit issuance at the subunit level; additionally, WMD 25 typically has many extra permits that go unclaimed. The harvest of antlerless deer without a permit during the Youth Hunt and the regular archery season is allowed only in designated WMDs. Like 2023, all WMDs are designated as open to the harvest of antlerless deer without a permit during these seasons in 2024.* *A public hearing was held on June 10, 2024 and no members of the public were in attendance. One written comment was received (attached). In summary, the comment was in opposition to the proposed increase in permit numbers for WMD 18. The Department wildlife biologist, Nathan Bieber has been in contact with the constituent and discussed his concerns and the Department's deer management goals and objectives for that area. The Department's response to the comment is*

	that town level harvest data and population trends do not support the constituent's observations of a declining deer population in his area. This may be related to the habitat conditions where referenced. The Department was not in favor of his recommendation to split the WMD at this time as this was not something that was done routinely. It may be something to consider when working on the next Big Game Management Plan. *The Commissioner brought forward the original rule proposal and the Advisory Council gave their consent on June 26, 2024 and of the eight (8) members present, voted unanimously to adopt the proposal as presented.*

09-137 Department of Inland Fisheries & Wildlife	
2024-180: Chapter 1, Open Water and Ice Fishing Regulations **2024-181: Chapter 1-A, State Heritage Fish Waters**	
Statutory Authority:	12 MRSA, Sections 10104, 12452 & 12461
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*No fiscal impact anticipated as a result of this rule.*
Principal purpose:	*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. The list of proposals contains information regarding each rule change.*
Basis Statement:	*The Department of Inland Fisheries and Wildlife has adopted rules pertaining to the 2025 ice fishing and open water seasons. The State Heritage Fish Waters list has also been amended with the addition of four waters. 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, 2025.* *The rulemaking packet was advertised to include 23 individual proposals presented in the following "theme" categories: State Heritage Fish Waters; Special Need; Salmonid Growth, Condition and Performance; Expanded Angler Opportunity; and Errors, Conflicts, and Confusion.* *A public hearing was held on July 15, 2024 (minutes attached) with one citizen in attendance. The Department also received 20 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.* *On August 1, 2024, the Commissioner brought forward the original rule packet for adoption by the Advisory Council. The seven (7) members present voted unanimously in favor to adopt the fishing regulations package for 2025 as presented.* *Copies of the publication will be available from license agents, on the Department's website or from the Department of Inland Fisheries and Wildlife, 353 Water Street, Augusta, ME 04333-0041. This body of rules is posted in its entirety on the Department's website and in a hard copy publication entitled* ***Open Water & Ice***

Fishing Laws and Rules (January 1, 2024 – December 31, 2024) *and by authority of Title 12 MRSA, Section 12452, is an official consolidation of the open water and ice fishing rules as maintained by the Department in an electronic version and distributed through electronic means.*

09-137 Department of Inland Fisheries & Wildlife	
2024-250: Chapter 16, Hunting	
Statutory Authority:	12 MRS, 10104, 12301-A
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*No fiscal impact anticipated as a result of this rule.*
Principal purpose:	*The Department regularly adjusts furbearer hunting and trapping regulations in response to emerging scientific information, changes in hunter and trapper participation, and biological data. These changes clarify the tagging and registration of furbearers.*
Basis Statement:	*During registration, a permanent fur tag is attached to the pelt and additional information is recorded, such as species, kill date, town, method, and who harvested the animal. The registration information is a valuable management tool to track annual harvests, as well as changes in species distribution and population indices over time. Historically, the rules for hunting and trapping were combined into one chapter (Ch. 4). In 2019, the hunting and trapping rules were separated into two chapters (Ch. 16 & Ch. 17), but some of the language for the registration of furbearers was transferred from trapping to the hunting rules. As a result, there was duplicate information in both hunting and trapping chapters, or language in the hunting chapter that only referred to trapping seasons. The proposed changes move the information pertaining to the possession, transportation, and registration of furbearers taken by hunting or trapping to C. 17 rules.* *Although there are some exceptions, nine furbearer species must be tagged and registered prior to being bought, sold, or transported out of state, including red fox, gray fox, bobcat, marten, fisher, coyote, beaver, mink and river otter. The changes move the possession, transportation, and registration of furbearers to C. 17, Furbearers and Trapping. The rule changes will become effective July 1, 2025.* *The rule proposal was advertised on July 31, 2024. There were no written comments received on the proposal, and there was no one in attendance at the public hearing that was held on August 19, 2024.* *On October 22, 2024, the Commissioner brought forward the original rule packet for adoption by the Advisory Council. The eight (8) members present voted unanimously in favor of adopting the proposal as presented.*

09-137 Department of Inland Fisheries & Wildlife	
2024-251: Chapter 17, Trapping	
Statutory Authority:	12 MRS, 10104, 12301-A
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*No fiscal impact anticipated as a result of this rule.*
Principal purpose:	*The Department regularly adjusts furbearer hunting and trapping regulations in response to emerging scientific information, changes in hunter and trapper participation, and biological data. The changes clarify the tagging and registration of furbearers.*
Basis Statement:	*During registration, a permanent fur tag is attached to the pelt and additional information is recorded, such as species, kill date, town, method, and who harvested the animal. The registration information is a valuable management tool to track annual harvests, as well as changes in species distribution and population indices over time. Historically, the rules for hunting and trapping were combined into one chapter (Ch. 4). In 2019, the hunting and trapping rules were separated into two chapters (Ch. 16 & Ch. 17), but some of the language for the registration of furbearers was transferred from trapping to the hunting rules. As a result, there was duplicate information in both hunting and trapping chapters, or language in the hunting chapter that only referred to trapping seasons. The proposed changes move the information pertaining to the possession, transportation, and registration of furbearers taken by hunting or trapping to C. 17 rules.* *Although there are some exceptions, nine furbearer species must be tagged and registered prior to being bought, sold, or transported out of state, including red fox, gray fox, bobcat, marten, fisher, coyote, beaver, mink and river otter. The changes move the possession, transportation, and registration of furbearers to Ch. 17, Furbearers and Trapping. The rule changes will become effective July 1, 2025.* *The rule proposal was advertised on July 31, 2024. There were no written comments received on the proposal, and there was no one in attendance at the public hearing that was held on August 19, 2024.* *On October 22, 2024, the Commissioner brought forward the original rule packet for adoption by the Advisory Council. The eight (8) members present voted unanimously in favor of adopting the proposal as presented.*

09-137 Department of Inland Fisheries & Wildlife	
2024-273: Chapter 29, Species of Special Concern	
Statutory Authority:	12 MRS 10104, 10105
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*No fiscal impact anticipated.*
Principal purpose:	*Public Law Chapter 65, titled "An Act To Amend Maine's Wildlife Laws Regarding Species of Special Concern" and enacted by the Governor on May 25, 2021, directed the Department to conduct rulemaking to "establish criteria for determining when a species of fish or wildlife that is not an endangered species or a threatened species is of special concern. The rules may include different criteria for categories of species of special concern, including a category for species that are rare. The rules must list the species that meet the criteria established in rule. The commissioner shall use the list in administering section 12152 and may also use the list in administering any other laws or programs or when providing advisory recommendations to other entities or agencies on fish and wildlife matters in accordance with applicable laws or rules." The list of special concern species was established in rule in 2022 but requires regular updates due to changes in species taxonomy, conservation status, or changes to the state Endangered and Threatened species list. An update to the state Endangered Species list in 2023 requires the Special Concern List to be updated.*
Basis Statement:	*Public Law Chapter 65, titled "An Act To Amend Maine's Wildlife Laws Regarding Species of Special Concern" and enacted by the Governor on May 25, 2021, directed the Department to conduct rulemaking to "establish criteria for determining when a species of fish or wildlife that is not an endangered species or a threatened species is of special concern. The rules may include different criteria for categories of species of special concern, including a category for species that are rare. The rules must list the species that meet the criteria established in rule. The commissioner shall use the list in administering section 12152 and may also use the list in administering any other laws or programs or when providing advisory recommendations to other entities or agencies on fish and wildlife matters in accordance with applicable laws or rules." The list of special concern species was established in rule in 2022 but requires regular updates due to changes in species taxonomy, conservation status, or changes to the state Endangered and Threatened species list. An update to the state Endangered Species list in 2023 requires the Special Concern List to be updated.* *The rule language will make several modifications to MDIFW rule chapter 29, including: Removal of 8 species from the special concern list because they have been added to Maine's Endangered Species List (effective 10/2023); Removal of 1 species from the special concern list due to improved conservation status (dragonfly); Update 3 species common names; Update 19 species scientific names or spelling; Addition of 3 species to the special concern list due to improved conservation status assessments that indicate they qualify for special concern status (flower flies).* *The rule proposal was advertised on October 16, 2024. There was no one in attendance at the public hearing that was held on August 19, 2024 and only one (1) written comment was received. The written comment was submitted by Maine*

	Audubon stating they were in favor of the proposed changes. *On December 4, 2024, the Commissioner brought forward the original rule packet for adoption by the Advisory Council. The eight (8) members present voted unanimously in favor of adopting the proposal as presented.*

10 Department of Health and Human Services

10-144 Department of Health and Human Services, MaineCare Services, Division of Policy	
2024-009: Chapter 101, MaineCare Benefits Manual, Ch. II, § 43, Hospice Services	
Statutory Authority:	22 M.R.S. §§ 42, 3173, and 3173-J; 42 U.S.C. §§ 1396b(1), 1395x(dd)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*This proposed rulemaking is cost neutral.*
Principal purpose:	*The Department of Health and Human Services (the "Department") proposes the following changes:* *Chapter II Rule Proposed Changes:* *1. Adds a requirement for Electronic Visit Verification ("EVV"). This has been approved by CMS. The Department proposes that this provider requirement be effective on January 1, 2024, in order to give providers adequate notice and time to comply.* *2. Amends the definition of "Attending Physician" to include nurse practitioners and physician assistants. This is consistent with Section 51006 of the Bipartisan Budget Act of 2018 (P. L. 115-123), as codified in 42 U.S.C. § 1395x(dd)(3)(B), the Medicare program.* *3. Adds a definition for the term "Benefit Period" which appears multiple times throughout this rule.* *4. Section 43.07-5 (Payment for Inpatient care): Changes the date by which Hospice providers submit inpatient data to the Department, upon Department request, from January 1st to October 1st, following the end of the period ending September 30th of the previous year, in keeping with the federal fiscal year.* *5. Adds Opioid Health Home Services to the list of services that may be continued after the election of hospice.* *6. Makes minor technical edits to improve the clarity of the rule.* *7. Adds a new section – Allowances for Hospice Services – which is largely moved from the Ch. III rule, which is being repealed.*
Basis Statement:	*This letter gives adoption notice of MaineCare Benefits Manual (the "MBM") Chapter II, Section 43, Hospice Services, and repeal of MBM Chapter III, Section 43, Allowances for Hospice Services.* *Chapter II Rule Changes:* *1. Adds a requirement for Electronic Visit Verification ("EVV") for Hospice Services delivered in-home. Federal Medicaid law mandates that EVV be utilized for personal care services and home health care services that require an in-home visit by a provider (42 U.S.C. Sec. 1396b(l)). The federal EVV requirement does not explicitly include Hospice services, however, to remain consistent with MaineCare efforts to*

prevent fraud, waste, and abuse for home-based services, EVV requirements are implemented for all Hospice Services delivered in-home. The adopted rule also clarifies that Physician Services are delivered and billed separately as described in MBM Ch. II, Section 90, and are exempt from EVV requirements. On February 6, 2023, CMS approved the Maine SPA which requires EVV for in-home hospice services. CMS, Maine state Plan, TN No 22-0044, Attachment 3.1-A, #18 (Hospice Care), Page 7, Effective Date: 1/1/23 ("The state will require Electronic Visit Verification System (EVV) requirements for in-home services effective January 1, 2023."). Hence, EVV is mandated for these MaineCare Hospice Services by the Federal Government.

Facilities providing Hospice Services will not be subject to EVV, this requirement only applies to services offered within the member's home. EVV implementation for all in-home Hospice Services, including those reimbursed at a per diem rate, will support the Department's goal of improving oversight of Hospice Services and, in turn, reduce the occurrence of fraud, waste, and abuse in home settings. Providers may utilize the Department's EVV system at no cost or may procure and utilize their own EVV system, so long as the Department's EVV system can accept and integrate data from the provider-owned EVV system and the provider-owned system is otherwise compatible with the Department's system and billing guidelines.

In response to comments, the Department changed the effective date of the EVV requirement from January 1 to July 1, 2024, in order to give providers more time.

2. Amends the definition of "Attending Physician" to include Nurse Practitioners and Physician Assistants. This is consistent with Section 51006 of the Bipartisan Budget Act (BBA) of 2018 (P. L. 115-123), as codified in 42 U.S.C. § 1395x(dd)(3)(B). The BBA considers Physician Assistants to be qualified to provide Hospice Services as an Attending Physician. Nurse Practitioners were qualified Attending Physicians in Section 1861(dd)(3)(B) of the Social Security Act (SSA) prior to the passing of the BBA. The adopted rule mirrors SSA statute, stating an Attending Physician must be a medical Doctor of Medicine or Osteopathy, Nurse Practitioner, or Physician Assistant licensed in the state of Maine.

3. Adds a definition for the term "Benefit Period" which appears multiple times throughout this rule to provide clarity.

4. Section 43.07-5 (Payment for Inpatient Care): Changes the date by which Hospice providers must submit inpatient data to the Department, upon Department request, from January 1st to October 1st, following the period ending September 30th of the previous year, in keeping with the federal fiscal year. This change grants providers additional time to compile and submit reports to the Department.

5. Adds Opioid Health Home Services to the list of services that may be continued after the election of hospice. The Department recognizes treatment for Substance Use Disorder may be required through the end of a member's life. As such, MaineCare will reimburse for services under Chapter II, Section 93 Opioid Health Home Services and under Chapter II, Hospice Services provided concurrently.

6. Makes minor technical edits to improve the clarity of the rule.

7. Sec. 43.09: Adds a new section – Allowances for Hospice Services – which is largely moved from the Ch. III rule, which is being repealed. The Department will henceforth list the specific reimbursement rates on the MaineCare Fee Provider Schedule which is posted on the Department's website, as authorized by 22 M.R.S. Sec. 3173-J(7). The Department, after OAG review, added language explaining the current methodology of annual adjustments to the reimbursement for the services. CMS has approved this methodology in the Maine Medicaid state Plan, and this is the methodology that has been utilized by the Department historically. In accordance with 22 M.R.S. Section 3173-J, the Department will not have to go through rulemaking if there is no change to this methodology and the rates are posted in accordance with this law.

***Chapter III Rule Changes**:*

The Department repeals Ch. III.

10-144 Department of Health and Human Services, MaineCare Services, Division of Policy	
2024-010: Chapter 101, MaineCare Benefits Manual, Ch. III, § 43, Hospice Services	
Statutory Authority:	22 M.R.S. §§ 42, 3173, and 3173-J; 42 U.S.C. §§ 1396b(1), 1395x(dd)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*This proposed rulemaking is cost neutral.*
Principal purpose:	*The Department proposes to repeal Ch. III, and to move the Ch. III columns describing the Revenue Code, HCPC Code and Description of Services to the Ch. II rule. The Department proposes to delete the column with the specific reimbursement rate from the rule, and will post the specific reimbursement rates on the MaineCare Fee Provider Schedule which is posted on the Department's website, as authorized by 22 M.R.S. Sec. 3173-J(7).*
Basis Statement:	*This letter gives adoption notice of MaineCare Benefits Manual (the "MBM") Chapter II, Section 43, Hospice Services, and repeal of MBM Chapter III, Section 43, Allowances for Hospice Services.* *Chapter II Rule Changes:* *1. Adds a requirement for Electronic Visit Verification ("EVV") for Hospice Services delivered in-home. Federal Medicaid law mandates that EVV be utilized for personal care services and home health care services that require an in-home visit by a provider (42 U.S.C. Sec. 1396b(l)). The federal EVV requirement does not explicitly include Hospice services, however, to remain consistent with MaineCare efforts to prevent fraud, waste, and abuse for home-based services, EVV requirements are implemented for all Hospice Services delivered in-home. The adopted rule also clarifies that Physician Services are delivered and billed separately as described in MBM Ch. II, Section 90, and are exempt from EVV requirements. On February 6, 2023, CMS approved the Maine SPA which requires EVV for in-home hospice services. CMS, Maine state Plan, TN No 22-0044, Attachment 3.1-A, #18 (Hospice Care), Page 7, Effective Date: 1/1/23 ("The state will require Electronic Visit Verification System (EVV) requirements for in-home services effective January 1, 2023."). Hence, EVV is mandated for these MaineCare Hospice Services by the Federal Government.* *Facilities providing Hospice Services will not be subject to EVV, this requirement only applies to services offered within the member's home. EVV implementation for all in-home Hospice Services, including those reimbursed at a per diem rate, will support the Department's goal of improving oversight of Hospice Services and, in turn, reduce the occurrence of fraud, waste, and abuse in home settings. Providers may utilize the Department's EVV system at no cost or may procure and utilize their own EVV system, so long as the Department's EVV system can accept and integrate data from the provider-owned EVV system and the provider-owned system is otherwise compatible with the Department's system and billing guidelines.* *In response to comments, the Department changed the effective date of the EVV requirement from January 1 to July 1, 2024, in order to give providers more time.* *2. Amends the definition of "Attending Physician" to include Nurse*

Practitioners and Physician Assistants. This is consistent with Section 51006 of the Bipartisan Budget Act (BBA) of 2018 (P. L. 115-123), as codified in 42 U.S.C. § 1395x(dd)(3)(B). The BBA considers Physician Assistants to be qualified to provide Hospice Services as an Attending Physician. Nurse Practitioners were qualified Attending Physicians in Section 1861(dd)(3)(B) of the Social Security Act (SSA) prior to the passing of the BBA. The adopted rule mirrors SSA statute, stating an Attending Physician must be a medical Doctor of Medicine or Osteopathy, Nurse Practitioner, or Physician Assistant licensed in the state of Maine.

3. Adds a definition for the term "Benefit Period" which appears multiple times throughout this rule to provide clarity.

4. Section 43.07-5 (Payment for Inpatient Care): Changes the date by which Hospice providers must submit inpatient data to the Department, upon Department request, from January 1st to October 1st, following the period ending September 30th of the previous year, in keeping with the federal fiscal year. This change grants providers additional time to compile and submit reports to the Department.

5. Adds Opioid Health Home Services to the list of services that may be continued after the election of hospice. The Department recognizes treatment for Substance Use Disorder may be required through the end of a member's life. As such, MaineCare will reimburse for services under Chapter II, Section 93 Opioid Health Home Services and under Chapter II, Hospice Services provided concurrently.

6. Makes minor technical edits to improve the clarity of the rule.

7. Sec. 43.09: Adds a new section – Allowances for Hospice Services – which is largely moved from the Ch. III rule, which is being repealed. The Department will henceforth list the specific reimbursement rates on the MaineCare Fee Provider Schedule which is posted on the Department's website, as authorized by 22 M.R.S. Sec. 3173-J(7). The Department, after OAG review, added language explaining the current methodology of annual adjustments to the reimbursement for the services. CMS has approved this methodology in the Maine Medicaid state Plan, and this is the methodology that has been utilized by the Department historically. In accordance with 22 M.R.S. Section 3173-J, the Department will not have to go through rulemaking if there is no change to this methodology and the rates are posted in accordance with this law.

Chapter III Rule Changes:

The Department repeals Ch. III.

10-144 Department of Health and Human Services, MaineCare Services, Division of Policy	
2024-012: Chapter 101, MaineCare Benefits Manual, Ch. II, § 29, Support of Adults with Intellectual Disabilities or Autism Spectrum Disorder	
Statutory Authority:	22 M.R.S. §§ 42, 42(8), 3173; 42 C.F.R. § 441.301(c); 42 U.S.C. § 1396b(1)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*This Chapter II rule does not contain reimbursement rates; those are contained in MBM Chapter III, Section 29, and fiscal impact has been estimated for that companion, major substantive rulemaking.*
Principal purpose:	*This Section 29 rule provides home and community-based services (HCBS) that are authorized by a federal Medicaid Section 1915(c) HCBS waiver that meets federal standards.* *On December 18, 2020, The Centers for Medicare & Medicaid Services (CMS) approved the Department's request to renew the Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder waiver for a five-year period, with an effective date of January 1, 2021. On April 13, 2023, the Department gave public notice of proposed amendments to the CMS-approved Section 29 waiver, to add services and enhance service delivery. Following the receipt of public comment on the proposed amended waiver, the Department will seek and anticipates receiving CMS approval of the waiver amendment.* *Through this rulemaking and in accordance with CMS approval of the renewed waiver, and the Department's proposed waiver amendment, the Department proposes to:* *1) Align similar processes, service descriptions, and similar provisions with MaineCare's four other Section 1915(c) waivers (primarily the Section 21 waiver);* *2) Make permanent certain flexibilities added under Appendix K authority during the Covid-19 Public Health Emergency (PHE), which will expire on November 11, 2023, including the additions of Individual Goods and Services, Self-Directed Services and tiered Community Support Services;* *3) Strengthen safeguards for Members by enacting the Plan of Corrective Action and Request for Exceptions processes;* *4) Incorporate the Department's proposed Global HCBS Rule (MBM Ch. I, Sec. 6-Global HCBS Waiver Person-Centered Planning and Settings Rule) by reference; and* *5) Add the opportunity for Section 29 Members to receive Increased Level of Support if they receive Shared Living services and have extraordinary need for additional support with behavioral or medical issues.* *The Department is concurrently undertaking major substantive rulemaking under the APA for MBM Ch. III, Sec. 29, to describe reimbursement procedures for the new and updated services described in this rulemaking, and is proposing retroactive application for rule provisions to November 12, 2023, pursuant to 22 M.R.S. § 42(8), following approval by the Legislature, and final adoption by the Department.* *The Department proposes the following specific changes to this rule:* • *Covered Services: updating, expansion or clarification of the descriptions for*

the following Covered Services:

- *Assistive Technology*
- *Career Planning*
- *Community Support*
- *Employment Specialist Services*
- *Home Accessibility Adaptations*
- *Home Support – Quarter Hour*
- *Home Support – Remote Support*
- *Shared Living (Foster Care Adult)*
- *Non-Medical Transportation Service*
- *Work Support – Group*
- *Work Support – Individual*

• *Revised Definitions: Updating the following definitions: Activities of Daily Living, Autism Spectrum Disorder, Intellectual Disability, Instrumental Activities of Daily Living, Person-Centered Service Plan and Shared Living.*

• *New Definitions: Addition of definitions for the following terms: Budget Authority, Community Inclusion, Competitive Integrated Employment, Community Mapping, Disability-Specific Setting, Employer Authority, Fiscal Intermediary, Home and Community Based Services, Personal Resources, Provider-Managed Service, Self-Direction, Service Implementation Plan, and Supports Broker.*

• *Self-Direction: Addition of Self-Direction Services, including Financial Management Services, Supports Brokerage Services, and Individual Goods and Services, to the list of covered services in Section 29 to expand opportunities for Members to manage and control certain services and service delivery methods. These changes make permanent new services temporarily offered under the Appendix K, Emergency Preparedness and Response amendment authority during the Covid-19 pandemic.*

• *Community Support: Separation of Community Support services into three tiers of service delivery: Community Only- Individual, Community Only- Group, and Center-Based, to support individualized needs of the participant population more broadly. The Department will seek CMS approval for this change.*

• *Exceptions from Caps on Services: Establishment of an exceptions process which provides that Section 29 Members, and Members applying to receive Section 29 benefits, may request services in excess of otherwise applicable Section 29 monetary and/or unit caps, where necessary to ensure that Section 29 Members receive adequate and appropriate services and supports in the most integrated setting appropriate to their needs, consistent with the Americans with Disabilities Act (ADA). This rulemaking proposes the Requests for Exceptions provision (See Sec. 29.14, Requests for Exceptions).*

• *Global HCBS Rule: Incorporation of the requirements of the January 19, 2022, Global HCBS Rule: see Sec. 29.15-1 [Person Centered Service Planning Process] and Sec. 29.05-1 [Home and Community Based Services Settings]), implementing the*

federal requirements for Maine's Section 1915(c) home and community-based waiver programs as required by 42 C.F.R. Sec. 441.301(c). The HCBS Global Rule includes requirements for person-centered service planning and for settings in which HCBS waiver services are provided.

- *29.07-2 (Limits): Changing the limit from $58,168.50 to $84,689.28 for the combined annual cost of Home Support (Remote or Quarter-hour), Community Support, and Shared Living Services. The Department received CMS approval for this change.*

- *29.08-3 (Termination from Participation as a MaineCare Provider): Clarification of this provision which establishes standards for providers who are disenrolling from participating as MaineCare providers. As revised, the provision expressly references the requirement in the MaineCare Benefits Manual, Ch. I, Sec. 1 that providers must give written notice to the Office of MaineCare Services of their intent to terminate participation in the MaineCare Program. In addition, this provision requires Section 29 providers to notify all Section 29 Members they serve of the provider's intent to terminate participation in the MaineCare program.*

- *29.10 (Provider Qualifications): Clarification of Provider Qualifications and Requirements for Direct Support Professionals (DSPs) and for Career Planners, Job Coaches, and Employment Specialists delivering Career Planning, Work Support, and Employment Specialist Services, to state that provider agencies may hire DSPs who are seventeen (17) years of age. The minimum age requirement for Career Planners, Job Coaches, and Employment Specialists remains eighteen (18) years of age.*

- *29.10-1 (DSP Qualifications): Requirement that all DSPs, regardless of capacity and prior to provision of services to a Member, receive training regarding the Global HCBS Rule. Moreover, within six (6) months of hire and annually thereafter, the proposed rule requires DSPs to comply with the Department's regulations: Reportable Events System (14-197 C.M.R. ch. 12) and the Adult Protective Services System (10-149 C.M.R. ch. 1).*

- *29.10-9 (Electronic Visit Verification): Requirement that providers of Home Support-Quarter Hour services comply with Maine DHHS Electronic Visit Verification (EVV) system standards and requirements, in accordance with the 21st Century Cures Act (P.L. 114-255), Section 12006, as codified in 42 U.S.C. § 1396b(l).*

- *29.10-11 (POCA): Authorization for the Office of Aging and Disability Services (OADS) to issue written notices of deficiencies in service delivery, and requirement for providers to submit and implement Plans of Corrective Action (POCA) as approved by the Department. Providers have the right to appeal written notices of deficiencies. This POCA process will provide increased protections for Members and ensure that providers are in compliance with service requirements, have sufficient clinical and administrative capability to carry out the intent of the service, and have taken steps to assure the safety, quality, and accessibility of the service for Members.*

	• *29.11 (Member Appeals): Clarification that Members have the right to appeal decisions made regarding priority level and waitlist determinations.* • *29.16 (Appendix I-Shared Living Criteria for Increased Level of Support): Addition of a new appendix describing the criteria for an increased level of support if, due to extraordinary medical or behavioral needs, a Member requires Shared Living Services beyond the level of support defined in § 29.05-12.* • *29.19 (Appendix IV-Additional Requirements for Section 29 Providers of Community Support Services, Employment Specialist Services, and Shared Living): Clarification of requirements and responsibilities of the Administrative Oversight Agency and the Shared Living Provider for Shared Living Services.*
Basis Statement:	*SUPPORT SERVCIES FOR ADULTS WITH INTELLECTUAL DISABILITIES OR AUTISM SPECTRUM DISORDER* *ADOPTED RULE* *The Department is adopting comprehensive amendments of 10-144 C.M.R. Chapter 101, MaineCare Benefits Manual ("MBM"), Chapter II, Section 29, Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder.* *This Section 29 rule implements and regulates a Section 1915(c) home and community-based services (HCBS) Medicaid waiver program. Under Section 29, the Department provides HCBS to support eligible adult MaineCare Members with an intellectual disability or autism living in the community. MBM Chapter II, Section 29 is a routine technical rule pursuant to 34-B M.R.S. § 5432(3).* *On December 18, 2020, The Centers for Medicare & Medicaid Services (CMS) approved the Department's request to renew the Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder waiver for a five-year period, with an effective date of January 1, 2021. On April 13, 2023, the Department gave public notice of proposed amendments to the CMS-approved Section 29 waiver, to add services and enhance service delivery. The Department is seeking and anticipates receiving CMS approval of this waiver amendment.* *On or about August 23, 2023, the Office of the Secretary of State gave notice of proposed amendments of MBM Chapter II, Section 29 to the Executive Director of the Legislative Council, published notice of the proposed rulemaking, and gave notice of the rulemaking to known interested parties. The Department then held a hybrid remote and in-person public hearing pursuant to 34-B M.R.S. § 5465(4) on September 11, 2023, conducted jointly with the public hearing on proposed amendments to MBM Chapter III, Section 29. The Department then accepted additional written public comment regarding the proposed rulemaking pursuant to 5 M.R.S. § 8057-A(3) until the close of business on September 21, 2023. A summary of public comments, the Department's responses, and changes made to the rule after it was published for public comment will be filed with the Secretary of State in conjunction with this rulemaking.*

The Department has added the following new services, effective March 1, 2024:

- *Home Support - Quarter Hour (Self-Directed)*
- *Shared Living – Two Members served*
- *Shared Living - One Member, Increased level of support (Provider Managed)*
- *Shared Living - Two Members, Increased level of support (Provider Managed)*
- *Home Accessibility Adaptations (Self-Directed)*
- *Home Accessibility Adaptations Repairs (Self-Directed)*
- *Assistive Technology - Devices (Self-Directed)*
- *Assistive Technology - Transmission (Self-Directed)*
- *Community Support - Community Only - Individual (Self-Directed)*
- *Community Support - Community Only – Individual (Provider Managed)*
- *Community Support - Community Only – Group (Provider Managed)*
- *Financial Management Services (Self-Directed)*
- *Supports Brokerage (Self-Directed)*
- *Individual Goods and Services (Self-Directed)*

The Department is seeking and anticipates approval from CMS for these newly added services with an effective date of March 1, 2024. These services will continue to be provided through February 29, 2024, under the Department's Appendix K: Emergency Preparedness and Response authority in response to the COVID-19 Public Health Emergency, which was approved by the Centers for Medicare and Medicaid Services (CMS) but not added to MBM Chapter II, Section 29 at that time.

The Department is concurrently going through APA rulemaking for MBM Ch. III, Section 29, to identify the methodology(ies) for reimbursements for these services. MBM Chapter III, Section is a major substantive rule, will be provisionally adopted pending approval by the Legislature, and will propose a retroactive date of March 1, 2024, for the increased reimbursement rates.

The Department adopts the following specific changes to this rule:

- *Covered Services: Updates, expands, and/or clarifies the descriptions for the following Covered Services:*
  - *Assistive Technology*
  - *Career Planning*
  - *Community Support*
  - *Employment Specialist Services*
  - *Home Accessibility Adaptations*
  - *Home Support – Quarter Hour*
  - *Home Support – Remote Support*
  - *Shared Living*
  - *Non-Medical Transportation Service*
  - *Work Support – Group*
  - *Work Support – Individual*

- *Revised Definitions: Updates the following definitions: Activities of Daily Living, Autism Spectrum Disorder, Intellectual Disability, Instrumental Activities of Daily Living, Person-Centered Service Plan and Shared Living, and Services Delivered*

for the Member (formerly, "On Behalf Of" Services).

- *New Definitions: Adds definitions for the following terms: Budget Authority, Community Inclusion, Competitive Integrated Employment, Community Mapping, Disability-Specific Setting, Employer Authority, Fiscal Intermediary, Home and Community Based Services, Personal Resources, Provider-Managed Service, Self-Direction, Representative, Self-Direction, Service Implementation Plan, and Supports Broker.*

- *Self-Direction: Adds Self-Direction Services, including Financial Management Services, Supports Brokerage Services, and Individual Goods and Services, to the list of covered services in Section 29 to expand opportunities for Members to manage and control certain services and service delivery methods.*

- *Global HCBS Rule: Incorporates the requirements of the January 19, 2022, Global HCBS Rule: see §§ 29.04 [Person-Centered Service Plan (PCSP)], 29.15-1 [Self-Directed Person-Centered Service Planning Process] and 29.05-1 [Home and Community Based Services Settings]), implementing the federal requirements for Maine's Section 1915(c) home and community-based waiver programs as required by 42 C.F.R. § 441.301(c). The HCBS Global Rule includes requirements for person-centered service planning and for settings in which HCBS waiver services are provided.*

- *29.07-2 (Limits): Changes the limit from $58,168.50 to $84,689.28 for the combined annual cost of Home Support (Remote or Quarter-hour), Community Support, and Shared Living Services. The Department received CMS approval for this change.*

- *29.08-3 (Termination from Participation as a MaineCare Provider): Establishes and clarifies standards for providers who are disenrolling from participating as MaineCare providers. The provision expressly references the requirement in the MaineCare Benefits Manual, Ch. I, Sec. 1 that providers must give written notice to the Office of MaineCare Services of their intent to terminate participation in the MaineCare Program. In addition, this provision requires Section 29 providers to notify all Section 29 Members they serve of the provider's intent to terminate participation in the MaineCare program.*

- *29.10 (Provider Qualifications): Clarifies Provider Qualifications and Requirements for Direct Support Professionals (DSPs) and for Career Planners, Job Coaches, and Employment Specialists delivering Career Planning, Work Support, and Employment Specialist Services, to state that provider agencies may hire DSPs who are seventeen (17) years of age. The minimum age requirement for Career Planners, Job Coaches, and Employment Specialists remains eighteen (18) years of age.*

- *29.10-1 (DSP Qualifications): Requires that all DSPs, regardless of capacity and prior to provision of services to a Member, receive training regarding the Global HCBS Rule. Moreover, within six (6) months of hire and annually thereafter, the*

adopted rule requires DSPs to comply with the Department's regulations: Reportable Events System (14-197 C.M.R. ch. 12) and the Adult Protective Services System (10-149 C.M.R. ch. 1).

- *29.10-9 (Electronic Visit Verification): Requires that providers of Home Support-Quarter Hour services comply with Maine DHHS Electronic Visit Verification (EVV) system standards and requirements, in accordance with the 21st Century Cures Act (P.L. 114-255), Section 12006, as codified in 42 U.S.C. § 1396b(l).*

- *29.10-11 (POCA): Authorizes for the Office of Aging and Disability Services (OADS) to issue written notices of deficiencies in service delivery and requires providers to submit and implement Plans of Corrective Action (POCA) as approved by the Department. Providers have the right to appeal written notices of deficiencies. This POCA process provides increased protections for Members and ensures that providers comply with service requirements, have sufficient clinical and administrative capability to carry out the intent of the service, and have taken steps to assure the safety, quality, and accessibility of the service for Members.*

- *29.11 (Member Appeals): Clarifies that Members have the right to appeal decisions made regarding priority level and waitlist determinations.*

- *29.14, Exceptions from Caps on Services: Establishes an exceptions process which provides that Section 29 Members, and Members applying to receive Section 29 benefits, may request services in excess of otherwise applicable Section 29 monetary and/or unit caps, where necessary to ensure that Section 29 Members receive adequate services and supports in the most integrated setting appropriate to their needs, consistent with the Americans with Disabilities Act (ADA).*

- *29.16 (Appendix I-Shared Living Criteria for Increased Level of Support): Adds a new appendix describing the criteria for an increased level of support if, due to extraordinary medical or behavioral needs, a Member requires Shared Living Services beyond the level of support defined in § 29.05-12.*

- *29.16 Appendix III, Performance Measures: The Department eliminates Appendix III because the Department utilizes data available through the Department of Labor, Person Centered Service Plans, and authorization data as part of the Department's commitment to quality assurance and quality improvement system. Additionally, specific performance measures are either no longer relevant or necessary to measure the performance of specifically listed employment services or have been met.*

- *29.19 (Appendix IV-Additional Requirements for Section 29 Providers of Community Support Services, Employment Specialist Services, and Shared Living): Clarifies the requirements and responsibilities of the Administrative Oversight Agency and the Shared Living Provider for Shared Living Services.*

In conformance with the January 1, 2021, CMS-approved, renewed waiver, and the Department's pending, proposed waiver amendments, this rule also aligns similar

processes, service descriptions, and similar provisions with MaineCare's four other Section 1915(c) waivers (primarily the Section 21 waiver).

As a result of public comments and further review by the Department and the Office of the Attorney General, the adopted rule includes clarifying language for §29.02-12 (E), Services that Support Personal Well-being, §29.04, Person-Centered Service Plan, §29.05-4 Community Support, and §29.05-8, Home Support-Quarter Hour.

Additionally, as a result of public comment, the adopted rule adds a provision allowing providers of Assistive Technology-Assessments to conduct evaluations via telehealth so long as the provider ensures that the assessment via telehealth meets the requirements of the scope of the service.

Further, as a result of public comment, the Department has revised §29.19 Appendix IV, Additional Requirements for Section 29 Providers of Community Support Services, Employment Specialist Services, and Shared Living, replacing the requirement that the Administrative Oversight Agency (AOA) train the Shared Living Provider with a requirement for the AOA to maintain and retain documentation that the Shared Living Provider meets the requirements to deliver Shared Living Services. The Department has also added a provision that Shared Living Providers must comply with training and certification requirements and to provide proof of current trainings to the AOA.

The Summary of Public Comments and Responses identifies more specifically all changes that were made to the final rule.

Additionally, as a result of review and guidance from the Centers for Medicare and Medicaid Services (CMS), the Department has replaced the term "On Behalf Of" within the rule with
"Services Delivered for the Member (formerly "On Behalf Of")". The Department has revised § 29.18 Appendix III, Additional Guidance for Home Support, Community Support, Work Support, Career Planning, and Employment Specialist Covered Services that are Delivered Directly for the Member (formerly, On Behalf Of Covered Services) by clarifying the billable and non-billable activities that constitute the same.

Finally, the Department anticipates that CMS will approve newly added services with an effective date of March 1, 2024. In the interim, the Department will continue to implement these flexibilities under the Appendix K: Emergency Preparedness and Response authority in accordance with State Medicaid Director (SMD) Letter # 23-004.

10-144 Department of Health and Human Services, Office for Family Independence	
2024-013: Chapter 301, Supplemental Nutrition Assistance Program (SNAP) Rules	
Statutory Authority:	22 M.R.S. §§ 42(1) and (8), 3104
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The fiscal impact of the proposed rule changes is minimal and will be absorbed through the existing budget.*
Principal purpose:	*Pursuant to the Consolidated Appropriations Act 2023 (CAA 2023), Public Law 117-328, Division HH, Title IV § 501, EBT Benefit Fraud Prevention requirements, the Department proposes to amend the SNAP Manual, Section 777-4 to align with the requirements of the CAA 2023. The proposed rule changes will provide clarity on the Department's procedure and timeframes for replacement of SNAP benefits determined to have been stolen through card skimming, card cloning, or similar fraudulent methods. The U.S.D.A. – Food and Nutrition Services approved the Department's Plan for the Replacement of Electronically Stolen EBT Benefits on August 10, 2023, retroactive to October 1, 2022. This rule change would be effective retroactive to October 1, 2022. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as this update provides a benefit to SNAP recipients or beneficiaries and does not adversely impact applicants, participants, beneficiaries, or providers.*
Basis Statement:	*Pursuant to the Consolidated Appropriations Act 2023 (CAA 2023), Public Law 117-328, Division HH, Title IV § 501, EBT Benefit Fraud Prevention requirements, the Department adopts changes to the SNAP Manual, Section 777-4 to align with the requirements of the CAA 2023. The adopted rule changes provide clarity on the Department's procedure and timeframes for replacement of SNAP benefits determined to have been stolen through card skimming, card cloning, or similar fraudulent methods. The U.S.D.A. – Food and Nutrition Services approved the Department's Plan for the Replacement of Electronically Stolen EBT Benefits on August 10, 2023, retroactive to October 1, 2022. This rule change is effective retroactive to October 1, 2022. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as this update provides a benefit to SNAP recipients or beneficiaries and does not adversely impact applicants, participants, beneficiaries, or providers.* *In addition, definitions for Card Cloning, Card Skimming, and Phishing are added to Section 999-1.* *The Department determined it necessary to make non-substantial changes to the final rule. The changes provide clarity to PROCEDURES FOR REPLACING BENEFITS STOLEN ELECTRONICALLY. These non-substantial changes include:* • *777-4 (3)(B) replaces must with shall.* • *777-4 (3)(D) removes appropriate and adds if applicable.* • *777-4 (3)(H) is a typo and is corrected to 777-4 (3)(G).* *This rule will not have an adverse impact on municipalities or small businesses.*

10-144 Department of Health and Human Services, Office for Family Independence	
2024-018: Chapter 333, Low Cost Drugs for Elderly and Disabled (DEL) - Eligibility	
Statutory Authority:	22 M.R.S. §§ 42(1) and (8), 254-D(4)(B)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The Department anticipates this rulemaking will cost approximately $414,414 in state dollars in SFY 2024 and $2,616,798 in SFY 2025. In SFY 2026 and each subsequent year, the anticipated cost of this rulemaking is $2,983,920 in state dollars.*
Principal purpose:	*The proposed rule change would remove the asset test, Section 2.1, effective retroactive to January 1, 2024. The proposed rule change is based on a legislative change to 22 M.R.S. § 254-D(4)(B) made by P.L. 2023, ch. 412, Part EEEEE. This rule change is consistent with a recent MaineCare Eligibility Manual proposed rule change which would remove the asset test for all Medicare Savings Plan coverage types. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as this update provides a benefit to recipients and applicants.*
Basis Statement:	*The adopted rule change removed the asset test, Section 2.1, effective retroactive to January 1, 2024. The adopted rule change is based on a legislative change to 22 M.R.S. § 254-D(4)(B) made by P.L. 2023, ch. 412, Part EEEEE. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as this update provides a benefit to recipients and applicants.* *The Department determined it necessary to make a non-substantial change to the final rule. Section 2.1, Assets, "Liquid assets are defined in 10-144 CMR Ch. 332 Part 16, MaineCare Eligibility Manual." is removed from the adopted rule as this sentence is irrelevant and unnecessary.* *This rule will not have an adverse impact on municipalities or small businesses.*

10-144 Department of Health and Human Services, Maine Center for Disease Control and Prevention	
2024-019: Chapter 242, Rules for Conversion of Seasonal Dwelling Units into Year-Round Residences in the Shoreland Zone	
Statutory Authority:	22 M.R.S. § 42(1) and (3-A); 22-A M.R.S. § 205(2); 30-A M.R.S. § 4212 and 4215(2) and (5)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*These proposed rule changes pose no fiscal impact to the Department, counties or municipalities.*
Principal purpose:	*The Department is proposing the repeal of (Ch. 242) at the same time as it is adopting amendments to Maine's Subsurface Wastewater Disposal Rule, 10-144 CMR Ch. 241 (Ch. 241). Within Section 8(B)(1) of Ch. 241, the Department has amended language in Section 8 to align the criteria for seasonal conversion permits to the criteria of first-time systems. The Department's adopting of Ch. 241 allows for all subsurface wastewater disposal regulations to be placed in one rule and avoids outdated conflicting rules under Ch. 242; therefore, the Department is proposing to repeal the stand-alone Rules for Conversion of Seasonal Dwelling Units into Year-Round Residences in the Shoreland Zone.* *The Department originally proposed the repeal of Ch. 242 concurrently with the proposing of amendments to Ch. 241. In the rulemaking for Ch. 241, the Department considered it necessary to engage in a second round of Public Comments for Ch. 241. As a result, the rulemaking for Ch. 242 lapsed as the Department did not want to repeal the requirements for Ch. 242 until these requirements were formally merged into an adopted amendment of Ch. 241.*
Basis Statement:	*The Department of Health and Human Services, Maine Center for Disease Control and Prevention (Department), advertised rulemaking for the repeal of 10-144 CMR Ch. 242, the Rules for Conversion of Seasonal Dwelling Units into Year-Round Residences in the Shoreland Zone, on September 27, 2023, with a 30-day public comment period. The comment period ended on October 27, 2023. The Department received no comments related to the rulemaking.* *The Department is repealing this rule, due to its recent adoption of amendments to Maine's Subsurface Wastewater Disposal Rule at 10-144 CMR Ch. 241 (Chapter 241) which became effective September 23, 2023. Within Section 8(B) of Chapter 241, the Department adopted amended language that aligns the criteria for seasonal conversion permits to the criteria of replacement systems. These amendments to Chapter 241 allow for all subsurface wastewater disposal requirements to be placed within one rule, to avoid confusion with any conflict between this Chapter 242 and the newly amended Chapter 241; therefore, the Department is repealing this stand-alone Chapter 242 - Rules for Conversion of Seasonal Dwelling Units into Year-Round Residences in the Shoreland Zone.* *The Department originally proposed the repeal of Ch. 242 concurrently with the proposing of amendments to Ch. 241. In the rulemaking for Ch. 241, the Department, upon the advice of the Office of the Attorney General, advertised to the public a second round of Public Comments for Ch. 241. As a result, the rulemaking for Ch. 242*

	lapsed, due to the Department wanting to wait to finalize Chapter 241 before moving forward with repealing Ch. 242. *The repeal of the Rules for Conversion of Seasonal Dwelling Units into Year-Round Residences in the Shoreland Zone, as well as the update to the Subsurface Wastewater Disposal Rule (10-144 CMR Ch. 241), mean that Municipalities, Licensed Plumbing Inspectors, and property owners subject to subsurface wastewater disposal rules, are now able to find all applicable subsurface wastewater disposal system requirements within the same rule. Any requirements for the conversion of seasonal dwellings into a principal dwelling or year-round residence are included with all other subsurface wastewater disposal requirements, which provides clearer understanding, due to the fact that all such conversions would need to meet the criteria of replacement criteria for subsurface wastewater disposal systems.*

10-144 Department of Health and Human Services, Division of Licensing and Certification	
2024-026: Chapter 123, Behavioral Health Organizations Licensing Rule	
Statutory Authority:	5 M.R.S. §§ 2001-2007(A), 22 M.R.S. § 42(1), 22 M.R.S. §§ 1501-1507, 22 M.R.S. §§ 7801-7807, 22 M.R.S. §§ 8001-8005, 22-A M.R.S. § 205(2), 34-B M.R.S. §§ 1001-1953
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The fiscal impact of the fee changes will be minimal since current operational practice is to collect a fee per regulated site each licensing year. These fees will be part of the biennial fee ($250.00) which translates to a provider with 5 locations/modules. The average provider has 5 modules now so increased fees will be minimal from ongoing operations. The smallest provider will see an increase of approximately $50 per licensing cycle. The charging of a fee for adding locations to a current license increases by $25 per unit and there are less than 100 such changes on average per year. This amounts to approximately $2,500 in additional funds each year. The increase from initial fees should be limited to less than $1,000 annually in increase since the number of new providers annually (estimate 20 new providers annually – start with two locations (Approx. fee $75 currently, fee will increase to $125 for the first year. Annual licensing costs are significantly greater than funds received from fees.* *Financial costs of the operational changes to the programs will be minimal since a significant benefit of adding clarity to the numerous rules being condensed will offset the inclusion of new regulatory parameters.*
Principal purpose:	*The Department proposes rulemaking to adopt 10-144 CMR Ch. 123, Behavioral Health Organizations Licensing Rule.* *The Department is proposing to repeal three existing licensing rules and replace them with one single rule. This proposed change will provide a comprehensive one-stop licensing rule for behavioral health programs. The rules proposed for repeal and replacement include community and residential licensing standards for mental health and substance use disorder treatment services, including Licensing of Mental Health Facilities, 14-193 CMR Ch.6; Licensing of Mental Health Facilities, PNMI, 14-193 CMR Ch. 6A; and Regulations for Licensing and Certifying of Substance Abuse Treatment Programs, 14-118 CMR Ch. 5.* *This proposed rule also updates and clarifies language to reflect current practice in application and licensing requirements. Major updates to this rule will:* *Add, update, and remove outdated definitions;* *Add more clarity to the licensing application and renewal process;* *Include a licensing fee schedule for all license types;* *Modify licensing fees, remaining within allowed limits by statute;* *Update the Department's role and responsibility for the enforcement and inspection of licensed organizations, including language that regulated behavioral health organizations must submit to regular and unannounced inspection surveys and complaint investigations to receive and maintain a license;* *Describe sanctions, and include a schedule of fines available to the Department, to address administrative violations;*

	Update policy to address and minimize potential client barriers including: communication needs; eligibility criteria; screening practices; and notices of denial and referral; *Clarify and update requirements for client assessments, crisis plans, service plans and discharge plans to ensure a more client driven process;* *Update the requirements for the composition of the client's service planning team;* *Add requirements for an organization to have a closure policy: when an organization plans to close a service, the Department must be promptly notified and clients need to be referred for appropriate services with minimal disruption;* *Add standards and qualifications necessary for the use of teleservices and distant site practioners to improve client choice and access to medical and behavioral care;* *Add requirements for managing adverse events to maintain services in the event of an emergency;* *Include a risk management section, to reduce the use of restrictive behavioral interventions, grievances and accidents;* *Update and clarify the requirements for a clinical supervisor and clinical supervision;* *Add a section on the use of independent contractors;* *Update and clarify medication management requirements to improve the safety and security of medications, including PRN orders of psychotropic medications; diversion control of schedule II controlled substances; and medication storage, administration and record keeping;* *Update client record management policies required by an organization;* *Add clarity to the requirements of an organization's quality improvement plan to ensure that services governed by this rule are accessible and effective;* *Update organization requirements for budgets and annual financial audits;* *Add requirements for organizations that manage client money, and add clarity to fees charged by the organization to clients served;* *Add requirements for building leases, safety and maintenance;* *Add requirements for assertive community treatment;* *Update requirements for crisis services;* *Add mobile substance use treatment services;* *Add a requirement that a substance use treatment program must maintain a waiting list;* *Add a requirement that a substance use treatment program must have 24-hour a day, phone availability to a physician, physician assistant or nurse;* *Require all organizations providing opioid treatment services to comply with 42 CFR §§ 8.11 through 8.12;* *For residential programs:* *clarify requirements for community involvement and add that when feasible, allow clients to attend religious activities of their choosing;* *include the requirement that clients may have visitors and access to private telephone calls at any time;* *add clarity to resident rights, including the right for a resident to access food and beverages 24-hours per day;* *add clarity to client rights on the use of restraints and aversive conditioning;*

	include standards for a daily census and add standards for maintaining a record of client absences from a residential facility; and *add requirements to enhance client nutrition.*
Basis Statement:	*The Department proposes rulemaking to adopt 10-144 CMR Ch. 123, Behavioral Health Organizations Licensing Rule.* *10-144 CMR Ch. 123 repeals and replaces three former chapters of the Code of Maine Rules: 14-118 CMR Ch. 5, Regulations for Licensing and Certifying of Substance Abuse Treatment Programs; 14-193 CMR Ch. 6, Licensing of Mental Health Facilities; and 14-193 CMR Ch. 6A, Licensing of Mental Health Facilities: Private Non-Medical Institutions. The rules that being repealed are very outdated and do not reflect best practices for the services being delivered under those rules:* • *14-193 CMR Ch. 6, Licensing of Mental Health Facilities was adopted on October 20, 1993, and has not been revised since that date.* • *14-193 CMR Ch. 6A, Licensing of Mental Health Facilities: Private Non-Medical Institutions was adopted on June 201 [sic], 2005, and has not been revised since that date.* • *14-118 CMR Ch. 5, Regulations for Licensing and Certifying of Substance Abuse Treatment Programs has not been revised since February 29, 2008.* *In addition, the Department has included licensure of children's mental health treatment services that are funded by MaineCare, 10-144 CMR Chapter 101, Section 28, Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations.* *The Department of Health and Human Services is taking this action for several reasons:* • *The unification of substance use disorder and mental health facility licensing under one rule better reflects the current service delivery system, as many providers offer both types of service, and many service recipients utilize both service types.* • *The new rule adopts standards for residential treatment programs, absent from the rules currently in force, that are equivalent to the standards in place for other licensed residential settings.* • *The new rule clarifies and elaborates on the content of the rules being replaced.* *The rule consolidates requirements for the licensing of mental health and substance use disorder programs and related residential treatment services. Because behavioral health programs often deliver a variety of mental health, substance use disorder, and integrated treatment services provided in diverse settings by an array of qualified professionals, one consolidated licensing rule for behavioral health programs will assist providers who are licensed to provide a variety of services.*

The rule is applicable to community support and integration mental health services, community support and integration substance use disorder services, crisis mental health services, crisis substance use disorder services, outpatient mental health services, outpatient substance use disorder services, residential mental health services for adults, residential substance use disorder services for adults, integrated treatment services, and rehabilitative and community services for children with cognitive impairments and functional limitations funded under 10-144 CMR Ch. 101 of the MaineCare Benefits Manual.
The rule requires organizations to be licensed. License types include a mental health license, substance use disorder license, or an integrated license. The license will indicate which modules or programs within each license type the organization is licensed to provide. The organization will also need to identify the sites and service locations where services may be delivered. Adding modules/programs or sites/service locations to an organization's license will require an additional fee.

Part 1 of the rule includes Sections 1 through Section 22 are the "core standards," designed to apply to all licensees. Of course, there will be provisions that are not applicable to some licensees, for example Section 21 will apply only to licensees that operate a residential program. But unless otherwise indicated, Part 1 is appliable to all licensees. Part 2 includes the program specific standards for mental health programs, substance use disorder treatment programs, and integrated mental health and substance use disorder treatment programs.

A section-by-section summary of significant changes is provided below:

PART ONE: CORE STANDARDS SECTIONS 1 - 21

SECTION 1. DEFINITIONS

- *Clarifies and adds additional definitions as required by the content changes listed below.*

SECTION 2. LICENSING AND CERTIFICATION REQUIREMENTS

- *Licensing requirements: Adds a requirement for notification to other DHHS offices prior to application.*

- *Initial or renewal application for a license: Adds a deadline by which license application must be completed and clarifies requirements for expired licenses.*

- *Documents required with initial application: Adds required supplemental documents to rule, to reflect current process. Adds requirement for a close of business plan, due to frequency of such actions which result in emergency responses by the Department.*

- *Conditional license: Adds a restriction on adding services during the term of a conditional license.*

- *Amended license required when changes occur: extends the notification of the Department from 30 to 90 days prior to changing the location of a provider.*

- *Issued license extends to identified physical sites: Added section to reflect current practice.*

- *National accreditation and deeming Added section to reflect statutory requirements, which will allow accredited organizations to be deemed in compliance with provisions of the licensing rule that are identical, almost identical, or serve an equivalent purpose to the accreditation standards..*

- *Approval for occupancy: Added to include Maine CDC Drinking Water Program recommendations.*

SECTION 3. FEES

- *Revised section to reflect new licensing structure and to incorporate fees schedule from statutes.*

SECTION 4. ENFORCEMENT AND INSPECTIONS

- *Organizational cooperation: Adds additional detail to standardize practices, based on site survey experience, to increase cooperation with Department surveys and investigations.*

- *Informal conference: New section added to create a process parallel to that offered to Nursing Facilities under the State Operations Manual for DLC and the licensee to discuss and potentially resolve certain deficiencies cited in a statement of deficiencies.*

- *Plan of correction: Updated to clarify what constitutes an acceptable plan of correction using Centers for Medicare & Medicaid Services standards as guidance.*

- *Refusal to issue a license: Clarifies Department procedures and the bases for the Department to refuse to issue or renew a license.*

- *Revocation or suspension of a license: Various statutes identify the process for license revocation and suspension, which often require a court order. The rule adheres to those statutory requirements*

- *Operating without a license: enter and inspect: The Department is authorized to enter and inspect an organization that it believes is operating without a license only with the permission of the owner or an administrative warrant from the District Court.*

- *Grounds for intermediate sanctions: Language updated using similar rule as a guidance to clarify the misconduct that may result in imposition of intermediate*

sanctions.

- *Intermediate sanctions: Language updated using similar rule as a guidance to clarify which Department actions constitute intermediate sanctions..*

SECTION 5. COMPLAINT INVESTIGATION

- *Section added to describe existing Department procedures and authority. Provides clarification of existing rules, and mirrors existing Assisted Housing rule provisions. Provides a clearer inventory of provider roles and Department processes.*

SECTION 6. CLIENT RIGHTS

- *Added to and clarified client rights, with consideration of the Rights of Recipients of Mental Health Services. The organization must have a written policy concerning the rights and responsibilities of clients and clients must be notified of these rights. .*

SECTION 7. ELIGIBILITY AND ACCESS TO SERVICES

- *Access to services: Clarification of existing rule- and adds some new requirements for mental health agencies that are already applicable to substance use disorder treatment agencies.*

SECTION 8. COMPREHENSIVE CLIENT ASSESSMENT

- *Client assessment: Added requirement for a client assessment within 30 days of admission, which merges existing rule requirements.*

SECTION 9. CLIENT SERVICE PLAN

- *Personal responsibility and self-determination: Expanded to clarify current rule by identifying ways to involve the client.*

- *Service plan: Extensively revised to clarify existing rule, adopt a whole-person approach, and to enhance client safety.*

- *Crisis plan revisions are based on Department experience in crisis response.*

SECTION 11. GOVERNING AUTHORITY

- *Legal authority to operate: Expanded to clarify existing rule.*

- *Governance: Clarified to enhance provider comprehension of expectations around advisory boards and boards of directors.*

- *Closure policy: Expanded to address inadequacy of current rules in force regarding client protection in the event of an agency closure.*

SECTION 12. PROGRAM ADMINISTRATION

- *Administrator: Added provisions to address current gaps in reporting.*

- *Evidence-based practice: New provision added to assure quality of care.*

- *Teleservices and distant site practitioners: New section added to improve access to services, reflective of current service delivery approaches.*

- *Reporting adverse events: Added to mirror client safety measure adopted under similar rule (see 10-144 CMR Ch. 113.)*

- *Continuity of operation plan: Added based on Department experience. Necessary to assure client safety.*

- *Annual program evaluation: Expansion of current Quality Assurance activities.*

SECTION 13. PERSONNEL

- *Background check: Updated to incorporate current rule and statute regarding the Maine Background Check Center.*

- *Qualifications: Expanded to clarify existing rule provisions.*

- *Job descriptions: Adds requirements for periodic updates to incorporate best practice.*

- *Staffing: Clarified to identify staffing pattern requirements.*

- *Nurse Consultant: Applicability to mental health agencies added (currently applies to Substance Use Treatment agencies.)*

- *Clinical supervisor: Significantly clarifies and expands on current rule.*

SECTION 14. INDEPENDENT CONTRACTORS

- *This is a new section added to reflect the business practices of many current licensees.*

SECTION 15. MEDICATION ADMINISTRATION

- *Many subsections are modeled after existing rule provisions in 10-144 CMR Ch. 113 in order to create consistent standards across similar settings.*

- *Lab testing: New subsection added to include Clinical Laboratory Improvements (CLIA) rule requirements.*

- *Availability of medicine during emergencies: New subsection added to require planning in the event of power outages (based on Division experience.) The emergence of electronic medical records requires backup systems.*

- *Diversion control plan: Currently in 14-118 CMR Ch. 5. Expansion of medication-assisted treatment requires this provision to support best practice.*

SECTION 16. RECORDS MANAGEMENT AND RETENTION

- *Record management policy: New provision added to reflect requirements of the federal Health Information Portability and Accountability Act.*

- *Client access to client's record: Provisions added to reflect requirements of the federal Health Information Portability and Accountability Act.*

- *Client record: Expanded to clarify the content of existing rules.*

SECTION 17. QUALITY IMPROVEMENT

- *Policy: Clarifies existing rule provisions.*

- *Operational plan: Expands and clarifies existing rule provisions and adopts best business practices.*

- *Focus of data collection: Adopts best business practices.*

- *Incident Analysis: adopts best business practices.*

- *Periodic reports to personnel: Added to promote availability of information to stakeholders.*

SECTION 18. FINANCIAL MANAGEMENT

- *Management systems; Expands existing rule provisions in response to ongoing recurrent crises within provider organizations.*

- *Annual financial audit: added to provide flexibility for smaller organizations that may lack the financial resources for a full audit.*

- *Client's money: Added protections for client's funds.*

- *Fees paid by clients: Added provisions for clarification.*

SECTION 19. RISK MANAGEMENT

- *Risk prevention and management practices: New provision based on best business practices.*

- *Annual risk assessment: Added for additional client safety.*

- *Quarterly review: Added provision in response to past history of licensee failures to protect clients.*

SECTION 20. NON-RESIDENTIAL BUILDING STANDARDS

- *Building design: Expanded for clarification.*

- *Local laws and codes: Expanded for clarification.*

- *Building lease: New provision, added for compliance with the Life Safety Code.*

- *Building security: Added to ensure compliance with Section 20 (A).*

SECTION 21. STANDARDS FOR ALL RESIDENTIAL PROGRAMS

- *Program manager: This section has been expanded to clarify the roles and duties of a person responsible for each service delivery site, analogous to an administrator of a nursing or residential care facility.*

- *General Program Requirements: merged existing rules and incorporates elements of Assisted Housing programs.*

- *Disaster, hazard, and evacuation plans: Clarified content of existing rule provisions.*

- *Food service and safety: These provisions are additions designed to mirror the expectations in other licensed residential settings.*

- *Physical plant: This subsection adds provisions to current mental health rule and expands the current provisions in place for substance use disorder programs based on the Division's survey experience with these settings.*

- *Policies for residential programs: New provision added to ensure client safety.*

- *Diabetes management training: These provisions are additions designed to mirror the expectations in other licensed residential settings.*

- *Infection prevention and control: These provisions are additions designed to mirror the expectations in other licensed residential settings that were adopted by emergency rulemaking in response to the global pandemic.*

PART TWO: PROGRAM-SPECIFIC STANDARDS SECTIONS 22 - 24

SECTION 22. MENTAL HEALTH PROGRAMS

- *Personnel: New provision added to clarify existing rule.*

- *Community support services module: Clarifies the services that fall under this module.*

- *Crisis services module: New subsection added to reflect the current system of service provision. This type of service is referred to as "emergency services" in rule in force.*

- *Outpatient services module: Updated to reflect the current system of service provision.*

- *Mental health residential services module: Updated for clarification and to reflect the current system of service provision.*

SECTION 23. SUBSTANCE USE DISORDER TREATMENT PROGRAMS

- *Admission criteria: Subsection adds specificity about criteria and procedures for linkages to other providers, reflecting that clients may have other service needs. Incorporates "ASAM Criteria: Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions" by reference.*

- *Personnel: Expansion of current rule to be more specific, based on Division experience with errors related to medication administration.*

- *Community support services module: New subsection added to include services that are required to be licensed by statute that are not currently licensed under the rule in force.*

- *Crisis services module: New subsection added to reflect changes in service delivery modules.*

- *Outpatient services module: Added a new provision to reflect addressing needs identified in the client's assessment; clarified existing rule provision;. amended to incorporate feedback from the Office of Behavioral Health; and amended in consultation with the State opioid treatment authority.*

- *Substance use disorder residential services module: Clarifies rule in force.*

SECTION 24. INTEGRATED MENTAL HEALTH AND SUBSTANCE USE DISORDER TREATMENT PROGRAMS

- *New section added to reflect the structure of the system as many providers offer both mental health and substance use disorder treatment. Allowing this integrated license will streamline the licensing process for many providers.*

14-193 Department of Health and Human Services, Division of Licensing and Certification	
2024-027: Chapter 6, Licensing Mental Health Facilities	
Statutory Authority:	5 M.R.S. §§ 2001-2007(A), 22 M.R.S. § 42(1), 22 M.R.S. §§ 1501-1507, 22 M.R.S. §§ 7801-7807, 22 M.R.S. §§ 8001-8005, 22-A M.R.S. § 205(2), 34-B M.R.S. §§ 1001-1953
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	This rule was repealed.
Principal purpose:	This rule was repealed.
Basis Statement:	This rule was repealed.

14-193 Department of Health and Human Services, Division of Licensing and Certification	
2024-028: Chapter 6A, Licensing Mental Health Facilities (PNMI)	
Statutory Authority:	5 M.R.S. §§ 2001-2007(A), 22 M.R.S. § 42(1), 22 M.R.S. §§ 1501-1507, 22 M.R.S. §§ 7801-7807, 22 M.R.S. §§ 8001-8005, 22-A M.R.S. § 205(2), 34-B M.R.S. §§ 1001-1953
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	This rule was repealed.
Principal purpose:	This rule was repealed.
Basis Statement:	This rule was repealed.

14-118 Department of Health and Human Services, Division of Licensing and Certification	
2024-029: Chapter 5, Regulations for Licensing and Certifying of Substance Abuse Treatment Programs	
Statutory Authority:	5 M.R.S. §§ 2001-2007(A), 22 M.R.S. § 42(1), 22 M.R.S. §§ 1501-1507, 22 M.R.S. §§ 7801-7807, 22 M.R.S. §§ 8001-8005, 22-A M.R.S. § 205(2), 34-B M.R.S. §§ 1001-1953
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	This rule was repealed.
Principal purpose:	This rule was repealed.
Basis Statement:	This rule was repealed.

10-144 Department of Health and Human Services, Division of Licensing and Certification	
2024-081: Chapter 111, Temporary Nurse Agency Registration Rule	
Statutory Authority:	22 M.R.S. §§ 42, 2131, and 2136 - 2139
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The new registration fee and mandated annual reporting requirements will have a minor financial impact on Temporary Nurse Agencies.* *The rulemaking will require funding one new position within the Department for the tracking of registrations, conducting complaint investigations, gathering data, and producing an annual report; at an anticipated cost of $108,698 for Fiscal Year 2023-2024 and $114,331 for Fiscal Year 2024-2025.*
Principal purpose:	*The new routine technical rule is required due to the statutory changes in 22 MRS §2131 enacted by PL 2023 Ch. 434.*
Basis Statement:	*This new rule operationalizes the changes made to 22 MRS § 2313 under PL 2023 Ch 434.* *The rule reflects the following requirements of statute:* • *Increases the registration fee;* • *Places requirements for annual reporting on registered Temporary Nurse Agencies (TNAs);* • *Authorizes the Department to issue financial penalties to TNAs in certain circumstances;* • *Places record-keeping and access to records requirements on TNAs; and* • *Establishes employee quality assurance measures for TNAs.* *The proposed routine technical rule also incorporates the statutory restrictions on predatory hiring practices and makes violation of 22 MRS § 2131 a violation of the Maine Unfair Trade Practices Act.* *In addition to incorporating these statutory requirements and including the deadlines for submission of the annual reports, the rule explains what types of practices by agencies are covered under the rule.* *TNAs will use the Maine Background Check Center prior to hiring, employing or placing an individual in Maine to adhere to statutory requirements and to protect the public safety.*

10-144 Department of Health and Human Services, MaineCare Services, Division of Policy	
2024-087: Chapter 101, MaineCare Benefits Manual, Ch. II, § 94, Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT)	
Statutory Authority:	22 M.R.S. §§ 42, 3173
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The Department anticipates that this rulemaking will cost approximately $2,018,906 in SFY 2024, which includes $328,608 in state dollars and $1,690,298 in federal dollars; and $1,345,937 in SFY 2025, which includes $30,149 in state dollars and $1,315,788 in federal dollars.*
Principal purpose:	*In order to codify telehealth visits allowable during the Public Health Emergency, to add the service of immunization counseling, and to add eligibility for MaineCare to pregnant individuals of any age who but for their immigration status would be eligible for MaineCare, this proposed rulemaking seeks to make the following changes:* *Addition of well-child visit: In response to the COVID-19 pandemic, on May 13, 2020, the Department adopted on an emergency basis MaineCare Benefits Manual, Ch. I, Section 5, COVID-19 Public Health Emergency Services, which allowed members to receive a second well-child visit when an initial visit was completed via telehealth. This proposed rule codifies that extra visit allowed during the public health emergency in Section 94.06-1.* *Immunizations: The proposed rule adds coverage for immunization counseling in Section 94.04-4.* *Eligibility: In Section 94.02-02, the proposed rule adds eligibility for EPSDT services. In accordance with the MaineCare Eligibility Manual, 10-144 Ch. 332 Part 3, Section 2.3, III, Coverage for Pregnant Individuals for the Health of Unborn Children, a pregnant individual of any age who is eligible for Medicaid but for noncitizen status and is covered under MaineCare's Children's Health Insurance Program (CHIP) is eligible for the services described in this Section.* *Changes to the rule also include minor technical changes such as replacing the outdated Bright Futures periodicity schedule with the website address for the most updated schedule, instructing providers to use the EP modifier when billing, and replacing a telephone number with the name of the office.*
Basis Statement:	*The Department of Health and Human Services (Department) finally adopts the rule changes in 10-144 C.M.R., Chapter 101, MaineCare Benefits Manual, Chapter II, Section 94, Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT).* *This adopted rulemaking makes the following changes:* • *Addition of well-child visit: In response to the COVID-19 pandemic, on May 13, 2020, the Department adopted on an emergency basis MaineCare Benefits Manual, Ch. I, Section 5, COVID-19 Public Health Emergency Services, which*

allowed members to receive a second well-child visit when an initial visit was completed via telehealth. This adopted rule permanently adds that extra visit as a new service in Section 94.06-1 to expand access to services.

- *Immunizations: The adopted rule adds coverage for immunization counseling in Section 94.04-4 in response to the Center for Medicare & Medicaid Services State Health Official letter #22-002.*

- *Bright Futures Periodicity Schedule: The adopted rule deletes Appendix I – Recommendations for Preventive Pediatric Health Care Committee on Practice and Ambulatory Medicine. After conferring with the Office of the Attorney General, the adopted rule provides that MaineCare has adopted the 2022 4th edition of the American Academy of Pediatrics Bright Futures Recommendations for Preventive Pediatric Health Care (Bright Futures Periodicity Schedule) and incorporates it by reference in the rule. The Bright Futures Periodicity Schedule is available online at the American Academy of Pediatrics website and upon request from the Office of MaineCare Services at https://www.maine.gov/dhhs/oms and a copy of such was filed with the Secretary of State's office with this rulemaking, in accord with 5 M.R.S. 8056(B).*

Section 94.02-2 (Eligibility for Services): The Department has decided to not adopt the proposed provision which would have added a certain group of pregnant individuals as being eligible for EPSDT services, after conferring with the Office of the Attorney General. That group of pregnant individuals, eligible under what is also known as the "Unborn Child Option", is eligible for services under the Maine CHIP program. See 67 Fed. Reg. 61974 (Oct. 2, 2002)(42 C.F.R. Sec. 457.10, amending the definition of "child"). Maine offers medical services to this group under its CHIP program, see MaineCare Eligibility Manual, 10-144 CMR Ch. 332, Part 3, Section 2.3(III)(Coverage for Pregnant Individuals for the Health of Unborn Children), including EPSDT-like services.

10-144 Department of Health and Human Services, MaineCare Services, Division of Policy	
2024-104: Chapter 101, MaineCare Benefits Manual, Ch. III, § 29, Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder	
Statutory Authority:	22 M.R.S. §§ 42, 42(8), 3173, 3173-J, and 7401 to 7404; Resolves 2023, ch. 133
Type:	Major Substantive
Emergency?:	No
Fiscal impact:	*The Department anticipates that this rulemaking will cost approximately $2,600,395.00 in SFY 2023 ($6,166,299.00 in SFY 2024), which includes $907,009.00 ($2,373,827) in state dollars and $1,693,386.00 ($3,792,472) in federal dollars.*
Principal purpose:	*The Department is proposing to make the following changes to this major substantive rule:* *The Department is adding new services which will be reimbursed pursuant to this rule:* • *Home Support - Quarter Hour (Self-Directed)* • *Shared Living - One member, Increased level of support* • *Shared Living - Two members, Increased level of support* • *Community Support - Community Only - Individual* • *Community Support - Community Only - Group* • *Community Support - Community Only - Individual (Self-Directed)* • *Home Accessibility Adaptations (Self-Directed)* • *Home Accessibility Adaptations Repairs (Self-Directed)* • *Assistive Technology - (Monitoring feature/device, stand alone or integrated, any type, includes all accessories,* *components and electronics, not otherwise classified) (Self-Directed)* • *Financial Management Service* • *Supports Brokerage* • *Individual Goods and Services* *Provision of these services was originally implemented through the Appendix K: Emergency Preparedness and Response authority in response to the COVID-19 Public Health Emergency, which was approved by CMS but was not added to the Ch. II, Sec. 29 rule at that time. Appendix K expires on November 11, 2023, and the Department is concurrently going through APA rulemaking for Ch. II, Section 29, to add these services to that rule. The Ch. II, Section 29 rule is a routine technical rule and is being proposed separately in anticipation of its being legally effective on or before November 12, 2023. The Department is proposing a retroactive application date of November 12, 2023, for the rates for the new services in this Chapter III rulemaking, so that both the new services and their rates share the same legal effective date. This retroactive application is authorized by 22 M.R.S. 42(8), as having the retroactive rates for the new services will benefit, and does not harm MaineCare members or providers.* *In accordance with 22 M.R.S. §7402, the Department proposes to implement annual rate adjustments every January 1st. Specifically, Section 29 services that have standard unit rates and that did not receive a rate adjustment within the prior twelve months will receive an annual increase equal to the annual increase in the Consumer*

	Price Index for Urban Wage Earners and Clerical Workers (CPI-W), for the Northeast Region, or its successor index, as published by the United States Department of Labor, Bureau of Labor Statistics or its successor agency. This increase will ensure that rates are sufficient to allow reimbursement for services provided by essential support workers to equal to at least 125% of the minimum wage established in 26 M.R.S. Section 664. Essential support workers are individuals who by virtue of employment generally provide to individuals direct contact assistance with activities of daily living or instrumental activities of daily living or have direct access to provide care and services to clients, patients or residents regardless of the setting. 22 M.R.S. § 7401. The Department proposes that this annual rate adjustment have a retroactive application date of January 1, 2024. This retroactive application is authorized by 22 M.R.S. Sec. 42(8), as this benefits, and does not harm, any MaineCare member or provider. *As authorized by 22 M.R.S. §3173-J, the Department proposes to remove reimbursement rates from the rule. The Department proposes that all Section 29 reimbursement rates will now be solely listed on the MaineCare Provider Fee Schedule, which is posted on the Department's website.* *The Department intends to seek permanent approval from the Centers for Medicare & Medicaid Services (CMS) for the added services and for the increased reimbursement rates.* *Pursuant to 5 M.R.S. Sections 8071 and 8072, the Department expects that the Commissioner will provisionally adopt this rule after the public hearing and responses to public comments, and then submit the rule to the Legislature for approval. This rule will have legal effect only after review by the Legislature followed by final adoption by the Commissioner.*
Basis Statement:	*The Department is finally adopting the following changes to this major substantive rule:* *The Department has added new services, effective March 1, 2024, which will be reimbursed pursuant to this rule:* • *Home Support - Quarter Hour (Self-Directed)* • *Shared Living – Two Members served* • *Shared Living - One Member, Increased level of support* • *Shared Living - Two Members, Increased level of support* • *Home Accessibility Adaptations (Self-Directed)* • *Home Accessibility Adaptations Repairs (Self-Directed)* • *Assistive Technology – Devices (Self-Directed)* • *Assistive Technology – Transmission (Self-Directed)* • *Community Support - Community Only – Individual (Self-Directed)* • *Community Support - Community Only - Individual (Provider-Managed)* • *Community Support - Community Only – Group* • *Financial Management Services (Self-Directed)* • *Supports Brokerage (Self-Directed)* • *Individual Goods and Services (Self-Directed)* *Provision of these services was originally implemented through the Appendix K:*

Emergency Preparedness and Response authority in response to the COVID-19 Public Health Emergency, which was approved by the Centers for Medicare & Medicaid Services (CMS) but was not added to MBM Chapter II, Section 29 at that time. The Department has permanently added these services to the Chapter II, Section 29 rule, when it adopted the rule amendment, which was legally effective on January 24, 2024. The Department received approval from CMS for the added services and for the increased reimbursement rates, in the Section 29 § 1915(c) home and community-based services waiver. MBM Chapter II, Section 29 had a prospective legal application date of March 1, 2024, for the new services.

The reimbursement provisions in this rule, for the new services listed above, have a retroactive effective date of March 1, 2024, while the annual cost of living increase provision is effective retroactive to January 1, 2024. Other changes in Chapter III, Section 29 are effective upon final adoption of this rule. As a result, both the new services and provisions for their reimbursement share the same legal effective date. Retroactive application, authorized by 22 M.R.S. § 42(8), benefits and does not harm MaineCare Members or providers.

The Department received CMS approval of provisions for reimbursing the newly added services in this rule with an effective date of March 1, 2024.

In accordance with 22 M.R.S. §§ 7402 and 3173-J, the Department implements annual rate adjustments every January 1st. Specifically, Section 29 services that have standard unit rates and that did not receive a rate adjustment within the prior twelve months will receive an annual adjustment equal to the annual increase in the Maine minimum wage, in accordance with 26 M.R.S. § 664(1).

The rule language provides that rates are sufficient to allow reimbursement for services provided by essential support workers to equal to at least 125% of the minimum wage established in 26 M.R.S. § 664. Essential support workers are individuals who by virtue of employment generally provide to individuals direct contact assistance with activities of daily living or instrumental activities of daily living or have direct access to provide care and services to clients, patients or residents regardless of the setting. 22 M.R.S. § 7401. This annual rate adjustment is effective retroactive to January 1, 2024. This retroactive application is authorized by 22 M.R.S. § 42(8), as this benefits and does not harm any MaineCare member or provider.

After this rule was approved by the Legislature, it was brought to the attention of the Department that the precise statutory directive in 22 M.R.S. Sec. 7402(1), was that the Department needed to ensure that the COLA increase would be sufficient to ensure that the labor components of the reimbursement rates (not the entire reimbursement rate) for essential support workers equaled at least 125% of the minimum wage established in 26 M.R.S. Sec. 664. After conferring with the Office of the Attorney General, the Department determined it would not make a change to the rule language, but rather inserted a "NOTE" into the rule. The Department will enforce the precise statutory directive in 22 M.R.S. Sec. 7402(1).

	The Department removed reimbursement rates from the rule in accordance with 22 M.R.S. § 3173-J. All Section 29 reimbursement rates are now solely listed on the MaineCare Provider Fee Schedule, which is posted on the Department's website. *The Maine State Legislature authorized final adoption of this Ch. III major substantive rule. Resolves 2023, ch. 133 was approved by Governor Mills on March 6, 2024. The final adopted rule makes the permanent changes to this rule as required by the Maine State Legislature. The Resolve contained an emergency clause, so that the legislation took effect when approved, on March 6, 2024. Pursuant to the Maine Administrative Procedure Act, this final major substantive rule shall become effective thirty days after filing with the Secretary of State's Office. 5 M.R.S. §8072(8).*

10-144 Department of Health and Human Services, Office for Family Independence	
2024-117: Chapter 301, Supplemental Nutrition Assistance Program (SNAP) Rule	
Statutory Authority:	22 M.R.S. §§ 42(1) and (8); 3104(13)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*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.* *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.*
Principal purpose:	*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://aspe.hhs.gov/poverty-guidelines on January 17. See also, Annual Update of the HHS Poverty Guidelines, Federal Register 89:11 (January, 17, 2024) pages. 2961-2963, https://www.govinfo.gov/content/pkg/FR-2024-01-17/pdf/2024-00796.pdf. The Department proposes to incorporate these figures effective retroactive to January 11, 2024. 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. The changes to Section 999-3 Chart 4 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) requires that FPL tests are updated each year, effective October 1st. The U.S. Department of Health and Human Services provided the updated Federal Poverty Guidelines on January 17, 2024. These figures are included in the figures updated each federal fiscal year per 7 C.F.R. § 273.9(a)(4). The Department proposes to incorporate these figures effective October 1, 2024. Incorporating these changes to Section 999-3 Chart 1, Chart 2, and Chart 3 will make SNAP benefits and the related SNAP Employment and Training (E&T) services available to more Maine households and reduce rulemaking effort and improve efficiency.*
Basis Statement:	*The adopted rule make the following changes:* *1) Federal Poverty Level: 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://aspe.hhs.gov/poverty-guidelines on January 17. See also, Annual Update of the HHS Poverty Guidelines, Federal Register 89:11 (January, 17, 2024) pages. 2961-2963, https://www.govinfo.gov/content/pkg/FR-2024-01-17/pdf/2024-00796.pdf. The adopted rule effectuates these figures retroactive to January 11, 2024. 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. The changes to Section 999-3 Chart 4 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) requires that FPL tests are updated each year, effective October 1st. The U.S. Department of Health and Human Services provided the updated Federal Poverty Guidelines on January 17, 2024. These figures are included in the figures updated each federal fiscal year per 7 C.F.R. § 273.9(a)(4). The adopted rule effectuates these figures October 1, 2024. Changes to Section 999-3 Chart 1, Chart 2, and Chart 3 will make SNAP benefits and the related SNAP Employment and Training (E&T) services available to more Maine households and reduce rulemaking effort and improve efficiency.

2) SNAP Utility Allowances:The Department determined it necessary to make a non-substantial change to Chart 8 to correct a clerical error that occurred with SNAP Rule #231 as the adopted redline rule pages differed from the clean adopted rule pages. SNAP Rule #231 went through the Maine Administrative Procedures Act rulemaking process pursuant to 5 M.R.S. §§ 8051-8064. SNAP Rule #231 was noticed correctly pursuant to 5 M.R.S. § 8053 on October 4, 2023 and the comment deadline ran through November 6, 2023. No comments were received. SNAP Rule #231 was adopted by the Commissioner on November 28, 2023, filed with the Secretary of State on November 28, 2023, and became effective on December 3, 2023. The rule package filed with the Secretary of State had the correct red lined rule, which correctly showed the Commissioner's adopted changes. Unfortunately, the "clean" rule filed with the Secretary of State did not contain the Commissioner's adopted changes to the rule. The Office of the Attorney General provided guidance that the Department had adopted the rule with changes, and it was a clerical error that the rule was not posted on the Secretary of State website. To correct the clerical mistake in SNAP Rule #231, this adopted rule implements the Full Standard Utility Allowance (FSUA), Non-Heat Standard Utility Allowance (NHUA) and Phone Standard Utility Allowance (PHUA) figures listed in Chart 8, for FFY 2024 consistent with the adopted SNAP Rule #231 which was effective December 3, 2023.

This rule will not have an adverse impact on municipalities or small businesses.

10-144 Department of Health and Human Services, Office for Family Independence	
2024-118: Chapter 609, Supplemental Nutrition Assistance Program – Employment and Training (SNAP E&T) Rule	
Statutory Authority:	22 M.R.S. § 42(1) and (8)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The transportation reimbursement is limited to $50 per week, unless otherwise approved by the Department. The proposed rule change will have no financial impact on the amount of SNAP benefits issued.*
Principal purpose:	*The proposed rule would update Section 8(I) Support Service Limits – Mileage Reimbursement to be consistent with the rate afforded to those covered under the Maine Service Employees Association (MSEA) contract. The proposed rule change would refer readers to the State of Maine rate found on the DHHS, Department of Administrative and Financial Services, Office of State Controller at https://www.maine.gov/osc/travel/mileage-other-info. In addition, the proposed rule would add DHHS, Divisions of Contract Management and Audit requirements for distribution of gift cards when E&T Participant Reimbursements are issued.* *The proposed rule change would be effective retroactive to January 1, 2024. 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 Section 8(I) Support Service Limits – Mileage Reimbursement to align with the rate afforded to those covered under the Maine Service Employees Association (MSEA) contract. The adopted rule refers readers to the State of Maine rate found on the Department of Administrative and Financial Services, Office of State Controller at https://www.maine.gov/osc/travel/mileage-other-info. In addition, the adopted rule adds DHHS, Divisions of Contract Management and Audit requirements for distribution of gift cards when E&T Participant Reimbursements are issued.* *For clarification, the Fact Sheet filed with the State of Maine's Secretary of State's Office indicated an effective retroactive date of January 1, 2024, which was an error and was inconsistent with the proposed rule which stated March 1, 2024. The adopted rule change is consistent with the proposed rule and is effective retroactive to March 1, 2024. 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 correct two typographical errors in the third paragraph of Section 8. The sentence reads "Providers must follow their approved policies and procedures which includes abiding by all prior authorizations and Participant Reimbursement caps in their contract in issuing gift cards for the purpose of Participant Reimbursements."* *This rule will not have an adverse impact on municipalities or small businesses.*

10-144 Department of Health and Human Services, Office for Family Independence	
2024-119: Chapter 330, Higher Opportunity for Pathways to Employment (HOPE) Program Rules	
Statutory Authority:	22 M.R.S. §§ 42(1) and (8); 3790-A(6)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The HOPE Program limits total mileage reimbursement at one hundred forty dollars ($140) weekly for transportation necessary for Participants to engage in Training or Education activities or a combination of Training or Education and employment activities. This rule does not change that weekly limit. The proposed rule change will have no financial impact on the amount of HOPE benefits issued.*
Principal purpose:	*The proposed rule change would update Section 4(B)(3) – Transportation to be consistent with the rate afforded to those covered under the Maine Service Employees Association (MSEA) contract. The proposed rule change would refer readers to the MSEA rate found at https://www.maine.gov/osc/travel/mileage-other-info.* *The proposed rule change would be effective retroactive to March 1, 2024. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as this update provides a benefit to HOPE recipients or beneficiaries and does not adversely impact applicants, participants, beneficiaries, or providers.*
Basis Statement:	*The adopted rule updates Section 4(B)(3) – Transportation to align with the rate afforded to those covered under the Maine Service Employees Association (MSEA) contract. The adopted rule refers readers to the State of Maine rate found on the Department of Administrative and Financial Services, Office of State Controller at https://www.maine.gov/osc/travel/mileage-other-info. The Department determined it necessary to make a non-substantive change to provide clarity to the final rule. Section 4(3) is updated to read "Effective March 1, 2024, mileage will be paid at the State of Maine mileage reimbursement rate set by the Department of Administrative and Financial Services Office of the State Controller found at https://www.maine.gov/osc/travel/mileage-other-info for the most direct route up to the weekly limit."* *The adopted rule change is effective retroactive to March 1, 2024. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as this update provides a benefit to HOPE recipients or beneficiaries and does not adversely impact applicants, participants, beneficiaries, or providers.* *This rule will not have an adverse impact on municipalities or small businesses.*

10-144 Department of Health and Human Services, Office for Family Independence	
2024-127: Chapter 332, MaineCare Eligibility Manual	
Statutory Authority:	22 M.R.S. §§ 42(1) and 8; 3174-G(1); 3174-FFF; and 3174-LLL
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The Department anticipates this rulemaking will cost approximately $733,726 in SFY 2024, which includes $194,969 in state dollars and $538,757 in federal dollars, and $4,255,259 in SFY 2025, which includes $1,133,592 in state dollars and $3,121,649 in federal dollars. In SFY 2026 and each subsequent year, the anticipated cost of this rulemaking is $4,827,612, which includes $1,286,859 in state dollars and $3,540,753 in federal dollars.*
Principal purpose:	*In addition, the Department submitted and received approval from the Center for Medicaid and CHIP Services for a CHIP State Plan Amendment to establish a Health Services Initiative (HSI) to provide comprehensive coverage during the 12-month postpartum period for individuals whose newborns had been eligible as targeted low-income children under the from-conception-to-end-of-pregnancy (FCEP) option. The benefits provided during this postpartum period are identical to the benefits provided to pregnant individuals enrolled in MaineCare. The Department's recently approved SPA is consistent with Social Security Act § 2105(a)(1)(D)(ii) and 42 C.F.R. § 457.10. The proposed rule changes would increase access to health insurance coverage.* *The Department proposes to amend Part 2, Section 1, Cub Care, to "This program provides coverage for children under the age of 19 within certain income limits and different eligibility rules than Medicaid."* *Part 3, Section 4.2.1 and Section 4.3 are changed to allow Transitional MaineCare (TM) coverage to begin the month after the individual becomes ineligible for MAGI coverage. In addition, the Department proposes to change the examples in these sections to show that the 12 months of TM coverage begins the month after the MAGI coverage closes due to the report of increased earnings or increased alimony.* *The Department proposes to change pregnant woman to pregnant individual in Part 3, Section 2.2(II) and Part 3, Section 4.1.1(IV).* *The Department proposes to amend Part 2, Section 13.1(III) to include "Effective December 1, 2023, pregnant individuals who are found eligible for Children's Health Insurance Program (CHIP), and enrolled in CHIP while pregnant, under Part 3, Section 2.3(III) are continuously eligible for 12 months beyond the date the pregnancy ends."* *Part 3, Section 2.3(III) would be updated to "Effective December 1, 2023, pregnant individuals who are found eligible for the Children's Health Insurance Program (CHIP), and enrolled in CHIP while pregnant, eligibility from conception to end of pregnancy extends 12 months beyond the month in which the pregnancy ends, regardless of any subsequent changes in household income." In addition, the Department proposes to change the countable income section to state: "Countable*

	income is equal to or less than 208% FPL." *Part 8, Section 4 would remove the asset test for all Medicare Savings Plan coverage types effective retroactive to January 1, 2024.* *Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these updates provide a benefit to recipients and applicants.*
Basis Statement:	*The adopted rule removes the asset test for the Medicare Savings Program (MSP) based on a legislative change to 22 M.R.S. § 3174-LLL made by P.L. 2023, ch. 412.* *In addition, the Department submitted and received approval from the Center for Medicaid and CHIP Services for a CHIP State Plan Amendment to establish a Health Services Initiative (HSI) to provide comprehensive coverage during the 12-month postpartum period for individuals whose newborns had been eligible as targeted low-income children under the from-conception-to-end-of-pregnancy (FCEP) option. The benefits provided during this postpartum period are identical to the benefits provided to pregnant individuals enrolled in MaineCare. The Department's recently approved SPA is consistent with Social Security Act § 2105(a)(1)(D)(ii) and 42 C.F.R. § 457.10. The adopted rule changes increase access to health insurance coverage.* *The adopted rule amends Part 2, Section 1, Cub Care, to "This program provides coverage for children under the age of 19 within certain income limits and different eligibility rules than Medicaid."* *Part 3, Section 4.2.1 and Section 4.3 are changed to allow Transitional MaineCare (TM) coverage to begin the month after the individual becomes ineligible for MAGI coverage. In addition, the Department proposes to change the examples in these sections to show that the 12 months of TM coverage begins the month after the MAGI coverage closes due to the report of increased earnings or increased alimony.* *The adopted rule updates Part 3, Section 2.2(II) and Part 3, Section 4.1.1(IV) with pregnant individual replacing pregnant woman.* *The adopted rule amends Part 2, Section 13.1(III) to include "Effective December 1, 2023, pregnant individuals who are found eligible for Children's Health Insurance Program (CHIP), and enrolled in CHIP while pregnant, under Part 3, Section 2.3(III) are continuously eligible for 12 months beyond the date the pregnancy ends."* *Part 3, Section 2.3(III) is updated to "Effective December 1, 2023, pregnant individuals who are found eligible for the Children's Health Insurance Program (CHIP), and enrolled in CHIP while pregnant, eligibility from conception to end of pregnancy extends 12 months beyond the month in which the pregnancy ends, regardless of any subsequent changes in household income." In addition, the adopted rule updates the countable income section to state: "Countable income is equal to or less than 208% FPL."* *Part 8, Section 4 removes the asset test for all Medicare Savings Plan coverage types*

	effective retroactive to January 1, 2024. *Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these updates provide a benefit to recipients and applicants.* *The Department determined it necessary to make non-substantial changes to the final rule to align the MaineCare Eligibility Manual with legislative changes to 22 M.R.S. §§ 2127 (2 & 6), 3173-K, and 3174-B(3), 3174-G(1B),(D &E), 3174-T, 3174-U, 3174-X(A), 3174-BB(1), 3174-NNN and 24 M.R.S. § 2332-A(2), 24-A MRSA §§ 2844(2) and 2849-B (3, C-1) made by P.L. 2024, Ch. 597, An Act to Correct Language Related to Medicaid Coverage for Children. Throughout the open Parts of this rule, CHIP replaces Cub Care. The final rule is consistent in substance with the rule that was proposed.* *An additional non-substantial change was made to Part 2, Section 13.1(II) "It does not apply to those enrolled in Katie Beckett or those receiving coverage under Transitional MaineCare." The adopted rule removed "enrolled in Katie Beckett or those" as individuals enrolled in Katie Beckett receive 12 months of continuous coverage consistent with Section 1902(e)(12) of the Act and 42 C.F.R. § 435.225. Further, Part 3, Section 2.3(III) removed "prenatal care and pregnancy related." Covered services are detailed in 10-144 C.M.R. Ch. 101, § 106-3(B).* *This rule will not have an adverse impact on municipalities or small businesses.*

10-144 Department of Health and Human Services, Maine Center for Disease Control and Prevention	
2024-132: Chapter 269, Rules Governing Self-Contained Breath Alcohol Testing Equipment	
Statutory Authority:	29-A M.R.S. § 2524(6)
Type:	Routine Technical
Emergency?:	Yes
Fiscal impact:	*None anticipated*
Principal purpose:	*The Department is adopting amendments to this rule to allow for the use of the new breath testing instruments that use a dry gas standard, effective immediately, ensuring new instruments qualify under the rule to be admissible in court for prosecuting Maine's criminal OUI cases. This rule aligns with industry standards (National Highway Traffic Safety Administration ("NHTSA") and National Institute of Standards and Technology ("NIST")).*
Basis Statement:	*The Department of Health and Human Services Maine Center for Disease Control and Prevention ("Department") is adopting, on an emergency basis, partial amendments to 10-144 CMR Chapter 269, Maine's Self-Contained Breath Alcohol Testing Equipment Rule. Adopted amendments update breath testing instruments to allow for the use of a dry gas standard, keeping current with industry standards, (National Highway Traffic Safety Administration ("NHTSA") and National Institute of Standards and Technology ("NIST")). The dry gas method uses an alcohol gas mixture in a sealed pressurized tank or cylinder and an approved gauge. Such a method requires very little maintenance, is more stable, and is less sensitive to temperature than wet bath standards.* *Emergency Justification:* *The dry gas standard for breath alcohol testing is currently being used in the field to perform accuracy checks and calibration adjustments on most evidential breath alcohol testing instruments. Maine Criminal Justice Academy's 2023 Breath Testing Device Operation and Certification Student Manual introduced dry gas standard as a replacement of the wet bath simulator. There are approximately 8,000 breath tests performed each year at law enforcement agencies throughout Maine. These new instruments need to be added to the rule in order for the results they generate to be admissible in court. Without this dry gas standard addition, legal challenges are likely imminent.* *Records generated by Department personnel are critical to establishing a foundation for admissibility of breath test evidence. Due to the anticipated legal challenges for the cases coming up in Maine's courts, the amended rule is implemented on an emergency basis to ensure the potential admissibility of the current model specifications for calibrating units, reducing future challenges of forensic breath alcohol evidence in the prosecution of criminal OUI cases.*

10-144 Department of Health and Human Services, Maine Center for Disease Control and Prevention	
2024-133: Chapter 201, Health Inspection Program Administration Rule	
Statutory Authority:	22 M.R.S. §§ 2491, 2496 and 1551-A; 32 M.R.S. §§ 1242, 4251, 4313 and 4326
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*In 2010-2011, HIP worked with its stakeholders on a four-year graduated fee schedule based on the size of the establishment. Municipal license fees were not increased at that time, nor have they been increased for the previous 18 years. HIP is now proposing to establish a $100 license fee, an increase of $40. PL 125 became effective October 19, 2022, which allows the Department to charge $100 for establishments located in delegated municipalities which currently include Portland, South Portland and Lewiston 22 MRS §2494. There are approximately 868 active municipal licenses, which should result in a revenue increase of $34,720.*
Principal purpose:	*The Department's Health Inspection Program is proposing changes to its rule in order to clarify requirements that are consistent with recent legislative changes to 22 MRS § 2491, as well as reflect improvements in its regulatory oversight of eating establishments, lodging places, campgrounds, recreational and sporting camps, youth camps, public pools and spas, as well as body artists. The Department is proposing to increase licensing fees for delegated municipalities as well as increase administrative fine amounts for non-compliant licensees, to more accurately cover the work performed by the Health Inspection Program, in performing this work. The Department is also proposing to rename this rule from Administration and Enforcement of Establishments Licensed by the Health Inspection Program Rule to the Health Inspection Program Administration Rule.*
Basis Statement:	*The Maine Department of Health and Human Services (Department) proposed rulemaking changes to partially amend its Rules Relating to the Administration and Enforcement of Establishments Regulated by the Health Inspection Program on December 27, 2023. The Department held a public hearing on the proposed rule,(renamed Health Inspection Administration Rule) on January 8, 2024. Written comments were accepted by the Department through January 28, 2024.* *This Health Inspection Administration Rule is administered by the Department's Maine CDC Health Inspection Program, for the licensing and the regulation of establishments governed by 22 MRS Chapter 562, which authorizes the Department to license eating establishments, lodging places, campgrounds, youth camps, sporting/recreational camps, and public pools and spas. The Department amended this rule by adding new definitions and sections, clarifying rule language, rearranging existing sections, and updating formatting elements, to align with Maine CDC rulemaking conventions.* *Additionally, the Department clarified the requirements for a Certified Food Protection Managers' proof of certification and added that a pest infestation will now require an establishment to hire a CFPM.* *A new requirement was added to application and licensing for the underpayment, or the return of payment by a license applicant due to insufficient funds. Youth camp applicants must now include a site plan as part of a license application. Additionally,*

a new updated license application must be submitted for any new construction or extensive renovation at the youth camp. For Campground licenses and event/temporary camping licenses, the amended rule adds the requirement for a license when a commercial property receives compensation for five (5) or more tents or recreational vehicles. The Department also clarified when a campground or event/temporary camping license is required.

This rule change clarified that those licensed by the Health Inspection Program are also responsible for complying with all other applicable rules and statutes. This clarification mirrors language already in statute, which states that the issuance of a license does not provide exemption from other state or local laws, ordinances or rules or any other provision of law, 22 MRS § 2495. The Department also updated an application requirement if alcohol is served on the premises, so that a copy of the applicant's liquor license must be included with an application for an eating and lodging license. Additionally, the Department clarified in the amended rule that Bed and Breakfasts (B&B) may only serve alcoholic beverages to its guests.

Under fees, the Department added a license category: Eating Place – Mobile Base Kitchen, to the License Fee Schedule that carries a $100 licensing fee. Applicants and licensees within municipalities with delegated authority are now required to pay $40 more for license fees, an increase from $60 to $100, based on recent public law (October 19, 2022, PL 2021, ch.125, Section 12), which amended 22 MRS § 2494 (2). The Department's Health Inspection Program currently licenses approximately 868 active municipal establishments, resulting in a projected revenue increase of $34,720.

The Department clarified language in the rule regarding inspections for licensed establishments, including the Department's right of entry as well as inspection intervals. This adopted rule also shortens the correction period for non-critical violations from 90 days to 30 days.

The Department removed the allowance for any entity other than the Department to conduct youth camp inspections, to increase protection of the health and safety of campers. Additionally, the Department clarified that a new license application is required upon a change in member ownership of an LLC. The Department added a section regarding detained/embargoed goods to ensure that the Department's authority under 22 MRS § 2503 is enforceable in rule.

The Department also clarified its authority to temporarily suspend a license of any non-compliant establishment. Such establishments may now be subject to higher administrative fines, to increase deterrence of continued or increased violations. All administrative fines may be avoided by remaining in compliance or returning to compliance by working with the Department within the specified timeframe. The Department also updated penalty schedules for rule violations that include but are not limited to operating without a license, operating during a temporary suspension, repeated violations, and failing to hire a Food Safety Consultant.

In the amended adopted rule, the Department has added two new decisions to the list of actions subject to appeal. They include the Department's voiding of an

	erroneously issued license and the Department's determination that a variance was violated. The rule also includes a new section describing the Department's process for addressing any licenses issued in error.

10-144 Department of Health and Human Services, Office for Family Independence	
2024-135: Chapter 331, Public Assistance Manual (TANF)	
Statutory Authority:	22 M.R.S. §§ 42(1) and (8); 3762(3)(A) and (8)(C); 3763(1) and (1-A); 3769-A; 3769-C(1)(D); and 3786; P.L. 2021, ch. 97, §§ 1 and 2
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The increased benefit amounts will result in an anticipated additional expenditure of $4,715,653 per year from the Federal TANF Block Grant for federally funded benefits and $449,568 per year from in state General Funds for state funded benefits. These expenditures will primarily be realized as income for Maine businesses where they are spent.*
Principal purpose:	*The proposed rulemaking seeks to clarify program requirements in Chapters I, II, IV and V for applicants and the Department as they relate to non-citizen eligibility. These requirements are consistent with 42 U.S.C. § 602 and 45 C.F.R. § 260. Proposed Asset limit changes in Chapter III are consistent with P.L. 2023 Ch. 366, An Act to Allow Maine Families to Increase Their Savings by Changing the Asset Limits for Eligibility for the Temporary Assistance for Needy Families Program. Throughout the proposed rule's affected sections "Noncitizens" replaces "aliens."* *This rulemaking proposes additions to the Table of Contents to provide ease in locating updated language in the affected sections of the rule.* *The definition of "Elderly" has been updated in the Introductions and General Definitions consistent with 22 M.R.S. § 3762(3)(B)(2)(a). The definition of Federal Poverty Level (FPL) includes reference to periodic updates in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).* *This rulemaking proposes Chapter I updates to the hardship extension categories and eligibility criteria for clarity and consistency, including:* • *Consistent with 20 C.F.R. § 404.1505 incapacity would be replaced with impairment in Ch. I (J)(3)(g)(ii)(a)(2)(a) and (b) and Ch. V(A)(1)(a)(ii);* • *(J)(3)(g)(ii)(a)(2)(a) and (b): Disability is defined consistent with that of the Social Security Administration;* • *(J)(3)(g)(ii)(4): Participation in a Training or Education Program proposes to remove the requirement that an individual is only eligible for this extension if they are participating in a training or education program "in the 60th month of receipt of TANF/PaS". J(4)(a) through (d) are removed as these are identified elsewhere (10-144 C.M.R. Ch. 60, ASPIRE-TANF Program Rules, Section (3)(IV)(A)(3)(a));* • *(J)(3)(g)(ii)(5): Working Families proposes to remove the requirement that an individual is only eligible for this extension if they are participating in paid employment "for at least 35 hours a week" and proposes to add (a) through (e) to provide clarification regarding paid employment standards consistent with 42 U.S.C. § 607(c)(B)(i);* • *(J)(3)(g)(ii)(6): Pregnancy proposes to remove "in the 60th month of TANF/PaS receipt." And proposes to add "This extension is limited to one occurrence in the adult's lifetime;*

- *(J)(3)(g)(ii)(7)(c): Loss of Job proposes to remove "and would be eligible except that they have not worked for a sufficient length of time". In addition, "provided there is a break in TANF for at least 12 months between the two extension periods" is intended to be removed;*
- *(J)(3)(g)(ii)(8): Occurrence of an Emergency Situation "This extension must be approved by the TANF Program Manager" is proposed to be removed. In addition, b through e would be added to provide clarification regarding homelessness, inadequate or unavailable childcare or transportation required to engage in substantial gainful activity, and a delay caused by a third-party in obtaining non-financial verifications required to make a hardship extension eligibility determination beyond the verification due date. In addition, "additional incremental extensions of up to six months each may be granted" is proposed; and*
- *(J)(3)(i)(v)(c)(3) "DSER or QC" is added for clarification to "fails to cooperate with their Family Contract Amendment during the temporary hardship extension period."*

Consistent with 8 U.S.C. Ch. 12, the Department proposes significant Chapter II updates which provide clarification for program citizenship and noncitizen eligibility requirements, verification requirements and application processing timeframes.

The Department proposes to clarify Chapter V (3)(c) by waiving the Parent Fee Requirement for any family with a gross weekly income equal to or less than 250%. Ch. V (4)(c)(ii) calculation of the parent fee is updated to align with Ch. V (3)(c) as permitted by 22 M.R.S. § 3762(8)(C).

All the above proposed changes would be effective upon adoption.
The proposed rule would remove "Escalating Sanctions" and associated language from Ch. II (F)(1)(d), (H)(3), and (H)(3)(a)(i and ii). Ch. II (H)(3) proposes clarification to benefits termination due to failure to comply with program requirements. In addition, this rule proposes to remove Chapter II (H)(3)(f). The Department proposes this provision with a retroactive application to October 18, 2021, as required by P.L. 2021, ch. 97, §§ 1 and 2.

Pursuant to 22 M.R.S. § 3762(8)(C), Appendix Charts page 3, Worksheet For Calculating TCC Parent Fees and Subsidy Payments, would be updated based on Federal Poverty Level (FPL) figures published in the Annual Update of the HHS Poverty Guidelines, 88 Fed. Reg. 3424. https://www.federalregister.gov/documents/2023/01/19/2023-00885/annual-update-of-the-hhs-poverty-guidelines. The Department proposes this provision with a retroactive application to February 5, 2023.
Chapter III, Asset limit changes consistent with P.L. 2023 Ch. 366 would be effective retroactive to October 25, 2023.
22 M.R.S. § 3769-C(1)(D) requires that the Department increase Appendix Chart, page 2, Standard of Need and Maximum Grant, each October based on the Cost-of-Living Increase used by the Social Security Administration. This rulemaking would apply these changes effective retroactive to October 1, 2023.
Retroactive rulemaking is authorized by the Legislature in accordance with 22 M.R.S. § 42(8) because the rule provides a benefit to recipients and beneficiaries and does

	not have an adverse financial effect on either providers or recipients.
Basis Statement:	*The adopted rule clarifies program requirements in Chapters I, II, IV and V for applicants and the Department as they relate to non-citizen eligibility. These requirements are consistent with 42 U.S.C. § 602 and 45 C.F.R. § 260. Asset limit changes in Chapter III are consistent with P.L. 2023 Ch. 366, An Act to Allow Maine Families to Increase Their Savings by Changing the Asset Limits for Eligibility for the Temporary Assistance for Needy Families Program.* *The adopted rule clarifies Chapter V (3)(c) by waiving the Parent Fee Requirement for any family with a gross weekly income equal to or less than 250%. Ch. V (4)(c)(ii) calculation of the parent fee is updated to align with Ch. V (3)(c) as permitted by 22 M.R.S. § 3762(8)(C).* *The adopted rule removes "Escalating Sanctions" and associated language from Ch. II (F)(1)(d), (H)(3), and (H)(3)(a)(i and ii). Ch. II (H)(3) provides clarification to benefits termination due to failure to comply with program requirements. In addition, this rule removes Chapter II (H)(3)(f). This provision has a retroactive application to June 1, 2022, as required by P.L. 2021, ch. 97, §§ 1 and 2.* *Pursuant to 22 M.R.S. § 3762(8)(C), Appendix Charts page 3, Worksheet For Calculating TCC Parent Fees and Subsidy Payments, is updated based on Federal Poverty Level (FPL) figures published in the Annual Update of the HHS Poverty Guidelines, 88 Fed. Reg. 3424. https://www.federalregister.gov/documents/2023/01/19/2023-00885/annual-update-of-the-hhs-poverty-guidelines. This provision has retroactive application dates to February 5, 2023 and February 4. 2024.* *Chapter III, Asset limit changes consistent with P.L. 2023 Ch. 366 are effective retroactive to October 25, 2023.* *22 M.R.S. § 3769-C(1)(D) requires that the Department increase Appendix Chart, page 2, Standard of Need and Maximum Grant, each October based on the Cost-of-Living Increase used by the Social Security Administration. This rulemaking applies these changes effective retroactive to October 1, 2023.* *Retroactive rulemaking is authorized by the Legislature in accordance with 22 M.R.S. § 42(8) because the rule provides a benefit to recipients and beneficiaries and does not have an adverse financial effect on either providers or recipients.* *The following changes have been made to the adopted rule:* *Table of Contents:* *Chapter X - The Department determined it necessary to make a non-substantial change to the outline of Chapter X - Parents as Scholars for consistency with the Table of Contents Chapter outlines. The adopted rule removed the reference to PaS in the Table of Contents.* *Introduction and General Definitions:* • *Page 1 adds "In a trauma informed and linguistically appropriate manner. Applicants and recipients" to the last paragraph;* • *The definition for Alien is removed and a Noncitizen definition is added;* • *The definition for Alien Sponsor is removed and a Noncitizen Sponsor*

definition is added;

- *A definition for Executive Office for Immigration Review (EOIR) is added;*
- *A definition for Immigration Court is added; and*
- *A definition for United States Department of Justice (DOJ) is added.*

Chapter I:

- *(C)(1)(b)(iii)(g) updates Immigration and Naturalization Service to United States Citizenship and Immigration Services (USCIS).*
- *D)(4)(a)(iii) is added as "A sworn statement from the applicant may be provided attesting to the circumstances that make the individual unable to attend orientation; or"*
- *(D)(4)(a)(iv) is added as "A department issued form may be completed and signed, attesting to the circumstances that make the individual unable to attend orientation. Supporting documentation may be required if articulable doubt exists regarding the credibility of the provided self-attested statements or forms."*
- *(J)(3)(g)(ii)(a)(1)(a) is updated to include sexual assault and assault.*
- *(J)(3)(g)(ii)(a)(1)(b) adds (iii) "A sworn statement from the applicant or recipient may be provided attesting to the circumstances that provide the basis for the Domestic Violence extension; or"*
- *(J)(3)(g)(ii)(a)(1)(b) adds (iv) "A department issued form may be completed and signed by the applicant or recipient, attesting to the circumstances that provide the basis for the Domestic Violence extension. Supporting documentation may be required if articulable doubt exists regarding the credibility of the provided statements or forms.*
- *(J)(3)(g)(ii)(a)(1)(b) adds (v) "Supporting documentation may be required if articulable doubt exists regarding the credibility of the provided statements or forms."*
- *(J)(3)(g)(ii)(a)(2)(a)(i) adds "or a signed statement from a medical professional (see note below regarding minimum requirements)."*
- *()J(3)(g)(ii)(a)(2) is updated with "NOTE: Statements from medical professional must be signed, dated and provided on company or provider letterhead. The letter must at a minimum contain the adult's name, date of birth, diagnoses, information regarding any work or functional limitation(s), date of last exam, date for when the limitations began and estimated amount of time the limitation(s) are expected to last."*
- *(J)(3)(g)(ii)(a)(2)(b)(i) adds "or signed statement from a medical professional (see note above regarding minimum requirements)".*
- *(J)(3)(g)(ii)(a)(3) adds "and is unable to engage in substantial gainful activity."*
- *(J)(3)(g)(ii)(a)(3)(c) removes "full-time".*
- *(J)(3)(g)(ii)(a)(8) removes "other than citizenship or alien status."*
- *(J)(3)(g)(ii)(a)(8)(b) is updated to "Homelessness or have an active eviction not caused by misuse of property by the tenant, tenant's family or invitee of the tenant, including: criminal activity, substantial damage caused to the premises, or nuisance within the premises; or"*
- *(J)(3)(g)(ii)(a)(8)(e) adds "when the applicant, or recipient, initiated attainment of the required documentation prior to the verification due date."*

Chapter II:

- *(C)(3)(a)(ii) adds "All requests for verification will be made in writing in accordance with the "Verification and Documentation" standards as defined in Chapter 1, Section D(5)."*
- *(C)(3)(a)(ii) adds clarifying language for Supplemental Verification in (a)(1-2), (b)(1-2), (b)(3)(a-d). In addition, throughout Chapter II proposed "Supplemental Verifications" have been removed.*
- *(C)(3)(a)(ii)(b)(1) and (C)(4)(a)(ii)(b)(1) adds "noncitizen" to status.*
- *Throughout Chapter II Lawful Permanent Resident replaces Legal Permanent Resident.*
- *Throughout Chapter II, unexpired has been removed from "the most current unexpired version of a letter or other document from DHS stating that they have received an application for asylum or a document…"*
- *(C)(3)(a)(3)(b) adds "the individual's immigration related A-Number. Throughout Chapter II, A-Number replaces an individual's USCIS number.*
- *(C)(3)(b)(v)(a)(1-2) 8 U.S.C. § 1641 replaces 8 U.S.C. § 1522.*
- *(C)(3)(b)(v) updates "c. Supplemental Verification" to "Additional Supplemental Verification."*
- *(C)(3)(b)(viii) Afghan Special Immigrants replaces Afghani Special Immigrants.*
- *(C)(3)(b)(x)(c) "Additional Supplemental Verification" replaces "Acceptable Verification of this type".*
- *(C)(3)(b)(xi)(c) is rewritten as "Additional Acceptable Verification of this type is—Verification through the trafficking victims' verification toll-free number, (866) 401-5510".*
- *(C)(3)(a)(ii)(a)(2) and (C)(4)(ii)(a)(2) are updated to "In instances where a response from DHS indicates that DHS cannot yet provide a definitive result due to a technical error, the Department shall honor the attested to status on the supplemental verification until such time that a data match response is received from DHS."*
- *(C)(4) adds "An individual who is not a citizen or national of the United States must present proof of immigration registration from the U.S. Citizenship and Immigration Services (USCIS), Department of Justice (DOJ) or other documents indicating the individual's noncitizen status."*
- *(C)(4)(a)(i) adds "or electronic verification through the Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) are the controlling verification types."*
- *(C)(4)(a)(ii) adds "with DHS or DOJ," "Supplemental Verifications" may be provided to aid in the data match verification process. All requests for verification will be made in writing in accordance with the "Verification and Documentation" standards as defined in Chapter I, Section (D)(5)."*
- *(C)(4)(a)(ii)(a)(1-2) is added beginning with "Supplemental Verification serves two purposes:" for further clarity.*
- *(C)(4)(a)(ii)(b) is added "Unless detailed otherwise within the type below, Supplemental Verification is the most current version of a letter or other documents from DHS or DOJ or a signed affidavit from an attorney that includes". In addition, (4)(a)(ii)(b)(1-3) are added.*
- *(C)(4)(a)(v)(b) adds "Acceptable verification of this condition is a letter or*

other document that indicates the household member is experiencing domestic violence or the effect thereof from:"

- *(C)(4)(a)(v)(b)(g) is added "A sworn statement from the applicant or recipient may be provided, or a department issued form can be completed, attesting to the circumstances that provide the basis for the exception. Supporting documentation may be required if articulable doubt exists regarding the credibility of the provided statements or forms."*
- *(C)(5)(a)(ii) removes "with DHS."*
- *(C)(5)(b)(2)(a) "A-Number" replaces Alien number or USCIS registration number.*
- *(C)(5)(b)(2)(g) is added "Any documentation that would serve as acceptable or supplemental verification of the declared citizenship, noncitizen status or special conditions as defined in Sections 3 and 4 above for the respective declaration of status or special conditions."*
- *(C)(5)(b)(2)(ii) adds "initial" application.*
- *(C)(5)(b)(iv)(a)(2)(b)(iv) adds "If otherwise eligible, benefits will be granted until the data match has been completed."*
- *(C)(5)(b)(iv)(a)(2)(c) is updated to "If documentary verification has been provided, the Department shall attempt a data match in a period not to exceed 7 calendar days from the date the documentary verification is received by the Department. The attested status or special conditions are honored until such time that the data match provides the Department with a response based on the documentary verification provided by the applicant. If otherwise eligible, benefits will be granted until the data match response is received.*
- *(G)(3)(b) adds "orally or in writing" and "Good cause can be requested at any time."*
- *(G)(3)(b)(ii)(f) removes "In the absence of all potential documentation listed in a. through e. above." And adds "A sworn statement from the applicant or recipient may be provided" and "Supporting documentation may be required if articulable doubt exists regarding the credibility of the provided statements or forms."*
- *(G)(3)(b)(iii) removes "would be against the best interest of the child or other family" and adds "may result in physical or emotional harm to one or more of the household" members.*

Chapter III:

- *(B) and (B)(1)(c) noncitizens replaces aliens. Chapter IV, D(5)(a)(i) USCIS replaces INS.*

The Department finds that it is necessary to update the Charts: Appendix – Weekly Gross Income by Family Size effective February 4, 2024 to remain in compliance with corresponding federal standards set by the U.S. Department of Health and Human Services. This update is consistent with the 2024 Federal Poverty Levels published in the Annual Update of the HHS Poverty Guidelines, 89 Fed. Reg. 2961. https://www.federalregister.gov/documents/2024/01/17/2024-00796/annual-update-of-the-hhs-poverty-guidelines, updated at https://aspe.hss.gov/poverty-guidelines on January 17, 2024. This is a retroactive change to cover the period from February 4, 2024 through until June 3, 2024.

	Retroactive rulemaking is authorized by the Legislature in accordance with 22 M.R.S. § 42(8) because the rule provides a benefit to recipients and beneficiaries and does not have an adverse financial effect on either providers or recipients. *This rule will not have an adverse impact on municipalities or small businesses.*

10-144 Department of Health and Human Services	
2024-153: Ch. 101, MaineCare Benefits Manual, Ch. II, § 23, Developmental and Behavioral Clinic Services	
Statutory Authority:	22 M.R.S. §§42, 3137-J, 4063-A
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The Department anticipates that this rulemaking will cost approximately $852,421 in SFY 2025, which includes $310,530 in state dollars and $541,891 in federal dollars, and approximately $852,421 in SFY 2026 and forward, which includes $311,768 in state dollars and $540,653 in federal dollars.*
Principal purpose:	*The Department of Health and Human Services (the "Department") proposes the following changes to 10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Chapter II, Section 23, Developmental and Behavioral Evaluation Clinic Services.* *The proposed rule adds "Foster Care Comprehensive Health Assessments" (CHA) as a covered service in accordance with P.L. 2019, ch. 162 (An Act To Ensure the Provision of Medical Assessments for Youth in Foster Care), codified at 22 MRSA §4063-A. The new service will provide timely, comprehensive evaluations for children in foster care that align with the Child Welfare League of America (CWLA) and the American Academy of Pediatrics Standards for Health Care Services for Children in Out of Home Care.* *This service includes an initial comprehensive assessment that includes a medical exam, a psychosocial evaluation, and a final report that is submitted to the Department. The service also includes a six (6) to eight (8) month follow-up comprised of another medical evaluation and a psychosocial evaluation. Providers who meet the criteria to provide the CHA do not have to hold a Developmental and Behavioral Evaluation Clinic contract with the Department.* *The rule adds a cost of living adjustment in accordance with 22 MRSA §3137-J (2)(D)(3). Each July 1st the Department will apply an annual cost of living adjustment proportional to the percentage increase in the Maine minimum wage, as determined by the Maine Department of Labor, so long as the service has not received any other adjustments within the previous twelve months. The Maine Department of Labor determines the percentage increase, if any, as of August of the previous year over the level as of August of the year preceding that year in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the Northeast Region, as published by the United States Department of Labor, Bureau of Labor Statistics, with the amount of the minimum wage increase rounded to the nearest multiple of 5¢.* *Other proposed changes to the rule include adding a definition of "trauma-informed care," which is a requirement to provide CHAs, making structural changes, removing unnecessary provisions, and making minor technical changes.* *MaineCare Benefits Manual, Chapter III, Section 23, Allowances for Developmental and Behavioral Evaluation Clinic Services*

	The Department proposes to repeal 10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Chapter III, Section 23, and list the specific reimbursement rates for the three services in the Chapter II and on the MaineCare Provider Fee Schedule available on the Department's website in accordance with 22 MRS §3173-J. *This rulemaking complies with 22 M.R.S. §3173-J. The Department issued a Rate Determination Initiation Notice on October 14, 2022. The Department held a public rate forum on November 23, 2022, to collect stakeholder input and comments to inform the Rate Determination process and accepted written comments through December 2, 2022.*
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 23, Developmental and Behavioral Health Services, and Chapter III, Section 23, Developmental and Behavioral Health Clinic Services.* ***MaineCare Benefits Manual, Chapter III, Section 23, Developmental and Behavioral Evaluation Clinic Services*** *The Department repeals this regulation.* ***MaineCare Benefits Manual, Chapter II, Section 23, Developmental and Behavioral Evaluation Services*** *Sec. 23.02-2 (Eligibility for Care). This rule lists out two separate categories of children, defining which Sec. 23 services the children are eligible for:* *(1) Members from birth through age 20 are eligible for the Developmental and Behavioral Evaluations and also Child Abuse Evaluations; and* *(2) Children in the care and custody of the Department are eligible for Developmental and Behavioral Evaluations, Child Abuse Evaluations, and a Foster Care Comprehensive Health Assessment (CHA).* *Sec. 23.04-2 (Child Abuse Evaluation). The rule eliminates the limit of eleven units per evaluation.* *Sec. 23.04-3 (Foster Care Comprehensive Health Assessment). The rule adds CHAs as a new covered service in accordance with 22 MRSA §4063-A(3). The new service will provide timely, comprehensive evaluations for children in foster care that align with the Child Welfare League of America (CWLA) and the American Academy of Pediatrics Standards for Health Care Services for Children in Out of Home Care.* *This service includes an initial comprehensive assessment that includes a medical exam, a psychosocial evaluation, and a final report that is submitted to the Department. The service also includes a six (6) to eight (8) month follow-up comprised of another medical evaluation and a psychosocial evaluation. Providers who meet the criteria to provide the CHA do not have to hold a Developmental and Behavioral Evaluation Clinic contract with the Department.* *Sec. 23.07 (Reimbursement). The now-repealed Ch. III rate table has been moved to*

Ch. II. Changes to the rate table include adding two new covered services for the CHA assessment/evaluation. In a change from the proposed rule, the rate table in the adopted rule includes the July 3, 2024, effective date for the rates. The rule also adds a cost-of-living-adjustment (COLA) provision in accordance with 22 MRSA §3137-J (2)(D)(3). The Department will apply a COLA to the rates annually every July 1, unless the rate has been adjusted during the previous twelve months. The Department will not do rulemaking to reflect the new rates every year, but, rather, new rates will be listed on the MaineCare Provider Fee Schedule, posted on the Department's website, in accordance with 22 M.R.S. Sec. 3173-J(7).

The 7/3/24 rate for the Developmental and Behavioral Evaluation services was increased from the proposed rate, reflecting the 7/1/24 COLA adjustment. The Child Abuse Evaluation services rate does not reflect a 7/1/24 COLA adjustment as this rate was adjusted in the past twelve months.

23.08(B) (Billing Instructions). This rule adds three provisions – the CHA Initial Assessment Bundled Payment; the CHA Follow-Up Evaluation Bundled Payment; and the CHA Psychosocial Evaluation Component Reimbursement. Each provision details what services are reimbursed.

Note that for the CHA Psychosocial Evaluation Component Reimbursement, CHA providers deliver and bill for the services that make up the psychosocial component of the CHA in accordance with the applicable section of the MaineCare Benefits Manual.

This rulemaking complies with 22 M.R.S. §3173-J. For the CHA, the Department issued a Rate Determination Initiation Notice on October 14, 2022. The Department held a public rate forum on November 23, 2022, to collect stakeholder input and comments to inform the Rate Determination process and accepted written comments through December 2, 2022.

Other Changes Made to the Adopted rule:

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:

As a result of comment 1, the Department clarified in Section 23.04-3(B)(1)(b) that the appointment must occur within fourteen (14) "calendar" days of the referral "unless there are unforeseen and uncontrollable circumstances, such as inclement weather or illness, that prevent the appointment from occurring. If the appointment occurs after fourteen calendar days from the referral, the provider must document the justification for the delay in the member's record."

As a result of comment 2, the Department has added to Section 23.04-3(B)(3)(a)(i) that "The provider may conduct the psychosocial evaluation virtually if it is for the benefit of the child, and providers must document the justification in the member's record. Providers cannot conduct a virtual psychosocial evaluation for their own

benefit or convenience."

As a result of comment 2, the Department added to Section 23.04-3(B)(5) that "the follow-up medical examination may only be conducted virtually if the findings from the initial examination indicate that a virtual follow-up is appropriate."

As a result of comment 2, the Department has removed "face-to-face" from Section 23.04-3(B)(5)(a).

As a result of comments 6 and 8, the Department corrected the final rate for the CHA to $1,462.48 in Section 23.07.

As a result of comment 9, the Department increased the rate for child abuse evaluations in Section 23.07; removed the larger, inaccurate list of providers who may conduct child abuse evaluations and replaced it with the team of three providers that conduct the evaluations together in Section 23.04-2: child abuse pediatricians, nurse practitioners, and licensed clinical social workers; expanded the list of components included in the evaluation in Section 23.04-2; and removed the unnecessary 11-hour service limit in Section 23.04-2.

As a result of comment 10, the Department clarified the CHA provider must submit the final report no later than 21 "calendar" days after CHA is complete.

As a result of the OAG legal review, the Department deleted the definition of trauma-informed care in Section 23.01-3 because the Sec. 23 services are evaluation services, and not medical services.

As a result of the OAG legal review, the Department removed Section 23.04-3(B)(3)(b)(iv) (which stated that the psychosocial evaluation may include "other services as medically necessary") because the psychosocial evaluation is an evaluation service. Other MaineCare services that are identified as medically necessary for a child are delivered and billed in accordance with the applicable section of the MaineCare Benefits Manual.

As a result of the OAG legal review, the Department removed "Providers that determine that additional services are required to complete the services described in this Section must deliver or coordinate the additional services with appropriately licensed providers acting within the scope of their licensure or qualifications, as appropriate" in Section 23.06-2 because it is duplicative of another provision and is not particularly clear in this provision. The Department revised the provision to its original intent to clarify that "Developmental and Behavioral Evaluation, Child Abuse Evaluation, and CHAs are reimbursable services when provided by appropriately licensed providers acting within the scope of their licensure."

As a result of the OAG legal review, the Department deleted Section 23.06-3 CHA Providers because the provision was duplicative of the CHA requirements set forth in Section 23.04-3(B).

	As a result of the OAG legal review, the Department added the effective date of the rates to the rate table in Section 23.07(A). *With the approval of the OAG legal review, the Department updated the cost-of-living-adjustment language in Section 23.07(B).* *As a result of the OAG legal review, the Department edited the headers and language in Section 23.08(B) to clarify precisely what the three different types of CHA payments are.* *As a result of the OAG legal review, the Department removed "Other services delivered as part of the CHA, but not included in the bundled payments, must be delivered and billed in accordance with the applicable Section of the MBM" in Section 23.08(B)(3) because the first sentence states clearly that services which make up the psychosocial component of the CHA are delivered and billed in accordance with the applicable section of the MaineCare Benefits Manual.*

10-144 Department of Health and Human Services	
2024-154: Ch. 101, MaineCare Benefits Manual, Ch. III, § 23, Developmental and Behavioral Evaluation Clinic Services	
Statutory Authority:	22 M.R.S. §§42, 3137-J, 4063-A
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	This rule was repealed.
Principal purpose:	This rule was repealed.
Basis Statement:	*See* "Basis Statement" at 2024-153, *supra*.

10-144 Department of Health and Human Services	
2024-155: Chapter 101, MaineCare Benefits Manual, Ch. II, § 25, Dental Services and Reimbursement Methodology	
Statutory Authority:	22 M.R.S. §§ 42, 3173; 22 M.R.S. § 3173-J(D); 5 M.R.S. § 8054
Type:	Routine Technical
Emergency?:	Yes
Fiscal Impact:	*The Department anticipates that this will result in a cost neutral fiscal impact.*
Principal purpose:	*The Department adopts this emergency rule, which amends 10-144 CMR ch 101, MaineCare Benefits Manual (the "MBM") Chapter II, Section 25 Dental Services and Reimbursement Methodology.* *This emergency rulemaking makes the following changes:* *Section 25.06(A)(1)(Commercial Median Benchmark): This benchmark will be "assessed" rather than "updated" every two years;* *Section 25.06(A)(2)(Medicaid State Average Benchmark): This benchmark will be "assessed" rather than "updated" every two years;* *Section 25.06(B)(3)(Temporary Exceptions): These exceptions are being extended from June 30, 2024 to June 30, 2026; and* *Section 25.03 on page 18 has been corrected to: Section 25.06.* ***Background**:* *The current rule requires the Department to update the Commercial Median Benchmark and the Medicaid State Average Benchmark every two years, and the updated Benchmarks were to take effect on July 1, 2024. In accordance with 22 M.R.S. §3173-J(2), the Department provided notice of the rate determination for dental services on October 13, 2023, by posting it on the MaineCare Rate System Reform website. The Department conducted a review of data from the Maine Health Data Organization All Payer claims Database as well as utilizing data from other State's Medicaid dental service rates. The result of this rate determination process for dental services rates was that the rebasing or updating would result in an estimated $2.2 million dollar reduction in total reimbursement to providers of MaineCare dental services. In accordance with Title 22 M.R.S. §3173-J, the Department held an online public meeting to present the results of the benchmark rebasing efforts and draft rates on April 12, 2024, and provided opportunities for stakeholder input and comment. Comments are still under review and the Department has not yet issued a written response to the comments.* ***Findings of Emergency**:* *The Department finds that immediate adoption of this rule is necessary to avoid an immediate threat to public health, safety, or general welfare. The Department's findings with respect to the existence of an emergency are as follows:* *Dental services are critical to the physical well-being of adults and children;* *A decrease in the MaineCare dental reimbursement could lead to a loss in dental*

	providers, which could lead to a loss in access to dental services for MaineCare members; *Maintaining the current MaineCare reimbursement rates mitigates this emergency; and* *Extending the temporary exceptions in Section 25.06(B)(3) ensures that reimbursement rates for those excepted services will not be reduced.* *Pursuant to 5 M.R.S §8054, this emergency rule may be effective for up to ninety (90) days. The Department shall proceed with routine technical rulemaking to permanently adopt these rule changes*
Basis Statement:	*The Department adopts this emergency rule, which amends 10-144 CMR ch 101, MaineCare Benefits Manual (the "MBM") Chapter II, Section 25 Dental Services and Reimbursement Methodology.* *This emergency rulemaking makes the following changes:* *Section 25.06(A)(1)(Commercial Median Benchmark): This benchmark will be "assessed" rather than "updated" every two years;* *Section 25.06(A)(2)(Medicaid State Average Benchmark): This benchmark will be "assessed" rather than "updated" every two years;* *Section 25.06(B)(3)(Temporary Exceptions): These exceptions are being extended from June 30, 2024 to June 30, 2026; and* *Section 25.03 on page 18 has been corrected to: Section 25.06.* ***Background**:* *The current rule requires the Department to update the Commercial Median Benchmark and the Medicaid State Average Benchmark every two years, and the updated Benchmarks were to take effect on July 1, 2024. In accordance with 22 M.R.S. §3173-J(2), the Department provided notice of the rate determination for dental services on October 13, 2023, by posting it on the MaineCare Rate System Reform website. The Department conducted a review of data from the Maine Health Data Organization All Payer claims Database as well as utilizing data from other State's Medicaid dental service rates. The result of this rate determination process for dental services rates was that the rebasing or updating would result in an estimated $2.2 million dollar reduction in total reimbursement to providers of MaineCare dental services. In accordance with Title 22 M.R.S. §3173-J, the Department held an online public meeting to present the results of the benchmark rebasing efforts and draft rates on April 12, 2024, and provided opportunities for stakeholder input and comment. Comments are still under review and the Department has not yet issued a written response to the comments.* ***Findings of Emergency**:* *The Department finds that immediate adoption of this rule is necessary to avoid an*

	immediate threat to public health, safety, or general welfare. The Department's findings with respect to the existence of an emergency are as follows: *Dental services are critical to the physical well-being of adults and children;* *A decrease in the MaineCare dental reimbursement could lead to a loss in dental providers, which could lead to a loss in access to dental services for MaineCare members;* *Maintaining the current MaineCare reimbursement rates mitigates this emergency; and* *Extending the temporary exceptions in Section 25.06(B)(3) ensures that reimbursement rates for those excepted services will not be reduced.* *Pursuant to 5 M.R.S §8054, this emergency rule may be effective for up to ninety (90) days. The Department shall proceed with routine technical rulemaking to permanently adopt these rule changes.*

10-144 Department of Health and Human Services, MaineCare Services, Division of Policy	
2024-179: Chapter 101, MaineCare Benefits Manual, Ch. III, § 25, Principles of Reimbursement for Hospital Services	
Statutory Authority:	5 M.R.S. § 8054; 22 M.R.S. §§ 42, 3173-J; P.L. 2023, ch. 643
Type:	Routine Technical
Emergency?:	Yes
Fiscal Impact:	*The Department anticipates that this rulemaking will cost approximately $30,584,514 in SFY 2024, which includes $8,440,233 in state dollars and $22,144,281 in federal dollars, and $122,338,057 in SFY 2025, which includes $34,716,249 in state dollars and $87,621,808 in federal dollars.*
Principal purpose:	*The Department of Health and Human Services adopts these emergency rule changes in 10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Chapter III, Section 45, Principles of Reimbursement for Hospital Services.* *The Department's principal purpose of this emergency rulemaking is to establish new reimbursement methodology for Acute Care and Rehabilitation Hospitals, with the exception of Distinct Psychiatric and Substance Use Disorder Unit services for which the Department recently implemented 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 June 23, 2023. MaineCare presented the draft reimbursement methodology and definitions to providers and interested stakeholders on December 11, 2023; February 16, 2024; and June 11, 2024. The Department accepted public comments through June 25, 2024 and responded in writing to comments with an explanation of whether and how feedback was incorporated into the final reimbursement methodology and rates.* *These changes include improved alignment with Medicare, greater consistency in reimbursement methodology across hospitals, and ensuring that reimbursement for services better reflects patient acuity. The Department adopts methodology which aligns reimbursement for facilities with similar delivery systems and cost structures, recognizing three distinct hospital peer groups that recognize distinct Maine Base Rates for inpatient services: Acute Care Non-Critical Access, Non-State Government Owned, and Rehabilitation. The Department's updated methodology introduces mechanisms to keep pace with inflation and improve the relationship between the quality of service outcomes and payment.* *The Department shall submit to the Centers for Medicare & Medicaid Services, and anticipates approval, for State Plan Amendments related to these provisions.* *Some of the rule changes have a retroactive application date of July 1, 2024, and the rule indicates the July 1, 2024 effective date for those provisions. The Department certifies that the retroactive changes comply with, and thus are authorized by, 22 M.R.S. Sec. 42(8).* *This emergency rulemaking makes the following changes:*

- *Introduction:*

- *Removes specific mention of private classification from Acute Care Non-Critical Access Hospitals and adds the subset of Non-State Government Owned Hospitals.*

- *Updates Public Acute Care Non-Critical Access Hospitals to Non-State Government Owned Hospitals and specifies they will be reimbursed as Acute Care Non-Critical Access Hospitals.*

Removes Hospitals Reclassified to a Wage Area Outside Maine by the Medicare Geographic Classification Review Board (MGCRB) as the classification is no longer relevant to this updated reimbursement methodology.

- *Effective July 1, 2024, updates Rehabilitation Hospital summary to reflect adoption of Medicare Severity Diagnosis Related Group (MS DRG)-based reimbursement methodology in lieu of the current set discharge rate.*

- *Section 45.01- Definitions:*

- *Updates definitions of Ambulatory Payment Classifications (APC); Discharge; Acute Care Non-Critical Access Hospital; and Rural Hospital.*

- *Removes the definition of Hospital Reclassified to a Wage Area Outside Maine by the Medicare Geographic Classification Review Board (MGCRB).*

- *Defines Provider-Based Department, Non-State Government Owned Hospital, and Acute Care Hospitals converting from Critical Access Hospital Reimbursement Methodology to Acute Care Non-Critical Access Hospital Reimbursement Methodology.*

- *Section 45.02 – General Provisions*

- *45.02-1 – Inflation: Includes application of annual inflation adjustments for MS DRG-based reimbursement rates.*

- *45.02-5(F) – Adds reimbursement information pertaining to Upper Payment Limits and related compliance measures. Adds the separate UPL required by CMS for Non-State Government Owned Hospitals.*

- *45.02-6 – Data for PIP Calculation: Adds cost report data requirements for hospitals approved for conversion to critical access hospital category and resulting reimbursement methodology. This requirement is added to ensure timely PIP determination and payment for converting hospitals.*

- *45.02-8 – Effective July 1, 2024, Days Awaiting Placement: Updates expired provision to reintroduce the provision with new methodology which removes the 10-day waiting period, establishes a new annual cap of $1,500,000, and reimburses Acute Care Non-Critical Access Hospitals at 75% of the statewide average per diem NF rate. The Department reintroduces this provision and*

triples the amount of the previous cap in recognition of the fiscal impact on hospitals for delivering such care. Utilizing a percentage of the per diem NF rate is an approach consistent with methodology utilized in other state Medicaid Programs and recognizes level of care constraints within the hospital setting.

- *45.02-9 – Claims Billing: Adds new section to introduce links to the Department's billing instructions and new supplemental Hospital Billing Guidance.*

- *45.02-10 – Readmissions Penalty: To more closely align with Medicare, the Department incorporates existing operational processes and components of the former Discharge definition to enhance Readmissions Penalties applied to qualifying DRG payments effective August 9, 2024. This adjustment moves away from exact DRGs in favor of clinically related criteria, clarifies when a member is considered to be readmitted, extends the readmissions "window" from 14 days to 30 days, and describes scenarios excluded from Readmissions Adjustment review.*

- *<u>Section 45.03 – Acute Care Non-Critical Access Hospitals</u>*
- *Removes Department's Total Obligation to the Hospital narrative as the formula is now described elsewhere within the rule.*

- *45.03-1 –Inpatient Services: References updates to MS DRG-based payment methodology detailed in Appendix A, effective July 1, 2024. For Distinct Psychiatric Units and Substance Use Disorder Units: Moves the end date for cost settlement of capital costs from July 1, 2025 to September 1, 2024.*

- *45.03-C – Effective July 1, 2024, Outpatient Services, Including Laboratory and Imaging: Aligns outpatient methodology across acute care non-critical access hospitals by transitioning Non-State Government Owned Hospitals from a cost reimbursement system to the Medicare Outpatient Prospective Payment System (OPPS) that also applies to Acute Care Non-Critical Access Hospitals. Updates the percent of Medicare OPPS Ambulatory Payment Classifications (APC) rates the Department pays to 109%. The Department will also pay the updated 109% of Medicare outlier payments. Fully aligns with Medicare by, effective August 9, 2024, adopting Medicare adjustments to reduce reimbursement at certain Provider Based Departments through use of the PO modifier.*

- *Effective July 1, 2024, removes reference to Public Hospitals as they are now absorbed in other areas of the rule.*

- *Removes reference to Capital and Graduate Medical Education Costs as those are now addressed in Appendix A and are no longer subject to cost settlement*

- *Removes Prospective Interim Payment (PIP) for Outpatient Services as Public Acute Care Non-Critical Access Hospitals will no longer receive PIPs.*

- *Effective July 1, 2024, Interim and Final Cost Settlement: Specifies cost settlement now only applies to hospital-based physician services; expired provisions are end*

dated. DRG and APC payments will not be cost settled.

- *Section 45.05 – Hospitals Reclassified to a Wage area Outside of Maine by the Medicare Geographic Classification Review Board (MGCRB) Prior to October 1, 2008*

- *Removes section as the Hospitals Reclassified to a Wage area Outside of Maine criteria will no longer be utilized by the Department to determine hospital classification. Such hospital types will now be reimbursed as Acute Care Non-Critical Access Hospitals to assure hospital fiscal stability.*

- *Section 45.06 – Rehabilitation Hospitals*

- *Effective July 1, 2024, updates section to reflect adoption of MS DRG-based payment methodology. The Department adopts this updated reimbursement methodology as the current flat discharge rate does not capture changes in patient mix or costs related to patient acuity. Unlike the stagnant flat discharge rate which was last updated in 2018, the DRG-based payment methodology will receive annual inflation adjustments and updates to the Medicare MS-DRG relative weights. Rehabilitation Hospitals are a distinct peer group and will receive their own Maine Base Rate.*
- *Effective July 1, 2024, Interim and Final Cost Settlement is added to specify cost settlement only applies to hospital-based physician services; DRG and APC payments will not be cost settled. The discontinuation of cost settlement for these services will reduce administrative burden for both providers and the Department.*
- *Updates the percent of Medicare OPPS Ambulatory Payment Classifications (APC) rates the Department pays to 109%. The Department will also pay the updated 109% of Medicare outlier payments. This increase is a result of the Department's larger hospital investment initiative.*

- *Section 45.07 – Value-Based Purchasing for Supplemental Sub-Pool*

- *Removes mention of Hospitals Reclassified to a Wage area Outside of Maine (as such hospital types will now be reimbursed as Acute Care Non-Critical Access Hospitals).*

- *Section 45.08 – Supplemental Pool for Acute Non-Critical Access Hospitals and Rehabilitation Hospitals*

- *Removes mention of Hospitals Reclassified to a Wage area Outside of Maine (as such hospital types will be reimbursed as Acute Care Non-Critical Access Hospitals).*

- *Section 45.09 – Supplemental Payments for Acute Care Hospitals converting from Acute Care Critical Access Hospital Reimbursement to Acute Care Non-Critical Access Hospital Reimbursement*

- *Adds this new section to address the supplemental payment for Acute Care Non-Critical Access Hospitals reimbursed by Medicare under the Prospective Payment System and reimbursed by MaineCare like a Critical Access Hospital for outpatient services on or before January 1, 2024.*

	• <u>*Appendix A – DRG-Based Payment Methodology*</u> • *Effective July 1, 2024, updates language addressing components of the updated MS DRG-Based Payment Methodology:* o *This rule also removes cost settlement provisions for Capital and GME costs for hospitals subject to the DRG-Based Payment Methodology.* o *The Department updates its DRG-Based Payment Methodology. The rule incorporates updated Maine Base Rates that reflect FY22 costs; recognize different costs of inpatient care for Acute Care Non-Critical Access and Rehabilitation hospitals; and are inclusive of capital and operating costs.* o *The Department calculates a hospital's DRG payment for a covered inpatient service by summing the assigned peer group's Maine Base Rate plus, for teaching hospitals, a hospital-specific GME add-on rate determined using the hospital's FY 2022 As-filed Medicare cost report data. This sum is multiplied by the Medicare DRG relative weight, and the resulting value equals the hospital's DRG payment. The rule updates the MS-DRG weights to the current year's Medicare weights to account for cost differences in services delivered and patient acuity.* o *Outlier Adjustment: The Department establishes a new DRG-based outlier payment methodology which will observe updates to hospital-specific cost-to-charge ratios (CCRs) and fixed reimbursement percentages, as well as introduce a standard outlier threshold, updated in this rule to account for cost growth, for all eligible hospitals. Effective July 1, 2024 through December 31, 2024, the Department will increase the percentage it reimburses from 80% to 90% of estimated costs based on charges that exceed the threshold. This differs from previous methodology in that a new fixed reimbursement percentage is applied, a standard outlier threshold used, and hospital-specific CCRs are updated.*
Basis Statement:	*The Department of Health and Human Services adopts these emergency rule changes in 10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Chapter III, Section 45, Principles of Reimbursement for Hospital Services.* *The Department's principal purpose of this emergency rulemaking is to establish new reimbursement methodology for Acute Care and Rehabilitation Hospitals, with the exception of Distinct Psychiatric and Substance Use Disorder Unit services for which the Department recently implemented 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 June 23, 2023. MaineCare presented the draft reimbursement methodology and definitions to providers and interested stakeholders on December 11, 2023; February 16, 2024; and June 11, 2024. The Department accepted public comments through June 25, 2024 and responded in writing to comments with an explanation of whether and how feedback was incorporated into the final reimbursement methodology and*

rates.

These changes include improved alignment with Medicare, greater consistency in reimbursement methodology across hospitals, and ensuring that reimbursement for services better reflects patient acuity. The Department adopts methodology which aligns reimbursement for facilities with similar delivery systems and cost structures, recognizing three distinct hospital peer groups that recognize distinct Maine Base Rates for inpatient services: Acute Care Non-Critical Access, Non-State Government Owned, and Rehabilitation. The Department's updated methodology introduces mechanisms to keep pace with inflation and improve the relationship between the quality of service outcomes and payment.

The Department shall submit to the Centers for Medicare & Medicaid Services, and anticipates approval, for State Plan Amendments related to these provisions.
Some of the rule changes have a retroactive application date of July 1, 2024, and the rule indicates the July 1, 2024 effective date for those provisions. The Department certifies that the retroactive changes comply with, and thus are authorized by, 22 M.R.S. Sec. 42(8).

This emergency rulemaking makes the following changes:

- *<u>Introduction:</u>*
- *Removes specific mention of "private" classification from Acute Care Non-Critical Access Hospitals and adds the subset of Non-State Government Owned Hospitals.*

- *Updates Public Acute Care Non-Critical Access Hospitals to Non-State Government Owned Hospitals and specifies they will be reimbursed as Acute Care Non-Critical Access Hospitals.*

- *Removes Hospitals Reclassified to a Wage Area Outside Maine by the Medicare Geographic Classification Review Board (MGCRB) as the classification is no longer relevant to this updated reimbursement methodology.*
- *Effective July 1, 2024, updates Rehabilitation Hospital summary to reflect adoption of Medicare Severity Diagnosis Related Group (MS DRG)-based reimbursement methodology in lieu of the current set discharge rate.*

- *<u>Section 45.01- Definitions:</u>*
- *Updates definitions of Ambulatory Payment Classifications (APC); Discharge; Acute Care Non-Critical Access Hospital; and Rural Hospital.*

- *Removes the definition of Hospital Reclassified to a Wage Area Outside Maine by the Medicare Geographic Classification Review Board (MGCRB).*

- *Defines Provider-Based Department, Non-State Government Owned Hospital, and Acute Care Hospitals converting from Critical Access Hospital Reimbursement Methodology to Acute Care Non-Critical Access Hospital*

Reimbursement Methodology.

- *Section 45.02 – General Provisions*

- *45.02-1 – Inflation: Includes application of annual inflation adjustments for MS DRG-based reimbursement rates.*

- *45.02-5(F) – Adds reimbursement information pertaining to Upper Payment Limits and related compliance measures. Adds the separate UPL required by CMS for Non-State Government Owned Hospitals.*

- *45.02-6 – Data for PIP Calculation: Adds cost report data requirements for hospitals approved for conversion to critical access hospital category and resulting reimbursement methodology. This requirement is added to ensure timely PIP determination and payment for converting hospitals.*

- *45.02-8 – Effective July 1, 2024, Days Awaiting Placement: Updates expired provision to reintroduce the provision with new methodology which removes the 10-day waiting period, establishes a new annual cap of $1,500,000, and reimburses Acute Care Non-Critical Access Hospitals at 75% of the statewide average per diem NF rate. The Department reintroduces this provision and triples the amount of the previous cap in recognition of the fiscal impact on hospitals for delivering such care. Utilizing a percentage of the per diem NF rate is an approach consistent with methodology utilized in other state Medicaid Programs and recognizes level of care constraints within the hospital setting.*

- *45.02-9 – Claims Billing: Adds new section to introduce links to the Department's billing instructions and new supplemental Hospital Billing Guidance.*

- *45.02-10 – Readmissions Penalty: To more closely align with Medicare, the Department incorporates existing operational processes and components of the former Discharge definition to enhance Readmissions Penalties applied to qualifying DRG payments effective August 9, 2024. This adjustment moves away from exact DRGs in favor of clinically related criteria, clarifies when a member is considered to be readmitted, extends the readmissions "window" from 14 days to 30 days, and describes scenarios excluded from Readmissions Adjustment review.*

- *Section 45.03 – Acute Care Non-Critical Access Hospitals*

- *Removes Department's Total Obligation to the Hospital narrative as the formula is now described elsewhere within the rule.*

- *45.03-1 – Inpatient Services: References updates to MS DRG-based payment methodology detailed in Appendix A, effective July 1, 2024. For Distinct Psychiatric Units and Substance Use Disorder Units: Moves the end date for*

cost settlement of capital costs from July 1, 2025 to September 1, 2024.

- *45.03-C – Effective July 1, 2024, Outpatient Services, Including Laboratory and Imaging: Aligns outpatient methodology across acute care non-critical access hospitals by transitioning Non-State Government Owned Hospitals from a cost reimbursement system to the Medicare Outpatient Prospective Payment System (OPPS) that also applies to Acute Care Non-Critical Access Hospitals. Updates the percent of Medicare OPPS Ambulatory Payment Classifications (APC) rates the Department pays to 109%. The Department will also pay the updated 109% of Medicare outlier payments. Fully aligns with Medicare by, effective August 9, 2024, adopting Medicare adjustments to reduce reimbursement at certain Provider Based Departments through use of the PO modifier.*

- *Effective July 1, 2024, removes reference to Public Hospitals as they are now absorbed in other areas of the rule.*
- *Removes reference to Capital and Graduate Medical Education Costs as those are now addressed in Appendix A and are no longer subject to cost settlement*

- *Removes Prospective Interim Payment (PIP) for Outpatient Services as Non-State Government Owned Hospitals will no longer receive PIPs.*

- *Effective July 1, 2024, Interim and Final Cost Settlement: Specifies cost settlement now only applies to hospital-based physician services; expired provisions are end dated. DRG and APC payments will not be cost settled.*

  - *<u>Section 45.05 – Hospitals Reclassified to a Wage area Outside of Maine by the Medicare Geographic Classification Review Board (MGCRB) Prior to October 1, 2008</u>*
- *Removes section as the Hospitals Reclassified to a Wage area Outside of Maine criteria will no longer be utilized by the Department to determine hospital classification. Such hospital types will now be reimbursed as Acute Care Non-Critical Access Hospitals to assure hospital fiscal stability.*

  - *<u>Section 45.06 – Rehabilitation Hospitals</u>*
- *Effective July 1, 2024, updates section to reflect adoption of MS DRG-based payment methodology. The Department adopts this updated reimbursement methodology as the current flat discharge rate does not capture changes in patient mix or costs related to patient acuity. Unlike the stagnant flat discharge rate which was last updated in 2018, the DRG-based payment methodology will receive annual inflation adjustments and updates to the Medicare MS-DRG relative weights. Rehabilitation Hospitals are a distinct peer group and will receive their own Maine Base Rate.*
- *Effective July 1, 2024, Interim and Final Cost Settlement is added to specify cost settlement only applies to hospital-based physician services; DRG and APC payments will not be cost settled. The discontinuation of cost settlement for these services will reduce administrative burden for both providers and the*

Department.

- *Updates the percent of Medicare OPPS Ambulatory Payment Classifications (APC) rates the Department pays to 109%. The Department will also pay the updated 109% of Medicare outlier payments. This increase is a result of the Department's larger hospital investment initiative.*

- *<u>Section 45.07 – Value-Based Purchasing for Supplemental Sub-Pool</u>*
- *Removes mention of Hospitals Reclassified to a Wage area Outside of Maine (as such hospital types will now be reimbursed as Acute Care Non-Critical Access Hospitals).*

- *<u>Section 45.08 – Supplemental Pool for Acute Non-Critical Access Hospitals and Rehabilitation Hospitals</u>*
- *Removes mention of Hospitals Reclassified to a Wage area Outside of Maine (as such hospital types will be reimbursed as Acute Care Non-Critical Access Hospitals).*

- *<u>Section 45.09 – Supplemental Payments for Acute Care Hospitals converting from Acute Care Critical Access Hospital Reimbursement to Acute Care Non-Critical Access Hospital Reimbursement</u>*
- *Adds this new section to address the supplemental payment for Acute Care Non-Critical Access Hospitals reimbursed by Medicare under the Prospective Payment System and reimbursed by MaineCare like a Critical Access Hospital for outpatient services on or before January 1, 2024.*

- *<u>Appendix A – DRG-Based Payment Methodology</u>*
- *Effective July 1, 2024, updates language addressing components of the updated MS DRG-Based Payment Methodology:*

    - *This rule also removes cost settlement provisions for Capital and GME costs for hospitals subject to the DRG-Based Payment Methodology.*

    - *The Department updates its DRG-Based Payment Methodology. The rule incorporates updated Maine Base Rates that reflect FY22 costs; recognize different costs of inpatient care for Acute Care Non-Critical Access and Rehabilitation hospitals; and are inclusive of capital and operating costs.*

    - *The Department calculates a hospital's DRG payment for a covered inpatient service by summing the assigned peer group's Maine Base Rate plus, for teaching hospitals, a hospital-specific GME add-on rate determined using the hospital's FY 2022 As-filed Medicare cost report data. This sum is multiplied by the Medicare DRG relative weight, and the resulting value equals the hospital's DRG payment. The rule updates the MS-DRG weights to the current year's Medicare weights to account for cost differences in services delivered and patient acuity.*

- *Outlier Adjustment: The Department establishes a new DRG-based outlier payment methodology which will observe updates to hospital-specific cost-to-charge ratios (CCRs) and fixed reimbursement percentages, as well as introduce a standard outlier threshold, updated in this rule to account for cost growth, for all eligible hospitals. Effective July 1, 2024 through December 31, 2024, the Department will increase the percentage it reimburses from 80% to 90% of estimated costs based on charges that exceed the threshold. This differs from previous methodology in that a new fixed reimbursement percentage is applied, a standard outlier threshold used, and hospital-specific CCRs are updated.*

Findings of Emergency:

The Maine Legislature granted the Department of Health and Human Services authority to adopt emergency rules under 5 M.R.S. Sec. 8054, if determined necessary by the Department to implement those provision of the Supplemental Budget Act over which the Department has subject matter jurisdiction, without the requirement that it demonstrate that immediate adoption is necessary to avoid a threat to public health, safety or general welfare. P.L. 2023, ch. 643, PART VV, Sec. VV-1. The Department has determined that it is necessary to adopt this emergency rule to implement provisions of the Supplemental Budget Act regarding hospital reimbursement set forth in PART A, Sec. A-14.

Pursuant to 5 M.R.S §8054, this emergency rule may be effective for up to ninety (90) days. The Department shall proceed with routine technical rulemaking to permanently adopt these rule changes.

10-144 Department of Health and Human Services, Office for Family Independence	
2024-183: Chapter 332, MaineCare Eligibility Manual	
Statutory Authority:	22 M.R.S. §§ 42(1) and (8); 3174-G; 3174-FFF and 3174-LLL
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The Department anticipates this rulemaking will cost approximately $24,521.33 in SFY 2025, which includes $10,387.691 in state dollars and $14,133,41 in federal dollars, and in SFY 2026 $32,382,204, which includes $13,896,148 in state dollars and $18,486,056 in federal dollars.*
Principal purpose:	*The proposed rule changes would increase the Federal Poverty Levels (FPLs) in the MaineCare Eligibility Manual, Part 8, Medicare Savings Program (Buy-In) and are based on a legislative change to 22 M.R.S. § 3174-LLL made by P.L. 2023, ch. 412. Part 8, Section 4.1(I)(B) would increase the FPL to 185% from 150% FPL. Part 8, Section 4.2 would add "The rules in this Section apply through June 30, 2024."* *In addition, Section 4.3(I)(B) would increase the Federal Poverty Level to 250% from 185%. The proposed rule changes would increase access to health insurance. The proposed rule changes would be effective July 1, 2024. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these updates provide a benefit to recipients and applicants.*
Basis Statement:	*The adopted rule effectuates the Federal Poverty Level (FPL) increases in the MaineCare Eligibility Manual, Part 8, Medicare Savings Program (Buy-In) and are based on a legislative change to 22 M.R.S. § 3174-LLL made by P.L. 2023, ch. 412. Part 8, Section 4.1(I)(B) increases the FPL to 185% from 150% FPL. Part 8, Section 4.2 adds "The rules in this Section apply through June 30, 2024."* *In addition, Section 4.3(I)(B) increases the Federal Poverty Level to 250% from 185%. The adopted rule increases access to health insurance. The adopted rule changes are effective July 1, 2024. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these updates provide a benefit to recipients and applicants.* *This rule will not have an adverse impact on municipalities or small businesses.*

10-144 Department of Health and Human Services, Office for Family Independence	
2024-184: Chapter 332, MaineCare Eligibility Manual	
Statutory Authority:	22 M.R.S. §§ 42(1) and (8); 3173-G; 3173-NNN and 3174-T
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The anticipated costs of raising the Federal Poverty Level from 208% of the FPL to 300% of the FPL for individuals under 21 years old has an estimated fiscal impact of $4,783,545 in SFY 2024, which includes $3,034,511 in federal dollars and $1,749,034 in state dollars, and SFY 2025 a total cost of $15, 803,983, which includes $10,025,578 in federal dollars and $5,778,353 in state dollars.*
Principal purpose:	*The purpose of this rule is to increase the Federal Poverty Level (FPL) to 300% from 208% of the FPL for all children. The proposed rule changes would align the MaineCare Eligibility Manual with a legislative change to 22 M.R.S. § 3174-G(B) made by P.L. 2024 ch. 597, §5. The proposed rule changes would increase access to health insurance coverage.* *Part 4, Section 4(B, D and E) would update the Federal Poverty Level (FPL) for children under age 21 to 300% of the FPL from 208% of the FPL effective retroactive to October 1, 2023 and consistent with Maine's State Plan Amendment approved by the Center for Medicaid & CHIP Services. In addition, the Department proposes to remove language from D and E that indicates uninsured children, with income between a certain FPL, may be covered under CHIP.* *Part 4, Section 1, Family Definition would make the following changes:* *1) "individual" would replace "woman"* *2) "one individual" would replace "herself" and "1 person"* *3) "they are" would replace "she is"* *CHIP would replace Cub Care throughout the open parts of this rule consistent with legislative changes to 22 M.R.S. §§ 3173-G, 3173-NNN and 3174-T made by P.L. 2024, Ch. 597, An Act to Correct Language Related to Medicaid Coverage for Children.* *In order to comply with Medicaid rules at 42 C.F.R. § 433.147, Part 5, Section 3 would remove "There is no requirement to refer the non-custodial parent without health insurance to the Division of Support Enforcement and Recovery (DSER)."* *Part 5, Section 6, Income Standard would increase the household income for all children from 208% of the Federal Poverty Level (FPL) to 300% of the FPL effective retroactive to October 1, 2023.* *Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these updates provide a benefit to recipients and applicants.*
Basis Statement:	*The adopted rule increased the Federal Poverty Level (FPL) to 300% from 208% of the FPL for all children. The adopted rule aligns the MaineCare Eligibility Manual with a legislative change to 22 M.R.S. § 3174-G(B) made by P.L. 2024 ch. 597, §5. The adopted rule is anticipated to increase access to health insurance coverage.*

Part 4, Section 4(B, D and E) updates the Federal Poverty Level (FPL) for children under age 21 to 300% of the FPL from 208% of the FPL effective retroactive to October 1, 2023 and consistent with Maine's State Plan Amendment approved by the Center for Medicaid & CHIP Services. In addition, the adopted rule removes language from D and E that indicates uninsured children, with income between a certain FPL, may be covered under CHIP.

The adopted rule updates Part 4, Section 1, Family Definition as follows:

1) *"individual" would replace "woman"*
2) *"one individual" would replace "herself" and "1 person"*
3) *"they are" would replace "she is"*

CHIP replaces Cub Care throughout the open parts of this rule consistent with legislative changes to 22 M.R.S. §§ 3174-G, 3174-NNN and 3174-T made by P.L. 2024, Ch. 597, An Act to Correct Language Related to Medicaid Coverage for Children.

In order to comply with Medicaid rules at 42 C.F.R. § 433.147, Part 5, Section 3 removes "There is no requirement to refer the non-custodial parent without health insurance to the Division of Support Enforcement and Recovery (DSER)."

Part 5, Section 6, Income Standard increases the household income for all children from 208% of the Federal Poverty Level (FPL) to 300% of the FPL effective retroactive to October 1, 2023.

Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these updates provide a benefit to recipients and applicants.

This rule will not have an adverse impact on municipalities or small businesses.

10-144 Department of Health and Human Services, Office for Family Independence	
2024-185 Chapter 332, MaineCare Eligibility Manual	
Statutory Authority:	22 M.R.S. §§ 42(1) and (8); 3173; and 3174-AA
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The Department has determined the cost of implementation would be minor and able to absorbed in existing budgets.*
Principal purpose:	*The proposed rule changes would update the MaineCare Eligibility Manual, Part 16, Section 4.6 consistent with amendments made by Resolves 2023, Ch. 34, Resolve to Update Allowable Limits on Mortuary Trusts for the Purposes of MaineCare Eligibility.* *The proposed rule change would update Section 4.6(A)(2) to "Prepaid burial contracts (mortuary trusts) established on or after March 1, 2006 but prior to April 1, 2024 are excluded as long as either the contract is less than or equal to the statewide average for burial and funeral costs of $12,000. If the contract is for more than $12,000 then the estate of the Medicaid recipient must be named the beneficiary of any funds remaining after payment of funeral and burial charges."* *The proposed rule would add Section 4.6(A)(3) as "Prepaid burial contracts (mortuary trusts) established on or after April 1, 2024, that are irrevocable, are excluded so long as either the contract is less than or equal to the statewide average for burial and funeral costs of $18,000. If the contract is for more than the excluded amount, then the estate of the Medicaid recipient must be named the beneficiary of any funds remaining after payment of funeral and burial charges. Effective January 1, 2025, the excluded contract amount will increase annually, by the same percentage as the percentage increase of the Consumer Price Index for the preceding year. The Consumer Price Index is updated periodically in the Federal Register by the U.S. Department of Labor under the authority of 49 U.S.C. § 33105(c). The Consumer Price Index is found at https://www.bls.gov/cpi. To calculate the increased excluded contract amount, the Department shall multiply the current excluded amount by the percentage increase of the Consumer Price Index, for the preceding year, and then add that amount to the current excluded contract amount, with effective dates of January 1, and posted online at https://www.maine.gov/dhhs/ofi/programs-services/health-care-assistance.* *The proposed rule changes are effective retroactive to April 1, 2024. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these updates provide a benefit to recipients and applicants.* *In addition, the proposed rule would correct a typographical error in Section 4.25 to "For settlements associated with the replacement of an excluded asset, see Section 4.43 of this Part."*
Basis Statement:	*The adopted rule updated the MaineCare Eligibility Manual, Part 16, Section 4.6 consistent with amendments made by Resolves 2023, Ch. 34, Resolve to Update Allowable Limits on Mortuary Trusts for the Purposes of MaineCare Eligibility.*

The adopted rule updated Section 4.6(A)(2) to "Prepaid burial contracts (mortuary trusts) established on or after March 1, 2006 but prior to April 1, 2024 are excluded as long as either the contract is less than or equal to the statewide average for burial and funeral costs of $12,000. If the contract is for more than $12,000 then the estate of the Medicaid recipient must be named the beneficiary of any funds remaining after payment of funeral and burial charges."

The adopted rule updated Section 4.6(A)(3) as "Prepaid burial contracts (mortuary trusts) established on or after April 1, 2024, that are irrevocable, are excluded so long as either the contract is less than or equal to the statewide average for burial and funeral costs of $18,000. If the contract is for more than the excluded amount, then the estate of the Medicaid recipient must be named the beneficiary of any funds remaining after payment of funeral and burial charges. Effective January 1, 2025, the excluded contract amount will increase annually, by the same percentage as the percentage increase of the Consumer Price Index for the preceding year. The Consumer Price Index is updated periodically in the Federal Register by the U.S. Department of Labor under the authority of 49 U.S.C. § 33105(c). The Consumer Price Index is found at https://www.bls.gov/cpi. To calculate the increased excluded contract amount, the Department shall multiply the current excluded amount by the percentage increase of the Consumer Price Index, for the preceding year, and then add that amount to the current excluded contract amount, with effective dates of January 1, and posted online at https://www.maine.gov/dhhs/ofi/programs-services/health-care-assistance.

The adopted rule changes are effective retroactive to April 1, 2024. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these updates provide a benefit to recipients and applicants.

In addition, the adopted rule corrected a typographical error in Section 4.25 to "For settlements associated with the replacement of an excluded asset, see Section 4.43 of this Part."

This rule will not have an adverse impact on municipalities or small businesses.

10-144 Department of Health and Human Services, Office for Family Independence	
2024-186: Chapter 301, Supplemental Nutrition Assistance Program (SNAP) Rules	
Statutory Authority:	22 M.R.S. §§ 42(1); 3104(16)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None.*
Principal purpose:	*The proposed rule change would update Section 444-12 based on a legislative change to 22 M.R.S. § 3104(16) made by P.L. 2024, ch. 501. These changes align Maine law with the Code of Federal Regulations as it relates to disqualifications based on gambling or lottery winnings. Applying one standard instead of two clarifies requirements for recipients and the Department without having an adverse impact on program integrity.*
Basis Statement:	*The adopted rule updates Section 444-12 based on a legislative change to 22 M.R.S. § 3104(16) made by P.L. 2024, ch. 501. The adopted rule change aligns Maine law with the Code of Federal Regulations as it relates to disqualifications based on gambling or lottery winnings. Applying one standard instead of two clarifies requirements for recipients and the Department without having an adverse impact on program integrity.* *In addition, the Department determined it necessary to make non-substantial changes in FS 444-12 for consistency within the rule. These changes include:* • *The header of FS 444-12 is updated to Section 444-12.* • *Section 999-3 replaces FS 999-3.* • *FS is removed from Sections FS 333, 444 and 555.* *This rule will not have an adverse impact on municipalities or small businesses.*

10-144 Department of Health and Human Services, Division of Licensing and Certification	
2024-188: Chapter 129, Rules and Regulations Governing In-Home Personal Care and Support Workers	
Statutory Authority:	22 M.R.S. §§ 42, 1717
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The licensing fee established by statute will have a minor financial impact on a Personal Care Agency.*
Principal purpose:	*This rule repeals and replaces an existing rule due to the statutory changes in 22 MRS §1717.*
Basis Statement:	*This routine technical rulemaking operationalizes the statutory requirements of PL 2023 Ch. 309, An Act to Authorize the Department of Health and Human Services to License and Ensure the Quality of Personal Care Agencies. This rulemaking repeals and replaces 10-144 CMR Ch. 129, Rules and Regulations Governing In-Home Personal Care and Support Workers, which became effective on January 1, 1999.* *The new rule replaces the existing requirement for registration with a licensing process, as required by the underlying legislation. The new rule also incorporates a new statutory definition for Personal Care Agency (PCA), establishes standards and fees for the licensing of personal care agencies, establishes types and terms of licenses, creates quality assurance and technical assistance mechanisms, and establishes right of entry, penalties, and enforcement actions for failure to comply with the rule. The new rule also creates an appeal process for PCAs aggrieved by the department's decisions.* *Among the standards established in the rule are minimum qualifications for PCA staff who assist clients with activities of daily living and documentation requirements. Although this rule imposes more requirements on PCAs than the prior rule, the Department has eliminated or modified many of the proposed rule provisions that commenters identified as burdensome or too costly. What remains are rules that are consistent with the statutory directive and that promote public health and safety.* *The Division considered the content of the changes to 22 MRS §1717 enacted by PL 2023, c. 309 and the Department's prior experience with the registration of Personal Care Agencies under the authority of 22 MRS §1717. The Division has sought the input of the Office of Aging and Disability Services and the Office of MaineCare Services in the development of this rule.* *This rule will have a minimal fiscal impact on Personal Care agencies through increased administrative requirements, staff training, and licensing fees.*

10-144 Department of Health and Human Services, Maine Center for Disease Control and Prevention	
2024-191: Chapter 269, Rules Governing Self-Contained Breath Alcohol Testing Equipment	
Statutory Authority:	17-A MRS §1057; 22 MRS §42(1); 22-A MRS §205(2); and 29-A MRS §2524(6)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None anticipated*
Principal purpose:	*The Department is proposing this routine technical rule change, to coincide with the rule recently adopted by emergency and effective for 90 days, starting on May 28, 2024, which provides for the use of the new breath testing instruments that use a dry gas standard. This dry gas standard is consistent with industry practice for performing accuracy checks and calibration adjustments on most evidential breath alcohol testing instruments. The Department's proposed rule change is necessary to retain this standard in rule beyond the 90-day period afforded by the current emergency rule in effect. (5 MRS § 8054(3)). Additionally, the Department proposes amendments to update the rule title and structure, make non-substantive formatting changes to conform to agency standards and improve the clarity and readability of the rule.*
Basis Statement:	*The Department of Health and Human Services has adopted routine technical rule changes amending Chapter 269, a rule administered by the Maine Center for Disease Control and Prevention governing self-contained breath alcohol testing equipment. The rule adoption coincides with the expiration of the current rule which was adopted on an emergency basis and effective on May 28, 2024.* *The final adoption of this routine technical rule change ensures that the allowance for dry gas units continues beyond the 90-day period afforded by the current emergency rule. (5 MRS § 8054(3)). The dry gas standard, which is in addition to the wet bath simulators, is consistent with industry practice for performing accuracy checks and calibration adjustments on most evidential breath alcohol testing instruments.* *All self-contained breath alcohol testing equipment must be approved by the U.S. Department of Transportation in accordance with 49 CFR Part 40. There are approximately 8,000 breath tests performed each year at law enforcement agencies throughout the State of Maine impacted by this rule. The new instruments must qualify under 10-144 CMR Chapter 269, Maine's Self-Contained Breath Alcohol Testing Equipment Rule in order for their results to be considered potentially admissible in court.*

10-144 Department of Health and Human Services, Office for Family Independence	
2024-208: Chapter 331, Maine Public Assistance Manual (TANF - Temporary Assistance for Needy Families)	
Statutory Authority:	22 M.R.S. §§ 42(1); 3769-C
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The Department anticipates that any additional costs from this rulemaking will fall within the current available federal funding for the TANF program.*
Principal purpose:	*The proposed rule change would update the Public Assistance Manual Temporary Assistance for Needy Families (TANF) consistent with legislative changes made to 22 M.R.S. § 3769-C made by P.L. 2024, Ch. 622, An Act to Reduce the Number of Children Living in Deep Poverty by Adjusting Assistance for Low-income Families.* *The proposed rule change would update the Maximum Benefit and Standard of Need Chart by increasing the maximum amount of monthly TANF assistance by an amount equal to 20% of the maximum payments that were in effect on January 1, 2024. In addition, 22 M.R.S. § 3769-C(1)(D) requires that the Department increase Appendix Chart, page 3, Standard of Need and Maximum Grant, each October based on the Cost-of-Living Increase used by the Social Security Administration.* *It is the intent of the Department that proposed changes to this rule will be in effect as of October 1, 2024 consistent with SSA COLA increases.*
Basis Statement:	*The adopted rule updates the Public Assistance Manual Temporary Assistance for Needy Families (TANF) consistent with legislative changes made to 22 M.R.S. § 3769-C made by P.L. 2024, Ch. 622, An Act to Reduce the Number of Children Living in Deep Poverty by Adjusting Assistance for Low-income Families.* *The adopted rule effectuates the Maximum Benefit and Standard of Need Chart by increasing the maximum amount of monthly TANF assistance by an amount equal to 20% of the maximum payments that were in effect on January 1, 2024. In addition, 22 M.R.S. § 3769-C(1)(D) requires that the Department increase Appendix Chart, page 3, Standard of Need and Maximum Grant, each October based on the Cost-of-Living Increase used by the Social Security Administration for that year.* *The adopted rule updates are effective October 1, 2024 as required by statute.* *This rule will not have an adverse impact on municipalities or small businesses.*

10-144 Department of Health and Human Services, Office for Family Independence	
2024-209: Chapter 301, Supplemental Nutrition Assistance Program (SNAP) Rules	
Statutory Authority:	22 M.R.S. §§ 42(1) and 3104 and 5 M.R.S. § 8054
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*This rulemaking is anticipated to result in loss up to but not to exceed federal revenue of $6,852,00.00 and state revenue of $829,000.00 per year of the PHE. This loss will be distributed over an indeterminate number of years.*
Principal purpose:	*This rule change would halt collection of SNAP overpayments that resulted from errors originating from March 1, 2020 through May 11, 2023, the end of the Federal Public Health Emergency related to CoViD-19 (the PHE), unless they were the result of an Intentional Program Violation (IPV) on the part of the household. The ongoing ramifications of the PHE dictate that Department staff focus their efforts on issuing the correct benefits going forward rather than devote time and effort to recouping benefits that were inadvertantly over paid during the PHE. This rule change allows Maine's Overpayment Unit and Eligibility Staff to operate more effectively and efficiently. Maine residents are positively impacted as Eligibility Specialists will have more time to process applications, recertifications and reported changes.* *OFI resources were strained during the PHE due to implementation of Pandemic EBT, online purchasing, and Maximum Emergency Allotments. Emergency allotments require many manual supplements that are both error prone and time consuming. Benefits offered by other state agencies including increased unemployment benefits added to the probability of increased errors. Maine was approved for waivers of interview at application and recertification andimplemented telephonic signatures for the first time. Maine extended certification periods and delayed periodic reports for some months. All of these rapid paced changes allowed us to serve the residents of Maine more effectively and efficiently. The swift and drastic nature of these changes and changes to other programs led to pandemic caused SNAP benefit errors.* *Maine's SNAP caseload jumped 7%, from 89,398 households and 165,097 individuals on SNAP in February 2020 to 95,494 and 176,094 respectively in April 2020. The increase in applications, new programs and the myriad of fast paced changes for OFI and Maine residents are the root causes of pandemic payment errors. It is in the best interest of our applicants and recipients to waive pandemic related claims that are not the result of an IPV. This waiver would improve the effective and efficient administration of SNAP and not further harm Maine residents during a period of economic healing and restoration.* *Additional changes are part of an ongoing effort to modernize the chapter and improve its readability. This section would be reorganized to better match the flow of the process of determining, collecting and closing overpayments. Wording would be updated to provide a universal description of rights and requirements rather than instructions for Department staff. "Food Supplement" and related appreciations would be modernized to "Supplemental Nutrition Assistance Program" or "SNAP". Redundancies would be removed.*
Basis Statement:	*The adopted rule updates the Public Assistance Manual Temporary Assistance for Needy Families (TANF) consistent with legislative changes made to 22 M.R.S. § 3769-*

	C made by P.L. 2024, Ch. 622, An Act to Reduce the Number of Children Living in Deep Poverty by Adjusting Assistance for Low-income Families. *The adopted rule effectuates the Maximum Benefit and Standard of Need Chart by increasing the maximum amount of monthly TANF assistance by an amount equal to 20% of the maximum payments that were in effect on January 1, 2024. In addition, 22 M.R.S. § 3769-C(1)(D) requires that the Department increase Appendix Chart, page 3, Standard of Need and Maximum Grant, each October based on the Cost-of-Living Increase used by the Social Security Administration for that year.* *The adopted rule updates are effective October 1, 2024 as required by statute.* *This rule will not have an adverse impact on municipalities or small businesses.*

10-144 Department of Health and Human Services, Maine Center for Disease Control and Prevention	
2024-214: Chapter 175, Amyotrophic Lateral Sclerosis Incidence Registry Rule	
Statutory Authority:	22 MRS § 1415
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*No fiscal impact is anticipated.*
Principal purpose:	*The Department's proposal implements the statewide amyotrophic lateral sclerosis (ALS) incidence registry (Registry) and the reporting requirements for health care practitioners, hospitals and other health care facilities that screen for, diagnose or treat patients with ALS, pursuant to 22 MRS Chapter 255-A. This proposed rule includes provisions specific to annual reporting of Registry data and data sharing with external partners, including registries and researchers. Registry data disclosure and release, reports and bidirectional data exchanges must be in accordance with this rule and State and federal confidentiality laws and policies and may require a data sharing agreement or Institutional Review Board (IRB) approval or exemption determination letter. This rule outlines the form and manner prescribed by the Department for reporting reportable cases. Data required for reportable cases include the date of diagnosis, residential and occupational history, risk factors and other information about reportable cases that will inform epidemiologic studies on the causes of ALS, trend analysis, and geographic and demographic patterns.*
Basis Statement:	*This rule implements the data collection requirements and data release protocols established by the State of Maine Department of Health and Human Services Maine Center for Disease Control Prevention's Data Research and Vital Statistics (Department) for the purposes of the Statewide amyotrophic lateral sclerosis (ALS) incidence registry, pursuant to 22 MRS § 1411. This rule is adopted in accordance with Title 5 MRS Chapter 375, Subchapter 2.* *Physicians, surgeons, nurse practitioners, physician assistants or other health care practitioners and hospitals or other health care facilities that screen for, diagnose or provide therapeutic services to patients with ALS must collect and report required data concerning a reportable case in the form and manner prescribed by the Department, including information that may otherwise not be included in an electronic medical record. As authorized by 22 MRS § 1412, the Department's rule requires information, including, but not limited to, diagnostic information, residential and occupational history, and reported known risk factors, that may be used to inform epidemiologic studies on the causes of ALS and in evaluating of trends over time and identifying geographic and demographic patterns. The ALS reporting form collects personal information. Because the transmission is not urgent, the forms may be submitted securely via U.S. mail or facsimile, as permitted for similar health-related data collection form submissions.* *The Department may follow-up with reporters for information held by the provider and determined to be important for ALS research or inclusion in the national ALS registry. The rule outlines data sharing protocols that ensure patient confidentiality and confirm that the release of registry information is for legitimate purposes.*

10-144 Department of Health and Human Services, MaineCare Services	
2024-215: Chapter 101, MaineCare Benefits Manual, Ch. II, § 25, Dental Services and Reimbursement	
Statutory Authority:	22 M.R.S. §§ 42, 3173, 3173-J(D)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The Department anticipates that this rulemaking will result in a cost neutral fiscal impact.*
Principal purpose:	*The Department proposes to amend 10-144 CMR ch. 101, MaineCare Benefits Manual (the "MBM") Chapter II, Section 25 Dental Services and Reimbursement Methodology, specifically Section 25.06 Reimbursement Methodology. On July 1, 2024, the Department enacted changes to this policy through emergency rulemaking pursuant to Title 5, M.R.S. §8054.* *This proposed rulemaking seeks to make permanent the updates in the reimbursement methodology described in Section 25.06(A). In accordance with 22 M.R.S. §3173-J(2), the Department provided notice of its initiation of the process to update the benchmarked rates for dental services to the most current year of data for the payer source on October 13, 2023, by posting it on the MaineCare Rate System Reform website. The Department conducted a review of data from the Maine Health Data Organization All Payer Claims Database as well as utilizing data from other states' Medicaid dental service rates. The result of this process to update the benchmarked rates for dental services was that the updated benchmarks would result in an estimated 2.2 million dollar reduction in total reimbursement to providers of MaineCare dental services. In accordance with Title 22 M.R.S. §3173-J, the Department held an online public meeting to present the results of the benchmark updating efforts and draft rates on April 12, 2024, and provided opportunities for stakeholder input and comment.* *In addition, to ensure reimbursement is not decreased, and in an effort to ensure continued access to services, this rulemaking will also amend Section 25.06(B)3 to extend the temporary exceptions for services defined as extraction of an erupted or exposed root and medicament application for an additional two years, through June 30, 2026. This change enables the Department to maintain the rates for these services in an effort to prevent further loss of enrolled dental providers and to ensure access to medically necessary services for MaineCare members.*
Basis Statement:	*The Department of Health and Human Services ("the Department") adopts this rule to amend 10-144 CMR ch. 101, MaineCare Benefits Manual (the "MBM") Chapter II, Section 25, Dental Services and Reimbursement Methodology.* *On June 28, 2024, the Department adopted an emergency rule, pursuant to 5. M.R.S. §8054, that made the following changes:* • *Section 25.06(A)(1)(Commercial Median Benchmark): This benchmark will be "assessed" rather than "updated" every two years;* • *Section 25.06(A)(2)(Medicaid State Average Benchmark): This benchmark will be "assessed" rather than "updated" every two years;* • *Section 25.06(B)(3(Temporary Exceptions): These exceptions are being extended from June 30, 2024 to June 30, 2026.*

	The June 28, 2024 Emergency Rule expires on September 26, 2024. This rulemaking makes permanent the three reimbursement methodology changes described above. The changes to the two benchmarks ensure that reimbursement to Providers will not decrease. The Department conducted a review of data from the Maine Health Data Organization All Payer Claims Database as well as utilizing data from the other states' Medicaid dental service rates. As a result, the Department concluded that updating the benchmarks would result in an estimated $2.2 million net reduction in reimbursement. The extension for the methodology for Temporary Exceptions for services defined as extraction of an erupted or exposed root and medicament application will continue for another two years. The Department will submit a State plan Amendment to CMS to these changes and anticipates CMS approval of such.

10-144 Department of Health and Human Services, Office for Family Independence	
2024-232: Chapter 333, Low Cost Drugs for the Elderly and Disabled (DEL) Eligibility	
Statutory Authority:	22 M.R.S. § 42(1) and (8); 254-D, 3174-LLL
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None anticipated.*
Principal purpose:	*The proposed rule change would update Section 2, APPLICATION PROCESS, consistent with a legislative change to 22 M.R.S. § 3174-LLL made by P.L. 2023, ch. 412. Effective retroactive to July 1, 2024, individuals who are enrolled in Medicaid and/or Medicare Buy-In (MSP), who are eligible for Medicare Part D, and meet the income criteria in Section 2.2, are deemed to be eligible for and enrolled in DEL. These individuals do not need to file a separate application.* *In addition, the proposed rule would make the following changes:* *"10-144" would replace the "MaineCare Eligibility Manual" throughout the rule.* *"Noncitizen" would replace "alien" and "noncitizens" would replace "aliens" throughout the rule.* *Section 1 "their" would replace "his/her" control.* *Section 1(III)(B)(3) "United" would replace "Unites."* *The proposed rule changes would be retroactive to July 1, 2024. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these updates provide a benefit to recipients and applicants.*
Basis Statement:	*The adopted rule updated Section 2, APPLICATION PROCESS, consistent with a legislative change to 22 M.R.S. § 3174-LLL made by P.L. 2023, ch. 412. Effective retroactive to July 1, 2024, individuals who are enrolled in Medicaid and/or Medicare Buy-In (MSP), who are eligible for Medicare Part D, and meet the income criteria in Section 2.2, are deemed to be eligible for and enrolled in DEL. These individuals do not need to file a separate application.* *In addition, the adopted rule effectuates the following changes:* • *"10-144" replaced the "MaineCare Eligibility Manual" throughout the rule.* • *"Noncitizen" replaced "alien" and "noncitizens" would replace "aliens" throughout the rule.* • *Section 1 "their" replaced "his/her" control.* • *Section 1(III)(B)(3) "United" replaced "Unites."* *The adopted rule changes are effective retroactive to July 1, 2024. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these updates provide a benefit to recipients and applicants.* *The Department determined it necessary to make non-substantial changes to the final rule to ensure consistency throughout the rule. Throughout the open sections of this rule, 10-144, C.M.R. Ch. 332 replaces MaineCare Eligibility Manual.* *The final rule is consistent in substance with the rule that was proposed.* *This rule will not have an adverse impact on municipalities or small businesses.*

10-144 Department of Health and Human Services, Office for Family Independence	
2024-233: Chapter 331, Public Assistance Manual (TANF)	
Statutory Authority:	22 M.R.S. §§ 42(1); 3762(3)(A)-(B)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The Department anticipates any additional costs from this rulemaking are expected to be minor and can be absorbed within existing budgeting resources.*
Principal purpose:	*The proposed rule changes would update the Public Assistance Manual Temporary Assistance for Needy Families (TANF) consistent with a legislative change to 22 M.R.S. § 3762 made by P.L. 2023, Ch. 29, An Act to Improve Family Economic Security Under the Temporary Assistance for Needy Families Program.* *The proposed rule changes would update Chapter IV, B, INCOME DISREGARDS as follows:* *B(3) would remove "one of"* *B(3)(a) would add "A current recipient with new employment that was obtained while actively participating in, and in compliance with, the TANF/PaS and ASPIRE programs; or"* *B(3)(b) would add "an increase in" and replace "or" with "and"* *B(3)(c) The increase in earned income occurred while actively participating in, and in compliance with, the TANF/PaS program" would replace "An applicant with earned income and the assistance group has passed the income eligibility test located below in (F)(1)."* *B(3)(c)(i) would add "applicable" and "or they meet the conditions included in (d) below."* *B(3)(e) "Supplemental Nutrition Assistance Program (SNAP)" would replace "Food Supplement Program."* *It is the intent of the Department that proposed changes to this rule will be in effect as of October 1, 2024 consistent with P.L. 2023 Ch. 29.*
Basis Statement:	*The adopted rule effectuates changes to Chapter IV of the Public Assistance Manual Temporary Assistance for Needy Families (TANF) consistent with a legislative change to 22 M.R.S. § 3762 made by P.L. 2023, Ch. 29, An Act to Improve Family Economic Security Under the Temporary Assistance for Needy Families Program.* *The adopted rule updated Chapter IV, B, INCOME DISREGARDS as follows:* • *B(3) removed "one of"* • *B(3)(a) added "A current recipient with new employment that was obtained while actively participating in, and in compliance with, the TANF/PaS and ASPIRE programs; or"* • *B(3)(b) added "an increase in" and replace "or" with "and"* • *B(3)(c) The increase in earned income occurred while actively participating in, and in compliance with, the TANF/PaS program" replaced "An applicant with earned income and the assistance group has passed the income eligibility test located below in (F)(1)."* • *B(3)(c)(i) added "applicable" and "or they meet the conditions included in (d) below."*

- *B(3)(e) "Supplemental Nutrition Assistance Program (SNAP)" replaced "Food Supplement Program."*

The adopted rule changes are effective retroactive to October 1, 2024 consistent with P.L. 2023 Ch. 29. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as this update is a benefit to recipients or beneficiaries and does not have an adverse financial effect on either providers or beneficiaries or recipients.

This rule will not have an adverse impact on municipalities or small businesses.

10-144 Department of Health and Human Services, Maine Center for Disease Control and Prevention	
2024-234: Chapter 265, Substance Use Testing For The Workplace Rule	
Statutory Authority:	26 MRS §§ 683(11) and 687 (1)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*This rule change permits labs to, again, conduct the appropriate confirmation tests for employers, eliminating any impact associated with changes in allowable testing for THC implemented November 2023.*
Principal purpose:	*This rule change is needed to ensure that licensed testing laboratories serving Maine employers with approved testing policies can continue to apply appropriate confirmation test methods for tetrahydrocannabinol (THC). This proposed rule corrects the unintended conflict resulting from a recent change adopted November 2023 in Section 1 (B)(8), to allow licensed testing laboratories to continue to conduct confirmation tests for tetrahydrocannabinol (THC) and/or metabolites that may include non-psychoactive components as an indicator of use of THC. Additionally, the Department proposes changes to clarify that, when an applicant or employee requests a portion of the sample for that person's own testing, the sample must be segregated at the time the sample is taken (Section 2(B)(2)); and that all non-negative specimens must be retained in the original containers and stored at appropriate temperature for preservation for at least 12 months, and that lab reports showing the presence or absence of that substance relative to the cutoff level only are sent to the employer or designee. Proposed changes also relocate provisions related to sample collection and storage to Section 2 and remove those provisions in Section 4 related to licensing and oversight that are no longer applicable, due to capacity and infrastructure changes impacting the inspections conducted by the Department for testing labs subject to this rule. Under this rule, licensed labs must be approved by the Substance and Mental Health Services Administration's National Laboratory Certification Program or College of American Pathologist Laboratory Accreditation Program.*
Basis Statement:	*The Maine Department of Health and Human Services (Department) has adopted routine technical rule changes amending 10-144 CMR Chapter 265, Substance Use Testing For The Workplace Rule, a rule administered by the Department's Maine Center for Disease Control and Prevention that governs testing of employees working in the State of Maine and applicants applying for employment in the State of Maine, for substances of use for the workplace. The adopted rule reflects changes finalized after consulting with the Maine Department of Labor (DOL), considering public comments received for this rulemaking, and receiving the review performed by the Office of the Attorney General for form and legality.* *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 incidents 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. (26 MRS §681).* *Following reports of a conflict resulting from Chapter 265 rule amendments adopted*

	in November 2023, the Department filed notice of proposed changes on May 15, 2024, to address the conflict in Chapter 265 that inadvertently restricted laboratories from testing non-psychoactive components of cannabis as an indicator of use of tetrahydrocannabinol (THC), which inadvertently impacted testing laboratories and employers' workplace substance use testing policies across the State of Maine. *This rule change is critical to ensure that licensed testing laboratories serving Maine employers with approved testing policies are allowed to continue to apply appropriate confirmation test methods that may include non-psychoactive components of cannabis as an indicator of use of THC. Additionally, adopted amendments further clarify statutory provisions, update language to align with industry standards, and reflect infrastructure changes that impacted the inspections conducted by the Department for labs subject to this rule.*

10-144 Department of Health and Human Services, Office for Family Independence	
2024-240: Chapter 332, MaineCare Eligibility Manual	
Statutory Authority:	22 M.R.S. §§ 42(1) and (8); 3174
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The proposed rule changes are not anticipated to have a fiscal impact.*
Principal purpose:	*The Department proposes rule changes to the MaineCare Eligibility Manual, Part 2, Basic Eligibility Criteria consistent with the Centers for Medicaid and Medicare Services' "2023 Streamlining Medicare Savings Program Enrollment" final rule (89 FR 22780). The proposed rule removes the requirement that applicants apply for other benefits as a condition of MaineCare eligibility. Additionally, it removes the limit on the number of reasonable opportunity periods for individuals verifying their citizenship and immigration status.* *The proposed rule would make the following changes to Part 2:* • *Section 3.1, (III)(B) would remove "not" from "A reasonable opportunity period will not be provided on subsequent applications submitted by or on behalf of the applicant or household members."* • *Section 3.4, (H) would capitalize Batterer(s).* • *Section 10, "APPLICATION FOR MEDICARE" would replace "APPLICATION FOR OTHER BENEFITS"* • *Section 10 would remove "Individuals must apply for other benefits to which they may be entitled. This includes applying for the benefit and providing the Department with necessary information to determine eligibility."* • *Section 10 would remove I. "Other benefits include but are not limited to, Social Security, Railroad Retirement, Veteran's Pension/Compensation, Worker's Compensation, and Unemployment Insurance. This provision does not apply to SSI, State Supplement, TANF cash benefits and other Federal, State, local or private programs which make payments based on need."* • *Section 10 would remove V. "The Department will not require an individual:"* • *Section 10 would remove V.A. "To file for other benefits when applying for them would result in no additional benefits which affects the individual's eligibility."* • *Section 10 would V.B. "To pursue a claim for other program benefits through the appeals process."* • *Section 10 would remove V.C. "Who is not applying for or covered by Medicaid to pursue a claim for other program benefits, for example, an ineligible spouse, parent or child."* *The proposed rule changes would be effective June 1, 2024. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these updates provide a benefit to recipients and applicants.*
Basis Statement:	*The adopted rule updates the MaineCare Eligibility Manual, Part 2, Basic Eligibility Criteria, consistent with the Centers for Medicaid and Medicare Services' "2023 Streamlining Medicare Savings Program Enrollment" final rule (89 FR 22780). The adopted rule removes the requirement that applicants apply for other benefits as a condition of MaineCare eligibility. Additionally, the adopted rule removes the limit*

on the number of reasonable opportunity periods for individuals verifying their citizenship and immigration status.

The adopted rule effectuates the following changes to Part 2, Basic Eligibility Criteria:

- *Section 3.1, (III)(B) removes "not" from "A reasonable opportunity period will not be provided on subsequent applications submitted by or on behalf of the applicant or household members."*
- *Section 3.4, (H) capitalizes Batterer(s).*
- *Section 10, "APPLICATION FOR MEDICARE" replaces "APPLICATION FOR OTHER BENEFITS"*
- *Section 10 removes "Individuals must apply for other benefits to which they may be entitled. This includes applying for the benefit and providing the Department with necessary information to determine eligibility."*
- *Section 10 removes I. "Other benefits include but are not limited to, Social Security, Railroad Retirement, Veteran's Pension/Compensation, Worker's Compensation, and Unemployment Insurance. This provision does not apply to SSI, State Supplement, TANF cash benefits and other Federal, State, local or private programs which make payments based on need."*
- *Section 10 removes V. "The Department will not require an individual:"*
- *Section 10 removes V.A. "To file for other benefits when applying for them would result in no additional benefits which affects the individual's eligibility."*
- *Section 10 updates V.B. "To pursue a claim for other program benefits through the appeals process."*
- *Section 10 removes V.C. "Who is not applying for or covered by Medicaid to pursue a claim for other program benefits, for example, an ineligible spouse, parent or child."*

Changes were made to the adopted rule as a result of public comment and intended to provide clarity and reduce confusion. The adopted rule is consistent in substance with the rule was proposed.

Section 10: Application for Medicare:

- *The title of Section 10 is changed to "Requirement to Apply for Medicare"*
- *I. and II. add "through the Social Security Administration,"*

The adopted rule changes are effective retroactive to June 1, 2024. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these updates provide a benefit to recipients and applicants.

This rule will not have an adverse impact on municipalities or small businesses.

10-144 Department of Health and Human Services, Office of MaineCare Services – Policy Division	
2024-245: Chapter 101, MaineCare Benefits Manual, Ch. II, § 43, Hospice Services	
Statutory Authority:	22 M.R.S. §42 and 42(8); P.L. 2023, ch. 576 (LD 2055).
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*This proposed rulemaking is cost neutral.*
Principal purpose:	***Background***: *In January 2024, the Department adopted changes to the Ch. II, Section 43 (Hospice Services), which included adding a new provision (Section 43.06-7) adding an Electronic Visit Verification (EVV) requirement for hospice services that are delivered in-home, with a prospective effective date of July 1, 2024 for that EVV requirement.* *After the Ch. II Section 43 rule was adopted, the Maine Legislature enacted legislation which provided that the Department may not implement EVV for hospice providers earlier than March 1, 2025, and that rules providing for such EVV requirements are major substantive rules. P.L. 2023, ch. 576 (LD 2055). This Public Law became law without the Governor's signature on March 27, 2024. The law is codified at 22 M.R.S. Sec. 3174-NNN.* ***The Department's rule proposal:*** *In accordance with P.L. 2023 ch. 576, the Department of Health and Human Services (the "Department") proposes to repeal the Ch. II, Sec. 43.06-7 provision (with the EVV requirement). Because this routine technical rule will likely not be adopted until after July 1, 2024, the Department proposes a retroactive effective date of June 30, 2024 for the repeal of the provision.* *The Department shall submit to the Centers for Medicare & Medicaid Services, and anticipates approval, for a State Plan Amendment related to this provision.*
Basis Statement:	*The Department of Health and Human Services (the "Department") adopts this rule to amend MaineCare Benefits Manual (the "MBM") Chapter II, Section 43, Hospice Services.* ***Background***: *In January 2024, the Department adopted a rule to amend Ch. II, Section 43: Hospice Services by adding a new provision (Section 43.06-7) to implement an Electronic Visit Verification (EVV) requirement for hospice services that are delivered in-home, with a prospective effective date of July 1, 2024 for that EVV requirement.* *After the Ch. II Section 43 rule was adopted, the Maine Legislature enacted legislation which provided that the Department may not implement EVV for hospice providers earlier than March 1, 2025, and that rules providing for such EVV requirements are major substantive rules. P.L. 2023, ch. 576 (LD 2055). This Public Law became law without the Governor's signature on March 27, 2024. The law is codified at 22 M.R.S. Sec. 3174-NNN.* ***The Department's changes to Chapter II, Section 43:*** *In accordance with P.L. 2023 ch. 576, the Department repeals the Ch. II, Sec. 43.06-7 provision (with the EVV requirement). Since this routine technical rule repealing Ch. II, Sec. 43.06-7 was not*

	adopted prior to July 1, 2024, the date Ch. II, Sec. 43.06-7 was intended to go into effect, the Department adopts a retroactive effective date of June 30, 2024, for the repeal of the provision. *The Department shall submit to the Centers for Medicare & Medicaid Services, and anticipates approval, for a State Plan Amendment related to this provision.* *Rules and related rulemaking documents may be reviewed at and printed from MaineCare Services website at http://www.maine.gov/dhhs/oms/rules/index.shtml or, for a fee, interested parties may request a paper copy of rules by calling 207-624-4050. For those who are deaf or hard of hearing and have a TTY machine, the TTY number is 711.*

10-144 Department of Health and Human Services, Office for Family Independence	
2024-247: Chapter 323, Maine General Assistance Manual	
Statutory Authority:	22 M.R.S. §§ 42(1) and 4308(2); 5 M.R.S. § 8054; P.L. Ch. 643 Section VV
Type:	Routine Technical
Emergency?:	Yes
Fiscal Impact:	*The Department anticipates that any additional costs to implement the adopted rule changes are expected to be minor and can be absorbed within existing budgeted resources.*
Principal purpose:	*The Department adopts this emergency rule, which amends10-144 C.M.R. Ch. 323, Maine General Assistance (GA) Manual, Section V, MAXIMUMS, CATEGORIES AND LEVELS OF ASSISTANCE, to align with a legislative change to 22 M.R.S. §§ 4308(2) made by P.L. 2024 Ch. 643.* *This emergency rule makes the following change to Section V, MAXIMUMS, CATEGORIES AND LEVELS OF ASSISTANCE:* • *(D)(5) "The maximum duration that an applicant may receive housing assistance for hotel, motel, inn or in a similar place of lodging in excess of the municipality's budgeted maximum levels is 30 days in a 12-month period. This does not preclude an applicant from receiving housing assistance less than or equal to the municipality's budgeted maximum levels for the remainder of the 12-month period as long as the applicant meets requirements."* ***Findings of Emergency:*** *The Maine Legislature granted the Department of Health and Human Services authority to adopt emergency rules under 5 M.R.S. Sec. 8054, if determined necessary by the Department to implement those provision of the Supplemental Budget Act over which the Department has subject matter jurisdiction, without the requirement that it demonstrate that immediate adoption is necessary to avoid a threat to public health, safety or general welfare. P.L. 2023, ch. 643, PART VV, Sec. VV-1. The Department has determined that it is necessary to adopt this emergency rule to implement provisions of the Supplemental Budget Act regarding hospital reimbursement set forth in PART A, Sec. A-14.* *Pursuant to 5 M.R.S §8054, this emergency rule may be effective for up to ninety (90) days. The Department shall proceed with routine technical rulemaking to permanently adopt these rule changes.* *This rule will not have an impact on municipalities or small businesses.*
Basis Statement:	*The Department adopts this emergency rule, which amends10-144 C.M.R. Ch. 323, Maine General Assistance (GA) Manual, Section V, MAXIMUMS, CATEGORIES AND LEVELS OF ASSISTANCE, to align with a legislative change to 22 M.R.S. § 4308(2) made by P.L. 2024 Ch. 643.* *This emergency rule makes the following change to Section V, MAXIMUMS, CATEGORIES AND LEVELS OF ASSISTANCE:* • *(D)(5) "The maximum duration that an applicant may receive housing*

assistance for hotel, motel, inn or in a similar place of lodging in excess of the municipality's budgeted maximum levels is 30 days in a 12-month period. This does not preclude an applicant from receiving housing assistance less than or equal to the municipality's budgeted maximum levels for the remainder of the 12-month period as long as the applicant meets requirements."

Findings of Emergency:

The Maine Legislature granted the Department of Health and Human Services authority to adopt emergency rules under 5 M.R.S. Sec. 8054, if determined necessary by the Department to implement those provision of the Supplemental Budget Act over which the Department has subject matter jurisdiction, without the requirement that it demonstrate that immediate adoption is necessary to avoid a threat to public health, safety or general welfare. P.L. 2023, ch. 643, PART VV, Sec. VV-1. The Department has determined that it is necessary to adopt this emergency rule to implement provisions of the Supplemental Budget Act regarding hospital reimbursement set forth in PART A, Sec. A-14.

Pursuant to 5 M.R.S §8054, this emergency rule may be effective for up to ninety (90) days. The Department shall proceed with routine technical rulemaking to permanently adopt these rule changes.

This rule will not have an impact on municipalities or small businesses.

10-144 Department of Health and Human Services, MaineCare Services	
2024-248: Chapter 101, MaineCare Benefits Manual, Ch. III, § 45, Hospital Services	
Statutory Authority:	22 M.R.S. §§ 42, 3173-J; P.L. 2023, ch. 643.
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The Department anticipates that this rulemaking will cost approximately $122,338,057 in SFY 2025, which includes $34,716,249 in state dollars and $87,621,808 in federal dollars, and $$122,338,057 in SFY 2026, which includes $34,805,689 in state dollars and $87,532,368 in federal dollars.*
Principal purpose:	*The Department of Health and Human Services proposes these rule changes in 10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Chapter III, Section 45, Principles of Reimbursement for Hospital Services. On August 9, 2024, the Department enacted changes to this policy through emergency rulemaking pursuant to Title 5, M.R.S. §8054.* *The Department's principal purpose of this rulemaking is to make permanent the establishment of a new reimbursement methodology for Acute Care and Rehabilitation Hospitals, with the exception of Distinct Psychiatric and Substance Use Disorder Unit services for which the Department recently implemented 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 June 23, 2023. MaineCare presented the draft reimbursement methodology and definitions to providers and interested stakeholders on December 11, 2023; February 16, 2024; and June 11, 2024. The Department accepted public comments through June 25, 2024 and responded in writing to comments with an explanation of whether and how feedback was incorporated into the final reimbursement methodology and rates.* *These changes include improved alignment with Medicare, greater consistency in reimbursement methodology across hospitals, and ensuring that reimbursement for services better reflects patient acuity. The Department adopts methodology which aligns reimbursement for facilities with similar delivery systems and cost structures, recognizing three distinct hospital peer groups that recognize distinct Maine Base Rates for inpatient services: Acute Care Non-Critical Access, Non-State Government Owned, and Rehabilitation. The Department's updated methodology introduces mechanisms to keep pace with inflation and improve the relationship between the quality of service outcomes and payment.* *The Department shall submit to the Centers for Medicare & Medicaid Services, and anticipates approval, for State Plan Amendments related to these provisions.* *Some of the rule changes have a retroactive application date of July 1, 2024, and the rule indicates the July 1, 2024 effective date for those provisions. The Department certifies that the retroactive changes comply with, and thus are authorized by, 22 M.R.S. Sec. 42(8).*

This rulemaking proposes to make permanent the following changes:

- *Introduction:*

- *Removes specific mention of private classification from Acute Care Non-Critical Access Hospitals and adds the subset of Non-State Government Owned Hospitals.*

- *Updates Public Acute Care Non-Critical Access Hospitals to Non-State Government Owned Hospitals and specifies they will be reimbursed as Acute Care Non-Critical Access Hospitals.*

Removes Hospitals Reclassified to a Wage Area Outside Maine by the Medicare Geographic Classification Review Board (MGCRB) as the classification is no longer relevant to this updated reimbursement methodology.

- *Effective July 1, 2024, updates Rehabilitation Hospital summary to reflect adoption of Medicare Severity Diagnosis Related Group (MS DRG)-based reimbursement methodology in lieu of the current set discharge rate.*

- *Section 45.01- Definitions:*

- *Updates definitions of Ambulatory Payment Classifications (APC); Discharge; Acute Care Non-Critical Access Hospital; and Rural Hospital.*

- *Removes the definition of Hospital Reclassified to a Wage Area Outside Maine by the Medicare Geographic Classification Review Board (MGCRB).*

- *Defines Provider-Based Department, Non-State Government Owned Hospital, and Acute Care Hospitals converting from Critical Access Hospital Reimbursement Methodology to Acute Care Non-Critical Access Hospital Reimbursement Methodology.*

- *Section 45.02 – General Provisions*

- *45.02-1 – Inflation: Includes application of annual inflation adjustments for MS DRG-based reimbursement rates.*

- *45.02-5(F) – Adds reimbursement information pertaining to Upper Payment Limits and related compliance measures. Adds the separate UPL required by CMS for Non-State Government Owned Hospitals.*

- *45.02-6 – Data for PIP Calculation: Adds cost report data requirements for hospitals approved for conversion to critical access hospital category and resulting reimbursement methodology. This requirement is added to ensure timely PIP determination and payment for converting hospitals.*

- *45.02-8 – Effective July 1, 2024, Days Awaiting Placement: Updates expired provision to reintroduce the provision with new methodology which removes the 10-day waiting period, establishes a new annual cap of $1,500,000, and*

reimburses Acute Care Non-Critical Access Hospitals at 75% of the statewide average per diem NF rate. The Department reintroduces this provision and triples the amount of the previous cap in recognition of the fiscal impact on hospitals for delivering such care. Utilizing a percentage of the per diem NF rate is an approach consistent with methodology utilized in other state Medicaid Programs and recognizes level of care constraints within the hospital setting.

- *45.02-9 – Claims Billing: Adds new section to introduce links to the Department's billing instructions and new supplemental Hospital Billing Guidance.*

- *45.02-10 – Readmissions Penalty: To more closely align with Medicare, the Department incorporates existing operational processes and components of the former Discharge definition to enhance Readmissions Penalties applied to qualifying DRG payments effective August 9, 2024. This adjustment moves away from exact DRGs in favor of clinically related criteria, clarifies when a member is considered to be readmitted, extends the readmissions "window" from 14 days to 30 days, and describes scenarios excluded from Readmissions Adjustment review.*

- *<u>Section 45.03 – Acute Care Non-Critical Access Hospitals</u>*
- *Removes Department's Total Obligation to the Hospital narrative as the formula is now described elsewhere within the rule.*

- *45.03-1 –Inpatient Services: References updates to MS DRG-based payment methodology detailed in Appendix A, effective July 1, 2024. For Distinct Psychiatric Units and Substance Use Disorder Units: Moves the end date for cost settlement of capital costs from July 1, 2025 to September 1, 2024.*

- *45.03-C – Effective July 1, 2024, Outpatient Services, Including Laboratory and Imaging: Aligns outpatient methodology across acute care non-critical access hospitals by transitioning Non-State Government Owned Hospitals from a cost reimbursement system to the Medicare Outpatient Prospective Payment System (OPPS) that also applies to Acute Care Non-Critical Access Hospitals. Updates the percent of Medicare OPPS Ambulatory Payment Classifications (APC) rates the Department pays to 109%. The Department will also pay the updated 109% of Medicare outlier payments. Fully aligns with Medicare by, effective August 9, 2024, adopting Medicare adjustments to reduce reimbursement at certain Provider Based Departments through use of the PO modifier.*

- *Effective July 1, 2024, removes reference to Public Hospitals as they are now absorbed in other areas of the rule.*

- *Removes reference to Capital and Graduate Medical Education Costs as those are now addressed in Appendix A and are no longer subject to cost settlement*

- *Removes Prospective Interim Payment (PIP) for Outpatient Services as Public Acute Care Non-Critical Access Hospitals will no longer receive PIPs.*

- *Effective July 1, 2024, Interim and Final Cost Settlement: Specifies cost settlement now only applies to hospital-based physician services; expired provisions are end dated. DRG and APC payments will not be cost settled.*

    - *Section 45.05 – Hospitals Reclassified to a Wage area Outside of Maine by the Medicare Geographic Classification Review Board (MGCRB) Prior to October 1, 2008*
- *Removes section as the Hospitals Reclassified to a Wage area Outside of Maine criteria will no longer be utilized by the Department to determine hospital classification. Such hospital types will now be reimbursed as Acute Care Non-Critical Access Hospitals to assure hospital fiscal stability.*

    - *Section 45.06 – Rehabilitation Hospitals*
- *Effective July 1, 2024, updates section to reflect adoption of MS DRG-based payment methodology. The Department adopts this updated reimbursement methodology as the current flat discharge rate does not capture changes in patient mix or costs related to patient acuity. Unlike the stagnant flat discharge rate which was last updated in 2018, the DRG-based payment methodology will receive annual inflation adjustments and updates to the Medicare MS-DRG relative weights. Rehabilitation Hospitals are a distinct peer group and will receive their own Maine Base Rate.*
- *Effective July 1, 2024, Interim and Final Cost Settlement is added to specify cost settlement only applies to hospital-based physician services; DRG and APC payments will not be cost settled. The discontinuation of cost settlement for these services will reduce administrative burden for both providers and the Department.*
- *Updates the percent of Medicare OPPS Ambulatory Payment Classifications (APC) rates the Department pays to 109%. The Department will also pay the updated 109% of Medicare outlier payments. This increase is a result of the Department's larger hospital investment initiative.*

    - *Section 45.07 – Value-Based Purchasing for Supplemental Sub-Pool*
- *Removes mention of Hospitals Reclassified to a Wage area Outside of Maine (as such hospital types will now be reimbursed as Acute Care Non-Critical Access Hospitals).*

    - *Section 45.08 – Supplemental Pool for Acute Non-Critical Access Hospitals and Rehabilitation Hospitals*
- *Removes mention of Hospitals Reclassified to a Wage area Outside of Maine (as such hospital types will be reimbursed as Acute Care Non-Critical Access Hospitals).*

    - *Section 45.09 – Supplemental Payments for Acute Care Hospitals converting from Acute Care Critical Access Hospital Reimbursement to Acute Care Non-Critical Access Hospital Reimbursement*
- *Adds this new section to address the supplemental payment for Acute Care Non-Critical Access Hospitals reimbursed by Medicare under the Prospective*

	Payment System and reimbursed by MaineCare like a Critical Access Hospital for outpatient services on or before January 1, 2024. • *Appendix A – DRG-Based Payment Methodology* • *Effective July 1, 2024, updates language addressing components of the updated MS DRG-Based Payment Methodology:* o *This rule also removes cost settlement provisions for Capital and GME costs for hospitals subject to the DRG-Based Payment Methodology.* o *The Department updates its DRG-Based Payment Methodology. The rule incorporates updated Maine Base Rates that reflect FY22 costs; recognize different costs of inpatient care for Acute Care Non-Critical Access and Rehabilitation hospitals; and are inclusive of capital and operating costs.* o *The Department calculates a hospital's DRG payment for a covered inpatient service by summing the assigned peer group's Maine Base Rate plus, for teaching hospitals, a hospital-specific GME add-on rate determined using the hospital's FY 2022 As-filed Medicare cost report data. This sum is multiplied by the Medicare DRG relative weight, and the resulting value equals the hospital's DRG payment. The rule updates the MS-DRG weights to the current year's Medicare weights to account for cost differences in services delivered and patient acuity.* o *Outlier Adjustment: The Department establishes a new DRG-based outlier payment methodology which will observe updates to hospital-specific cost-to-charge ratios (CCRs) and fixed reimbursement percentages, as well as introduce a standard outlier threshold, updated in this rule to account for cost growth, for all eligible hospitals. Effective July 1, 2024 through December 31, 2024, the Department will increase the percentage it reimburses from 80% to 90% of estimated costs based on charges that exceed the threshold. This differs from previous methodology in that a new fixed reimbursement percentage is applied, a standard outlier threshold used, and hospital-specific CCRs are updated.*
Basis Statement:	*The Department of Health and Human Services (the "Department") 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 Department's principal purpose of this rulemaking is to establish new reimbursement methodology for Acute Care and Rehabilitation Hospitals, with the exception of Distinct Psychiatric and Substance Use Disorder Unit services for which the Department recently implemented a new reimbursement methodology.* *On August 9, 2024, the Department adopted an emergency rule implementing these and other changes in Chapter III, Section 45. That emergency rule expires after 90 days, pursuant to 5 M.R.S. § 8054(3); this rulemaking makes permanent those emergency adopted changes.*

This rulemaking makes the following changes:

- *Introduction:*

- *Removes specific mention of "private" classification from Acute Care Non-Critical Access Hospitals and adds the subset of Non-State Government Owned Hospitals.*

- *Updates Public Acute Care Non-Critical Access Hospitals to Non-State Government Owned Hospitals and specifies they will be reimbursed as Acute Care Non-Critical Access Hospitals.*

- *Removes Hospitals Reclassified to a Wage Area Outside Maine by the Medicare Geographic Classification Review Board (MGCRB) as the classification is no longer relevant to this updated reimbursement methodology.*

- *Effective July 1, 2024, updates Rehabilitation Hospital summary to reflect adoption of Medicare Severity Diagnosis Related Group (MS DRG)-based reimbursement methodology in lieu of the current set discharge rate.*

- *Section 45.01- Definitions:*

- *Updates definitions of Ambulatory Payment Classifications (APC); Discharge; Acute Care Non-Critical Access Hospital; and Rural Hospital.*

- *Removes the definition of Hospital Reclassified to a Wage Area Outside Maine by the Medicare Geographic Classification Review Board (MGCRB).*

- *Defines Provider-Based Department, Non-State Government Owned Hospital, and Acute Care Hospitals converting from Critical Access Hospital Reimbursement Methodology to Acute Care Non-Critical Access Hospital Reimbursement Methodology.*

- *Section 45.02 – General Provisions:*
- *45.02-1 – Inflation: Includes application of annual inflation adjustments for MS DRG-based reimbursement rates.*

- *45.02-5(F) – Adds reimbursement information pertaining to Upper Payment Limits and related compliance measures. Adds the separate UPL required by CMS for Non-State Government Owned Hospitals.*

- *45.02-6 – Data for PIP Calculation: Adds cost report data requirements for hospitals approved for conversion to critical access hospital category and resulting reimbursement methodology. This requirement is added to ensure timely PIP determination and payment for converting hospitals.*

- *45.02-8 – Effective July 1, 2024, Days Awaiting Placement: Updates expired*

provision to reintroduce the provision with new methodology which removes the 10-day waiting period, establishes a new annual cap of $1,500,000, and reimburses Acute Care Non-Critical Access Hospitals at 75% of the statewide average per diem NF rate. The Department reintroduces this provision and triples the amount of the previous cap in recognition of the fiscal impact on hospitals for delivering such care. Utilizing a percentage of the per diem NF rate is an approach consistent with methodology utilized in other state Medicaid Programs and recognizes level of care constraints within the hospital setting.

- *45.02-9 – Claims Billing: Adds new section to introduce links to the Department's billing instructions and new supplemental Hospital Billing Guidance.*

- *45.02-10 – Readmissions Penalty: To more closely align with Medicare, the Department incorporates existing operational processes and components of the former Discharge definition to enhance Readmissions Penalties applied to qualifying DRG payments effective August 9, 2024. This adjustment moves away from exact DRGs in favor of clinically related criteria, clarifies when a member is considered to be readmitted, extends the readmissions "window" from 14 days to 30 days, and describes scenarios excluded from Readmissions Adjustment review.*

- *<u>Section 45.03 – Acute Care Non-Critical Access Hospitals</u>:*
- *Removes Department's Total Obligation to the Hospital narrative as the formula is now described elsewhere within the rule.*

- *45.03-1 – Inpatient Services: References updates to MS DRG-based payment methodology detailed in Appendix A, effective July 1, 2024. For Distinct Psychiatric Units and Substance Use Disorder Units: Moves the end date for cost settlement of capital costs from July 1, 2025 to September 1, 2024.*

- *45.03-C – Effective July 1, 2024, Outpatient Services, Including Laboratory and Imaging: Aligns outpatient methodology across acute care non-critical access hospitals by transitioning Non-State Government Owned Hospitals from a cost reimbursement system to the Medicare Outpatient Prospective Payment System (OPPS) that also applies to Acute Care Non-Critical Access Hospitals. Updates the percent of Medicare OPPS Ambulatory Payment Classifications (APC) rates the Department pays to 109%. The Department will also pay the updated 109% of Medicare outlier payments. Fully aligns with Medicare by, effective August 9, 2024, adopting Medicare adjustments to reduce reimbursement at certain Provider Based Departments through use of the PO modifier.*

- *Effective July 1, 2024, removes reference to Public Hospitals as they are now absorbed in other areas of the rule.*

- *Removes reference to Capital and Graduate Medical Education Costs as those are now addressed in Appendix A and are no longer subject to cost settlement*

- *Removes Prospective Interim Payment (PIP) for Outpatient Services as Non-*

State Government Owned Hospitals will no longer receive PIPs.

- *Effective July 1, 2024, Interim and Final Cost Settlement: Specifies cost settlement now only applies to hospital-based physician services; expired provisions are end dated. DRG and APC payments will not be cost settled.*

  - *<u>Section 45.05 – Hospitals Reclassified to a Wage area Outside of Maine by the Medicare Geographic Classification Review Board (MGCRB) Prior to October 1, 2008</u>:*
- *Removes section as the Hospitals Reclassified to a Wage area Outside of Maine criteria will no longer be utilized by the Department to determine hospital classification. Such hospital types will now be reimbursed as Acute Care Non-Critical Access Hospitals to assure hospital fiscal stability.*

  - *<u>Section 45.06 – Rehabilitation Hospitals</u>:*
- *Effective July 1, 2024, updates section to reflect adoption of MS DRG-based payment methodology. The Department adopts this updated reimbursement methodology as the current flat discharge rate does not capture changes in patient mix or costs related to patient acuity. Unlike the stagnant flat discharge rate which was last updated in 2018, the DRG-based payment methodology will receive annual inflation adjustments and updates to the Medicare MS-DRG relative weights. Rehabilitation Hospitals are a distinct peer group and will receive their own Maine Base Rate.*
- *Effective July 1, 2024, Interim and Final Cost Settlement is added to specify cost settlement only applies to hospital-based physician services; DRG and APC payments will not be cost settled. The discontinuation of cost settlement for these services will reduce administrative burden for both providers and the Department.*
- *Updates the percent of Medicare OPPS Ambulatory Payment Classifications (APC) rates the Department pays to 109%. The Department will also pay the updated 109% of Medicare outlier payments. This increase is a result of the Department's larger hospital investment initiative.*

  - *<u>Section 45.07 – Value-Based Purchasing for Supplemental Sub-Pool</u>:*
- *Removes mention of Hospitals Reclassified to a Wage area Outside of Maine (as such hospital types will now be reimbursed as Acute Care Non-Critical Access Hospitals).*

  - *<u>Section 45.08 – Supplemental Pool for Acute Non-Critical Access Hospitals and Rehabilitation Hospitals</u>:*
- *Removes mention of Hospitals Reclassified to a Wage area Outside of Maine (as such hospital types will be reimbursed as Acute Care Non-Critical Access Hospitals).*

  - *<u>Section 45.09 – Supplemental Payments for Acute Care Hospitals converting from Acute Care Critical Access Hospital Reimbursement to Acute Care Non-Critical Access Hospital Reimbursement</u>:*

- *Adds this new section to address the supplemental payment for Acute Care Non-Critical Access Hospitals reimbursed by Medicare under the Prospective Payment System and reimbursed by MaineCare like a Critical Access Hospital for outpatient services on or before January 1, 2024.*

  - *<u>Appendix A – DRG-Based Payment Methodology</u>:*
- *Effective July 1, 2024, updates language addressing components of the updated MS DRG-Based Payment Methodology:*

  - *This rule also removes cost settlement provisions for Capital and GME costs for hospitals subject to the DRG-Based Payment Methodology.*

  - *The Department updates its DRG-Based Payment Methodology. The rule incorporates updated Maine Base Rates that reflect FY22 costs; recognize different costs of inpatient care for Acute Care Non-Critical Access and Rehabilitation hospitals; and are inclusive of capital and operating costs.*

  - *The Department calculates a hospital's DRG payment for a covered inpatient service by summing the assigned peer group's Maine Base Rate plus, for teaching hospitals, a hospital-specific GME add-on rate determined using the hospital's FY 2022 As-filed Medicare cost report data. This sum is multiplied by the Medicare DRG relative weight, and the resulting value equals the hospital's DRG payment. The rule updates the MS-DRG weights to the current year's Medicare weights to account for cost differences in services delivered and patient acuity.*

  - *Outlier Adjustment: The Department establishes a new DRG-based outlier payment methodology which will observe updates to hospital-specific cost-to-charge ratios (CCRs) and fixed reimbursement percentages, as well as introduce a standard outlier threshold, updated in this rule to account for cost growth, for all eligible hospitals. Effective July 1, 2024 through December 31, 2024, the Department will increase the percentage it reimburses from 80% to 90% of estimated costs based on charges that exceed the threshold. This differs from previous methodology in that a new fixed reimbursement percentage is applied, a standard outlier threshold used, and hospital-specific CCRs are updated.*

Other Changes Made to the Adopted rule:

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 change in the adopted rule:

- *As a result of comment 11, the Department has replaced the term "cap" with "floor" in Section 45.02-7 and renamed this subsection "PIP Payment Floor" for clarity.*

These changes include improved alignment with Medicare, greater consistency in

	reimbursement methodology across hospitals, and ensuring that reimbursement for services better reflects patient acuity. The Department adopts methodology which aligns reimbursement for facilities with similar delivery systems and cost structures, recognizing three distinct hospital peer groups that recognize distinct Maine Base Rates for inpatient services: Acute Care Non-Critical Access, Non-State Government Owned, and Rehabilitation. The Department's updated methodology introduces mechanisms to keep pace with inflation and improve the relationship between the quality of service outcomes and payment. *Some of the rule changes have a retroactive application date of July 1, 2024, and the rule indicates the July 1, 2024 effective date for those provisions. The Department certifies that the retroactive changes comply with, and thus are authorized by, 22 M.R.S. Sec. 42(8).* *The Department shall submit to the Centers for Medicare & Medicaid Services, and anticipates approval of, a State Plan Amendment related to these provisions.*

10-144 Department of Health and Human Services, Office for Family Independence	
2024-257: Chapter 301, Supplemental Nutrition Assistance Program (SNAP) Rules	
Statutory Authority:	22 M.R.S. § 42(1) and (8)(C); 7 C.F.R. § 273.24(f)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*SNAP benefits are federally funded. No fiscal impact is anticipated.*
Principal purpose:	*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 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 213 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, 2024.* *Retroactive rulemaking is permissible under 22 M.R.S. § 42(8)(C) as this update provides a benefit to 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 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's 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 was approved on September 17, 2024. The geographic areas include 213 qualifying cities, towns, unorganized territories, townships, and reservations that qualify individually or as part of a federally defined labor market area. With the U.S.D.A. – FNS' waiver 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, 2024.* *The Department determined it necessary to make a non-substantial change to the proposed rule after the public comment period ended and modified Section 999-2 by adding the following geographic areas that qualify for an exception to the ABAWD work requirements as approved by the U.S.D.A. - FNS:*

- *Winterville*
- *Woodville*

Retroactive rulemaking is permissible under 22 M.R.S. § 42(8)(C) as this update provides a benefit to SNAP recipients who meet the ABAWD definition and does not adversely impact applicants, participants, beneficiaries, or providers.

This rule will not have an adverse impact on municipalities or small businesses.

10-144 Department of Health and Human Services, Office for Family Independence	
2024-258: Chapter 301, Supplemental Nutrition Assistance Program (SNAP) Rules	
Statutory Authority:	22 M.R.S. §§ 42(1) and (8)(A); 3104
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*State-Funded SNAP benefits are estimated to cost an additional $294,120 for Federal Fiscal Year 2025. These same changes will result in an estimated additional $10,058,400 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.*
Principal purpose:	*Federal rules 7 C.F.R. §§ 273.9(a)(3), 273.10(e)(4), and 273.11(r)(2)(ii) require that income and asset 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 and asset allowances, standard deductions, and minimum and maximum benefit standards to states and territories, annually. The final income and asset allowances, standard deductions, and minimum and maximum benefit levels were distributed by the USDA FNS on August 2, 2024. The Department proposes to incorporate these figures effective October 1, 2024. 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) requires 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 USDA FNS on August 2, 2024. FNS annually approves 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. FNS approved Maine's SUAs for FFY 2025 on August 15, 2024.* *Retroactive rulemaking is permissible under 22 M.R.S. § 42(8)(A) as this update is necessary to comply with federal requirements, provides a benefit to SNAP recipients and does not adversely impact applicants, participants, beneficiaries, or providers.*
Basis Statement:	*Federal rules 7 C.F.R. §§ 273.9(a)(3), 273.10(e)(4), and 273.11(r)(2)(ii) require that income and asset 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 and asset allowances, standard deductions, and minimum and maximum benefit standards to states and territories, annually. The final income and asset allowances, standard deductions, and minimum and maximum benefit levels were distributed by the U.S.D.A. FNS on August 2, 2024. The Department adopts these figures effective retroactive to October 1, 2024. 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) requires 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 2, 2024. FNS annually approves 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. FNS approved Maine's SUAs for FFY 2025 on August 15, 2024.* *Retroactive rulemaking is permissible under 22 M.R.S. § 42(8)(A) as this update is necessary to comply with federal requirements, provides a benefit to SNAP recipients and does not adversely impact applicants, participants, beneficiaries, or providers.* *This rule will not have an adverse impact on municipalities or small businesses.*

10-144 Department of Health and Human Services, Center for Disease Control and Prevention	
2024-260: Ch. 223, Rules Relating to Tanning Facilities	
Statutory Authority:	22 MRS § 689-A(10)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*There are no additional costs associated with this rule.*
Principal purpose:	*Maine CDC is proposing amendments to its Rules Relating to Tanning Facilities to comply with Public Law Chapter 275, § 2, An Act to Reduce Youth Cancer Risk, signed into law on June 13, 2019, at 22 MRS § 689-A. These proposed amendments align with Section 689-A(2), to further protect individuals from the harmful effects of exposure to UV radiation from indoor tanning, by prohibiting minors from using indoor ultraviolet tanning facilities. Maine CDC also proposes to add new customer safety requirements in Sections 4 and 6 that provide more extensive customer consent and notification requirements, restrict exposure- time controls to facility personnel, limit tanning-facility use to every 24 hours, require facilities to provide free eye-protective wear, and ensure stricter controls for checking that customers are at least 18 years of age. Maine CDC also proposes to update the rule title by changing it to "Tanning Facilities Rule", to align with its Maine CDC rule formatting convention, and add a definition for Phototherapy device and Tanning facility, for clarity. In addition, Maine CDC proposes to clarify two existing definitions: Tanning equipment and Tanning facility.*
Basis Statement:	*The Maine Department of Health and Human Services, Maine Center for Disease Control and Prevention (Department), advertised proposed changes to its Tanning Facilities Rule, previously titled Rules Relating to Tanning Facilities, (10-144 CMR Ch. 223), on May 29, 2024. In lieu of a public hearing, the Department held a 30-day public comment period, which ended on June 28, 2024. The Department received no comments related to the rulemaking.* *These rule amendments enable the Department's Maine CDC Radiation Control Program to enforce the recent statute (22 MRS § 689-A) that prohibits minors from using tanning equipment in Maine. The United States Food and Drug Administration (FDA) also warns persons under the age of 18 against using tanning beds or lamps.* *The amended rule contains other new customer safety additions that include further customer consent and notification requirements, restrictions to exposure-time controls for facility personnel, limitations of tanning-facility use to every 24 hours, requirements for facilities to provide free eye protective wear, and stricter controls to ensure customers are at least 18 years of age. The amendments to the rule also add a definition for Phototherapy device, for clarity, as well as update two existing definitions: Tanning equipment and Tanning facility. Maine CDC also updated the rule title to "Tanning Facilities Rule", to align with Maine CDC rule formatting convention.*

10-144 Department of Health and Human Services, Division of Licensing and Certification	
2024-261: Chapter 500, Rules Governing the Maine Certification of Healthcare Cooperative Agreements	
Statutory Authority:	PL 2023, c. 37
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The enactment of PL 2023 c. 37, which repealed the statute creating the Hospital and Health Care Provider Cooperation Act, resulted in a total deallocation of $183,812 to the Office of the Attorney General and $204,446 to the Department of Health and Human Services in FY 2023-2024 and a total deallocation of $192,567 to the Office of the Attorney General and $204,446 to the Department of Health and Human Services in FY 2024-2025. This fiscal impact was tied to the repeal of the statute, and repealing the associated rule should have no further independent fiscal impact.*
Principal purpose:	*This rule is necessary to comply with PL 2023 c. 37, An Act to Repeal the Hospital and Health Care Provider Cooperation Act. Because the statute has been repealed, there is no longer the authority nor the need for a rule to implement the statute.*
Basis Statement:	*This repeal is necessary due to PL 2023 c. 37, An Act to Repeal the Hospital and Health Care Provider Cooperation Act, which repealed 22 MRS Ch. 405-A, effective 10/25/23. With the repeal of the statute, there is no need for rules to implement that statute and there is no longer any statutory authority for the Department to have rules in place.*

10-144 Department of Health and Human Services, Office for Family Independence	
2024-272: Chapter 301, Supplemental Nutrition Assistance Program (SNAP) Rules	
Statutory Authority:	22 M.R.S. §§ 42(1) and (8)(C); 3104
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None anticipated.*
Principal purpose:	*The Continuing Appropriations and Extensions Act, 2025, Public Law 118-83, Division B, Title I § 105, EBT Benefit Fraud Prevention Requirements will expire December 20, 2024. The Department proposes to update Section 777-4 of the Supplemental Nutrition Assistance Program (SNAP) Rules consistent with the end of the federal authorization for replacement of EBT benefits stolen through card skimming, card cloning, or similar fraudulent methods. The proposed rule change would limit the replacement of electronically stolen SNAP benefits to periods that such replacement is federally authorized.* *The proposed rule would update Section 777-4, Administration Procedures Replacement of Benefits as follows:* • *(1)(A) "Beginning December 20, 2024, the Department will only replace benefits pursuant to the process in Section 777-4(3)(B)-(F), as described below, if the replacement of benefits is federally authorized. If replacement of benefits lacks federal authorization, the Department will also suspend replacement of state funded benefits for the same period. If replacement of benefits is suspended due to a lack of federal authorization, the Department shall promptly notify a claimant of the suspension upon receiving an Electronically Stolen Benefits Application (EBSA) and deny that request.* • *(3) "Benefits used unlawfully for non-household members can only be replaced when the benefits were accessed as a result of card skimming, card cloning, phishing or other electronic acquisition of the EBT card number and PIN."* *The proposed rule changes are consistent with the expiration of the Continuing Appropriations and Extensions Act, 2025, P.L. 118-83, Division B, Title I § 105. Should the federal authority be extended or reimplemented prior to the adoption of this rule, the timeframes articulated therein will be adjusted accordingly.*
Basis Statement:	*The Continuing Appropriations and Extensions Act, 2025, Public Law 118-83, Division B, Title I § 105, EBT Benefit Fraud Prevention Requirements will expire December 20, 2024. The Department adopts Section 777-4 of the Supplemental Nutrition Assistance Program (SNAP) Rules consistent with the end of the federal authorization for replacement of EBT benefits stolen through card skimming, card cloning, or similar fraudulent methods. The adopted rule limits the replacement of electronically stolen SNAP benefits to periods that such replacement is federally authorized. In addition, clarity was added that the policy applies to instances where electronic theft of information leads to the theft of benefits, not the other way around.* *The adopted rule updated Section 777-4, Administration Procedures Replacement of*

Benefits as follows:

- *(1)(A) "Beginning December 20, 2024, the Department will only replace benefits pursuant to the process in Section 777-4(3)(B)-(F), as described below, if the replacement of benefits is federally authorized. If replacement of benefits lacks federal authorization, the Department will also suspend replacement of state funded benefits for the same period. If replacement of benefits is suspended due to a lack of federal authorization, the Department shall promptly notify a claimant of the suspension upon receiving an Electronically Stolen Benefits Application (EBSA) and deny that request.*
- *(3) "Benefits used unlawfully for non-household members can only be replaced when the benefits were accessed as a result of card skimming, card cloning, phishing or other electronic acquisition of the EBT card number and PIN."*

The adopted rule changes are consistent with the expiration of the Continuing Appropriations and Extensions Act, 2025, P.L. 118-83, Division B, Title I § 105.

This rule will not have an adverse impact on municipalities or small businesses.

10 Department of Health and Human Services

10-146 Department of Health and Human Services, Maine Center for Disease Control and Prevention	
2024-226: 10-146 CMR Ch 4, Disclosure of Vital Statistics Data, Reports and Records	
Statutory Authority:	5 MRS §90-B; 22 MRS §§42, 1596, 2706, 2706-A, 2710, 2768, 2803, and 22 MRS §§2841-2842
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None anticipated.*
Principal purpose:	*The Department is mainly proposing these rule changes to align this rule with Maine law (22 MRS § 2706) and to further specify who may apply and how applicants may demonstrate direct and legitimate interest in the records they wish to receive from the State Registrar.*
Basis Statement:	*The Department of Health and Human Services (Department) adopted amendments to 10-146 CMR Chapter 4 - Disclosure of Vital Statistics Data, Reports and Records, to implement Public Law 2023 chapter 110, introduced to the 131st Maine Legislature as LD 982, "An Act to Allow the Disclosure of Death Certificate Data to Hospitals and Health Care Practitioners", and to specify criteria for the disclosure of vital records data to licensed hospitals and health care practitioners and administrators of Maine's qualified tuition plans, also referred to as 529 funds.* *In accordance with 22 MRS §2706, Chapter 4 details who may apply for access to vital records data and how applicants may demonstrate direct and legitimate interest and qualify to receive requested records from the State Registrar. This rulemaking adds the following two groups that may have direct and legitimate interest and eligible to apply: health care practitioners seeking to update their patient records by requesting death certificate data and organizations and foundations for the purpose of administering 529 funds. The Department acknowledges that vital records data will help record-keeping for these groups, though disclosure is not without limitation. PL 2023 chapter 110, enacted as amended, retains a level of discretion for the Maine CDC - Data, Research, and Vital Statistics (DRVS) in receipt of a request for vital record data, ensuring the Department's stewardship of the restricted information contained in vital records, including death certificates. This rule may not be construed to circumvent the Department's protocols in place to verify the legitimacy of vital record data requests and direct the appropriate release of records maintained in the State's vital record system.* *PL 2023 chapter 110 and this rule serve to address the challenge for health care providers to maintain an active patient list by requiring Department to make death certificate data available to licensed hospitals and health care practitioners. Accurate patient lists are necessary for determining capacity for accepting new patients and for ensuring that mailings issued by the healthcare provider are current with active patients served by the provider and consider the sensitivity of a family's recent loss. Additionally, under this rule, information contained in vital records can be released to organizations administering 529 plans to identify those who may benefit from these educational resources and to further disseminate information to better service those who are eligible. Consistent with existing*

	Department policy to share only the minimal amount necessary to satisfy a valid request, this rule directs the Department to provide the data sufficient to update and purge patient records and for maintaining systems current, as it relates to dispersing information about higher educational 529 plans available to eligible Mainers.

10 Department of Health and Human Services

10-148 Department of Health and Human Services, Office of Child and Family Services	
2024-050: Chapter 30, Early Childhood Educator Workforce Salary Supplement System	
Statutory Authority:	22 M.R.S. §§ 42, 3737-A; 5 M.R.S. § 8054
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The Department anticipates that the total cost of the proposed rule will be $ $30,000,000 in SFY 2024 and $30,000,000 in SFY 2025, all in state dollars.*
Principal purpose:	*Pursuant to 5 M.R.S. § 8054, the Department determines that immediate adoption of this rule is necessary to comply with Maine statute 22 M.R.S. §3737(3). The Department proposes this rule, Early Childhood Educator Workforce Salary Supplement System Rules, to develop and implement the system to provide salary supplements to child care providers and early childhood educators who provide direct services to children as provided in 22 M.R.S. § 3737-A.* *An Act To Build a Child Care System by Recruiting and Retaining Maine's Early Childhood Educators Workforce, codified at 22 M.R.S. § 3737-A, requires the Maine Department of Health and Human Services (the Department) to develop and implement a system 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. Any salary supplement funding provided by the Department to a child care facility or family child care provider must be paid by that child care facility or family child care provider in order to increase wages for any child care provider or early childhood educator who provides direct services to children. 22 M.R.S. § 3737-A further requires the department to establish by rule and implement a three-tiered system for salary supplements based on the education and experience levels of child care providers and early childhood educators. The 2nd tier must provide a salary supplement that is at least 50% greater than the first tier and the 3rd tier must provide a salary supplement that is at least 50% greater than the 2nd tier. 22 M.R.S. § 3737-A directs the Department to implement a tiered system for salary supplements beginning July 1, 2023. Funding for the additional supplement for employees at a higher tier will be available to the Department October 25, 2023.* *The proposed rule establishes eligibility requirements for Early Childhood Educators to receive salary supplements, explains how licensed child care programs register through the Department's online registration portal to receive funding from the Department for paying out salary supplements to eligible educators, describes the Department's role in providing funding to licensed child care programs and licensed child care programs' responsibility to actually pay out salary supplements to eligible educators and sufficiently document it through maintenance of payroll records, establishes three tiers for salary supplements based on an educator's level in Maine's Professional Development Network Registry, explains how the Department will conduct compliance monitoring to ensure compliance with rule and 22 M.R.S. § 3737-A, provides a process for the determination of overpayment or underpayment of salary supplement funding paid to licensed programs and the recoupment of overpayments, and allows licensed programs to request an administrative hearing to appeal a Department*

	determination of overpayment or underpayment.
Basis Statement:	*The Department of Health and Human Services (the "Department") adopts 10-148 C.M.R. Chapter 30, Early Childhood Educator Workforce Salary Supplement System Rules.* *The Department determines that adoption of this rule is necessary to comply with Maine statute 22 M.R.S. § 3737-A.* *In 2022, the Maine Legislature enacted P.L. 2021, ch. 635, Sec. RR-1, codified as 22 M.R.S. § 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.* *On December 1, 2023, the Department adopted a substantively similar emergency rule (that was essentially identical to the proposed rule) to establish tiered payments starting in December 2023. The final rule adopted today will continue tiered payments as required under section 3737-A.* *The adopted rule benefits families and providers by increasing wages through monthly salary supplements, incentivizing continuing education for the early childhood workforce, encouraging workforce retention by increasing supplement amounts based on years of experience, and raising the overall quality of 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 adopted rule:* • *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. § 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. § 3737-A by requiring the child care facility or family child care provider to pay the supplement to employees who provide direct services to children.* • *Explains how a program enrolls in the Early Childhood Educator Workforce Supplement Program.* • *Describes an appeal process for overpayments and underpayments.*

10-148 Department of Health and Human Services	
2024-156: Chapter 6, Child Care Affordability Program Rules	
Statutory Authority:	22 M.R.S. §§ 3731-A to 3740-D
Type:	Routine Technical
Emergency?:	Yes
Fiscal Impact:	*The Department anticipates that the total cost of the proposed rule will be $10,272649 in SFY 2025 in state dollars.*
Principal purpose:	*This rule is necessary to comply with Maine statute. P.L. 2023, ch. 412, pt. VVV and P.L. 2024, ch. 643, pt. SS and TT, which made multiple amendments to the statutory authority for what was formerly known as the Child Care Subsidy Program, including:* *Changing the name of the program to "Child Care Affordability Program,"* *Changing the timeline for eligibility determinations for 30 to 15 days,* *Requiring the Department to inform child care providers within 2 business days of when a recipient's eligibility changes,* *Requiring the Department to reimburse providers within 15 days of receipt of a complete and accurate invoice,* *Requiring the Department to provide retroactive reimbursement to a child care program that provided tuition assistance to an applicant during the application period, and* *Increasing eligibility for child care subsidies from 85% of State Median Income (SMI) to 125% SMI.* *The Department has also revised language to clarify parent eligibility determinations and the requirements for a child care provider to qualify to receive CCAP payments.*
Basis Statement:	*This rule is necessary to comply with Maine statute. P.L. 2023, chapter 412, pt. VVV and P.L. 2024, chapter 643, pt. SS and TT, which made multiple changes to the statutory authority for what was formerly known as the Child Care Subsidy Program, including:* *Changing the name of the program to "Child Care Affordability Program (CCAP),"* *Increasing eligibility for child care subsidies from 85% of State Median Income (SMI) to 125% SMI.* *Changing the timeline for eligibility determinations for 30 to 15 days,* *Requiring the Department to inform child care providers within 2 business days of when a recipient's eligibility changes,* *Requiring the Department to reimburse providers within 15 days of receipt of a complete and accurate invoice, and* *Requiring the Department to provide retroactive reimbursement to a child care program that provided tuition assistance to an applicant during the application period.* ***Findings of Emergency*** *Early care and education programs serve a vitally important role in supporting children, families, and the Maine economy. The cost of care, however, is among the complex set of problems the system faces. Increased investment from State General Funds and this emergency Rule will allow hundreds of families and thousands of*

children to access child care through child care financial assistance.

With the current income eligibility up to 85% of State Median Income, a family of 4 with a household income of $89,000 or less may qualify for child care assistance. With the new expanded income eligibility up to 125% SMI, a family of 4 with a household income of $130,000 or less may qualify for child care assistance. This new eligibility will be incredibly helpful to families in Maine, who often pay more for child care than tuition at a state college or university. It may also allow parents to return to the workforce, knowing that child care will make up a smaller percentage of their expenses. With this emergency Rule, families will also benefit from faster eligibility determination, allowing them to secure the child care they need so they can go to work or school.

This emergency Rule will allow child care providers to receive CCAP payments more quickly. Providers may also receive payments retroactive to at least the date that a family's completed application was submitted to the Child Care Affordability Program. This will allow child care programs to support families immediately who they know are likely to qualify for CCAP, and to be reimbursed for the care they are providing once the application is approved.

Pursuant to the Legislative determination regarding the urgent need for a shortened timeline for eligibility determinations and subsidy payments, and increased income eligibility for families in the Child Care Affordability Program, the requirements of 5 M.R.S. § 8054(1) are satisfied and emergency rulemaking is appropriate. Similarly, a July 1, 2024, effective date is necessary to implement these changes as soon as possible and to comply with P.L. 2024, ch. 643, pt. SS.

Pursuant to 5 M.R.S. § 8054, this emergency rule may be effective for up to ninety (90) days. The Department shall proceed with routine technical rulemaking to permanently adopt these rule changes.

10-148 Department of Health and Human Services	
2024-216: Chapter 6, Child Care Affordability Program Rules	
Statutory Authority:	22 M.R.S.§§ 3731-A–3740-D
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The Department anticipates that the total cost of the proposed rule will be $10,272649 in SFY 2025 in state dollars.*
Principal purpose:	*This rule is necessary to comply with Maine statute. P.L. 2023, ch. 412, pt. VVV and P.L. 2024, ch. 643, pt. SS and TT, which made multiple amendments to the statutory authority for what was formerly known as the Child Care Subsidy Program, including:* *Changing the name of the program to "Child Care Affordability Program,"* *Changing the timeline for eligibility determinations for 30 to 15 days,* *Requiring the Department to inform child care providers within 2 business days of when a recipient's eligibility changes,* *Requiring the Department to reimburse providers within 15 days of receipt of a complete and accurate invoice,* *Requiring the Department to provide retroactive reimbursement to a child care program that provided tuition assistance to an applicant during the application period, and* *Increasing eligibility for child care subsidies from 85% of State Median Income (SMI) to 125% SMI.* *The Department has also revised language to clarify parent eligibility determinations and the requirements for a child care provider to qualify to receive CCAP payments.*
Basis Statement:	*This rule is necessary to comply with Maine statute. P.L. 2023, chapter 412, pt. VVV and P.L. 2023, chapter 643, pt. SS and TT, which made multiple changes to the statutory authority for what was formerly known as the Child Care Subsidy Program, including:* • *Changing the name of the program to "Child Care Affordability Program (CCAP),"* • *Increasing eligibility for child care subsidies from 85% of State Median Income (SMI) to 125% SMI.* • *Changing the timeline for eligibility determinations from 30 to 15 days,* • *Requiring the Department to inform child care providers within 2 business days of when a recipient's eligibility changes,* • *Requiring the Department to reimburse providers within 15 days of receipt of a complete and accurate invoice, and* • *Requiring the Department to provide retroactive reimbursement to a child care program that provided tuition assistance to an applicant during the application period.* *Early care and education programs serve a vitally important role in supporting children, families, and the Maine economy. The cost of care, however, is among the complex set of problems the system faces. Increased investment from State General Funds and this Rule will allow hundreds of families and thousands of children to*

	access child care through child care financial assistance. *With income eligibility up to 85% of State Median Income, a family of 4 with a household income of $89,000 or less may qualify for child care assistance. With the new expanded income eligibility up to 125% SMI, a family of 4 with a household income of $130,000 or less may qualify for child care assistance. This new eligibility is incredibly helpful to families in Maine, who often pay more for child care than tuition at a state college or university. It may also allow parents to return to the workforce, knowing that child care will make up a smaller percentage of their expenses. With this Rule, families benefit from faster eligibility determination, allowing them to secure the child care they need so they can go to work or school.* *This Rule allows child care providers to receive CCAP payments more quickly. Providers may also receive payments retroactive to at least the date that a family's completed application was submitted to the Child Care Affordability Program. This allows child care programs to support families immediately who they know are likely to qualify for CCAP, and to be reimbursed for the care they are providing once the application is approved.*

10 Department of Health and Human Services

10-149 Department of Health and Human Services, Office of Aging and Disability Services	
2024-085: Chapter 1, Adult Protective Services System	
Statutory Authority:	22 M.R.S. §§ 42(1), 3473(2)(D), 3493; 34-B M.R.S. § 5604-A(4)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*There is no cost to municipalities or counties associated with this rule.*
Principal purpose:	*The Adult Protective Services System Rule implements the Adult Protective Services Act, 22 M.R.S. § § 3470, et seq. The rule states who must and may report suspected abuse, neglect, or exploitation of incapacitated or dependent adults; how such reports are to be investigated by the Department; and the substantiation and appeal process for caregivers found to have abused, neglected, or exploited clients who are incapacitated or dependent adults.*
Basis Statement:	*This rulemaking repeals 10-149 C.M.R. Chapter 1 – Adult Protective Services System and replaces it with 10-149 C.M.R. Chapter 2, Section 1 – Adult Protective Services System, and adopts comprehensive revisions to the rule.* *In March 2020, the Legislature adopted Public Law Chapter 661, An Act to Strengthen Protections for Incapacitated and Dependent Adults from Abuse, Neglect, and Exploitation. This law authorized the Department of Health and Human Services (the "Department") to maintain and list on a Substantiation Registry care workers who have been found under the Adult Protective Services Act, 22 M.R.S. §§ 3470, et seq. (the "APS Act") to have Abused, Neglected, or Exploited one or more Incapacitated or Dependent Adults.* *Provisions for maintaining this Substantiation Registry are found in § 1.02 – Definitions, and § 1.08 – Substantiation Registry. The rule states who may be listed on the registry, outlines notice and appeal rights triggered by a substantiation, and states when a substantiated person may be removed from the registry. In § 1.08(2)(G), the rule states that persons found to have abused, neglected, or exploited an incapacitated or dependent adult in another adjudicatory or quasi-adjudicatory forum may also be listed on the Substantiation Registry.* *In this rulemaking, the Department also engaged in a comprehensive amendment and reorganization of the Adult Protective Services System rule. Resulting changes better align the system for investigating and substantiating reports of abuse, neglect, or exploitation with the APS Act. These amendments include:* ** consistent with the Adult Protective Services Act, this rulemaking broadens the category of caregivers who may be substantiated for having abused, neglected, or exploited their clients, from those who assist adults with intellectual disabilities or autism to those who support any incapacitated or dependent adult;* ** amends the definitions of "Dependent Adult" and "Incapacitated Adult" to better align with definitions provided in Maine law;* ** In § 1.04, describes the responsibility of APS staff for documentation, review, determinations, and report closures;* ** requires the Department to provide APS records to Maine's Protection and Advocacy Agency when requested;*

	** eliminates the distinction between Level I and Level II substantiations, in § 1.07 (previously, § 1.06); and* ** lists potential findings following investigations as "Substantiated," "Substantiated – Other," "Not Substantiated," and "Unable to Determine".* *Section 1.08 was added to the rule for organizational clarity. This section now includes (1) the Department's responsibility to provide written notice to the alleged perpetrator of a substantiation; (2) due process and appeal rights of the alleged perpetrator; and (3) hearing procedures as described in the Administrative Hearings Regulations, 10-144 C.M.R. ch. 1. Subsection 1.08 also states when a registry listing may be made based on a determination in another proceeding.* *The rules of the Office of Aging and Disability Services (OADS) are currently codified in two Titles in the Code of Maine Rules: 10-149 (formerly the Office of Elder Services) and 14-197 (formerly the Office of Adults with Cognitive and Physical Disability Services). OADS is in the process of combining the rules of these two former State agencies into one Title, by eliminating use of 14-197 and creating a single comprehensive OADS Policy Manual under 10-149.* *The rule also contains many formatting corrections, ensures use of gender-neutral language, and includes many clarifying edits.* *Though the Adult Protective Services System rule is a routine technical rule, the Department held a public hearing on the proposed rulemaking in conformance with 34-B M.R.S. § 5203(3)(B).* *The Department does not anticipate that this rule will have any impact on municipalities, counties, or small businesses.*

10-149 Department of Health and Human Services, Office of Aging and Disability Services	
2024-086: Chapter 2, Adult Protective Services System	
Statutory Authority:	22 M.R.S. §§ 42(1), 3473(2)(D), 3493; 34-B M.R.S. § 5604-A(4)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*There is no cost to municipalities or counties associated with this rule.*
Principal purpose:	*The Adult Protective Services System Rule implements the Adult Protective Services Act, 22 M.R.S. § § 3470, et seq. The rule states who must and may report suspected abuse, neglect, or exploitation of incapacitated or dependent adults; how such reports are to be investigated by the Department; and the substantiation and appeal process for caregivers found to have abused, neglected, or exploited clients who are incapacitated or dependent adults.*
Basis Statement:	*See* Basis Statement at 2024-085, *supra.*

10-149 Department of Health and Human Services, Office of Aging and Disability Services	
2024-275: Chapter 5, Office of Aging and Disability Services Policy Manual	
Statutory Authority:	22 M.R.S. § 42(1), 22 M.R.S. § 7303, 34-B M.R.S. § 5439
Type:	Routine Technical rule components were the subject of this rulemaking initiative.
Emergency?:	No
Fiscal Impact:	*There is no cost to municipalities or counties associated with this rule. PL 2023, Chapter 412 approved General Fund of $2,286,048 in SFY 2024 and $3,189,351 annually beginning in SFY 2025 to operationalize home-delivered meal services for certain eligible older adults.*
Principal purpose:	*This proposed rulemaking is necessitated by the adoption of Public Law 2023, Chapter 412, which is the biennium budget for July 1, 2023, through June 30, 2025 that was signed into law by the Governor during the 2023 special legislative session. The budget allocated $5,475,399 for Home-Delivered Meals for certain eligible older adults, and this rule operationalizes this service. Additionally, this proposed rule clarifies the monetary cap on the annual cost of respite services for older adults, and it clarifies the limit at which monthly service hour caps can be exceeded for adults receiving Adult Day Services reimbursable by Home Based Supports and Services (HBSS) funds. It also makes formatting adjustments for consistency.* *Section 63 is a hybrid routine technical / major substantive rule. However, no changes to the major substantive part of the rule – subsection 63.12 – are proposed. As a result, this rulemaking follows the provisions for routine technical rulemaking in the Maine Administrative Procedure Act.*
Basis Statement:	*This proposed rulemaking is necessitated by the adoption of Public Law 2023, Chapter 412, which is the biennium budget for July 1, 2023, through June 30, 2025 that was signed into law by the Governor during the 2023 special legislative session . The budget allocated $5.5 million for Home-Delivered Meals for certain eligible older adults, and this rule operationalizes this service. Additionally, this proposed rule clarifies the monetary cap on the annual cost of respite services for older adults, and it clarifies the limit at which monthly service hour caps can be exceeded for adults receiving Adult Day Services reimbursable by Home Based Supports and Services (HBSS) funds. It also makes formatting adjustments for consistency.* *Section 63 is a hybrid routine technical / major substantive rule. However, no changes to the major substantive part of the rule – subsection 63.12 – are proposed. As a result, this rulemaking follows the provisions for routine technical rulemaking in the Maine Administrative Procedure Act.*

14 Department of Health and Human Services

14-118 Department of Health and Human Services, Office of Behavioral Health	
2024-276: Chapter 20, Housing First Program Administrative Responsibility Rule	
Statutory Authority:	22 M.R.S. § 20-A (2023); 22 M.R.S. § 42(1)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*PL 2023, c. 412 establishes one Public Service Manager III position and one Social Services Program Manager position effective January 1, 2024 in the Housing First Program, General Fund to provide initial planning and administration for the delivery of support and stabilization services to residents of properties established or developed to provide permanent housing to end chronic homelessness in the State.* ***GENERAL FUND*** ***2023-24*** ***2024-25*** *POSITIONS - LEGISLATIVE COUNT* *2.000* *2.000* *Personal Services* *$125,755* *$265,355* *All Other* *$6,537* *$13,074* *GENERAL FUND TOTAL* *$132,292* *$278,429*
Principal purpose:	*This is a new joint rule by the State of Maine Department of Health and Human Services, Office of Behavioral Health and Maine State Housing Authority setting forth the responsibilities of each agency and their joint responsibilities in administering the State of Maine's Housing First Program. The Housing First Program provides funding for support and stabilization services for residents of properties in the State of Maine that provide permanent housing for persons who are experiencing chronic homelessness.*
Basis Statement:	*The Housing First Program Administrative Responsibility Rule is a joint rule by the State of Maine Department of Health and Human Services, Office of Behavioral Health (the "Department") and Maine State Housing Authority ("MaineHousing") setting forth the responsibilities of each agency and their joint responsibilities in administering the State of Maine's Housing First Program (the "Program"). The Program provides funding for support and stabilization services for residents of properties in the State of Maine that provide permanent housing for persons who are experiencing chronic homelessness.* *The Department is responsible for administering the funding under the Program. The funding is primarily for 24-hour on-site supportive services, except for an annual amount that is set aside for housing stability services available for residents at least 20 hours each week but not necessarily on site or 24 hours per day. Any funding that is not used for these supportive services and the Department's costs of administering the Program will be transferred to MaineHousing to develop affordable permanent housing with 24-hour on-site supportive services, which initially will be the majority of the funding to produce the housing where these services will be provided.* *The Department is also responsible for establishing and administering the requirements for the two types of supportive services that are eligible for funding under the Program, the payment models for the services, and the qualifications of the providers of the services. The Department is obligated to maximize eligibility*

for reimbursement under existing and future federal programs that provide funding for the supportive services, such as MaineCare, to supplement and expand the use of the funding and to provide technical assistance to providers in navigating these federal programs.

MaineHousing will work with the Department to administer the permanent housing with 24-hour on-site services. The Department and MaineHousing will identify the areas in the State where the properties should be located to best serve persons who are chronically homeless. The funding under the Program will only be available to teams that are selected under one or more competitive processes and consist of a service provider that the Department has determined is qualified through its procurement process together with an experienced affordable housing developer and property manager that MaineHousing, in consultation with the Department as needed, determines can work together to successfully develop, own and operate permanent housing with 24-hour on-site services for persons who are chronically homeless. MaineHousing will provide technical assistance, approve specific sites, develop construction standards to ensure successful operation and delivery of services at the properties, and offer financing for the development of the properties, including Program funding transferred to MaineHousing, other capital funding, and low-income housing tax credits.

The rule delegates oversight of the service providers to the Department, but the Department and MaineHousing will work together to develop, administer, and enforce the operational guidelines for the permanent housing with 24-hour on-site supportive services to effectively address chronic homelessness and ensure long-term viability of these properties. The rule also addresses other administrative responsibilities of the Department and MaineHousing, including recordkeeping and reporting requirements.

12 Department of Labor

12-172 Department of Labor, Bureau of Unemployment Compensation	
2024-045: Chapter 8, Payments for Dependents	
Statutory Authority:	26 M.R.S. §§ 1082 and 1191(6)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*None*
Principal purpose:	*These rules align statutory changes that were made in Public Law 2021 Chapter 456 regarding payments for unemployment claimants with dependents.*
Basis Statement:	*This chapter amends the criteria for determining when a claimant is eligible for a dependency allowance, in accordance with recent statutory changes to 26 M.R.S. § 1191(6) made by Public Law 2021, Chapter 456 § 16. The amended Rule clarifies that a claimant who supports a dependent is eligible for a dependency allowance, removing the requirement that the claimant be "wholly or mainly" supporting the dependent. The amended Rule sets forth the procedure for determining which parent is eligible for the dependency allowance when both parents qualify for unemployment benefits for the same week. The Rule establishes that the parent who files for unemployment benefits first will be eligible for the dependency allowance, except in situations in which one parent has primary custody, in which case, the custodial parent will be eligible for the dependency allowance.* *This rulemaking of the Bureau of Unemployment Compensation is authorized by 26 M.R.S. § 1082. The proposed Rules were posted on October 4, 2023. A public hearing was held on Tuesday, October 24 at the Maine Department of Labor, Frances Perkins Conference Room, 45 Commerce Drive, Augusta ME 04330. No public comments were received at the public hearings, but written comments were submitted by:* *Commenter # 1: Maine Equal Justice* *Commenter # 2: Peer Workforce Navigator Project* *Commenter 3 3: Maine AFL-CIO*

12-172 Department of Labor, Bureau of Unemployment Compensation	
2024-046: Chapter 26, Waivers of Repayment of Erroneously Paid Benefits (Overpayments)	
Statutory Authority:	26 M.R.S. § 1082
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*None*
Principal purpose:	*These rules align statutory changes that were made in Public Law 2021 Chapter 456, clarifying that waiver decisions will be made by the Bureau of Unemployment Compensation in the first instance.*
Basis Statement:	*The changes incorporate recent statutory changes to the law under Public Law 2021, Chapter 456, § 6 specifying that waiver determinations will be made in the first instance by the Bureau of Unemployment Compensation ("Bureau" or "BUC). The Rule clarifies that denials of waivers by the Bureau may be appealed to the Division of Administrative Hearings and the Unemployment Insurance Commission. The Rule refines and explains the criteria used in determining whether an overpayment will be waived.* *This rulemaking of the Bureau of Unemployment Compensation is authorized by 26 M.R.S. § 1082. The proposed Rules were posted on October 4, 2023. Public hearings were held for each of the three rules on Tuesday, October 24 at the Maine Department of Labor, Frances Perkins Conference Room, 45 Commerce Drive, Augusta ME 04330. No public comments were received at the public hearings, but written comments were submitted by:* *Commenter # 1: Maine Equal Justice* *Commenter # 2: Peer Workforce Navigator Project* *Commenter # 3: Maine AFL-CIO* *The public comment period ended November 6, 2023. As set forth below, minor changes were made to the rule as a result of public comments.*

12-597 Department of Labor, Bureau of Employment Services	
2024-051: Chapter 2, Rule Governing the Competitive Skills Scholarship Program	
Statutory Authority:	26 M.R.S. § 2033
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*N/A*
Principal purpose:	*This rulemaking is to repeal and replace a rule pertaining to the Competitive Skills Scholarship Program.*
Basis Statement:	*This rulemaking is to repeal and replace a rule pertaining to the Competitive Skills Scholarship Program.* *The amended rule clarifies existing definitions and adds new definitions; clarifies the eligibility requirements; clarifies the documents needed to verify financial eligibility, identity, and Maine residence; clarifies the process for eligibility determination; clarifies the duration of the education or training; makes changes in accordance with P.L.2023, Ch. 184 for participants in registered apprenticeship and certified preapprenticeship programs and provides for cost of licensing or certification.* *This rulemaking of the Bureau of Employment Services is authorized by 26 M.R.S. § 2033. The proposed Rules were posted on October 11, 2023. A public hearing was held on Friday, November 3rd at the Maine Department of Labor, Frances Perkins Conference Room, 45 Commerce Drive, Augusta ME 04330. The public comment period ended November 17, 2023. Public comments were received from the following:* *Commenter # 1: Chris Hastedt, Maine Equal Justice (In-person and written comments submitted)* *Commenter # 2: Scott Cuddy, Maine Labor Climate Council (In-person and written comments submitted)* *Commenter # 3: Tom Fernands, Eastern Maine Development Corporation (Virtual)* *Commenter # 4: Carry Gosselin, Competitive Skills Scholarship Program (Virtual)* *Commenter # 5: AFL-CIO (Written comments submitted)* *Commenter # 6: Denis Lehouillier, IBEW 567 (Written comments submitted)*

12-170 Department of Labor, Bureau of Labor Standards	
2024-061: Chapter 15, Rules Relating to Severance Pay	
Statutory Authority:	26 M.R.S. § 625-B(8); 26 M.R.S. § 42
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*No significant impact anticipated. Law excludes businesses with under 100 employed.*
Principal purpose:	*These changes address technical issues with the current rule clarifying definitions that previously resulted in questions and bringing the rule into better alignment with Bureau practices streamlining the determination process.*
Basis Statement:	*The Bureau of Labor Standards is modifying this rule, which governs the administration of Maine's Severance Pay Law in order to bring it into conformity with statute, specifically Title 26 §625-B, and by clarifying certain issues that have been the subject of questions from employers. The amended rule addresses application to establishments with multiple sites by adding a definition for the term "facility"; clarifies the treatment of various types of payments and whether they should be included when calculating gross earnings and severance pay; specifies notice requirements and clarifies the process for determination of certain dates, as well as changes in layoff dates after the issuance of initial notice. The changes bring the rule into better alignment with Bureau practices as well as streamlining the determination process.*

12-172 Department of Labor, Bureau of Unemployment Compensation	
2024-096: Chapter 27, WorkShare Program	
Statutory Authority:	26 MRS §§ 1082(1) and 1198
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	None indicated by agency
Principal purpose:	*To set forth the procedures and requirements for employers who choose to participate in Maine's Short-Term Compensation Program, known as the WorkShare Program*
Basis Statement:	*Chapter 27: Work Share* *This is a new Rule to set forth the procedures and requirements for employers who choose to participate in Maine's Short-Term Compensation Program, known as the Work-Share Program. this Rule provides additional guidance and clarifies definitions and processes set forth in 26 M.R.S. § 1198 of the Employment Security Act* *This rulemaking of the Bureau of Unemployment Compensation is authorized by 26 M.R.S. §§ 1082 and 1198. The proposed Rule was posted on November 29, 2023. A public hearing was scheduled for December 19, 2023, but was rescheduled due to closings of state offices. The public hearing was renoticed and held on February 2, 2024 at the Maine Department of Labor, Frances Perkins Conference Room, 45 Commerce Drive, Augusta ME 04330.* *Comments were submitted by:* *Commenter # 1: Maine Equal Justice* *Commenter # 2: Peer Workforce Navigator Project* *The public comment period ended on February 13, 2024.*

12-172 Department of Labor, Bureau of Unemployment Compensation	
2024-125: Chapter 14, Education Institutional Employees	
Statutory Authority:	26 M.R.S. § 1082(1), Resolves 2023, ch. 38
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*N/A*
Principal purpose:	*To clarify the requirements and eligibility around educational employees who are between terms, including applicability to adjunct faculty, as directed by Resolves 2023, ch. 38..*
Basis Statement:	*Chapter 14: Education Institutional Employees* *The repealed and replaced Rule clarifies the analysis as to whether an education institution employee is eligible for unemployment benefits during an established and customary vacation period. In particular, this Rule clarifies the criteria for determining whether a "written reasonable assurance" exists and defining a "contract" as those terms are used in 26 M.R.S. § 1192(7). The rule further provides clarity and guidance on when adjunct faculty may qualify for unemployment benefits, as directed by Resolves 2023, ch. 38. In developing the changes to the Rule, the Bureau of Unemployment Compensation ("Bureau") looked to guidance from the United States Department of Labor (USDOL), including USDOL's Unemployment Insurance Program Letter (UILP) No. 5-17.* *This rulemaking of the Bureau of Unemployment Compensation is authorized by 26 M.R.S. § 1082 and Resolves 2023, ch. 38. The proposed Rules were posted on November 29, 2023. A public hearing was scheduled for December 19, 2023, but was rescheduled due to closings of state offices. The public hearing was rescheduled and held on February 2, 2024 at the Maine Department of Labor, Frances Perkins Conference Room, 45 Commerce Drive, Augusta ME 04330.* *Comments were submitted by:* *Commenter # 1: Maine Equal Justice* *Commenter # 2: Peer Workforce Navigator Project* *Commenter # 3: Maine AFL-CIO* *Commenter # 4: Tim McCord, President of the Part-time Faculty Association of Maine* *Commenter # 5: Andrea LaFlamme, President of the adjunct union with MSEA-SEIU and an adjunct professor at Eastern Maine Community College in Bangor* *Commenter # 6: John J. Kosinski, Maine Education Association (MEA)* *The public comment period ended on February 13, 2024.* *Minor changes were made in response to comments, as set forth below. In addition, the Bureau made formatting and grammatical changes.*

12-172 Department of Labor, Bureau of Unemployment Compensation	
2024-167: Chapter 24, Approved Training	
Statutory Authority:	26 M.R.S. §§ 1082 and 1192 (6) and (6-C)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None.*
Principal purpose:	*The amendments to the Rule update and clarify the criteria and procedure for approved training.*
Basis Statement:	*The Rule explains the process for a training agency requesting prior approval of a training waiver and for a claimant requesting approval. The Rule explains the criteria that will be used by the Bureau of Unemployment Compensation ("Bureau" or "BUC") to determine whether a training waiver will be granted, thus waiving the requirement that a claimant be able and available for work and searching for work in order to be eligible for unemployment benefits. In developing the changes to the Rule, the BUC looked to guidance from the United States Department of Labor.* *This rulemaking of the Bureau of Unemployment Compensation is authorized by 26 M.R.S. § 1082. The proposed Rules were posted on October 4, 2023. A public hearing was held on Tuesday, October 24 at the Maine Department of Labor, Frances Perkins Conference Room, 45 Commerce Drive, Augusta ME 04330. No public comments were received at the public hearings. Three sets of written comments were submitted by:* *Commenter # 1: Maine Equal Justice* *Commenter # 2: Peer Workforce Navigator Project* *Commenter # 3: Maine AFL-CIO* *The public comment period ended on November 6, 2023.* *The rule was reposted on February 21, 2024 for additional changes, in response to comments, with a comment period that ended on March 25, 2024, later extended to March 29, 2024. In the reposted rule, the section on prior approval of a training program was removed, as it is unnecessary and confusing. The additional changes clarified that claimants involved in training approved by the Bureau of Employer Services (BES) or the Bureau of Rehabilitation Services (BRS) pursuant to various federal and state laws qualify for the training waiver without further fact-finding or analysis. Thus, the rule is simplified and explains the process for a claimant to obtain a training waiver if the applicable training program has not been previously approved by BES or BRS.* *Written comments were received on the reposted rule by:* *Commenter # 1: Maine Equal Justice* *Commenter # 2: Peer Workforce Navigator Project* *All comments from Commenter #1 and Commenter #2 are identical.*

12-179 Department of Labor, Board of Occupational Safety and Health	
2024-189: Chapter 6, Recording Occupational Injuries and Illnesses in The Public Sector	
Statutory Authority:	26 M.R.S. § 565
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*No significant impact anticipated.*
Principal purpose:	*The purpose of this chapter is to incorporate by reference rules governing the recording of occupational injuries and illnesses as promulgated by the Federal Occupational Safety and Health Administration at 29 CFR Part 1904, most recently amended on January 1, 2024*
Basis Statement:	*Maine is an OSHA State Plan for State and Local Governments only. The Federal Occupational Safety & Health Administration (OSHA) still has jurisdiction for enforcing safety and health regulations in the private 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. § 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.* *The purpose of this Chapter is for BOSH to establish workplace safety and health standards and procedures to protect public sector employees, aligning public sector standards with changes to federal safety and health standards and procedures for injury and illness recordkeeping. OSHA has amended its occupational injury and illness recordkeeping regulation to require certain employers to electronically submit injury and illness information to OSHA that employers are already required to keep under the recordkeeping regulation. Specifically, OSHA amended its regulation to require establishments with 100 or more employees in certain designated industries (Appendix B to Subpart E - new) to electronically submit information from their OSHA Forms 300 and 301 to OSHA once a year. OSHA will not collect employee names or addresses, names of health care professionals, or names and addresses of facilities where treatment was provided if treatment was provided away from the worksite from the Forms 300 and 301. Establishments with 20 to 249 employees in certain industries (Appendix A to Subpart E- updated) will continue to be required to electronically submit information from their OSHA Form 300A annual summary to OSHA once a year. All establishments with 250 or more employees that are required to keep records under OSHA's injury and illness regulation will also continue to be required to electronically submit information from their Form 300A to OSHA on an annual basis.* *Procedural history – BOSH voted to propose the rule on March 6, 2024. The notice was issued on April 17, 2024.* *No comments were received during the public comment period. BOSH voted to adopt the rule on June 5, 2024.*

12-170 Department of Labor, Bureau of Labor Standards	
2024-190: Chapter 9, Rules Governing Administrative Civil Money Penalties for Labor Law Violations	
Statutory Authority:	26 M.R.S. §§ 42 and 53
Type:	Major Substantive
Emergency?:	No
Fiscal Impact:	*N/A*
Principal purpose:	*The Bureau of Labor Standards is proposing amendments to this Rule to simplify and increase the effectiveness of the administrative civil money penalties, to modify the appeals process to remove the possible perception of bias, and to ensure that Bureau resources are allocated in an effective and accountable manner.*
Basis Statement:	*The Bureau of Labor Standards is proposing amendments to this Rule to simplify and increase the effectiveness of the administrative civil money penalties, to modify the appeal process to remove the possible appearance of bias, and to ensure that Bureau resources are allocated in a more effective and accountable manner.* *The proposed rules simplify the administrative civil money penalties by reducing the number of categories under which a penalty may be increased or decreased. This makes calculating penalties easier and enables better understanding for employers of the penalties to which they might be subject for violations.* *The proposed rules make the civil money penalties more effective by increasing the deterrent effect associated with violations. This is done by making initial penalties higher and making the criteria for penalty reductions more stringent. Deterrence is not the only factor in effective enforcement, but without an effective deterrent, widespread compliance becomes much more difficult to attain.* *The proposed rules also modify the appeals process to avoid any possible appearance of bias. As the current rules stand, it is the Director who oversees the appeals process; the Director either sits as the hearing officer or delegates the hearing officer role to someone else but still makes the ultimate decision on the appeal outcome. Although the Director is not involved in the detail of all cases, the Director is heavily involved in the detail of some cases and directs the overall strategy of the Bureau. If the Director is also deciding the appeals which come out of the Bureau, it may create the impression that an employer is not obtaining a fresh review of the matter, notwithstanding the administrative burden, legal complexity, and cost of the proceedings. The proposed amended rules cure this deficiency by designating the Commissioner of Labor to be in charge of the appeals process and allowing the Commissioner to designate the appeal determination to any qualified person. This removes the appeals process one step further from the initial decision-maker and would also ensure that the appeal is being heard by someone from outside the Bureau. While the Bureau does not suggest or accept that its current appeals process is tainted by bias, it does wish to remove any potential appearance of bias as much as possible.* *The proposed rules also make the Bureau's enforcement efforts more evidence-based and transparent. The Bureau's enforcement duty goes beyond simply addressing complaints alleging legal rights have been violated. As 26 M.R.S. § 42 states:*

"The Director shall cause to be enforced all laws regulating the employment of minors; …all laws regulating the payment of wages; and all laws enacted for the protection of the working classes."

The Bureau cannot adequately enforce the laws if it does so only by responding to complaints. This is because many of the workers most in need of protection are those least likely to complain, due to fear of retaliation, lack of confidence or trust in the system, language difficulties, lack of awareness of rights, or myriad other factors. To effectively enforce the laws, therefore, the Bureau must lean heavily on proactive investigations, directing investigative resources towards sectors of the economy where there are likely to be high violations and low complaints.

The proposed rules ensure this happens by requiring the Bureau to submit a public report annually, setting out a strategy for proactive enforcement, identifying the sectors or areas it will target – as well as the evidence base for this selection – and reviewing the effectiveness of its enforcement strategy for the previous year.

The notice of proposed rulemaking and hearing date were published in newspapers on November 22, 2023. The notice and hearing date were then sent to interested parties on November 28, 2023. A hearing was held on December 11, 2023.

The comment period closed on December 27, 2023.

Legislative Process

In the second regular session of the 131st Legislature, a resolve was introduced as the vehicle for the Legislature to approve the rules. This resolve took the form of L.D. 2184, Resolve, Regarding Legislative Review of Chapter 9: Rules Governing Administrative Civil Money Penalties for Labor Law Violations, a Major Substantive Rule of the Department of Labor, Bureau of Labor Standards.

The Joint Standing Committee on Labor and Housing held a public hearing on Tuesday, February 6, 2024. 18 people testified.
The Committee then held a work session on February 15, 2024. On the same day, the Committee voted, by a majority, Ought to Pass. On March 5, 2024, the Committee reported the bill out.

The bill was finally passed by the House of Representatives on March 19, 2024, and by the Senate on March 20, 2024. On March 25, 2024, the Governor signed the bill into law.

12-702 Department of Labor, Paid Family Medical Leave Program	
2024-268: Chapter 1, Rules Governing Paid Family and Medical Leave Program	
Statutory Authority:	26 MRS 850-Q
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*n/a*
Principal purpose:	*The legislature established a paid family and medical leave benefits program to be administered by the Department of Labor. Pursuant to 26 MRS §850-Q, the Department is responsible for adopting rules as necessary to implement this program.*
Basis Statement:	***SUMMARY:*** *The Maine legislature enacted the Paid Family and Medical Leave (PFML) law in October 2023, establishing the program effective January 1, 2026. The PFML law is codified at 26 M.R.S. §§ 850-A – 850-R. The PFML law, at 26 M.R.S. § 850-Q, directs the Department of Labor to adopt rules necessary to implement the law by January 1, 2025. The PFML law and this rule will apply to most employees and employers in the State of Maine. PFML will provide up to 12 weeks of paid leave per benefit year for family, medical or safe leave, with such benefits beginning in mid-2026. Premium contributions will begin January 2025.* *Before the formal rulemaking process began, the Department held informal listening sessions to solicit feedback from the public about questions or issues surrounding PFML that may benefit from further detail or clarification in rule. The Department hosted four informal listening sessions on the following topics: January 25, 2024 (Contributions), February 1, 2024 (Eligibility), February 12, 2024 (Private plans) and, February 28, 2024 (Any provisions related to the PFML law). Furthermore, the Department consulted with other paid leave states as to their experiences with implementing their respective programs to further inform the Department's rulemaking. The Department considered United States Department of Labor regulations and guidance with respect to federal Family Medical Leave. Furthermore, the Department considered the legislative history of the statute. The Department also held meetings with the Paid Family Leave Authority and considered their recommendations. The Department also relied upon the expertise and experience of its staff.* *On May 20, 2024, the Maine Department of Labor ("The Department") invited comments on the new Chapter 1 of the rules governing the Maine Paid Family and Medical Leave Program (PFML). Comments were accepted through July 8, 2024.* *On August 28, 2024, the Department invited a second round of comments on amendments to the proposed Rule based on comments submitted in the first comment period. The second comment period ended on September 30, 2024. The Department carefully considered more than 1,600 comments submitted by approximately 500 commenters during both comment periods. This statement contains the factual and policy basis for each section, comments from the first and second round and the response to the comments in each round. In addition to the changes set forth below, the Department made minor grammatical and formatting changes.*

13 Department of Marine Resources

13-188 Department of Marine Resources	
2024-020: Chapter 11, Scallops	
Statutory Authority:	12 M.R.S. § 6171(3)(A)
Type:	Routine Technical
Emergency?:	Yes
Fiscal impact:	*Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.*
Principal purpose:	*The Commissioner adopts this emergency rulemaking to establish scallop conservation closures in Cobscook, Whiting & Dennys Bay (Zone 3), Upper Frenchman Bay, Toothacher and Upper Swans Island rotational areas (RA) and expanded closures in Addison and Englishman 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 five 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) Upper Englishman Bay Rotational Area; (9) Upper Addison Rotational Area; (10) Cobscook, Whiting & Dennys Bay; (11) Upper Frenchman Bay; and (12) Toothacher and Upper Swans Island Rotational Area*

13-188 Department of Marine Resources	
2024-063: Chapter 4, Municipal Shellfish Conservation Warden Certification	
Statutory Authority:	12 M.R.S. § 6671
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.*
Principal purpose:	*The primary purpose of proposing this rule is to amend the process for Municipal Shellfish Conservation Warden applicants and their Performance Standards. Specifically, it would allow Municipal Shellfish Conservation Warden applicants to attend the MDMR Municipal Shellfish Conservation Warden Certification Course prior to receiving a formal nomination from an appointing municipality. It adds enforcement of minimum sizes of all shellfish species included in a municipality's ordinance into the Performance Standards of Municipal Shellfish Conservation Wardens. The proposed rule makes other minor clarifying changes.*
Basis Statement:	*The rule amends the process for Municipal Shellfish Conservation Warden applicants and their Performance Standards. Specifically, it allows Municipal Shellfish Conservation Warden applicants to attend the MDMR Municipal Shellfish Conservation Warden Certification Course prior to receiving a formal nomination from an appointing municipality. It adds enforcement of minimum sizes of all shellfish species included in a municipality's ordinance into the Performance Standards of Municipal Shellfish Conservation Wardens. The rule makes other minor clarifying changes.*

13-188 Department of Marine Resources	
2024-064: Chapter 7: Requirements for Municipalities Having Shellfish Conservation Programs	
Statutory Authority:	12 M.R.S. § 6671
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*Enforcement of this rule will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.*
Principal purpose:	*This rulemaking is proposed to modify and clarify the requirements of Municipal Shellfish Programs so that the Department of Marine Resources can consistently apply the same standards to all programs. These changes including amending current definition of "period of issuance" and providing a new definition for the effective license year. Additionally, regulations regarding holding and removing shellfish on and from Municipal Limited Purpose Aquaculture licenses (LPAs) sites held by Shellfish Committees have been developed. The process for requesting permission to complete a shellfish resource survey in a closed area and the requirements for such surveys have been defined. Finally, the length of the comment period for Shellfish Programs to provide recommendations on intertidal mussel dragging has been increased from 21 to 30 days.*
Basis Statement:	*This rulemaking modifies and clarifies the requirements of Municipal Shellfish Programs so that the Department of Marine Resources can consistently apply the same standards to all programs. These changes include amending the current definition of "period of issuance" and providing a new definition for the effective license year. Additionally, regulations regarding holding and removing shellfish on and from Municipal Limited Purpose Aquaculture license sites held by Shellfish Committees have been developed. The process for requesting permission to complete a shellfish resource survey in a closed area and the requirements for such surveys have been defined. Finally, the length of the comment period for Shellfish Programs to provide recommendations on intertidal mussel dragging has been increased from 21 to 30 days.*

13-188 Department of Marine Resources	
2024-065: Chapter 32, Eel Regulations	
Statutory Authority:	12 M.R.S. §§ 6505-A, 6575-L
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.*
Principal purpose:	*Each year, the method of calculating annual elver quota must be specified for the upcoming season. In addition, the Legislature has authorized the temporary medical transfer of elver quota, and this rule specifies the parameters under which such transfers may be requested.*
Basis Statement:	*This rulemaking establishes the elver quota allocations for the 2024 season for individuals licensed 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 2023 season. 2024 allocations for individuals who held a license in 2023 will be the same as their 2023 allocations, plus any quota associated with licenses not renewed in 2023, or licenses suspended for the duration of the 2023 season, in excess of that which is allocated to new license holders authorized through the lottery, which will be distributed evenly to all existing license holders. In addition, the rulemaking specifies the parameters for a temporary medical transfer of elver quota.* *In response to comments received, the Passamaquoddy quota for 2024 was further adjusted to accurately reflect the overage in 2023 to include elvers originally libeled by Maine Marine Patrol, but which were subsequently awarded to the Passamaquoddy harvesters. In addition, the rule was amended for consistency with a legislative change from last session, which allows crew members of individuals holding fyke net with crew licenses to empty the cod end of the fyke net, provided they are under the direct supervision of the license holder.*

13-188 Department of Marine Resources	
2024-066: Chapter 36, Atlantic Herring	
Statutory Authority:	12 M.R.S. § 6171
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*Enforcement of these proposed amendments will not require additional activity in this Agency. Existing enforcement personnel will monitor compliance during their routine patrols.*
Principal purpose:	*This regulation amends language clarifying the default closing and open dates for spawning closures, and strikes language within section D(3)(b)(ii)(A) as all harvest schedules are updated annually through the ASMFC Days Out Program. It clarifies that reporting requirements apply to all fish landed or retained.*
Basis Statement:	*This regulation amends language clarifying the default closing and open dates for spawning closures, and strikes language within section D(3)(b)(ii)(A) as all harvest schedules are updated annually through the ASMFC Days Out Program. It clarifies that reporting requirements apply to all fish landed or retained.* *Based on comments received, the Eastern Maine spawning closure has been amended to recognize the terminus at the Lubec International Bridge for clarity.*

13-188 Department of Marine Resources	
2024-067: Chapter 40, Smelt Regulations	
Statutory Authority:	12 M.R.S. § 6171
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.*
Principal purpose:	*This rule is proposed by request of smelt fishermen who wish to be able to continue to fish for smelt after December 31 in those years where ice has not yet formed to allow fishing through the ice.*
Basis Statement:	*This rule-making reorganizes and clarifies existing regulations pertaining to fishing for smelt in Zones 1, 2, and 3. Regulations in Zone 2 and Zone 3 are unchanged, but rewritten for greater clarity and consistency. In Zone 1, the regulation extends the period of time during which smelt fishing may occur prior to the formation of ice from October 1 to December 31 to October 1 to January 31. All other management measures in Zone 1 remain unchanged. A clarification is provided that fishing for smelts in Zone 3 using gill nets or bag nets requires a commercial pelagic and anadromous license.*

13-188 Department of Marine Resources	
2024-068: Chapter 41, Menhaden	
Statutory Authority:	12 M.R.S. §§ 6171, 6502-C
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*Enforcement of these proposed amendments will not require additional activity in this Agency. Existing enforcement personnel will monitor compliance during their routine patrols.*
Principal purpose:	*This rulemaking establishes limitations for the 2024 menhaden season. It establishes an annual end date for the fishery of November 30. It creates a new program in which two commercial menhaden license holders may enter into a Designated Partnership Agreement, which will allow either vessel to remove fish from a purse seine that has been set by one of the vessels in the Designated Partnership Agreement. A definition is provided for "fish box" or "tank" so that harvesters may use fish boxes or tanks to meet the requirement to store fish upon harvest. It clarifies that reporting requirements apply to all fish landed or retained. It creates an incidental bycatch limit of 1,050 lbs for individuals operating a pound net or fish weir during periods when the commercial menhaden fishery is paused by the Commissioner or when the commercial fishery is closed prior to the opening of the Episodic Event Set Aside Program. It amends the weekly limit for the State Allocated Fishery from 18,000 pounds to 17,850 pounds and amends the Small Scale Fishery daily limit from 6,000 to 5,950 pounds. The fishing and landing days for the Episodic Event Set Aside Program are proposed to be Monday and Thursday and the daily limit is increased from 6,000 lbs to 7,000 lbs.*
Basis Statement:	*This rulemaking establishes limitations for the 2024 menhaden season. It establishes an annual end date for the fishery of November 30. It creates a new program in which two commercial menhaden license holders may enter into a Designated Partnership Agreement, which will allow either vessel to remove fish from a purse seine that has been set by one of the vessels in the Designated Partnership Agreement. A definition is provided for "fish box" or "tank" so that harvesters may use fish boxes or tanks to meet the requirement to store fish upon harvest. It clarifies that reporting requirements apply to all fish landed or retained. It creates an incidental bycatch limit of 1,050 lbs for individuals operating a pound net or fish weir during periods when the commercial menhaden fishery is paused by the Commissioner or when the commercial fishery is closed prior to the opening of the Episodic Event Set Aside Program. It amends the weekly limit for the State Allocated Fishery from 18,000 pounds to 17,850 pounds and amends the Small Scale Fishery daily limit from 6,000 to 5,950 pounds. The fishing and landing days for the Episodic Event Set Aside Program are proposed to be Monday and Thursday and the daily limit is increased from 6,000 lbs to 7,000 lbs.* *For clarity, section 41.06 was amended to specify that previous landing reports must be from the Maine commercial menhaden fishery.*

13-188 Department of Marine Resources	
2024-069: Chapter 55, Gear Restrictions	
Statutory Authority:	12 M.R.S. § 6171
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.*
Principal purpose:	*This rulemaking establishes standard practices for operating pound nets and fish weirs in Maine's territorial waters. Bait gillnet requirements while harvesting under menhaden licenses are clarified. Outdated references are removed.*
Basis Statement:	*This rulemaking establishes standard practices for operating pound nets and fish weirs in Maine's territorial waters. Bait gillnet requirements while harvesting under menhaden licenses are clarified. Outdated references are removed.*

13-188 Department of Marine Resources	
2024-070: Chapter 115, Vibrio parahemolyticus Control Plan	
Statutory Authority:	12 M.R.S. § 6171-A
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.*
Principal purpose:	*This rule is proposed in order to expand the application of the existing Vibrio parahaemolyticus (Vp) control plan from certain areas, to all of Maine's territorial waters for oysters. The purpose of this change is to reduce the likelihood that American and European oysters (Crassostrea virginica and Ostrea edulis) harvested from Maine territorial waters will cause Vibrio infections in consumers. Increasingly, Maine's territorial waters have environmental characteristics (primarily water and air temperature and salinity) that potentially pose a threat to public health with regard to Vibrio infections. Research indicates that the most reliable way to minimize potential Vibrio illnesses is to utilize time and temperature controls.*
Basis Statement:	*Under current regulation, certain areas of Maine's territorial waters are subject to a Control Plan for Vibrio parahaemolyticus between June 1 and October 15. This rule-making protects consumers from all species of Vibrio by extending these requirements for oysters to all of Maine's territorial waters during these months. The requirements for hard clams are limited to the upper New Meadows River through this rule-making. With the extension of these restrictions, harvester sales of oysters and upper New Meadows River hard clams from their homes are prohibited during these months. The recreational harvest of oysters and upper New Meadows River hard clams is also prohibited during these months, except for holders of Limited Purpose Aquaculture licenses removing oysters from their license sites, or in municipalities providing mandatory Vibrio training to recreational harvesters prior to licensing. The rule eliminates a current requirement to submit an annual harvest/purchase plan. It requires mandatory annual Department provided training for all oyster and some hard clam harvesters and certified shellfish dealers purchasing oysters or upper New Meadows River hard clams. It provides two options for methods for harvesters to follow to reduce time to temperature for oysters and upper New Meadows River hard clams. Finally, it removes the option of wet storing to remediate product that has not been subject to the appropriate time to temperature controls.*

13-188A Department of Marine Resources	
2024-134: Chapter 36, Atlantic Herring	
Statutory Authority:	12 M.R.S. § 6171(3)(C)
Type:	Routine Technical
Emergency?:	Yes
Fiscal impact:	*Enforcement of these proposed amendments will not require additional activity in this Agency. Existing enforcement personnel will monitor compliance during their routine patrols.*
Principal purpose:	*The Days Out Commissioners have set zero landing days for June 1 through June 30, 2024, at 6:00 p.m. for Season 1 (Trimester 2; June 1 – September 30) of the Atlantic herring fishery. Beginning on Sunday, June 30, 2024, at 6:01 p.m., five landing days have been designated: Sundays at 6:00 p.m. through Fridays at 6:00 p.m. Weekly landing limit for Atlantic herring Category A permitted vessels is 320,000 pounds. Harvester vessels may not transfer herring at-sea to a carrier vessel. 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 June 30, 2024, at 6:00 p.m. for Season 1 (Trimester 2; June 1 – September 30) of the Atlantic herring fishery. Beginning on Sunday, June 30, 2024, at 6:01 p.m., five landing days have been designated: Sundays at 6:00 p.m. through Fridays at 6:00 p.m. The weekly landing limit for Atlantic herring Category A permitted vessels is 320,000 pounds (8 trucks). All vessels landing herring caught in Management Area 1A in any Maine port are limited to one landing per 24 hour period (6 pm to 6 pm).* *Harvester vessels may transfer herring while at-sea to another harvester vessel. Harvester vessels may not transfer herring while at-sea to a carrier vessel. 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. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. §6171(3)(C).*

13-188A Department of Marine Resources	
2024-162: Chapter 41, Menhaden	
Statutory Authority:	12 M.R.S. §6171 (3)(A) and (B)
Type:	Routine Technical
Emergency?:	Yes
Fiscal Impact:	*No fiscal impact anticipated.*
Principal purpose:	*The State Allocation fishery for menhaden opened June 17, 2024 with an available quota of 23.9 million pounds. Harvest rates are higher than previous seasons and are likely to lead to a quota overage if not reduced. This harvest rate will also result in the fishery being closed in mid-August. To ensure a moderate harvest pace on the remaining quota and available biomass, harvesters are restricted to a daily landing limit of 5,950 pounds per vessel per day on Mondays, Wednesdays and Fridays.*
Basis Statement:	*The State Allocation fishery for menhaden opened June 17, 2024 with an available quota of 23.9 million pounds. Harvest rates are higher than previous seasons and are likely to lead to a quota overage if not reduced. This harvest rate will also result in the fishery being closed in mid-August. To ensure a moderate harvest pace on the remaining quota and available biomass, harvesters are restricted to a daily landing limit of 5,950 pounds per vessel per day on Mondays, Wednesdays and Fridays.* *The Commissioner has determined that it is necessary to take emergency action to revert to a daily landing limit to minimize the risk of an overage of the available menhaden quota and to prevent the depletion of the supply of bait. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. §6171(3)(A) and (B).*

13-188 Department of Marine Resources	
2024-169: Chapter 41, Menhaden	
Statutory Authority:	12 M.R.S. §6192(5)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*No fiscal impact anticipated.*
Principal purpose:	*On July 14, 2024 the Department of Marine Resources implemented an emergency regulation, which limited the commercial menhaden fishery to a daily limit of 5,950 lbs. and removed the weekly limit. DMR is now repealing that emergency regulation, which will restore the previous weekly limit of 17,850 lbs. available to be taken on Mondays, Wednesdays, and Fridays only.*
Basis Statement:	*On July 14, 2024 the Department of Marine Resources implemented an emergency regulation, which limited the commercial menhaden fishery to a daily limit of 5,950 lbs. and removed the weekly limit. DMR is now repealing that emergency regulation, which will restore the previous weekly limit of 17,850 lbs. available to be taken on Mondays, Wednesdays, and Fridays only.* *The Commissioner hereby repeals the emergency regulation as authorized by 12 M.R.S. §6192(5).*

13-188 Department of Marine Resources	
2024-173: Chapter 34, Groundfish Regulations	
Statutory Authority:	12 M.R.S. 6171(3)(C).
Type:	Routine Technical
Emergency?:	Yes
Fiscal Impact:	*Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.*
Principal purpose:	*For consistency with NOAA Fisheries federal rulemaking, the Department is implementing regulatory changes to the recreational fishing measures for Gulf of Maine cod and haddock. For cod, the emergency rulemaking modifies the recreational minimum size limit of cod to 23 inches. For haddock, the emergency rulemaking standardizes recreational measures across sectors with a 15 fish possession limit and a minimum size of 18 inches.*
Basis Statement:	*The Commissioner adopts this emergency rulemaking to modify the recreational fishing measures for Gulf of Maine cod and haddock. Cod and haddock are regulated by NOAA Fisheries as part of the Northeast Multispecies Fishery Management Plan (FMP). NOAA Fisheries sets recreational sub-annual catch limits (sub-ACLs) for both species as well as a suite of effort controls to ensure catch stays within the sub-ACLs. With this objective in mind, NOAA fisheries issued a final rule to set the recreational measures for the 2024 fishing season. The rule increases the minimum size limit for Gulf of Maine cod and aligns the minimize size and bag limit for haddock between the private and for-hire sectors of the recreational fishery. This is in response to analysis from NOAA Fisheries which suggests these modifications are not expected to result in an overage of the sub-ACLs for the Gulf of Maine cod and haddock.* *Specifically, for the 2024 fishing year, the minimum size limit for Gulf of Maine cod increased from 22 inches to 23 inches. The bag limit and season for cod are unchanged. For Gulf of Maine haddock, the bag limit is 15 fish and the minimum size limit is set at 18 inches. There is no change to the haddock season.* *Importantly, this action ensures compliance with the federal fisheries management plan. It also simplifies regulations and enforcement for recreational fishing in Maine state waters. 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).*

13-188 Department of Marine Resources	
2024-223: Chapter 26, Sea Urchins	
Statutory Authority:	12 MRS §6749
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.*
Principal purpose:	*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 2024-2025 season. For Zone 1, seasons are proposed for divers, trappers, rakers and draggers in 2024-2025, from which harvesters may only fish up to 15 days of their choosing, the same number of days allowed during the 2023-2024 season. For Zone 1, the daily tote limit is nine (9). For Zone 2, 40-day seasons are proposed for divers, trappers, rakers and draggers in 2024-2025, 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 2023-2024 season. For the Whiting & Dennys Bays Limited Access Area in Zone 2, a 12-day season is proposed for Zone 2 divers, trappers, rakers and draggers in 2024-2025, 3 days less than the 2023-2024 season due to the contraction of the calendars. For Zone 2, the daily tote limit is six (6).* *Harvesters are permitted to defer sale of daily catch and increase on-shore possession by the daily tote limit per zone multiplied by the number of open harvest days each week. All catch must be sold weekly on Fridays, 11:59 p.m. If there is no sale transaction, the harvester is required to report their daily landing electronically. All on-shore catch must be tagged by harvester, indicating landings number, harvester name and date of harvest.*
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 2024-2025 season. For Zone 1, seasons are established for divers, trappers, rakers and draggers in 2024-2025, from which harvesters may only fish up to 15 days of their choosing, the same number of days allowed during the 2023-2024 season. For Zone 1, the daily tote limit is nine (9). For Zone 2, 40-day seasons are established for divers, trappers, rakers and draggers in 2024-2025, from which harvesters may only fish up to 30 days of their choosing. This regulation has the same number of fishing days and opportunity days as the 2023-2024 season. For the Whiting & Dennys Bays Limited Access Area in Zone 2, a 12-day season is established for Zone 2 divers, trappers, rakers and draggers in 2024-2025, 3 days less than the 2023-2024 season due to the contraction of the calendars. For Zone 2, the daily tote limit is six (6).* *Harvesters are permitted to defer sale of daily catch and increase on-shore possession by the daily tote limit per zone multiplied by the number of open harvest days each week. All catch must be sold weekly on Fridays, 11:59 p.m. If there is no sale transaction, the harvester is required to report their daily landing electronically. All on-shore catch must be tagged by harvester, indicating landings number, harvester name and date of harvest.*

	Based on summary of comments, the calendars for Zone 2 Early Dive and Zone 2 Early Dive Limited Access were updated to reflect the corrected calendar dates. This amendment did not impact the proposed rulemaking.

13-188 Department of Marine Resources	
2024-224: Chapter 36, Atlantic Herring	
Statutory Authority:	12 M.R.S. § 6171(3)(C)
Type:	Routine Technical
Emergency?:	Yes
Fiscal Impact:	*Enforcement of these proposed amendments will not require additional activity in this Agency. Existing enforcement personnel will monitor compliance during their routine patrols.*
Principal purpose:	*The Days Out Commissioners have set zero landing days for October 1 through October 9, 2024 for Season 2 (Trimester 3; October 1 – December 31) of the Atlantic herring fishery. Two landing days have been designated beginning Thursday, October 10 at 12:01 a.m. through Friday, October 11 at 11:59 p.m. followed by zero landing days through to Monday, November 4. Four landing days have been designated starting Tuesday, November 5 at 12:01 a.m. through Friday at 11:59 p.m., weekly. 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 October 1 through October 9, 2024 for Season 2 (Trimester 3; October 1 – December 31) of the Atlantic herring fishery. Two landing days have been designated beginning Thursday, October 10 at 12:01 a.m. through Friday, October 11 at 11:59 p.m. followed by zero landing days through to Monday, November 4. Four landing days have been designated starting Tuesday, November 5 at 12:01 a.m. through Friday at 11:59 p.m., weekly.* *The Eastern Maine spawning closure remains in effect until October 8, 2024. The Western Maine and Massachusetts/New Hampshire spawning closure remains in effect until November 3, 2024.* *The fishery will only move to four landing days, starting on November 5, 2024 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 reallocation of the management uncertainty buffer 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 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).*

13-188 Department of Marine Resources	
2024-225: Chapter 34, Groundfish Regulations	
Statutory Authority:	12 MRS 6171
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.*
Principal purpose:	*This rulemaking is intended to maintain consistent recreational fishing measures between state and federal waters for Gulf of Maine cod and haddock.*
Basis Statement:	*On July 27, 2024, 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. Consistent with the existing emergency rule, this rule-making maintains the existing season and bag limit for cod but modifies the size limit to 23 inches. For haddock, the rulemaking maintains the season but standardizes recreational measures across sectors with a 15 fish possession limit and a minimum size of 18 inches.*

13-188 Department of Marine Resources	
2024-255: Chapter 11, Scallops	
Statutory Authority:	12 M.R.S. §6171
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*Enforcement of this rule will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.*
Principal purpose:	*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 rule-making establishes the 2024-2025 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 9, 2024 and the last day of the season is March 20, 2025. For Zone 1, a 60-day season for divers begins on December 3, 2024 and the last day of the season is April 26, 2025. For Zone 2, a 70-day season for draggers begins on December 2, 2024 and the last day of the season is March 31, 2025. For Zone 2, a 70-day season for divers begins on November 19, 2024 and the last day of the season is April 12, 2025. For Zone 3, a 50-day season for draggers begins on December 2, 2024 and the last day of the season is March 25, 2025. For Zone 3, a 50-day season for divers begins on December 5, 2024 and the last day of the season is March 29, 2025.* *Existing limited access areas in the following areas are maintained: W. Casco Bay, Muscle Ridge, Whiting and Denny's Bays. Additionally, the following existing targeted closures are maintained: Lower Muscle Ridge, Upper Sheepscot River, New Meadows River, Card Cove and Beals-Jonesport Bridge. Lower Sheepscot and Damariscotta Rivers in Zone 1 along with Upper Machias Bay, Moosabec Reach and Upper Cranberries in Zone 2 are new targeted closures for recovery and rebuilding. Gouldsboro and Dyers Bay along with Upper Blue Hill Bay are established as new limited access areas.* *Harvesting of scallops by hand (diving) is restricted to Rotation B (Second) only for the 2024-2025 season. Harvesting for scallops by dredge gear is restricted to Rotation C (Third) only for the 2024-2025 season. Rotation A is closed to all harvest.* *The proposed rule was modified based on comments received as follows:* • *Moosabec Reach Closure (11.08) was expanded to include Wohoa Bay, Indian and West Rivers.* • *Zone 1 Dive Calendar's Limited Access Days (11.09) were amended to focus harvest on Tuesdays, Wednesdays and Thursdays, while drag harvesting is occurring in open waters. This change ensure divers have less spatial overlap with draggers on open water harvest days.* • *Zone 1 Dive Calendar (11.11) was amended to replace December 25 with December 23 as an open harvest day, removing harvest from Christmas Day.*

13-188 Department of Marine Resources	
2024-256: Chapter 2, Aquaculture Lease Regulations	
Statutory Authority:	12 MRSA §§ 6072, 6072-A, 6072-B, 6072-C
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.*
Principal purpose:	*This proposed rule is necessary to effectively communicate and implement the ownership interest exception pursuant to 12 M.R.S.A. §6072-C(2-B) and to provide clarification for consistency with statute.*
Basis Statement:	*12 M.R.S.A. §6072-C(2-B) allows a Limited Purpose Aquaculture (LPA) license holder to request certain exceptions to the requirement that the license holder provide direct supervision of unlicensed individuals assisting the LPA holder in the licensed activities at the license holder's LPA site. Some of the exceptions are specific to the LPA holder having an ownership interest in an entity that holds or has applied for an experimental or standard lease. For purposes of implementing the exception in 12 M.R.S.A. §6072-C(2-B)(A), the regulation clarifies that the LPA holder needs to have a 50% or greater ownership interest in the entity, including as a shareholder in a company, that holds or has applied for an experimental and standard lease. In cases where multiple LPA holders have an ownership interest such that no one has a 50% or greater share, only one individual can claim the exception. The rule also exempts LPA upweller sites from the owner/operator requirement. As a matter of clarity, the regulation changes the name of Chapter 2 regulations from "Aquaculture Lease Regulations" to "Aquaculture Regulations." Finally, the proposed regulation clarifies the application of the definition of "riparian owner", consistent with statute.* *Based on comments received, the Department made two modifications to the rule:* *1. For purposes of implementing the exception in 12 M.R.S.A. §6072-C(2-B)(A), in consideration of situations where an entity is owned by multiple individuals such that no individual owns a 50% or greater share, the Department has modified the rule to allow one individual to claim the ownership interest exception.* *2. Sites that are for upwellers only have been exempted from the owner/operator requirement. Sites that were issued in 2024 for upwellers including unrelated gear are grandfathered (provided they are renewed after January 1, 2025), but any new LPA sites that are permitted after January 1, 2025 must be for upwellers only to qualify for the exemption.*

15 Department of Defense, Veterans, and Emergency Management

15-214 Department of Defense, Veterans Affairs, and Emergency Management	
2024-021: Chapter 2, Rules for Establishing Fees for Reporting Under the Superfund Amendments and Reauthorization Act of 1986 and Title 37-B Sec. 801, MRSA, Chapter 13	
Statutory Authority:	37-B M.R.S. § 801(2)(A)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The proposed change in the rule will increase the facilities' cost each year dependent upon how many facilities they own. Each reporting facility currently pays a registration fee and separate inventory fee. With this proposed rate increase, MEMA and the Commission would increase the registration fee associated with all hazardous and extremely hazardous chemical facilities. The registration fee has not changed since it was implemented in 2002 and has not kept up with inflation and the rise of the administrative cost of the program. Some examples of how costs will change are outlined below.* *School District W has three facilities they report for, but all are on continuous property. Under the current rule, $50 is the registration fee. Under this new rule, $100 is the registration fee.* *Facility W owns two facilities in different towns. Under the current rule, $50 per facility is the registration fee, totaling $100. Under the new rule, $100 per facility is the registration fee, totaling $200.*
Principal purpose:	*This would increase the registration fee paid by facility owners and operators of hazardous materials in the State of Maine as reported to the State Emergency Response Commission (SERC) pursuant to the Superfund Amendments and Reauthorization Act of 1986 and 37-B Sec. 801 M.R.S., Chapter 13. This rule would authorize the Director of Maine Emergency Management Agency, with the advice of the State Emergency Response Commission, to change the current fee amount and fee schedule. The registration fee set by the Commission has not been changed since it was implemented in 2002; the inventory fee was changed by rulemaking in 2021. Due to cost of inflation, the Commission struggles to maintain an adequate level of funding for County Emergency Management Agencies, State-funded Hazardous Materials Response Teams and local trainings for first responders. This increase in the current fee schedule would allow the State Emergency Response Commission to fund local first responder trainings, equipment, planning activities and outreach in order to help facilities prepare for and respond to hazardous material incidents. Without the increased fee, the Commission may have to cut back on funding these critical hazardous materials response teams and first responders, potentially reducing the State's ability to prepare for and respond to hazardous materials incidents.*
Basis Statement:	*The final rule is identical to the proposed rule that was submitted. This new rule increases the fees paid by facility owners and operators for registration, inventories, and releases of hazardous materials in the State of Maine as reported to the State Emergency Response Commission (SERC) pursuant to the Superfund Amendments and Reauthorization Act of 1986 and 37-B Sec. 801 M.R.S., Chapter 13. This rule authorizes the Director of Maine Emergency Management Agency, with the advice of the State Emergency Response Commission, to change the current fee amount and fee schedule. The fee set by the Commission has not changed since it was implemented in 2002. However, the inventory fee was changed under rulemaking in*

	2021. Due to cost of inflation, the Commission struggles to maintain an adequate level of funding for County Emergency Management Agencies, State-funded Hazardous Materials Response Teams, and local trainings for first responders. This increase in the current fee schedule allows the State Emergency Response Commission to fund local first responder *trainings, equipment, planning activities and outreach in order to help facilities prepare for and respond to hazardous material incidents. Without the increased fee, the Commission may have to cut back on funding these critical hazardous materials response teams and first responders, potentially reducing the State's ability to prepare for and respond to hazardous materials incidents.*

15-215 Defense, Veterans, and Emergency Management	
2024-265: Chapter 4, Expanded Burial Eligibility in the Maine Veterans' Memorial Cemetery System	
Statutory Authority:	37-B M.R.S. § 504(4)(B-1)(2024)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*$90,000 in annual state budget to supplement headstone and plot allowance.*
Principal purpose:	*This rule governs expanded burial eligibility in the Maine Veterans Memorial Cemetery, pursuant to 37-B M.R.S. § 504(4)(B-1)(2024).*
Basis Statement:	*The Maine Veterans Memorial Cemetery System is updating its burial eligibility rules, expanding the interment criteria. Previously, only Veterans or Service Members of the National Guard and Reserves who met certain criteria were allowed to be buried in the cemetery system. However, under the proposed rules, National Guard and Reserve Service Members, Veterans, and their family members would be eligible for burial. The rules specify the eligibility criteria, including members or former members of the National Guard, State Military Forces, and the Reserve Components of the US Armed Forces, and those who died while serving in the Active Guard Reserve, along with their spouses and minor children. Additionally, the rules outline the military service requirements for eligibility and the State's operational expenses for headstones and markers. This eligibility expansion follows the federal 'Burial Equity for Guards and Reserves Act of 2021,' which authorizes National Guard and Reserve Service Members to be buried in state veterans' cemeteries at the discretion of individual states, even if they did not meet the qualifying service period. LD 619, also known as 'An Act Regarding Eligibility for the Maine Veterans' Memorial Cemetery System,' granted National Guard and Reserve Service Members the right to be interred in the Maine Veterans' Memorial Cemetery System at the state level and gave the department authority to develop necessary implementation rules.*

16 Department of Public Safety

16-163 Department of Public Safety, Maine Emergency Management Services	
2024-004: Chapter 21, Immunization Requirements	
Statutory Authority:	32 M.R.S. §§ 81-A, 84(1)(A), 88(2)(B)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*None*
Principal purpose:	*The purpose of this proposal for the amendment of Chapter 21 is to remove COVID-19 as a disease covered by this chapter and to add to the list of vaccine-preventable diseases for which licensees of the Board must obtain proof of immunization, an exemption, or, in the case of seasonal influenza, the option to wear a surgical mask.*
Basis Statement:	*Pursuant to 32 M.R.S. § 81-A, the Emergency Medical Services' Board (hereafter "Board") is responsible for the oversight of emergency medical service (EMS) agencies throughout the State of Maine. The Board is charged with the medical care and transportation of the sick and injured and promoting the public's health, safety, and welfare. Pursuant to its rulemaking authority in 32 M.R.S. § 84(1)(A), the Board is amending its current immunization requirements to remove COVID-19, retain Influenza, and add Rubeola, Mumps, Rubella, Varicella, and Pertussis as diseases for which immunization is required for EMS persons who routinely provide direct patient care. The purpose of the rulemaking is to reduce the risk of exposure to and transmission of vaccine-preventable diseases from EMS persons to patients. EMS persons frequently encounter the immune-compromised, the elderly, and the young. The Board's proposed changes are based on recommendations from the U.S. CDC's Immunization of Healthcare Personnel Recommendation of the Advisory Committee on Immunization published on November 25, 2011, which includes Influenza, Measles, Mumps, Rubella, Varicella, and Pertussis for Health Care Personnel, recommendations from the American College of Preventative Medicine which recommends mandatory vaccination or presumptive evidence of immunity against influenza, measles, mumps, rubella, pertussis, and varicella for healthcare workers, information from the Maine Center for Disease Control and Prevention indicating that between 2011 and 2019, Maine experienced an elevated incidence of pertussis compared to the national average, and a Maine Public Health Advisory published on April 6, 2023 indicating that cases of pertussis in Maine were increasing. The federal public health emergency for COVID-19 ended on May 11, 2023, and the U.S. Centers for Medicare and Medicaid Services withdrew COVID-19 vaccine requirements for healthcare employees in June 2023.* *In addition, the Maine Department of Health and Human Services adopted amendments to 10-144 C.M.R. ch. 264 regarding vaccination requirements for healthcare workers working in certain healthcare environments, on September 5, 2023, which removed COVID-19 as a disease for which immunization was required, but maintained requirements for vaccination against Influenza, Rubeola, Mumps, Rubella, and Varicella. In amending Chapter 21 of the Board's rules, the Board is responding to the evolving COVID-19 pandemic, including the evolving scientific research and the nature of the disease itself, and is aligning its rule with the requirements of the Maine Department of Health and Human Services 's rule.*

16-227 Department of Public Safety, Maine Criminal Justice Academy Board of Trustees	
2024-030: Chapter 5, Training Standards	
Statutory Authority:	25 M.R.S. §§ 2801-2809
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*None*
Principal purpose:	*This rule is proposed to update the Maine Criminal Justice Academy Training standards to designate the current Basic Corrections Training Program as the training program for adult corrections officers and implement the Juvenile Basic Corrections Training Program as a separate basic training course for juvenile corrections officers as authorized by P.L. 2023, ch. 341 (effective October 25, 2023). Additionally, minor corrections are made to the Basic Law Enforcement Training Program standards for academic testing and other minor typographical errors. There is no anticipated fiscal impact.*
Basis Statement:	*The purpose of the rule is to better inform Maine Criminal Justice Academy staff, applicants for law enforcement and corrections training, and law enforcement and corrections certificate holders about the procedures for applying to attend training, training requirements, maintenance of certifications, and recertification which is authorized pursuant to 25 M.R.S. §§ 2803-A(1), 2803-A(5), and 2803-A(5-B).* *Additionally, the rule creates a separate training program and certification standards for juvenile corrections officers pursuant to 25 M.R.S. § 2803-A(5-B) as corrections officers in juvenile correctional facilities need to operate differently from corrections officers in adult correctional facilities to achieve their correctional objectives.*

16-633 Department of Public Safety, Gambling Control Unit	
2024-043: Chapter 32, Rules Relating to Games of Chance	
Statutory Authority:	17-A M.R.S. Ch. 62, §§ 1832, 1934, 1835-B & 1840 and 21-A M.R.S. § 1006
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*Unknown*
Principal purpose:	*This rule package is to create rules to implement the new game night statutory changes in 17 M.R.S. ch. 62 as amended by 2023 PL 2023 ch. 391, that authorize once a calendar year game nights for certain entities. In addition, these amendments include Unit proposed language to clarify recordkeeping and submission requirements for licensees and registrants.*
Basis Statement:	*This rule package is to create rules to implement the new game night statutory changes in 17 M.R.S. ch. 62 as amended by 2023 PL 2023 ch. 391, that authorize once a calendar year game nights for certain entities. In addition, these amendments include Unit proposed language to clarify recordkeeping and submission requirements for licensees and registrants.*

16-227 Department of Public Safety, Maine Criminal Justice Academy Board of Trustees	
2024-049: Chapter 13, Minimum Standards for Mandatory Policy on Response to Domestic Abuse	
Statutory Authority:	25 M.R.S. §§ 2803-A(18), 2803-B(1)(D), and 2803-B(2)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*None*
Principal purpose:	*The purpose of this proposed new rule is to establish the minimum standards for a mandatory written law enforcement agency policy on Response to Domestic Abuse required by 25 M.R.S. § 2803-B(1)(D) as recently amended by P.L. 2023, ch. 235, §§ 6-8. There is no anticipated fiscal impact.*
Basis Statement:	*The purpose of the rule is to establish minimum standards for a mandatory written law enforcement agency policy on Response to Domestic Abuse required pursuant to 25 M.R.S. § 2803-B(1)(D). Accordingly, the rule establishes the minimum policy standards with which law enforcement agencies and their staff must comply. This policy requirement will require law enforcement agencies to implement comprehensive procedures that will instruct and guide their law enforcement staff on proper handling of domestic abuse and related complaints. The expectation is that these required procedures will help ensure uniform and effective responses to domestic abuse complaints and uniform and effective after-action review and reporting of incidents involving the death or serious injury of a victim of domestic violence.*

16-163 Department of Public Safety, Maine Emergency Medical Services	
2024-062: Chapter 25, Implementing the Maine EMS Stabilization Program	
Statutory Authority:	32 M.R.S. §§ 84(1), 98
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*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.*
Principal purpose:	*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 was adopted as an emergency rule by the Board, effective December 13, 2023, to 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. The promulgation of this rule is necessary to ensure the uninterrupted functioning of this program and to ensure that the disbursement of funds authorized under the emergency rule continues.*
Basis Statement:	*Pursuant to the requirements of 32 M.R.S. §84(1)(A), 32 M.R.S. §88(2)(B), and 32 M.R.S §98, the Maine EMS Board is adopting a permanent rule; Implementing the Emergency Medical Services Stabilization Program. Previously, the Board adopted an Emergency Rule, Chapter 24: Implementing the Maine EMS Stabilization Program. That rule expired on March 12, 2024. The Board is using as a basis for its policy decision the report published in December of 2022 by the 130th Legislature's Second Regular Session Blue Ribbon Commission To Study Emergency Medical Services in the State, in which they record as findings and recommendations that: "...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 promulgation of this rule is necessary to continue the uninterrupted functioning of this program and to ensure that the disbursement of funds authorized under the emergency rule continues, acknowledging that there is a continued need as established by the legislature.*

16-163 Department of Public Safety, Maine Emergency Medical Services	
2024-082: Chapter 15, Maine EMS Regions and Regional Councils	
Statutory Authority:	32 M.R.S. §§ 84(1), 88(2)(B), 89
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*While there may be a fiscal impact on contractors that are currently providing regional administrative support services, it isn't possible to definitively identify the potential impact of the implementation of this rule on those specific entities. Some of those entities may be poised to receive additional funds; whereas others that are providing services for multiple existing regions may not receive as much funding because they will only be able to support one region at a time.*
Principal purpose:	*The Board of Emergency Medical Services (hereafter Board) is proposing to repeal and replace existing rules regarding regions and regional councils, to clarify the composition, roles, and responsibilities of the regional councils. In doing so, consolidating the existing six-region model to a four-region structure that is aligned with existing county boundaries based on the recommendations of multiple independent evaluations. This proposal also serves to clarify the process by which regional councils are recognized, the manner in which they must report their activities and finances and the manner in which those activities must be carried out, the conditions under which an organization in each region may be recognized by the Board as the regional council for that region, and the structure of the regional council to ensure that it adequately represents each major geographical part. The proposed rule includes and clarifies the duties of the Regional Medical Director and establishes that regions may elect to have an Associate Regional Medical Director.*
Basis Statement:	*Pursuant to its rulemaking authority in 32 M.R.S. § 84(1)(D), the Emergency Medical Services' Board (hereafter "Board") is responsible for promulgating rules related to the composition of regional councils, the process by which they come to be recognized, the manner in which regional councils must report their activities and finances, and the manner in which those activities must be carried out. Pursuant to 32 M.R.S. §89, the Board is responsible for delineating regions within the State, and for setting out conditions under which an organization in each region may be recognized by the Board. The purpose of this rulemaking is to amend its current rules to consolidate and realign the existing regional structure into a four-region model to align them with existing county boundaries. The Board's proposed changes are based on recommendations from An Assessment of Maine Emergency Medical Services System: Report and Recommendation on Maine EMS with a focus on regional programs and services (hereafter "ASMI"), published in December 2016, and recommendations from An Assessment of the Maine EMS System (hereafter "EMSSTAR"), published on July 21, 2004. The ASMI report recommended "The State Maine Board of EMS should begin planning for transition from the six (6) current regions to three (3) regions (with consideration for subregions) centered around the state's tertiary care facilities" The Board considered the recommendation of three (3) regions, however decided to pursue a change to four (4) regions finding that the large geographic size of the northernmost region makes it challenging to provide the necessary support. The ASMI report further recommended "The focus of Regional Council activities should be clearly delineated by rule (not just for service contracts)*

	and should emphasize regional system development…" The EMSSTAR report recommended "Clearly define the roles of the regional councils and staff and establish quantitative reporting requirements and performance accountability" In adopting this rule, the Board is responding to the requirement for rulemaking found in 32M.R.S. §84(1)(D) by clarifying the composition of the regional councils and the process by which they come to be recognized, while ensuring pursuant to 32 M.R.S §89 that there is adequate representation of groups named within the authorizing statute and structuring the regional council to adequately represent each major geographical part of its region.

16-633 Department of Public Safety, Gambling Control Unit	
2024-083: Chapter 62, Geolocation and Remote Access	
Statutory Authority:	8 M.R.S. § 1203(2)(K) & (G)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*Non applicable*
Principal purpose:	*To establish rules required under 8 M.R.S. §1203(2)(K) 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 and add additional requirements to Chapter 62 as required under 8 M.R.S. §1203(2)(G)*
Basis Statement:	*This rule is to establish rules required under 8 M.R.S. §1203(2)(K)&(G) to create standards for involuntary placement on the unauthorized list and for removal from the list in Chapter 67 and adds the requirements for geolocation providers to furnish the Director with a real time dashboard and data feed in Chapter 62.*

16-633 Department of Public Safety, Gambling Control Unit	
2024-084: Chapter 67, Involuntary Placement of Persons on the Unauthorized Persons List	
Statutory Authority:	8 M.R.S. § 1203(2)(K) & (G)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*Non applicable*
Principal purpose:	*To establish rules required under 8 M.R.S. §1203(2)(K) 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 and add additional requirements to Chapter 62 as required under 8 M.R.S. §1203(2)(G)*
Basis Statement:	*This rule is to establish rules required under 8 M.R.S. §1203(2)(K)&(G) to create standards for involuntary placement on the unauthorized list and for removal from the list in Chapter 67 and adds the requirements for geolocation providers to furnish the Director with a real time dashboard and data feed in Chapter 62.*

16-163 Department of Public Safety, Maine Emergency Medical Services	
2024-146: Chapter 2, Definitions	
Statutory Authority:	32 M.R.S. §84(1), 32 M.R.S. §88(2)(B)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*No anticipated fiscal impact.*
Principal purpose:	*The Emergency Medical Services' Board ("Board") is seeking to amend its rules to add two definitions; defining "Routinely" as it is used throughout the Board's rules to clarify a threshold for the number of calls for service that an agency may respond to before their response is considered "routine". The Board is also defining a "9-1-1 Primary Response Area" to clarify and operationalize proposed changes to Chapter 3 of the Board's rules.*
Basis Statement:	*The Emergency Medical Services Board is amending Chapter 2: Definitions, of its rules to add two definitions; "Routinely" and "9-1-1 Primary Response Area". By adding "Routinely" to its definitions, the Board is seeking to clarify a threshold for the number of calls for service that an agency may respond to before their response is considered "routine", which would impact requirements for licensure by the Board. By adding a definition for a "9-1-1 Primary Response Area", the Board is clarifying and operationalizing changes to Chapter 3 of its rules.*

16-163 Department of Public Safety, Maine Emergency Medical Services	
2024-147: Chapter 3, Ground Ambulance Service and Non-Transporting Service Licenses	
Statutory Authority:	32 M.R.S. §84.1, 32 M.R.S. §86.1.A
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*Maine EMS anticipates that the fiscal impact that the promulgation of this rule, or compliance with this rule will have will be minor for those municipalities or counties that have preexisting EMS services delivered. Maine EMS anticipates that for those municipalities or counties seeking to establish or change those services, there could be a fiscal impact of between $15,000 and $50,000 for a third-party disinterested consultant report needed for compliance with the rule. Maine EMS anticipates that most municipal-based EMS agencies already perform an annual driving history record check for operators who also operate fire-apparatus, however agencies that do not do so may incur an expense of no more that $7.00/operator of an ambulance, annually.*
Principal purpose:	*PL 2021, c. 241 §4 requires the Board of EMS (hereafter "Board") to engage in rulemaking to evaluate the need for any new ambulance service in the State of Maine before granting a license, including rules that provide an appeal process for any decision made by the Board. The Board is proposing to adopt rules requiring entities licensed under this chapter to establish a written driver training program or standard operating procedure for the operation of ambulance and emergency medical service vehicles licensed by Maine EMS, which is intended to establish a standard related to entity recordkeeping, the review of driving records, policies related to safe operation, and the initial training of operators.*
Basis Statement:	*The Board is amending its current Chapter 3: Ground Ambulance Service and Non-Transporting Service licenses to add rules required by PL 2021, c. 241 §4 for the Board to evaluate the need for any new ambulance service in the State of Maine prior to granting a license, including rules that provide an appeal process for any decision made by the Board. The Board based the criteria that an applicant must use, when applying for licensure with a 9-1-1 Primary Response Area, to define their proposed enroute times, response times, transport times, and time tolerances, on certificate of need processes and applications from the State of Arizona Bureau of Emergency Medical Services and Trauma System and Connecticut Department of Public Health's Office of Emergency Medical Services. The purpose of those criteria is to ensure that the applicant intends to establish service to the proposed geopolitical subdivision(s) to adequately meet the emergency healthcare needs of that geopolitical subdivision. The Board is additionally establishing an evaluation process for an applicant to pursue licensure with a 9-1-1 Primary Response Area that is currently served by a licensed ground ambulance that addresses when the currently licensed service voluntarily relinquishes the 9-1-1 Primary Response Area to the applicant, and when the current ground ambulance service does not voluntarily relinquish the 9-1-1 Primary response area to the applicant. In the case where a 9-1-1-Primary response area is not voluntarily relinquished, the Board is seeking to ensure that the change is acceptable to the geopolitical subdivision(s) within the area sought by requiring the submission of a signed and notarized letter, and is seeking*

	to ensure that the change is impartially determined to be beneficial to Maine EMS's system by requiring a disinterested third-party consultant report that acknowledges and defends the change based off of criteria listed within the rule. *Pursuant to 32 M.R.S. §81-A, the provision of the safe handling and transportation of the sick and injured is a key element of an emergency medical services system, for which Maine EMS is responsible for the coordination and integration of all state activities. The Board is additionally requiring services to establish a written driver training program and/or standard operating procedures for the operation of Ambulances and Emergency Medical Service Vehicles licensed by Maine EMS, in the interest of ensuring that the services are properly addressing the training and operation of vehicles the Board licenses. The Maine Department of Labor, Bureau of Labor Standards, already sets forth minimum driver-training requirements for fire apparatus for both career and volunteer firefighters that include a requirement to have a written SOP/Policy for the use of seatbelts, emergency vehicle response, an annual review of each apparatus driver's motor vehicle driving history, and the apparatus driver selection, "…in order to reduce accidents, injuries and loss of fire equipment". The Board is proposing similar rules to accomplish its purpose of ensuring the safe handling and transportation of the sick and injured.*

16-163 Department of Public Safety, Maine Emergency Medical Services	
2024-218: Chapter 21, Immunization Requirements	
Statutory Authority:	32 M.R.S. §84(1)(A)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The Emergency Medical Services Board does not anticipate there will be any fiscal impact.*
Principal purpose:	*The Emergency Medical Services Board has previously engaged in rulemaking, during which comments were received from the public that advocated for the inclusion of licensed ambulance operators as "Covered Emergency Medical Services Person(s)" and which identified challenges with the timeline of implementation by which Covered Emergency Medical Services Person(s) would need proof of immunization or documentation of a medical exemption. As a result of the feedback from those comments, the Board is proposing to amend its rules to include licensed ambulance operators within the definition of a Covered Emergency Medical Services Person and to change the implementation timeline of the effective date within this chapter of rules.*
Basis Statement:	*Pursuant to 32 M.R.S. § 81-A, the Emergency Medical Services' Board (hereafter "Board") is responsible for the oversight of emergency medical service (EMS) agencies throughout the State of Maine. The Board is charged with the medical care and transportation of the sick and injured and promoting the public's health, safety, and welfare. Pursuant to its rulemaking authority in 32 M.R.S. § 84(1)(A), the Board is amending its current immunization requirements to address public comments received during previous rulemaking; the Board believes this rulemaking will address challenges identified by stakeholders related to Covered Emergency Medical Services Persons obtaining sufficient proof of immunization or documentation of a medical exemption by making the requirement for Covered Emergency Services Persons effective at the time such person is added to the entity's roster within a system prescribed by the Office of Emergency Medical Services. This change would ideally make the requirement for documentation to be provided at the time the Covered Emergency Medical Services Person is onboarded to the entity as part of the hiring/affiliation process.* *The Board is additionally seeking, in response to comments received during previous rulemaking, to remove an exemption of Licensed Ambulance Operators as covered in the definition of Covered Emergency Medical Services Persons. The Board believes that removing this exemption will reduce the risk of exposure to and transmission of vaccine-preventable diseases from EMS persons to patients and between EMS persons, and will reduce the risk of severe disease from vaccine-preventable diseases for EMS persons. This belief is based in part upon the recognition of the role that Licensed Ambulance Operators have in assisting the response of Covered Emergency Medical Services persons as currently defined, on emergency medical calls.*

16-633 Department of Public Safety, Gambling Control Unit	
2024-222: Chapter 28, Advanced Deposit Wagering	
Statutory Authority:	8 M.R.S. § 1073; 8 M.R.S. § 1041(1); 8 M.R.S. § 1003 (3)(J)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*Non-applicable*
Principal purpose:	*This rule is to comply with changes in state law under 8 M.R.S.A., Chapter 31, Subchapter 7 Advanced Deposit Wagering*
Basis Statement:	*This rule is to comply with changes in state law under **8 M.R.S.A.**, Chapter 31, Subchapter 7 Advanced Deposit Wagering*

16-163 Department of Public Safety, Maine Emergency Medical Services	
2024-236: Chapter 26, Community Grant Program	
Statutory Authority:	32 M.R.S. § 84(1)(A), 32 M.R.S. § 97(4)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*This rule sets forth the process by which funds totaling $200,000.00 can be awarded to municipalities or groups of municipalities, to facilitate the review and consideration of the provision of effective and efficient emergency medical services for those municipalities or groups of municipalities, to engage in activities authorized by statute. This will have an impact on those municipalities or groups of municipalities commensurate with the amount of funds awarded and the activities undertaken.*
Principal purpose:	*The Emergency Medical Services Board is proposing this rule to set forth the grant application and selection process pursuant to P.L. 2021 c. 700 §1.*
Basis Statement:	*The Emergency Medical Service's Board is adopting this rule to satisfy its obligation to establish the grant application and selection process pursuant to 32 M.R.S. §97(4). The Board is establishing within this rule the selection process for applications that are submitted by communities as defined by 32 M.R.S. §97(1)(A), which addresses the requirements for those applications, the criteria the application will be reviewed against, and the way funds will be awarded to applicants.*

16-227 Department of Public Safety, Maine Criminal Justice Academy	
2024-262: Chapter 15, Standards of Conduct	
Statutory Authority:	25 M.R.S § 2803-A(15-A) and (18)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None*
Principal purpose:	*The proposed rule enacts 25 M.R.S § 2806-A(5)(M) following its passage in 2021, establishing standards of conduct for certificate holders or applicants for a certificate issued by the Maine Criminal Justice Academy Board of Trustees, the violation of which will constitute grounds for imposing discipline pursuant to 25 M.R.S. § 2806-A(5)(M). This will include all law enforcement and corrections officers and will include probation officers beginning July 1, 2025, pursuant to the enactment of P.L. 2024, Ch. 525.*
Basis Statement:	*Pursuant to 25 M.R.S. § 2801(2), the purpose of the Maine Criminal Justice Academy Board of Trustees ("the Board") is to protect the public health and welfare by ensuring that the public is served by competent and honest criminal justice practitioners by establishing minimum standards of proficiency by examining, licensing, regulating, and disciplining practitioners.* *The rule responds to a 2021 legislative directive codified at 25 M.R.S § 2803-A(15-A) to adopt rules establishing standards of conduct for applicants for certificates and certificate holders, the violation of which would subject the person to disciplinary action pursuant to 25 M.R.S. § 2806-A(5)(M). The rule applies to all law enforcement and corrections officers and will include probation officers beginning July 1, 2025, pursuant to the enactment of P.L. 2024, Ch. 525.* *The rule recognizes that the professional conduct of corrections and law enforcement officers is of paramount importance in maintaining the high standards and integrity of the criminal justice system. Accordingly, this rule communicates and clarifies established professional standards to better assure professional conduct by certificate holders and, in accordance with 25 M.R.S. § 2806-A(5)(M), permit the Board to discipline those who violate these standards.*

16-633 Department of Public Safety, Gambling Control Unit	
2024-263: Chapter 32, Rules Relating to Games of Chance	
Statutory Authority:	17 M.R.S.A. §1843. Rules
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*No expected fiscal impact.*
Principal purpose:	*The proposed rule change will repeal the rule located in Chapter 32, section 4(5)(F). Operators of games of chance have expressed confusion about the rule to Unit staff. Operators are unsure whether the rule prohibits or allows the posting of all awards offered during a game. Repealing the rule will eliminate this confusion and clearly show that operators may post/advertise all awards offered to game participants.*
Basis Statement:	*The proposed rule change will repeal the rule located in Chapter 32, section 4(6)(F). Operators of games of chance have expressed confusion about the rule to Unit staff. Operators are unsure whether the rule prohibits or allows the posting of all awards offered during a game. Repealing the rule will eliminate this confusion and clearly show that operators may post/advertise all awards offered to game participants.*

17 Department of Transportation

17-229 Department of Transportation	
2024-168: Chapter 602, Rules Relating to Maine State Ferry Service Tolls	
Statutory Authority:	23 M.R.S. §52; 23 M.R.S. §4404
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*This Rule will have no fiscal impact on the State of Maine General Fund.*
Principal purpose:	*The Department of Transportation proposes to revise Chapter 602 to update Maine State Ferry Service (MSFS) tolls at rates that are anticipated to generate sufficient revenue to pay for continued operation of the MSFS in light of the limitation on state support contained in 23 M.R.S. §4210-C.*
Basis Statement:	*This rule establishes tolls for the Maine State Ferry Service pursuant to 23 M.R.S. § 4404. The toll rates in the rule are anticipated to generate sufficient revenue to pay for the continued operation of the Ferry Service in light of the limitation on State support contained in 23 M.R.S. § 4210-C.*

17-387 Department of Transportation, Maine Pilotage Commission	
2024-219: Chapter 2, Pilotage Rates	
Statutory Authority:	38 M.R.S.A. § 90 (1) (B)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*This rule is not anticipated to have any financial impact on municipalities or counties, however, maritime pilotage users (shipping companies, vessel owners, and/or vessel operators) will be obligated by Rule to pay for pilotage services rendered within waters subject to the jurisdiction of the Maine Pilotage Commission. In some cases, the pilotage fees are proposed to increase based on changing operational climate, pilot infrastructure costs, and general increases to cost of living.*
Principal purpose:	*The Maine Pilotage Commission seeks to codify within the Maine Pilotage Rules related to pilotage rates contained in Title 17: Department of Transportation, Number 387: Maine Pilotage Commission, Chapter 2: Pilotage Rates. The new proposed rules will establish the rates of pilotage that Maine state licensed pilots may charge customers to pilot vessels that transit Maine pilotage waters within the jurisdiction of the Maine Pilotage Commission. Specifically, the waterways covered by this rule will include the Kennebec River, Sheepscot River, Penobscot Bay (including Rockland, Camden, Castine, Belfast and Searsport), Penobscot River (including Bucksport, Brewer, and Bangor) Frenchman Bay, Somes Sound, Blue Hill Bay, and Eastport/Cobscook Bay. Pilotage rates vary within Maine waters (from port to port) based on factors including pilotage units which is derived from a mathematical formula largely based on the vessel's length, breadth, and depth. Other factors include distance and complexity of transits. The proposed Rule may also contain additional fees pilots may charge. If approved, new rates will become effective October 1, 2024.*
Basis Statement:	*This rule establishes rates of pilotage pursuant to 38 M.R.S. Section 90-1B. The rates in the rule are established to generate sufficient revenue to support a sustainable system of pilotage to assure safe and efficient marine transportation of passengers and cargo to Maine ports.* *The effective date of the Rule and the associated rates of pilotage is October 1, 2024.* *No comments were received during the comment period and thus no responses were necessary.*

18 Department of Administrative and Financial Services

18-125 Department of Administrative and Financial Services, Maine Revenue Services	
2024-072: Chapter 815, Dirigo Business Incentives Program	
Statutory Authority:	36 M.R.S. §§ 112, 5219-AAA
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The fiscal impact will likely be neutral. The rule is in line with the expectations of the fiscal estimate prepared for PL 2023, c. 412, Part J.*
Principal purpose:	*To establish rules for the Dirigo Business Incentives Program created by PL 2023, c. 412, Part J.*
Basis Statement:	*The basis for the proposed new rule is to establish rules for the Dirigo Business Incentives Program created by PL 2023, c. 412, Part J. The rule provides additional detail to definitions of eligible sectors and qualified business activity and specifies the process of applying for a letter of certification in order to clarify definitions and process for participants and agency staff.*

18-125, Department of Administrative and Financial Services, Maine Revenue Services	
2024-088: Chapter 101, General Administrative Provisions	
Statutory Authority:	36 M.R.S. § 112
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	None
Principal purpose:	*MRS is proposing to adopt a new Rule 101 to explain certain General Administrative Provisions. For now, this new Rule 101 will explain aspects of the reconsideration process related to interest and penalty accrual. Specifically, interest continues to accrue during the reconsideration process whereas penalties that otherwise would accrue are permanently abated during the reconsideration process until the underlying liability is considered "final."*
Basis Statement:	*MRS is proposing to adopt a new Rule 101 to explain certain General Administrative Provisions. For now, this new Rule 101 will explain aspects of the reconsideration process related to interest and penalty accrual. Specifically, interest continues to accrue during the reconsideration process whereas penalties that otherwise would accrue are permanently abated during the reconsideration process until the underlying liability is considered "final."*

18-125, Department of Administrative and Financial Services, Maine Revenue Services	
2024-089: Chapter 102, Electronic Funds Transfer (EFT)	
Statutory Authority:	36 M.R.S. § 112
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	None
Principal purpose:	*Maine Revenue Services is proposing to amend Rule 102 ("Electronic Funds Transfer (EFT)") to impose an electronic funds transfer requirement on payers of Maine real estate withholding beginning in 2025 and to clarify the rule by removing obsolete provisions, adding clarifying language, and making other technical changes.*
Basis Statement:	*Maine Revenue Services is proposing to amend Rule 102 ("Electronic Funds Transfer (EFT)") to impose an electronic funds transfer requirement on payers of Maine real estate withholding beginning in 2025 and to clarify the rule by removing obsolete provisions, adding clarifying language, and making other technical changes.*

18-125, Department of Administrative and Financial Services, Maine Revenue Services	
2024-090: Chapter 104, Filing of Maine Tax Returns	
Statutory Authority:	36 M.R.S. § 112
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	None
Principal purpose:	*Maine Revenue Services is proposing to amend Rule 104 ("Filing of Maine Tax Returns") to impose an electronic filing requirement on taxpayers and certain taxpayer representatives for the filing of the following Maine tax returns: corporate income tax returns filed after 2024 if the taxpayer is required to file the related federal return electronically; real estate withholding returns due on or after January 1, 2025; financial institutions franchise tax returns and insurance premiums tax returns filed after 2024; and returns for certain special taxes, such as the blueberry tax, cannabis excise tax, cigarette tax, gasoline distributor tax, special fuel supplier tax, and other special taxes, filed after 2024. A waiver from the electronic filing requirement may be obtained if the requirement causes undue hardship. The proposed amended rule deletes obsolete provisions and contains technical changes for clarification.*
Basis Statement:	*Maine Revenue Services is proposing to amend Rule 104 ("Filing of Maine Tax Returns") to impose an electronic filing requirement on taxpayers and certain taxpayer representatives for the filing of the following Maine tax returns: corporate income tax returns filed after 2024 if the taxpayer is required to file the related federal return electronically; real estate withholding returns due on or after January 1, 2025; financial institutions franchise tax returns and insurance premiums tax returns filed after 2024; and returns for certain special taxes, such as the blueberry tax, cannabis excise tax, cigarette tax, gasoline distributor tax, special fuel supplier tax, and other special taxes, filed after 2024. A waiver from the electronic filing requirement may be obtained if the requirement causes undue hardship. The proposed amended rule deletes obsolete provisions and contains technical changes for clarification.*

18-125, Department of Administrative and Financial Services, Maine Revenue Services	
2024-091: Chapter 110, Requests for Advisory Rulings	
Statutory Authority:	36 M.R.S. § 112, 5 M.R.S. § 9001(4)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	None
Principal purpose:	*MRS is proposing to amend Rule 110 ("Requests for Advisory Rulings") in order to clarify that MRS may decline any request for advisory ruling. MRS is also proposing to make certain other clarifications, regarding terminology and method of submission.*
Basis Statement:	*MRS is proposing to amend Rule 110 ("Requests for Advisory Rulings") in order to clarify that MRS may decline any request for advisory ruling. MRS is also proposing to make certain other clarifications, regarding terminology and method of submission.*

18-125, Department of Administrative and Financial Services, Maine Revenue Services	
2024-092: Chapter 202, Tree Growth Tax Law Valuations - 2024	
Statutory Authority:	36 M.R.S. §§ 112, 576
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	None
Principal purpose:	*The rule is being replaced to provide updated valuation rates for each forest type by region. 36 M.R.S. § 576 requires that the State Tax Assessor annually establish the value per acre for each forest type, by economic region, for parcels classified under the Tree Growth Tax Law.*
Basis Statement:	*Amended Rule 202 provides an updated valuation rates for each forest type by region. 36 M.R.S. § 576 requires that the State Tax Assessor annually establish the value per acre for each forest type, by economic region, for parcels classified under the Tree Growth Tax Law.*

18-125, Department of Administrative and Financial Services, Maine Revenue Services	
2024-093: Chapter 603, Maine Estate Tax After 2012	
Statutory Authority:	36 M.R.S. § 112
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	None
Principal purpose:	*Maine Revenue Services is proposing to amend Rule 603 ("Maine Estate Tax After 2012") to remove the requirement that a copy of the federal estate tax closing letter be attached to the Maine amended estate tax return. The change is effective on the date of adoption. Technical changes are added to enhance clarity.*
Basis Statement:	*Maine Revenue Services is proposing to amend Rule 603 ("Maine Estate Tax After 2012") to remove the requirement that a copy of the federal estate tax closing letter be attached to the Maine amended estate tax return. The change is effective on the date of adoption. Technical changes are added to enhance clarity.*

18-125, Department of Administrative and Financial Services, Maine Revenue Services	
2024-094: Chapter 805, Composite Filing	
Statutory Authority:	36 M.R.S. § 112
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	None
Principal purpose:	*Maine Revenue Services is proposing to amend Rule 805 ("Composite Filing") to reflect that the composite filing of a pass-through entity on behalf of eligible persons (certain nonresident individuals, trusts, and estates) is, for taxable years beginning after 2022, a separate, unique tax type. The amended rule also proposes to clarify that entity income does not include an eligible person's distributive share of Maine-source net income of an entity if that income is less than zero and to make other technical changes for clarification.*
Basis Statement:	*Maine Revenue Services is proposing to amend Rule 805 ("Composite Filing") to reflect that the composite filing of a pass-through entity on behalf of eligible persons (certain nonresident individuals, trusts, and estates) is, for taxable years beginning after 2022, a separate, unique tax type. The amended rule also proposes to clarify that entity income does not include an eligible person's distributive share of Maine-source net income of an entity if that income is less than zero and to make other technical changes for clarification.*

18-125 Department of Administrative and Financial Services, Maine Revenue Services	
2024-120: Chapter 803, Income Tax Withholding Reports and Payments	
Statutory Authority:	36 M.R.S. § 112
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	None indicated
Principal purpose:	*Maine Revenue Services is proposing to amend Rule 803 ("Income Tax Withholding Reports and Payments") to remove the requirement to file the annual reconciliation Form W-3ME for tax periods beginning on or after January 1, 2024 and to make related technical changes.*
Basis Statement:	*Maine Revenue Services is proposing to amend Rule 803 ("Income Tax Withholding Reports and Payments") to remove the requirement to file the annual reconciliation Form W-3ME for tax periods beginning on or after January 1, 2024 and to make related technical changes.*

18-125 Department of Administrative and Financial Services, Maine Revenue Services	
2024-121: Chapter 811, Student Loan Repayment Tax Credit	
Statutory Authority:	36 M.R.S. § 112
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	None stated
Principal purpose:	*Maine Revenue Services is proposing new Rule 811 ("Student Loan Repayment Tax Credit") to clarify how individual income tax taxpayers may claim and calculate the Student Loan Repayment Tax Credit. The credit applies to taxable years beginning after 2021.*
Basis Statement:	*Maine Revenue Services is proposing new Rule 811 ("Student Loan Repayment Tax Credit") to clarify how individual income tax taxpayers may claim and calculate the Student Loan Repayment Tax Credit. The credit applies to taxable years beginning after 2021.*

18-125 Department of Administrative and Financial Services, Maine Revenue Services	
2024-171: Chapter 104, Filing of Maine Tax Returns	
Statutory Authority:	36 M.R.S. § 112
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*N/A*
Principal purpose:	*Maine Revenue Services is proposing to amend Rule 104 ("Filing of Maine Tax Returns") to impose an electronic filing requirement beginning in 2025 on applicants and applicant representatives submitting applications for the refundable seed capital investment tax credit claimed by private venture capital funds and applications for the certified visual media production wage reimbursement. A waiver from the electronic filing requirement may be obtained if the requirement causes undue hardship.*
Basis Statement:	*Maine Revenue Services is proposing to amend Rule 104 ("Filing of Maine Tax Returns") to impose an electronic filing requirement beginning in 2025 on applicants and applicant representatives submitting applications for the refundable seed capital investment tax credit claimed by private venture capital funds and applications for the certified visual media production wage reimbursement. A waiver from the electronic filing requirement may be obtained if the requirement causes undue hardship.*

18-125 Department of Administrative and Financial Services, Maine Revenue Services	
2024-176: Chapter 806, Nonresident Individual Income Tax	
Statutory Authority:	36 M.R.S. § 112
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None*
Principal purpose:	*Maine Revenue Services is proposing to amend Rule 806 ("Nonresident Individual Income Tax") to repeal the provision that relates to income from an entity with a permanent business presence in Maine that currently appears in the section of the rule relating to the nonresident individual minimum taxability thresholds. Income from an entity with a permanent business presence in Maine is not an amount subject to the minimum taxability thresholds contained in 36 M.R.S. 5142(8-B). Repealing the provision will align the rule with Maine law and add clarity regarding the application of the taxability thresholds to business income. The rule also proposes related technical changes for consistency and makes other changes for clarity.*
Basis Statement:	*Maine Revenue Services is proposing to amend Rule 806 ("Nonresident Individual Income Tax") to repeal the provision that relates to income from an entity with a permanent business presence in Maine that currently appears in the section of the rule relating to the nonresident individual minimum taxability thresholds. Income from an entity with a permanent business presence in Maine is not an amount subject to the minimum taxability thresholds contained in 36 M.R.S. 5142(8-B). Repealing the provision will align the rule with Maine law and add clarity regarding the application of the taxability thresholds to business income. The rule also proposes related technical changes for consistency and makes other changes for clarity.*

18-674 Department of Administrative and Financial Services, Maine Board of Tax Appeals	
2024-211 Chapter 100, Maine Board of Tax Appeals Practice and Procedure	
Statutory Authority:	36 M.R.S. § 151-D
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*This rulemaking is not anticipated to have any fiscal impact.*
Principal purpose:	*This rule updates 18-674 C.M.R. ch. 100 § 105(1) to reflect changes made by P.L. 2023, c. 412 to 36 M.R.S.A. § 151(2)(C) limiting the jurisdiction of the Maine Board of Tax Appeals to matters where the amount in controversy is $500,000 or less, which became effective October 25, 2023.*
Basis Statement:	*This rule updates 18-674 C.M.R. ch. 100 § 105(1) to reflect changes made by P.L. 2023, c. 412 to 36 M.R.S.A. § 151(2)(C) limiting the jurisdiction of the Maine Board of Tax Appeals to matters where the amount in controversy is $500,000 or less, which became effective October 25, 2023.*

18-691 Department of Administrative and Financial Services, Office of Cannabis Policy	
2024-228: Chapter 10, Rules for the Administration of the Adult Use Cannabis Program	
Statutory Authority:	28-B M.R.S. Ch. 1, including PL 2023, c. 679
Type:	Major Substantive
Emergency?:	No
Fiscal Impact:	*This rule should have no fiscal impact on existing state resources.*
Principal purpose:	*This rulemaking updates the definitions, fees and other administrative requirements necessary to implement statutory changes made to the Cannabis Legalization Act, 28-B MRS, including PL 2023, ch. 6, Emergency (Signed March 15, 2023), and PL 2023, ch. 408, PL 2023, ch. 396, specifically changes to the authorized activity of tier 1, tier 2, and nursery cultivation facilities and products manufacturing facilities allowing for the sales of cannabis and cannabis products to consumers by delivery (except that nursery cultivation facilities may sell only immature cannabis plants, seedlings, cannabis seeds and agricultural or gardening supplies relating to the cultivation of cannabis); permitting the delivery of cannabis and cannabis products by authorized licensees to consumers at hotels or other private businesses, provided that the delivering licensee has obtained written consent from the owner or other authorized agent of the business to conduct such deliveries; permitting the return of cannabis or cannabis products from licensee to the licensee that transferred the cannabis or cannabis products to the returning licensee and provides for the testing of such returned cannabis or cannabis products; permitting the use of vehicle wraps by licensees; increasing the per package limit for edible cannabis products from 100 mg per package to 200 mg per package and increasing the possession limit for cannabis concentrates from 5 grams to 10 grams; creation of new definitions for the terms "permitted premises for a specified event," "specified event," and "specified event permit"; amendments to the application requirements for the issuance of a permit for cannabis stores to conduct sales at specified events; amendments to the limitations and conditions for cannabis stores to conduct sales at events – including repealing the prohibition on the sale of "smokable" cannabis or cannabis products at specified event; establishment of criteria for suspension/revocation of permit to conduct sales at an event; established criteria for DAFS's approval or denial of a permit application for cannabis stores to conduct sales at a specified event to allow denial of such applications for "good cause"; and amendments to the requirements that the Department issue guidance to cannabis stores.* *This rulemaking is being conducted in preparation to repeal the Adult Use Cannabis Program Rule, 18-691 CMR, ch. 1, once this rule, and 18-691 CMR, chapters 20, 30 and 40 are finally adopted.*
Basis Statement:	*The Department of Administrative and Financial Services, Office of Cannabis Policy, is promulgating the Rules for the Administration of the Adult Use Cannabis Program, along with the Rules for the Licensure of Adult Use Cannabis Establishments, 18-691 CMR, ch. 20, Compliance Rules for Adult Use Cannabis Establishments, 18-691 CMR, ch. 30 and the Rules for the Testing of Adult Use Cannabis, 18-691 CMR, ch. 40 in anticipation of fully repealing the Adult Use Cannabis Program Rule, 18-691 CMR, ch. 1, once those four rules have been finally*

adopted.[1] *The Office of Cannabis Policy (OCP) has the authority to "promulgate rules necessary to implement, administer and enforce [the Cannabis Legalization Act]." 28-B MRS § 104.*

This rule is comprised of the administrative provisions, definitions and program fees from the original Adult Use Cannabis Program Rule, and incorporates statutory changes since the last time that rule was revised, specifically, PL 2021, ch. 628, PL 2023, ch. 6, Emergency (Signed March 15, 2023), PL 2023, ch. 408 and PL 2023, ch. 396. This rule also incorporates changes identified by the Office during its process of regulatory lookback and those identified by stakeholders through public comments during the public comment period for this rule.

In addition, the Office has attached to this basis statement a complete list of all comments received by the Office during the public comment period and the agency's response to the same.

Statutory Changes

An Act To Allow the State's Adult Use Marijuana Tracking System To Track Plants and Products by Group, PL 2021, ch. 628, amended the Cannabis Legalization Act, Title 28-B, ch. 1, to allow adult use cannabis cultivation facility licensees to track cannabis plants by group, as opposed to tracking each plant individually. As a result, this rule includes a definition of "group of cannabis plants" that reflects the statutory changes to 28-B MRS § 105 that describe a "group of cannabis plants" for the purposes of inventory tracking.

An Act to Clarify State Policy Regarding Cannabis Paraphernalia in the Maine Medical Use of Cannabis Act and the Cannabis Legalization Act, PL 2023, ch. 6, Emergency (Signed March 15, 2023) amended the Cannabis Legalization Act (and the Maine Medical Use of Cannabis Act, Title 22, ch. 558-C) to include a definition of "cannabis paraphernalia" and distinguished that "cannabis paraphernalia" from "tobacco products" as defined in 22 MRS § 1551. As a result, this rule contains a definition of "cannabis paraphernalia" that mirrors the one added to statute.

An Act to Clarify the Requirements for Off-Premises Sales by Cannabis Store Licensees, PL 2023, ch. 408, amended the Cannabis Legalization Act to update the requirements applicable to the conduct of off-premises sales by cannabis store licensees at "specified events" outside of the licensed premises of cannabis stores. That law created definitions of "permitted premises for a specified event", "specified event", and "specified event permit" that have been integrated into the definitions section of this rule. Changes included in that law also necessitated amendment of the definition of "limited access area" and "premises" originally included in the Adult Use Cannabis Program Rule, to accommodate the extension of retail sales to consumers at a location not within the licensed premises of a cannabis store. A fee for a specified event permit was also added to the fees section of the rule.

An Act to Amend the Adult Use Cannabis Laws, PL 2023, ch. 396, amended the Cannabis Legalization Act in a number of ways, including expanding the authorized

[1] With the exception of the *Rules for the Testing of Adult Use Cannabis*, 18-691 CMR, ch. 40, all other rules, Chapters 10, 20, and 30, are designated "major substantive" under the *Cannabis Legalization Act,* Title 28-B, ch. 1. 18-691 CMR, ch. 40 is exclusively related to mandatory testing in the Adult Use Cannabis Program, and those rules are designated "routine technical". The Office intends to finally adopt Chapter 40 in late 2023 and will finally adopt Chapters 10, 20, and 30 following action by the 131st Legislature in 2024. Following final adoption of all four rules, the Office will take the steps required under the *Maine Administrative Procedures Act*, Title 5, ch. 375, necessary to repeal 18-691 CMR, ch. 1, the *Adult Use Cannabis Program Rule*.

activities for tier 1, tier 2 and nursery cultivation facilities and products manufacturing facilities, changes to the advertising and marketing restrictions of the law, and changes to the potency limits for packages of edible cannabis products and an increase in the amount of cannabis concentrate an adult consumer may possess; however, the only provision that necessitated additions to this rule was a new requirement that the Department specify in rule limitations on signs, advertising and marketing necessary to limit the appeal of such materials to individuals under 21 years of age. In response, OCP included in this rule a definition of "appealing to individuals under 21 years of age" to be used throughout the rules governing the adult use cannabis program. In order to accommodate the expansion of the kinds of cannabis establishments permitted to make retail sales by delivery to consumers, OCP also updated the definitions of "sales delivery manifest" and "sales order" to include those newly authorized establishment types.

Changes Identified Through Regulatory Lookback

In order to clarify program requirements and reduce compliance costs for program participants, the Office engaged in a process of regulatory lookback before drafting these rules. Through that process, OCP identified a number of terms that were commonly used within the program by OCP staff and program participants, but that had not been previously defined, or that had definitions in the Adult Use Cannabis Program Rule that did not align with the implementation of those terms in practice. Specifically, the Office added the following terms to this rule in order to ensure a shared understanding between regulators and program participants of the requirements of the adult use cannabis program "indoor", "outdoor", and "principal", and added to the existing definition of "seedling" the commonly use terms "clones" and "tissue cultures".

The definitions of "indoor" and "outdoor" were added to this rule in order to address longstanding confusion among program participants regarding whether non-permanent outbuildings like sheds, hoop houses and the like were considered "indoor" or "outdoor" for the purpose of cannabis cultivation. Definition of these terms is important because cultivation facility licensees are subject to different licensee fees and compliance requirements based upon whether a cultivation facility is an indoor, outdoor, or indoor and outdoor cultivation facility. In developing these definitions, OCP sought to incorporate both the common meaning of these terms and the shared understanding of the regulator and program participants regarding the same. The resulting definitions did not receive any public comments, indicating to OCP that the definitions proposed in the draft rule accurately reflected both the legislative intent for these terms and program participants' understanding of the same.

The definition of "principal" was identified through the regulatory lookback process as a term that is commonly used within the program, but heretofore undefined. Because of the various vetting and disclosure requirements (e.g. review of tax compliance, child support obligations, criminal history records, etc.) applicable to individuals with direct or indirect financial interests or management or other fiduciary roles within a licensee's business structure, OCP has used the term "principal" to identify those individuals required to undergo the most rigorous vetting requirements, and obtain from the Department an individual identification card, as opposed to those individuals and entities requiring only disclosure. As a result, OCP

defined the term "principal" in this rule, and revised that proposed definition (as well as the definition of "direct or indirect financial interests) based upon feedback from attorneys Hannah King, Esq. and Jill Polster, Esq., who represent a number of cannabis businesses operating in Maine's market.

The Office also struck from this rule the definition of "resident" used in the Adult Use Cannabis Program Rule and the Cannabis Legalization Act, because the decision in United Cannabis Patients & Caregivers of Me. v. Me. Dep't of Admin. & Fin. Servs., No. 1:20-cv-00388 (D. Me. Oct. 19, 2020) found that the residency requirement included in Title 28-B, ch. 1, is unconstitutional, and therefore unenforceable by the Department, under the Dormant Commerce Clause. As a result, the definition of "resident" is no longer needed for the administration of the rules governing the adult use cannabis program.

Changes Based Upon Public Comments

OCP received a total of 18 public comments regarding this rule, requesting generally modest revisions to the definitions section of the rule. As a result, OCP revised the definitions of "appealing to individuals under 21 years of age", "direct or indirect financial interests", "pre-packaged retail unit". Specifically, OCP narrowed the scope of the definition of "appealing to individuals under 21 years of age" in order to reduce ambiguity in interpreting the same, adopting a version of the 5% equity interest threshold for equity and other financial interest holders proposed by Attorney King, and removed the opacity and tamper evident requirements from the definition of "pre-packaged retail unit" in response to comments on other proposed rules governing the adult cannabis program related to the elimination (and subsequent reinstatement in response to those comments) of exit packaging.

Conclusion

These rules reflect changes to the Cannabis Legalization Act impacting the definitions and fees applicable to licensees included in the Adult Use Cannabis Program Rule, as well as efforts to standardize common terminology used since the program's inception but identified through the regulatory lookback process as previously undefined. This rule, along with the other rules governing the adult use cannabis program, is intended to replace the Adult Use Cannabis Program Rule, which will be repealed following final adoption of all rules affecting the adult use cannabis program.

Small Business Impact Statement required pursuant to 5 MRS § 8052(5-A):

The following businesses may be impacted by the requirements of this rule: All adult use cannabis licensees. As of November 2023, that includes: 88 cultivation facility licensees, 67 products manufacturing facility licensees, 132 cannabis store licensees, and 4 cannabis testing facility licensees.

The projected reporting and record-keeping costs of this rule are not applicable, this rule is not expected to require any additional reporting or record-keeping costs for licensees.

The probable impact of these costs is not applicable.

18-691 Department of Administrative and Financial Services, Office of Cannabis Policy	
2024-229: Chapter 30, Compliance Rules for Adult Use Cannabis Establishments	
Statutory Authority:	28-B M.R.S. Ch. 1
Type:	Major Substantive
Emergency?:	No
Fiscal Impact:	*This rule should not have any impact on existing state resources.*
Principal purpose:	*This rulemaking updates the compliance requirements necessary to implement statutory changes made to the Cannabis Legalization Act, 28-B MRS, including PL 2023, ch. 6, Emergency (Signed March 15, 2023), and PL 2023, ch. 408, PL 2023, ch. 396, specifically changes to the authorized activity of tier 1, tier 2, and nursery cultivation facilities and products manufacturing facilities allowing for the sales of cannabis and cannabis products to consumers by delivery (except that nursery cultivation facilities may sell only immature cannabis plants, seedlings, cannabis seeds and agricultural or gardening supplies relating to the cultivation of cannabis); permitting the delivery of cannabis and cannabis products by authorized licensees to consumers at hotels or other private businesses, provided that the delivering licensee has obtained written consent from the owner or other authorized agent of the business to conduct such deliveries; permitting the return of cannabis or cannabis products from licensee to the licensee that transferred the cannabis or cannabis products to the returning licensee and provides for the testing of such returned cannabis or cannabis products; permitting the use of vehicle wraps by licensees; increasing the per package limit for edible cannabis products from 100 mg per package to 200 mg per package and increasing the possession limit for cannabis concentrates from 5 grams to 10 grams; creation of new definitions for the terms "permitted premises for a specified event," "specified event," and "specified event permit"; amendments to the application requirements for the issuance of a permit for cannabis stores to conduct sales at specified events; amendments to the limitations and conditions for cannabis stores to conduct sales at events – including repealing the prohibition on the sale of "smokable" cannabis or cannabis products at specified event; establishment of criteria for suspension/revocation of permit to conduct sales at an event; established criteria for DAFS's approval or denial of a permit application for cannabis stores to conduct sales at a specified event to allow denial of such applications for "good cause"; and amendments to the requirements that the Department issue guidance to cannabis stores.* *This rulemaking is being conducted in preparation to repeal the Adult Use Cannabis Program Rule, 18-691 CMR, ch. 1, once this rule, and 18-691 CMR, chapters 10, 20 and 40 are finally adopted.*
Basis Statement:	*The Department of Administrative and Financial Services, Office of Cannabis Policy, is promulgating the Compliance Rules for Adult Use Cannabis Establishments, along with the Rules for the Administration of the Adult Use Cannabis Program, 18-691 CMR, ch. 10, the Rules for the Licensure of Adult Use Cannabis Establishments, 18-691 CMR, ch. 20, and the Rules for the Testing of Adult Use Cannabis, 18-691 CMR, ch. 40 in anticipation of fully repealing the Adult Use Cannabis Program Rule, 18-691 CMR, ch. 1, once those four rules have been finally adopted.*[2] *The Office of Cannabis*

[2] With the exception of the *Rules for the Testing of Adult Use Cannabis*, 18-691 CMR, ch. 40, all other rules, Chapters 10, 20, and 30,

Policy (OCP) has the authority to "promulgate rules necessary to implement, administer and enforce [the Cannabis Legalization Act]." 28-B MRS § 104.

This rule is comprised of the compliance requirements from the original Adult Use Cannabis Program Rule, and incorporates statutory changes since the last time that rule was revised, specifically, PL 2023, ch. 6, Emergency (Signed March 15, 2023), PL 2023, ch. 408 and PL 2023, ch. 396. This rule also incorporates changes to clarify provisions addressed in guidance documents previously issued by the Office, changes identified by the Office through regulatory lookback, as well as changes identified by stakeholders through public comments during the public comment period for this rule.

In addition, the Office has attached to this basis statement a complete list of all comments received by the Office during the public comment period and the agency's response to the same. Also attached for readers' convenience is a list of those public comments accepted by the Office and integrated into the provisionally adopted rule. Finally, attached to this basis statement is an e-mail chain and attachments from Dr. David Nathan, on behalf of Doctors for Cannabis Regulation, regarding the changes made to the department-required warning statement to be included on the labels of cannabis and cannabis products, that is discussed in the "changes identified through regulatory lookback" section below.

Statutory Changes

An Act to Clarify State Policy Regarding Cannabis Paraphernalia in the Maine Medical Use of Cannabis Act and the Cannabis Legalization Act, PL 2023, ch. 6, Emergency (Signed March 15, 2023) amended the Cannabis Legalization Act (and the Maine Medical Use of Cannabis Act, Title 22, ch. 558-C) to include definitions of "cannabis paraphernalia" and distinguished that "cannabis paraphernalia" from "tobacco products" as defined in 22 MRS § 1551. One of the consequences of that change was an expansion of the kinds of adult use cannabis and cannabis products that can be delivered to consumers. Previously, because items like pre-rolled cannabis cigarettes (commonly referred to as "joints"), rolling papers, or cannabis concentrate cartridges (commonly referred to as "vapes" or "vape carts") could not be delivered to consumers because those cannabis items also fell under the definition of "tobacco products", and tobacco products may not be delivered to consumers. As a result, the Compliance Rules for Adult Use Cannabis Establishments removed restrictions included in the Adult Use Cannabis Program Rule regarding the delivery of so-called "tobacco products", allowing delivery of the same inventory available at cannabis stores operating in the program.

An Act to Clarify the Requirements for Off-Premises Sales by Cannabis Store Licensees, PL 2023, ch. 408, amended the Cannabis Legalization Act to update the requirements applicable to the conduct of off-premises sales by cannabis store licensees at "specified events" outside of the licensed premises of cannabis stores. Specifically, that law amends the compliance requirements regarding permits for cannabis stores to conduct sales at specified events by:

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are designated "major substantive" under the *Cannabis Legalization Act,* Title 28-B, ch. 1. 18-691 CMR, ch. 40 is exclusively related to mandatory testing in the Adult Use Cannabis Program, and those rules are designated "routine technical". The Office intends to finally adopt Chapter 40 in late 2023 and will finally adopt Chapters 10, 20, and 30 following action by the 131st Legislature in 2024. Following final adoption of all four rules, the Office will take the steps required under the *Maine Administrative Procedures Act*, Title 5, ch. 375, necessary to repeal 18-691 CMR, ch. 1, the *Adult Use Cannabis Program Rule*.

1. *Amending the limitations and conditions for cannabis stores to conduct sales at events – including repealing the prohibition on the sale of "smokable" cannabis or cannabis products at specified events;*
2. *Establishing criteria for suspension or revocation of permits to conduct sales at a specified event; and*
3. *Identifying the criteria for DAFS' approval or denial of a permit application for cannabis stores to conduct sales at a specified event, including provisions allowing denial of such applications for "good cause".*

In response, OCP included in this rule security and inventory tracking requirements regarding the conduct of sales by cannabis stores at specified events. Also included in this rule are provisions regarding suspension and revocation of specified event permits, as well as a process for reciprocal suspension or revocation of such permits in the event that landowner or municipal authority to conduct these events is revoked.

An Act to Amend the Adult Use Cannabis Laws, PL 2023, ch. 396, amended the Cannabis Legalization Act in a number of ways, including expanding the authorized activities for tier 1, tier 2 and nursery cultivation facilities and products manufacturing facilities, changes to the advertising and marketing restrictions of the law, and changes to the potency limits for packages of edible cannabis products and an increase in the amount of cannabis concentrate an adult consumer may possess. Specifically, the law amended the Cannabis Legalization Act as follows:

1. *Permitting tier 1, tier 2, and nursery cultivation facilities and products manufacturing facilities to conduct sales of cannabis and cannabis products to consumers by delivery (except that nursery cultivation facilities may sell only immature cannabis plants, seedlings, cannabis seeds and agricultural or gardening supplies relating to the cultivation of cannabis);*
2. *Permitting delivery of cannabis and cannabis products by authorized licensees to adult use consumers at hotels or other private businesses, provided that the delivering licensee has obtained written consent from the owner or other authorized agent of the business to conduct such deliveries;*
3. *Permitting the return of cannabis or cannabis products from a licensee to the licensee that transferred the cannabis or cannabis products to the returning licensee and providing for the testing of such returned cannabis or cannabis products;*
4. *Requiring the Department to specify in rule limitations on signs, advertising and marketing necessary to limit the appeal of such materials to individuals under 21 years of age;*
5. *Permitting the use of "vehicle wraps" by licensees; and*
6. *Increasing the per package THC limit for edible cannabis products from 100 mg per package to 200 mg per package and increasing the possession limit for cannabis concentrates from five grams to ten grams.*

In response, OCP included in this rule provisions:

1. *Regarding the newly authorized activities of tier 1, tier 2 and nursery cultivation facilities, as well as products manufacturing facilities, to include compliance requirements for retail sales of cannabis and cannabis products to consumers by delivery, including requirements that cultivation facility and products manufacturing facility licensees conducting such retail sales*

separate their inventory for delivery from that intended for wholesale transfers to other licensees;

2. *Requiring licensees that intend to conduct retail sales to consumers by delivery at businesses, including hotels and motels, obtain and retain written consent from a business owner or their agent on forms provided by the Department;*
3. *Regarding the inventory tracking, testing and packaging, and as applicable, resale, of cannabis and cannabis products returned by a cultivation facility, products manufacturing facility and cannabis store licensees to the licensee that originally transferred the cannabis or cannabis products to it;*
4. *Implementing the Office's new definition of "appealing to individuals under 21 years of age" included in 18-691 CMR, ch. 1, in the advertising and marketing requirements applicable to licensees;*
5. *Removing a prohibition from the Adult Use Cannabis Program Rule regarding the use of so-called "vehicle wraps" for advertising and marketing purposes; and*
6. *Adjusting the per package potency limit of edible cannabis products from 100 mg of THC per package to 200 mg of THC per package, and adjusting the retail sales limits to reflect the increase in the personal possession limit for cannabis concentrate from five grams per person to ten grams per person.*

Changes Based Upon Previously Issued Guidance[3]

As the Office has implemented the requirements of and amendments to the Cannabis Legalization Act, Title 28-B, ch. 1, it has made a practice of periodically issuing guidance to clarify provisions of the rules promulgated pursuant to that law in response to repeated inquiries from program participants, as well as findings of licensee noncompliance by OCP's compliance team.

This rule reflects guidance issued by OCP clarifying the implementation of "group tracking" of "groups" of cannabis plants as required by P.L. 2021, ch. 628, based upon the reconfiguration of the inventory tracking system to accommodate that new plant tracking option. The rule also includes provisions necessary to clarify the packaging requirements for single-serve cannabis drinks to ensure that such edible cannabis products are child resistant and tamper evident.

Changes Identified Through Regulatory Lookback

In addition to the integration of guidance documents indicated above, in order to clarify program requirements and reduce compliance costs for program participants, the Office engaged in a process of regulatory lookback before drafting these rules. Through that process, OCP identified that single-serve cannabis drink packaging issue discussed above. OCP also identified through this process improvements to the warning statements required to be printed on the labels of all cannabis and cannabis products.

Specifically, OCP determined, based upon feedback from Dr. David Nathan, on behalf of Doctors for Cannabis Regulation, that the warning statement included in the Adult Use Cannabis Program Rule should be updated to better conform with the standards for cannabis labels identified by Doctors for Cannabis Regulation and

[3] "Guidance Documents", Office of Cannabis Policy Website, available at: https://www.maine.gov/dafs/ocp/resources/guidance-documents (Accessed November 6, 2023).

other medical professionals: readability, warnings based upon scientific evidence, and brevity. To correct this deficiency, OCP changed the language of the warning statement to conform with the ASTM International consensus standard "ASTM D8441" for the International Intoxicating Cannabinoid Product Symbol. An e-mail and attached memorandum from Dr. Nathan are included as an appendix to this basis statement. As indicated on the attached public comments and responses document, OCP received several comments and questions from the public regarding the implementation of this new warning statement. In response, OCP indicated that it would provide more detailed guidance regarding the implementation of the warning statement at the time these rules are finally adopted, however, it is the intention of the Office to permit licensees to use up any existing packaging with the current warning statement for at least one year after the effective date for this new rule.

Changes Based Upon Public Comments

In response to public comments, which mirrored industry feedback over the past two years, OCP updated this rule to allow cultivation facility licensees to accept transfers of gifts of seeds in addition to the seedlings those licensees were already authorized to accept under the Adult Use Cannabis Program Rule.

In response to public comments indicating confusion regarding the definition of "appealing to individuals under 21 years of age" included in 18-691 CMR, ch. 10 (in response to a statutory directive that OCP make rules regarding the same) that impacted provisions of this rule, OCP made changes to that definition in 18-691 CMR, ch. 10 to clarify and narrow the scope of that definition. While those comments were submitted in response to this rule, the changes necessitated were incorporated into 18-691 CMR, ch. 10.

Additionally, OCP accepted comments from Jill Polster, Esq. and Alex McMahan regarding the addition of a "knowing" mens rea before the prohibition on allowing adult use consumers to open packaging containing cannabis or cannabis products on the licensed premises of a cannabis store.

In an attempt to simplify packaging requirements and reduce packaging waste, OCP originally proposed in this rule the elimination of so-called "exit packaging". However, OCP a number of comments from the public that licensees wanted the flexibility of meeting the opacity and tamper evident requirements for packaging either through the retail packaging for each individual retail unit or the exit packaging used by cannabis store licensees. In response, OCP revised the rule to allow the opacity and tamper evident requirements to be met using either retail packaging or exit packaging.

Conclusion

In general, these rules reflect the good governance practice of regulatory lookback and continue the practice of rightsizing compliance requirements for program participants while ensuring that OCP has the ability to protect public health and safety.

Small Business Impact Statement required pursuant to 5 MRS § 8052(5-A):

The following businesses may be impacted by the requirements of this rule: All adult use cannabis licensees. As of November 2023, that includes: 88 cultivation facility licensees, 67 products manufacturing facility licensees, 132 cannabis store licensees, and 4 cannabis testing facility licensees.

The projected reporting and record-keeping costs of this rule are related to

	compliance with the inventory tracking requirements of this rule and those costs amount to: $40/month fee to access the state's inventory tracking system, Metrc; and 45¢ per plant for plant tags (for cultivation facility licensees) and 25¢ per package tag (for cultivation facility and products manufacturing facility licensees). *The probable impact of these costs is negligible, as licensees are already required to comply with these requirements under existing program rules and recordkeeping through the state's inventory tracking system is a statutory requirement under 28-B MRS § 105.* *Seed-to-sale inventory tracking is standard across regulated cannabis markets in the United States, at this time, there are no less costly, reasonable alternatives to the state's inventory tracking system. The contract for the state's inventory tracking system vendor was awarded through the state's competitive procurement process.*

18-691 Department of Administrative and Financial Services, Office of Cannabis Policy	
2024-230: Chapter 20, Rules for the Licensure of Adult Use Cannabis Establishments	
Statutory Authority:	28-B M.R.S. Ch. 1
Type:	Major Substantive
Emergency?:	No
Fiscal Impact:	*This rule should have no fiscal impact on existing state resources.*
Principal purpose:	*This rulemaking updates the licensing requirements necessary to implement statutory changes made to the Cannabis Legalization Act, 28-B MRS, including PL 2023, ch. 6, Emergency (Signed March 15, 2023), and PL 2023, ch. 408, PL 2023, ch. 396, specifically changes to the authorized activity of tier 1, tier 2, and nursery cultivation facilities and products manufacturing facilities allowing for the sales of cannabis and cannabis products to consumers by delivery (except that nursery cultivation facilities may sell only immature cannabis plants, seedlings, cannabis seeds and agricultural or gardening supplies relating to the cultivation of cannabis); permitting the delivery of cannabis and cannabis products by authorized licensees to consumers at hotels or other private businesses, provided that the delivering licensee has obtained written consent from the owner or other authorized agent of the business to conduct such deliveries; permitting the return of cannabis or cannabis products from licensee to the licensee that transferred the cannabis or cannabis products to the returning licensee and provides for the testing of such returned cannabis or cannabis products; permitting the use of vehicle wraps by licensees; increasing the per package limit for edible cannabis products from 100 mg per package to 200 mg per package and increasing the possession limit for cannabis concentrates from 5 grams to 10 grams; creation of new definitions for the terms "permitted premises for a specified event," "specified event," and "specified event permit"; amendments to the application requirements for the issuance of a permit for cannabis stores to conduct sales at specified events; amendments to the limitations and conditions for cannabis stores to conduct sales at events – including repealing the prohibition on the sale of "smokable" cannabis or cannabis products at specified event; establishment of criteria for suspension/revocation of permit to conduct sales at an event; established criteria for DAFS's approval or denial of a permit application for cannabis stores to conduct sales at a specified event to allow denial of such applications for "good cause"; and amendments to the requirements that the Department issue guidance to cannabis stores.* *This rulemaking is being conducted in preparation to repeal the Adult Use Cannabis Program Rule, 18-691 CMR, ch. 1, once this rule, and 18-691 CMR, chapters 10, 30 and 40 are finally adopted.*
Basis Statement:	*The Department of Administrative and Financial Services, Office of Cannabis Policy, is promulgating the Rules for the Licensure of Adult Use Cannabis Establishments, along with the Rules for the Administration of the Adult Use Cannabis Program, 18-691 CMR, ch. 10, the Compliance Rules for Adult Use Cannabis Establishments, 18-691 CMR, ch. 30, and the Rules for the Testing of Adult Use Cannabis, 18-691 CMR, ch. 40 in anticipation of fully repealing the Adult Use Cannabis Program Rule, 18-691 CMR, ch. 1, once those four rules have been finally adopted.[4] The Office of Cannabis*

[4] With the exception of the *Rules for the Testing of Adult Use Cannabis*, 18-691 CMR, ch. 40, all other rules, Chapters 10, 20, and 30,

Policy (OCP) has the authority to "promulgate rules necessary to implement, administer and enforce [the Cannabis Legalization Act]." 28-B MRS § 104.

This rule is comprised of the licensing requirements from the original Adult Use Cannabis Program Rule, and incorporates statutory changes since the last time that rule was revised, specifically, PL 2023, ch. 408 and PL 2023, ch. 396. This rule also incorporates changes to clarify provisions addressed in guidance documents previously issued by the Office as well as changes identified by stakeholders through public comments during the public comment period for this rule.

In addition, the Office has attached to this basis statement a complete list of all comments received by the Office during the public comment period and the agency's response to the same. Also attached for readers' convenience is a list of those public comments accepted by the Office and integrated into the provisionally adopted rule.

Statutory Changes

An Act to Clarify the Requirements for Off-Premises Sales by Cannabis Store Licensees, PL 2023, ch. 408, amended the Cannabis Legalization Act to update the requirements applicable to the conduct of off-premises sales by cannabis store licensees at "specified events" outside of the licensed premises of cannabis stores. Specifically, that law amends the application requirements for the issuance of a permit for cannabis stores to conduct sales at specified events by:

4. *Amending the limitations and conditions for cannabis stores to conduct sales at events – including repealing the prohibition on the sale of "smokable" cannabis or cannabis products at specified events;*
5. *Establishing criteria for suspension or revocation of permits to conduct sales at a specified event; and*
6. *Identifying the criteria for DAFS' approval or denial of a permit application for cannabis stores to conduct sales at a specified event, including provisions allowing denial of such applications for "good cause".*

In response, OCP included in this rule a process by which cannabis store licensees can apply for and receive from the Department a permit to conduct off-premises sales of cannabis and cannabis products at "specified events", including provisions related to local and landowner approval prior to submission of a permit application to the Department, as well as a requirement that applicants provide a diagram of the permitted premises as part of their application materials.

An Act to Amend the Adult Use Cannabis Laws, PL 2023, ch. 396, amended the Cannabis Legalization Act to expand the activities authorized under tier 1, tier 2 and nursery cultivation facility licenses, as well as activities authorized for products manufacturing facility licensees, while expanding the places where licensees can deliver cannabis and cannabis products to adult use consumers. Specifically, the law amended the activities authorized under the Cannabis Legalization Act as follows:

7. *Permitting tier 1, tier 2, and nursery cultivation facilities and products manufacturing facilities to conduct sales of cannabis and cannabis products to consumers by delivery (except that nursery cultivation facilities may sell*

are designated "major substantive" under the *Cannabis Legalization Act,* Title 28-B, ch. 1. 18-691 CMR, ch. 40 is exclusively related to mandatory testing in the Adult Use Cannabis Program, and those rules are designated "routine technical". The Office intends to finally adopt Chapter 40 in late 2023 and will finally adopt Chapters 10, 20, and 30 following action by the 131st Legislature in 2024. Following final adoption of all four rules, the Office will take the steps required under the *Maine Administrative Procedures Act*, Title 5, ch. 375, necessary to repeal 18-691 CMR, ch. 1, the *Adult Use Cannabis Program Rule*.

only immature cannabis plants, seedlings, cannabis seeds and agricultural or gardening supplies relating to the cultivation of cannabis);

8. *Permitting delivery of cannabis and cannabis products by authorized licensees to adult use consumers at hotels or other private businesses, provided that the delivering licensee has obtained written consent from the owner or other authorized agent of the business to conduct such deliveries; and*
9. *Permitting the return of cannabis or cannabis products from a licensee to the licensee that transferred the cannabis or cannabis products to the returning licensee and providing for the testing of such returned cannabis or cannabis products.*

In response, OCP included in this rule provisions expanding the authorized activities of tier 1, tier 2 and nursery cultivation facilities, as well as products manufacturing facilities, to include retail sales of cannabis and cannabis products to consumers by delivery. OCP also included in this rule provisions requiring licensees that intend to conduct sales to consumers by delivery to update with the Department their facility plan of record to indicate the same. The rule also includes provisions expanding the authorized activities of cultivation facility, products manufacturing facility and cannabis store licensees to include returns of cannabis or cannabis products to the licensee that originally transferred the cannabis or cannabis products to it.

Changes Based Upon Previously Issued Guidance[5]

As the Office has implemented the requirements of and amendments to the Cannabis Legalization Act, Title 28-B, ch. 1, it has made a practice of periodically issuing guidance to clarify provisions of the rules promulgated pursuant to that law in response to repeated inquiries from program participants, as well as findings of licensee noncompliance by OCP's compliance team.

This rule reflects guidance issued by OCP related to adult use cultivation facilities that are co-located with medical cannabis cultivation areas maintained by registered caregivers or registered dispensaries, as well as guidance regarding the calculation of plant canopy grown in noncontiguous outdoor cultivation areas by a cultivation facility licensee. Specifically, this rule requires licensees to obtain approval from the Department for a change of the licensee's facility plan of record prior to designating a cultivation room or area for the cultivation of medical cannabis or adult use cannabis if the room or area was previously designated for the cultivation of cannabis for adult use or medical use cannabis, respectively. In addition, this rule specifies that OCP will be measuring mature plant canopy for noncontiguous outdoor cultivation areas in a way that reflects the noncontiguous cultivation areas identified on the cultivation facility licensee's facility plan of record.

Changes Based Upon Public Comments

In an attempt to simplify packaging requirements and reduce packaging waste, OCP originally proposed in this rule the elimination of so-called "exit packaging". However, OCP received a number of comments from the public that licensees wanted the flexibility of meeting the opacity and tamper evident requirements for packaging

[5] "Guidance Documents", Office of Cannabis Policy Website, available at: https://www.maine.gov/dafs/ocp/resources/guidance-documents (Accessed November 6, 2023).

either through the retail packaging for each individual retail unit or the exit packaging used by cannabis store licensees. In response, OCP revised the rule to allow the opacity and tamper evident requirements to be met using either retail packaging or exit packaging.

OCP included a requirement in this rule that products manufacturing facilities using extraction equipment that utilizes "inherently hazardous substances" in the extraction process must submit proof that the equipment has been inspected and certified by a professional engineer licensed in Maine within the past 24 months. Hannah King, Esq. indicated in her comments that each "inspection and certification" would cost products manufacturing facilities $25,000 per inspection, and Alex McMahan, on behalf of MEDCo, indicated that other professionals, such as municipal code inspectors, might be sufficient to inspect the equipment.

Because it is OCP's understanding that municipal staff rely on the State's licensing requirements to ensure the safe operation of this equipment, it was determined that the other professionals suggested by Mr. McMahan would not suffice for the purpose of these re-inspections and re-certifications. Therefore OCP sought a quote from one of the professional engineers who is responsible for inspecting and certifying inherently hazardous substance extraction equipment, who indicated that before airfare and lodging, the cost of such an inspection would be around $3,300. As a result, OCP revised the rule to allow such re-inspections and re-certifications to be done remotely, as opposed to in-person, thus negating the travel costs associated with this requirement.

Conclusion

In general, these rules reflect the good governance practice of regulatory lookback and continue the practice of reducing application and renewal requirements for program participants while ensuring that OCP has all information required for it to determine applicants' eligibility for licensure. Where OCP has included new requirements applicable to licensees, those requirements have been in response to statutory changes enacted since the rules governing the adult use cannabis program were last revised in 2022; except that OCP did add a new requirement that manufacturers engaged in inherently hazardous substance extraction show proof that their extraction equipment has been inspected and certified by a professional engineer within the 24 months preceding the application for renewal of the products manufacturer's license. OCP's research regarding the cost of this re-inspection and re-certification found that the cost of this service by a professional engineer would be around $3,300 once every 2 years.

Small Business Impact Statement required pursuant to 5 MRS § 8052(5-A):

The following businesses may be impacted by the requirement that products manufacturers show proof of that their inherently hazardous substance extraction equipment has been inspected and certified within the last 24 months: products manufacturing facility licensees.

Of the 67 licensed products manufacturing facilities operating in the adult use cannabis program, 15 have indicated to OCP that they extract cannabis using inherently hazardous substances.

For those 15 products manufacturing facility licensees that will be required to comply with this inspection and certification requirement, the average cost to the licensee will be approximately $3,300 biennially. Such inspections and certifications must be

	done by a professional engineer licensed in the state. *In order to ensure the safety of such extraction equipment and the employees who use it, there are no less costly means for ensuring that equipment is properly maintained, installed and serviced.*

18-691 Department of Administrative and Financial Services, Office of Cannabis Policy	
2024-231: Chapter 40, Rules for the Testing of Adult Use Cannabis	
Statutory Authority:	28-B M.R.S. Ch. 1
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*This rulemaking should not have an impact on existing state resources.*
Principal purpose:	*This rulemaking updates the requirements for the mandatory testing of adult use cannabis and cannabis products necessary to implement statutory changes made to the Cannabis Legalization Act, 28-B MRS, including PL 2023, ch. 6, Emergency (Signed March 15, 2023), and PL 2023, ch. 408, PL 2023, ch. 396, specifically changes to the authorized activity of tier 1, tier 2, and nursery cultivation facilities and products manufacturing facilities allowing for the sales of cannabis and cannabis products to consumers by delivery (except that nursery cultivation facilities may sell only immature cannabis plants, seedlings, cannabis seeds and agricultural or gardening supplies relating to the cultivation of cannabis); permitting the delivery of cannabis and cannabis products by authorized licensees to consumers at hotels or other private businesses, provided that the delivering licensee has obtained written consent from the owner or other authorized agent of the business to conduct such deliveries; permitting the return of cannabis or cannabis products from licensee to the licensee that transferred the cannabis or cannabis products to the returning licensee and provides for the testing of such returned cannabis or cannabis products; permitting the use of vehicle wraps by licensees; increasing the per package limit for edible cannabis products from 100 mg per package to 200 mg per package and increasing the possession limit for cannabis concentrates from 5 grams to 10 grams; creation of new definitions for the terms "permitted premises for a specified event," "specified event," and "specified event permit"; amendments to the application requirements for the issuance of a permit for cannabis stores to conduct sales at specified events; amendments to the limitations and conditions for cannabis stores to conduct sales at events – including repealing the prohibition on the sale of "smokable" cannabis or cannabis products at specified event; establishment of criteria for suspension/revocation of permit to conduct sales at an event; established criteria for DAFS's approval or denial of a permit application for cannabis stores to conduct sales at a specified event to allow denial of such applications for "good cause"; and amendments to the requirements that the Department issue guidance to cannabis stores.* *This rulemaking is being conducted in preparation to repeal the Adult Use Cannabis Program Rule, 18-691 CMR, ch. 1, once this rule, and 18-691 CMR, chapters 10, 20 and 30 are finally adopted.*
Basis Statement:	*The Department of Administrative and Financial Services, Office of Cannabis Policy, is promulgating the Rules for the Testing of Adult Use Cannabis, along with the Rules for the Administration of the Adult Use Cannabis Program, 18-691 CMR, ch. 10, Rules for the Licensure of Adult Use Cannabis Establishments, 18-691 CMR, ch. 20, and Compliance Rules for Adult Use Cannabis Establishments, 18-691 CMR, ch. 30, in anticipation of fully repealing the Adult Use Cannabis Program Rule, 18-691 CMR,*

ch. 1, once those four rules have been finally adopted.[6] *The Office of Cannabis Policy (OCP) has the authority to "promulgate rules necessary to implement, administer and enforce [the Cannabis Legalization Act]." 28-B MRS § 104.* ***The Department is delaying the effective date of this finally adopted, routine technical rule until the effective date for the major substantive rules that accompany it. Specifically, this rule will not go into effect and OCP will not enforce this rule until the earliest effective date for any of the following rules: Rules for the Administration of the Adult Use Cannabis Program, 18-691 CMR, ch. 10, Rules for the Licensure of Adult Use Cannabis Establishments, 18-691 CMR, ch. 20, and Compliance Rules for Adult Use Cannabis Establishments, 18-691 CMR, ch. 30. Until that time, the Adult Use Cannabis Program Rule, 18-691 CMR, ch. 1, shall remain in full force and effect.***

This rule is comprised of the mandatory testing and sample collection provisions from the original Adult Use Cannabis Program Rule, and incorporates statutory changes since the last time that rule was revised, specifically, PL 2023, ch. 396. This rule also incorporates changes to clarify provisions addressed in guidance documents previously issued by the Office, as well as changes identified by stakeholders through public comments during the public comment period for this rule.

In addition, the Office has attached to this basis statement a complete list of all comments received by the Office during the public comment period and the agency's response to the same.

Statutory Changes

An Act to Amend the Adult Use Cannabis Laws, PL 2023, ch. 396, amended the Cannabis Legalization Act in a number of ways, including expanding the authorized activities for tier 1, tier 2 and nursery cultivation facilities and products manufacturing facilities, allowing for returns of cannabis or cannabis products to the licensee that transferred those items to another licensee, changes to the advertising and marketing restrictions of the law, and changes to the potency limits for packages of edible cannabis products and an increase in the amount of cannabis concentrate an adult consumer may possess; however, the only provisions that necessitated additions to this rule were the allowance for the return and resale of some cannabis and cannabis products and the new limited authorization for some licensees besides cannabis stores to conduct sales of cannabis and cannabis products to consumers by delivery. As a result, OCP clarified that all cannabis and cannabis products, regardless of which cannabis establishment type is conducting the retail sale of the same, must be tested prior to sale to a consumer and exempted some returned cannabis and cannabis products, that had undergone and passed all mandatory testing previously, from some of the mandatory testing requirements of the rule.

[6] With the exception of the *Rules for the Testing of Adult Use Cannabis*, 18-691 CMR, ch. 40, all other rules, Chapters 10, 20, and 30, are designated "major substantive" under the *Cannabis Legalization Act,* Title 28-B, ch. 1. 18-691 CMR, ch. 40 is exclusively related to mandatory testing in the Adult Use Cannabis Program, and those rules are designated "routine technical". The Office intends to finally adopt this rule in late 2023 and will finally adopt Chapters 10, 20, and 30 following action by the 131st Legislature in 2024. Following final adoption of all four rules, the Office will take the steps required under the *Maine Administrative Procedures Act*, Title 5, ch. 375, necessary to repeal 18-691 CMR, ch. 1, the *Adult Use Cannabis Program Rule*.

Changes Based Upon Previously Issued Guidance[7]

As the Office has implemented the requirements of and amendments to the Cannabis Legalization Act, Title 28-B, ch. 1, it has made a practice of periodically issuing guidance to clarify provisions of the rules promulgated pursuant to that law in response to repeated inquiries from program participants, as well as findings of licensee noncompliance by OCP's compliance team.

This rule reflects guidance issued by OCP regarding the implementation of the final statutorily required analyte category for mandatory testing – "pesticides". When the Office launched the adult use program in 2020, in the midst of the global COVID-19 pandemic, it required only a limited panel of mandatory tests, based upon the authority granted under 28-B MRS § 602 to "temporarily waive mandatory testing requirements under [section 602] for any contaminant or factor for which the department has determined that there exists no licensed testing facility in the State capable of and certified to perform such testing." Since that time, OCP has worked with the Maine CDC's Cannabis Testing Facility Certification Program and the existing licensed and certified cannabis testing facilities to bring online additional analyte categories for mandatory testing as those testing facilities demonstrated proficiency in testing those additional analyte categories. That process was described in the Adult Use Cannabis Program Rule, but is no longer necessary in light of the implementation of all statutorily required tests. OCP issued guidance documents to all current and prospective adult use cannabis establishment licensees periodically between the beginning of the program and June 2023 regarding the onboarding of additional analyte categories, and those additions are reflected in this rule.

Changes Based Upon Public Comments

OCP received a total of 12 public comments regarding this rule, many of which were questions rather than requests for changes to the rule. As a result, OCP made revisions only to clarify that licensees may not split or otherwise divide or subcontract the testing of samples for mandatory testing in order to have one testing facility test the sample for some analyte categories while another testing facility tests for the other analytes. OCP also clarified that remediation of adult use cannabis or cannabis products found to contain harmful contaminants cannot be done by combining the failed batch of cannabis or cannabis products with cannabis or cannabis products that have passed mandatory testing, in order to dilute the overall contaminants in the cannabis or cannabis product.

Conclusion

These rules reflect changes to the Cannabis Legalization Act impacting the mandatory testing requirements applicable to cannabis and cannabis products offered for sale to consumers in the Adult Use Cannabis Program Rule. This rule, along with the other rules governing the adult use cannabis program, is intended to replace the Adult Use Cannabis Program Rule, which will be repealed following final adoption of all rules affecting the adult use cannabis program.

Small Business Impact Statement required pursuant to 5 MRS § 8052(5-A):

[7] "Guidance Documents", Office of Cannabis Policy Website, available at: https://www.maine.gov/dafs/ocp/resources/guidance-documents (Accessed November 6, 2023).

	The following businesses may be impacted by the requirements of this rule: All adult use cannabis licensees. As of November 2023, that includes: 88 cultivation facility licensees, 67 products manufacturing facility licensees, 132 cannabis store licensees, and 4 cannabis testing facility licensees. *The projected reporting and record-keeping costs of this rule are not applicable, this rule is not expected to require any additional reporting or record-keeping costs for licensees.* *The probable impact of these costs is not applicable.*

18-553 Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations	
2024-249: Chapter 20, Powerball Rules	
Statutory Authority:	8 MRSA §374 and 8 MRSA §372, sub-§2, ¶I
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*No known fiscal impact.*
Principal purpose:	*To update the Powerball Rules to allow players to add an option called "Double Play" for an extra $1 per play. This new game feature allows players to win additional prizes in a second drawing held after the Powerball drawing.*
Basis Statement:	*This amendment updates the existing rules governing the rules of Powerball. This amendment makes necessary changes to allow an option called "Double Play" to the existing Powerball game. Double Play allows players the opportunity to use their existing Powerball numbers to win prizes in a separate drawing. There is an additional charge of $1 per play to add the Double Play option. In addition, there are technical changes to clarify language, and fix typographical errors.* *Copies of the rule are available by contacting the Maine Bureau of Alcoholic Beverages and Lottery Operations, 8 State House Station, Augusta, Maine 04333-0008.*

18-691 Department of Administrative and Financial Services, Maine Revenue Services	
2024-253: 5, Rules for the Certification of Cannabis Testing Facilities	
Statutory Authority:	Title 28-B, Chapter 1 (Cannabis Legalization Act)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*This rule should not have any impact on existing state resources.*
Principal purpose:	*Revisions to this rule incorporates legislative changes enacted in P.L. 2023, ch. 679 and guidance previously issued by OCP regarding the process by which cannabis testing facilities report equipment failures to OCP and Maine CDC and the conduct of testing during those periods of equipment downtime, as well providing requirements applicable to "demonstrations of capability" by testing facility licensees, adding a requirement that microbial analyses that use plating methods use a plate reader to read all plates, clarifying sample homogenization requirements, clarifying circumstances when a cannabis testing facility can retest samples of cannabis or cannabis products that had previously failed mandatory testing, updating all cross references to reflect references to statute and the rules governing the adult use cannabis program necessitated by legislative changes to Title 28-B, ch. 1, and reformatting the rule to reflect the Secretary of State's required rule format.*
Basis Statement:	*The Department of Administrative and Financial Services, Office of Cannabis Policy, is promulgating revisions to the Rules for the Certification of Cannabis Testing Facilities, 18-691 C.M.R., ch. 5, to incorporate legislatives changes to the Cannabis Legalization Act, Title 28-B, ch. 1, enacted during the second session of the 131st Maine Legislature, specifically PL 2023, chapter 679, An Act to Protect Liberty and Advance Justice in the Administration and Enforcement of the Cannabis Legalization Act and the Maine Medical Use of Cannabis Act.* *In addition to changes necessitated by legislative action, the revisions to the rule reflect the incorporation of guidance regarding mandatory testing issued by the Office of Cannabis Policy to current and prospective adult use licensees since the rule was last subject to revision in 2022.* *Next, these revisions incorporate public comments received by the Office of Cannabis Policy pursuant to the public comment period for this rulemaking. On July 2, 2024, the Office of Cannabis Policy conducted an in-person public hearing at its offices in Augusta. No members of the public attended this hearing, so it is important to note that all comments received by the office were written comments. A complete list of the public comments received by the Office of Cannabis Policy during the rulemaking period, as well as the agency's response to those comments, is attached to this Basis Statement.* ***Statutory Changes*** *P.L. 2023, ch. 679 necessitated a number of changes to the major substantive rules governing the adult use cannabis program (18-691 CMR, chapters 10, 20 and 30) that in turn required several changes to the requirements of the Rules for the Certification of Cannabis Testing Facilities.* *First, a number of cross references to the rules governing the adult use cannabis program included in the rule required updating to reflect references to the newly adopted rules. References to 18-691 CMR, chapter 1, the previous Adult Use Cannabis Program Rule have been replaced with references to rules that have been reorganized and approved for final adoption by the 131st Legislature in accordance with P.L. 2023,*

ch. 679, Part E.

Second, the rule was updated to reflect explicit authorization to permit licensees to retest samples of cannabis or cannabis products once for potency at the request of the licensee that submitted the sample for mandatory testing. P.L. 2023, ch. 679 specified that retesting for potency could only be done with a portion of the original representative, composite sample submitted for mandatory testing by the licensee to a cannabis testing facility. This rule was updated to reflect authorization for such retesting and to specify the minimum sample retention period for such mandatory test samples to ensure that licensees can request retesting. The rule was also updated to reflect the reporting requirements applicable to such retests for potency.

Changes Based on Previous Guidance from the Office of Cannabis Policy

As the Office has implemented the requirements of and amendments to the Cannabis Legalization Act, Title 28-B, ch. 1, it has made a practice of periodically issuing guidance to clarify provisions of the rules promulgated pursuant to that law in response to repeated inquiries from program participants, as well as findings of licensee noncompliance by OCP's compliance team.

This rule reflects guidance issued by OCP regarding the process by which cannabis testing facilities report equipment failures to OCP and Maine CDC and the conduct of testing during those periods of equipment downtime.

The rule has also been updated to add a requirement that microbial analyses that use plating methods use a plate reader to read all plates and to clarify sample homogenization requirements and the circumstances when a cannabis testing facility can retest samples of cannabis or cannabis products that had previously failed mandatory testing. The rule has also been updated to clarify the requirements applicable to testing facilities' "demonstrations of capability" during the certification and annual recertification process. These changes reflect guidance given to cannabis testing facility licensees to address deficiencies identified through the annual recertification process and through OCP and Maine CDC's compliance efforts with cannabis testing facility licensees.

Additionally, this rule has been updated to require applicants for certification and licensure as a cannabis testing facility to obtain certification for all required analytes and matrices as opposed to "at least one" required analyte category. This change was in response to the implementation of mandatory testing for all analyte categories in 2023 with the addition of pesticides testing to the mandatory testing requirements. Before that time, OCP was in the process of implementing a gradual roll out of mandatory testing requirements to ensure the testing program had sufficient capacity to continue mandatory testing. Once all mandatory analyte categories were required, cannabis testing facilities were required to be able to conduct all mandatory tests in order to offer such testing to licensees.

Changes in Response to Public Comments

OCP received a total of 21 comments from four individuals and made changes to the rule in response to comments from two individuals, Randall Querry from the American Association for Laboratory Accreditation (A2LA) and Barry Chaffin of Nova Analytic Labs.

Mr. Querry recommended that the rule be updated to reflect a more detailed definition of the term "accredited" and that proposed definition was incorporated in full.

Mr. Chaffin recommended some changes to the timing of mandatory testing for

	certain analyte categories in certain matrices. Specifically, OCP updated the rule to reflect that pesticides and metals testing is required for all cannabis concentrates and only for cannabis flower or trim that is intended to be sold to consumers. OCP updated the rule to reflect that "fresh frozen" flower be dried (but not cured) prior to being submitted for mandatory testing in response to a question from Mr. Chaffin. Finally, OCP accepted Mr. Chaffin's comments to require a cannabis testing facility that uses a plate reader to read microbial test results from a plate to retain the "raw data" from that plate reader to ensure the integrity and traceability of results reported using such methodology. ***Conclusion*** *In sum, the Office of Cannabis Policy based the revisions included in this rule on statutory changes made by the second session of the 131st Legislature, integration of existing guidance published by the Office of Cannabis Policy and public comments received by the office during the public comment period.*

19 Department of Economic and Community Development

19-100 Department of Economic and Community Development	
2024-071: Chapter 300, Dirigo Business Incentives Program	
Statutory Authority:	36 M.R.S. §§ 112, 5219-AAA
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The fiscal impact will likely be neutral. The rule is in line with the expectations of the fiscal estimate prepared for PL 2023, c. 412, Part J.*
Principal purpose:	*To establish rules for the Dirigo Business Incentives Program created by PL 2023, c. 412, Part J.*
Basis Statement:	*The basis for the proposed rule is to establish rules for the Dirigo Business Incentives Program created by PL 2023, c. 412, Part J. The rule provides additional detail to definitions of eligible sectors and qualified business activity and specifies the process of applying for a letter of certification in order to clarify definitions and process for participants and agency staff.*

29 Department of the Secretary of State

29-250 Department of the Secretary of State, Bureau of Corporations, Elections, and Commissions	
2024-235: Chapter 525, Rules for Administering the Central Issuance and Processing of UOCAVA Absentee Ballots	
Statutory Authority:	21-A MRS §783
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None anticipated.*
Principal purpose:	*This rule is being amended to facilitate timely and accurate central processing and counting of absentee ballots cast by voters covered by the Uniformed and Overseas Citizen Absentee Voting Act. The amendment corrects errors included in the current version of the rule. It also expands the amount of time that absentee ballots may be processed (removing ballots from the absentee envelopes and depositing them in a locked ballot box) from the day before election day to the 7th day immediately prior to election day in order to facilitate tabulation of the ballots on Election Day. The rule clarifies procedures for UOCAVA voters who opt to return an absentee ballot electronically. The amendment also clarifies when appointments of wardens, deputy wardens, and election clerks will occur; and provides law enforcement personnel are to take physical control of all ballots and related materials that are involved in a recount, if requested by the Secretary of State.*
Basis Statement:	*To comply with the federal Military and Overseas Empowerment Act ("MOVE" Act), state legislation was enacted in 2010 that authorized the Secretary of State to centrally issue, receive and count absentee ballots for uniformed service and overseas voters ("UOCAVA" voters). These rules govern processes to provide for the examination, counting and storage of ballots in the same manner as regular absentee ballot that are issued by municipal election officials.* *Since the rule's initial adoption in 2010, the Secretary has revised and improved its procedures regarding UOCAVA ballots. The amendment removes the requirement to provide a ballot privacy sheet with a ballot issued by electronic means because the ballot affidavit that must be signed by the voter in fact acts as both an affidavit and privacy sheet to conceal the voter's ballot selections when it is printed before inserting it into an absentee ballot envelope.* *The amendment also extends the time period in which the Secretary of State is authorized to process absentee ballots prior to election day. By statute, municipal officials are authorized to process civilian absentee ballots beginning on the 7th day before election day. 21-A M.R.S. §760-B. The Secretary of State expects the number of ballots returned by UOCAVA voters for the November 5, 2024 presidential election to be exceptionally heavy as more voters tend to vote in presidential elections. The current rule allows processing to begin no earlier than the day before election day and the Department has determined that will not allow sufficient time for processing give the concurrent election-related duties that must be performed by a limited number of staff. This amendment will allow the Department to begin processing UOCAVA ballots as early as municipal officials begin processing the other Maine citizens' absentee ballots.* *The amendment makes other technical changes to bring it into compliance with current Department practices.* *The rule amendment was advertised in the Secretary of State's consolidated*

	rulemaking notice in the daily newspapers and online on September 5, 2024. A public hearing was held on September 30, 2024 and the comment deadline ended on October 10, 2024. No one attended the public hearing, nor did anyone submit comments on the rule. Following the public comment period, we are making a finding that the clarity of the rule would be improved with a grammatical change to section 5, subsection 1 of the rule, to change the wording "starting on the day 7th prior to election day" to "starting on the 7th day prior to election day".

29-250, Department of the Secretary of State, Bureau of Motor Vehicles	
2024-271: Chapter 6, Rules For the Suspension of Commercial Drivers' Licenses	
Statutory Authority:	29-A M.R.S.A. §1253, Sub 2
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None*
Principal purpose:	*These rules, first published in 1990, are updated to implement 29-A M.R.S.A. §1253 (2) (F) to allow reinstatement after a lifetime disqualification in accordance with 49 CFR 381.51 (a)(b). The rule changes being proposed update the existing rule, adding measures to implement a rehabilitation and reinstatement program.* *There is no fiscal impact of the rule.*
Basis Statement:	*These rules, first published in 1990 and last repealed and replaced in 2005, implement those provisions of the federal Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570, Title XII), Motor Carrier Safety Improvement Act of 1999 (Public Law 106-59), 113 Stat. 1748 and rules adopted thereto and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001 (Public Law 107-56) and rules adopted thereto relating to the disqualification of persons from operating commercial motor vehicles upon conviction, adjudication, or administrative determination for specific traffic and other designated offenses. These adopted rule changes provide requirements for how a commercial driver, who has been indefinitely suspended in accordance with federal regulations, may appeal for license restoration after serving 10 years of the lifetime suspension.*

65 Public Utilities Commission

65-407 Public Utilities Commission	
2024-008: Chapter 317, Statewide Arrearage Management Program	
Statutory Authority:	35-A M.R.S. §§ 104, 111, 1714, 3214, 10110
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*Minimal*
Principal purpose:	*The Public Utilities Commission amends Chapter 317 of the Commission's Rules regarding the Arrearage Management Program. The Commission amends Chapter 317 to: 1) allow participants to miss two payments before disqualification from the program; 2) allows a ratepayer to participate once every seven years rather than once in a lifetime; 3) allows all Low-income Assistance Program (LIAP) eligible ratepayers to qualify for AMP; 4) increases the maximum monthly AMP benefit to $500 a month (which increases the total amount eligible for forgiveness to $6,000 a year); and 5) changes the enrollment process to ensure that participants are not required to pay for more than one month of service at a time when enrolled in AMP. The Commission also approves other non-substantive changes to the rule.*
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. 2023-00134, issued on December 5, 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.*

65-407 Public Utilities Commission	
2024-140: Chapter 840, Intervenor and Participant Funding	
Statutory Authority:	35-A M.R.S.A. §§ 111, and 1310- A
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*Minimal*
Principal purpose:	*The Commission amends its Intervenor Funding Rule (Chapter 840) to comply with recently enacted legislation.*
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. 2022-00299, issued on May 29, 2024. Copies may also be obtained from the Administrative, Public Utilities Commission, 18 State House Station, Augusta, Maine 04333-0018.*

65-407 Public Utilities Commission	
2024-143: Chapter 313, Customer Net Energy Billing Rule	
Statutory Authority:	35-A M.R.S. §§ 104, 111, 1301, 3209-A, 3209-B
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*None*
Principal purpose:	*The Public Utilities Commission amends its Net Energy Billing (NEB) rule, Chapter 313, to reflect recently enacted legislation.*
Basis Statement:	*The factual and policy basis for this rule is set forth in the Commission's Order Adopting Rule and Statement of Factual and Policy Basis, Docket No. 2023-00284, issued on June 6, 2024. 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.*

65-407 Public Utilities Commission	
2024-172: Chapter 397, Rule Governing Procurement of Renewable Energy Promoting the Use of Contaminated Land	
Statutory Authority:	35-A M.R.S. §§ 104, 111, 1301, 3210-J
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None.*
Principal purpose:	*The Commission initiated rulemaking to provide guidance for the procurement of renewable energy resources, including providing a preference for resources located on contaminated lands, in accordance with 35-A M.R.S. § 3210-J.*
Basis Statement:	*The factual and policy basis for this Rule is set forth in the Commission's Order Adopting Rule and Statement of Factual and Policy Basis, Docket No. 2024-00028, issued on July 23, 2024. 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.*

65-407 Public Utilities Commission	
2024-187 Chapter 815, Consumer Protection Standards for Gas Utilities and Electric Transmission and Distribution Utilities	
Statutory Authority:	35-A M.R.S. §§ 104, 111, 704, 719, 1308; P.L. 2021 ch. 347, P.L. 2021, ch. 586.
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*Minimal*
Principal purpose:	*The Commission amends its Consumer Protection Standards for Electric and Gas Transmission and Distribution Utilities to include substantial modifications intended to 1) reduce the uncollectible accounts of utilities thereby reducing upward pressure on rates for all customers, 2) amend the dispute resolution procedures, 3) respond to recent legislation, and 4) make routine, stylistic and updating changes.*
Basis Statement:	*The factual and policy basis for this Rule is set forth in the Commission's Order Adopting Rule and Statement of Factual and Policy Basis, Docket No. 2023-00323, issued on August 13, 2024. 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.*

65-407 Public Utilities Commission	
2024-254: Chapter 895, Underground Facility Damage Prevention Requirements	
Statutory Authority:	23 M.R.S.A. §3360-A, 35-A M.R.S.A. §§ 104 and 111; PL 2013, ch. 557, Resolves 2015, ch. 9, PL 2015, ch. 213, and PL 2023, ch. 572.
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None*
Principal purpose:	*The Public Utilities Commission initiates a rulemaking proceeding to amend chapter 895. The proposed amendments are narrowly tailored for the purpose of reducing the number of Dig Safe tickets issued to operators and owners of underground facilities where the facilities are not located in the area of the planned excavation thereby reducing the administrative burdens associated with participation in the Dig Safe system without compromising safety.*
Basis Statement:	*The factual and policy basis for this Chapter is set forth in the Commission's Order Amending Rule and Statement of Factual and Policy Basis, Docket No. 2024-00157, issued on November 5, 2024. 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.*

65-407 Public Utilities Commission	
2024-264: Chapter 328, Funding Source for Interconnection Ombudsman	
Statutory Authority:	35-A M.R.S.A. §§ 104, 111, and P.L. 2023, c. 307, as amended by P.L. 2024, c. 643, Sec. WWW-1, codified at 35-A M.R.S. § 3474
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None*
Principal purpose:	*The Public Utilities Commission initiates a rulemaking proceeding to establish an Interconnection Ombudsman Fee and an Interconnection Ombudsman Fee Fund, pursuant to P.L. 2023, Chapter 307, as amended by P.L. 2024, Chapter 643, § WWW-1.*
Basis Statement:	*The factual and policy basis for this Rule is set forth in the Commission's Order Adopting Rule and Statement of Factual and Policy Basis, Docket No. 2024-00218, issued on November 19, 2024. 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.*

90-590 Maine Health Data Organization

90-590 Maine Health Data Organization	
2024-098: Chapter 270, Uniform Reporting System for Quality Data Sets	
Statutory Authority:	22 M.R.S. §§ 8704, sub-§ 4, 8708-A, 8712, 8761, and 24-A M.R.S. § 6951(2), (3)
Type:	Major Substantive
Emergency?:	No
Fiscal impact:	*There is no fiscal impact on state municipalities, counties or businesses.*
Principal purpose:	*The focus of the proposed changes to Chapter 270 include, adding a new measure for Maine nursing facilities under healthcare associated infections (HAI); adding a new measure for Maine hospitals for antimicrobial resistance (AR), and for both types of facilities a new requirement to report a subset of NHSN's direct patient identifiers that are non-required fields in NHSN. This information will inform analysis in health inequities.*
Basis Statement:	*The Maine Health Data Organization is authorized by statute to collect quality data from health care practitioners and health care facilities to support the set of quality measures adopted by the Maine Quality Forum with the goal of improving the quality of healthcare in Maine.* *Chapter 270 defines health care quality data sets and the provisions for filing the data sets by health care providers to the Maine Health Data Organization. These provisions include: identification of the organizations required to report; establishment of requirements for the content, form, medium, and time for filing health care quality metrics data; establishment of standards for the data reported; and compliance provisions.* *The focus of the proposed changes to Chapter 270 include, adding a new measure for Maine nursing facilities under healthcare associated infections (HAI); adding a new measure for Maine hospitals for antimicrobial resistance (AR), and for both types of facilities a new requirement to report a subset of NHSN's direct patient identifiers that are non-required fields in NHSN. This information will inform analysis in health inequities.* *The MHDO Board met on February 2, 2023, and authorized the MHDO to initiate rulemaking to Chapter 270. The MHDO held a public hearing on September 7, 2023, with a September 18, 2023, deadline for written comments. The MHDO board met on December 7, 2023, and unanimously voted to provisionally adopt the changes as proposed and amended, as outlined in the Basis Statement (dated December 7, 2023). Subsequently, the Board submitted the provisionally adopted rule to the Maine State Legislature for its review, in accordance with 5 MRS Sec. 8072. The Maine State Legislature authorized final adoption of the December 7, 2023 provisionally adopted rule, with no changes (Resolve 2023, ch 138). On April 4, 2024, the Board finally adopted this rule, which makes the following changes.* *Below is a summary of the rule changes.* *1. Add a definition for Direct Patient Identifiers. [page 1]* *Justification: The definition for Direct Patient Identifiers (definition is from Chapter 120, Release of Data to the Public) has been added to support the collection of direct patient identifiers.* *2. Add a general statement to section 2 specific to all measures in this section*

are to be submitted to the US CDC's NHSN in accordance with the NHSN specifications and this rule, except for a subset of non-required fields within NHSN data structure that are required per this rule if the data is available. [page 3]

Justification: With one exception, the existing requirements in Section 2 of Chapter 270 require data for each measure be submitted to the US CDC's NHSN in accordance with NHSN specifications and this rule. The change that is being proposed is the requirement that for this section a small subset of the non-required direct patient identifier fields within the NSHN reporting structure be populated when the data is available at the time of reporting. The specific fields are identified in section 10.

3. Revise the submission requirement in 2. E. to align with the fact that all nursing homes in Maine are reporting to the US CDC's National Safety Network (NHSN). [page 4]
Justification: Administrative streamlining.
4. Add a new reporting requirement for nursing facilities to submit data to NHSN for Urinary Tract Infections (UTIs) in accordance with NHSN specifications and this rule. [page 4]
Justification: Nursing homes report almost four times as many antibiotic courses of treatment for UTIs in nursing homes residents as compared to UTI events meeting surveillance definitions (Infect Control Hosp Epidemiol. 2022 Feb; 43(2): 238–240.). Post COVID, the nursing home UTI rate in Maine (3.4%) has increased above the national average (2.3%). While the number of UTI events per facility is available through the CMS Minimum Data Set (MDS), the enhanced detail available through NHSN UTI reporting allows greater transparency into the details of the UTI. This detail will allow the Maine CDC to work with nursing homes to target both prevention and antimicrobial stewardship (AMS) activities to reduce both UTI rates and use of antibiotics in nursing homes.
5. Add a new reporting requirement for hospitals to submit data to NHSN for Antimicrobial Use and Resistance (AUR). [page 4]
Justification: Major causes associated with healthcare associated infections include inadequate hand washing, uneven use of proven infection control procedures, patients who have weakened immune systems and bacteria becoming resistant to antibiotics. For example, MRSA and C. difficile bacteria (Ch. 270 requires hospitals to report MRSA and C. difficile lab ID events) can both cause serious infections leading to longer hospital stays, higher medical costs and even death. MRSA bacteria give rise to special concern, because of their resistance to multiple types of antibiotics and new strains of drug-resistant C. difficile have become more virulent. Collecting AUR data provides transparency into antimicrobial use and resistance to inform strategies to reduce antimicrobial resistant infections through antimicrobial stewardship, and interrupt transmission of resistant pathogens at the individual facility, healthcare system, and state levels.
6. Add language to 2.G. that includes direct patient identifiers in the authorization of the Maine CDC to access NHSN facility specific reports of data. Delete the language in 2. G. that limits the Maine CDC's access to NHSN for facility-specific reports of data submitted for healthcare associated infections. [page 4]

Justification: The proposed changes allow the Maine CDC to access both HAI and AUR data in NHSN, including patient identifiable data which going forward will allow the Maine CDC to understand and begin to address the impact of health inequities.

7. Add language to 2.H. that includes direct patient identifiers in the authorization of the MHDO to access NHSN facility specific reports of data. Delete the language in 2. H. that limits the MHDO 's access to NHSN for facility-specific reports of data submitted for healthcare associated infections; and add language regarding the protection and confidentiality of individuals in any public reporting. [page 4]

Justification: The proposed changes allow the MHDO to access both HAI and AUR data in NHSN, including direct patient identifiers. The submission of patient identifiable data is consistent with the data submissions to MHDO from hospitals for each inpatient and outpatient encounter per the requirements in Chapter 241, Uniform Reporting System for Hospital Inpatient Data Sets and Hospital Outpatient Data Sets. Access to direct patient identifiers will allow MHDO to leverage more robust information regarding the individual's health care experience and demographic characteristics. This robust data set will improve analysis in several areas of healthcare inequities. Patient identifiable data is confidential and will be protected by MHDO per the terms of Chapter 120, Release of Data to the Public.

8. Updates to the table of Reporting Requirements in Section 9 to include the new proposed measures, UTI and AUR. Updates to the MRSA and C.difficile measures to explicitly exclude inpatient rehab. [page 7]
Justification: Updates to the table of Reporting Requirements keeps the table current.
9. Add Section 10 which is a table of the subset of non-required Direct Patient Identifiers NHSN fields that are required under Chapter 270. [page 8]

Justification: The table provides information needed so that the submitters understand the specific direct patient identifiers that are included in the NHSN reporting form for both hospitals and nursing facilities that are not required under NHSN but are required under this rule.

90-590 Maine Health Data Organization	
2024-145: Chapter 243, Uniform Reporting System for Health Care Claims Data Sets	
Statutory Authority:	22 MRSA, §§8703(1), 8704(4), 8708(6-A) and 8712(2)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*There is no fiscal impact on state municipalities, counties, or small businesses.*
Principal purpose:	*The proposed rule changes incorporate feedback from the reporting entities specific to the structure for reporting capitation data to the Maine Health Data Organization. These changes will improve the process by which payors report capitated data to the MHDO including payments and services.*
Basis Statement:	***Section I. 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.* *The MHDO held a public hearing on proposed changes to 90-590 Chapter 243, August 3, 2023. One of the proposed changes included clarification specific to the reporting of capitation (both services and payments). Based on public comments received, staff made non-substantive amendments to the proposed structure specific to capitation for the board's consideration. The MHDO board met on December 7, 2023, and unanimously voted to adopt the changes to Chapter 243 as proposed and amended.* *At the December 7, 2023, board meeting, staff requested that the board authorize MHDO to initiate rulemaking to Chapter 243 to address the substantive comments that were received regarding the submission of capitation data. The board voted unanimously to authorize staff to initiate rulemaking. A public hearing was held on May 1, 2024 with a 10-day written comment period deadline of May 13, 2024. The MHDO board met on June 6, 2024, and unanimously voted to adopt the changes as proposed and amended.* *The newly proposed changes in the structure for reporting capitation data to MHDO is based on feedback received as a result of the August 3, 2023, public hearing, and mostly align with the State of California's Capitation file (provided by Anthem), and the APCD-CDL. We believe that these proposed changes will improve the process by which payors report capitated payments and the services provided under capitated services agreements.* *Below is a summary of the proposed rule changes.* *1. Removes the capitation reporting requirement (recently adopted) from the Chapter 243 medical file and creates a separate Capitated Payments File (CF). These proposed changes align with the feedback provided both in terms of the reporting structure and the reporting content. File specifications for the new CF file are found in Sec 2(B)(4)(e); Appendices G-1 and G-2, pages 99-107.* ***Justification:*** *Based on the feedback received from the reporting entities, capitation payments are typically processed separately from the processing of claims data.*

Segregating capitation payments into a separate file avoids the complexities associated with integrating this information with the medical claims data and removes the administrative burden that merging these data would impose on payers.

2. Adds language regarding the new capitated payments file (CF) that provides instructions on how to separately report capitated payments and capitated services. [General Requirements, Sec 2(A)(2), (pages 4-5); Appendix B-1, data elements HD004, HD005, HD006 (page 19); Appendix B-2, data elements TR004, TR005, TR006 (page 20)].

Justification: *Instructions are helpful to minimize confusion and helps ensure uniform reporting of this information.*

3. Removes instructions for including capitated payment information in the medical claims file (pages 37, 38, 59, 60)

Justification: *Instructions for including capitated payment information in Chapter 243 medical file is no longer necessary since this information will be reported only in the capitated payments file (CF).*

4. Adds information to Appendix A, MHDO's External Code Sets, to associate the data elements in the Capitated Payments File to the appropriate external sources (pages 12-14, 16).

Justification: *As part of developing a uniform data set, identification of the external code sets is foundational.*

Section II. Names of Individuals that Submitted Comments

The following is a list of individuals and affiliations that made oral comments at the public hearing and/or submitted written comments to the Maine Health Data Organization (MHDO) regarding the proposed rule:

Karynlee Harrington, MHDO, Executive Director

Section III. Summary of Comments Received by Submitter with Proposed Agency Response & Action

Maine Health Data Organization submitted the following comment(s):

Comment(s):
It has come to my attention that in the drafting of our proposed rule changes to Rule Chapter 243, Uniform Reporting System for Health Care Claims Data Sets, a clarification correction should be made to page 7, Sec 2(A)(13)(d) to read as follows:
"Consistent, Inter-file Identifiers. A carrier or health care claims processor and any contracted entity acting on its behalf shall ensure that member and subscriber identifiers for the same individuals are unique and consistent across medical claims, pharmacy claims and member <u>all</u> eligibility <u>and claims</u> files."

Justification: *The proposed revisions clarify explicitly with the requirement that consistent inter-file identifiers are to be provided for all MHDO eligibility and claims files, including MHDO dental claims and eligibility files.*

90-590 Maine Health Data Organization	
2024-213: Chapter 340, Uniform Reporting System for Reporting 340B Drug Program Data Sets	
Statutory Authority:	22 M.R.S. §§ 8703(1), 8704(1) & (4) and PL 2023, ch. 276 [22 M.R.S. § 1728]
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*There is no fiscal impact on state municipalities, counties, or small businesses.*
Principal purpose:	*This new rule is being proposed to implement the provisions in Title 22 M.R.S. §1728(2)(A-D)(3).*
Basis Statement:	*The Maine Health Data Organization is authorized by statute to collect health care data.* *PL 2023, Chapter 276, "An Act to Increase Transparency Regarding Certain Drug Pricing Programs", requires the Maine Health Data Organization to collect data in a standardized way from Maine hospitals participating in the federal drug pricing program under Section 340B of the federal Public Health Service Act, 42 United States Code, Section 256b, referred to in this document as the 340B program.* *This new proposed chapter governs the provisions for filing 340B Drug Program data sets from participating Maine hospitals. The provisions include identification of the organizations required to report; establishment of requirements for the content, format, method, and time frame for filing 340B Drug Program data; establishment of standards for the data reported; and compliance provisions.* *The MHDO Board met on September 7, 2023, and authorized the MHDO to initiate rulemaking for this new routine technical rule. The MHDO held a public hearing on May 1, 2024, with a May 13, 2024, deadline for written comments. The MHDO Board met on September 5, 2024, and voted unanimously to adopt the changes as amended and presented below and in the corresponding rule.*

94-089 Maine Historic Preservation Commission

94-089 Maine Historic Preservation Commission	
2024-177: Chapter 810, Maine Historic Restoration Standards	
Statutory Authority:	27 MRSA §504
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*N/A*
Principal purpose:	*The adoption of the Secretary of the Interior's Standards for the Treatment of Historic Properties nationally and their use by the MHPC staff across the program renders the need for the state level restoration standards in Chapter 810 obsolete. Furthermore, recent amendments to 27 MRSA §505.D in PL 2023, c. 9, §1 make the rule inconsistent with Maine law because the quality of work performed through state financed grants for the preservation and restoration of historic properties must now be guided by the Standards.*
Basis Statement:	*This rule was adopted in 1986 in response to the establishment of a program of state financed grants for the restoration of historic buildings (27 MRSA §505.D.). Since this rule was written, the approach to the treatment of historic properties has evolved and been refined. This approach is now codified in federal law as the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR Part 68) [the Standards]. The Standards are an integral part of several activities carried out by State Historic Preservation Offices – including the Maine Historic Preservation Commission (MHPC) – to implement the program of the National Historic Preservation Act of 1966, as amended. These include the selection and award of pre-development/development grants, the review of historic rehabilitation tax credit projects, and in Section 106 consultation.* *The adoption of The Standards nationally and their use by the MHPC staff across the program renders the need for the state level restoration standards in Chapter 810 obsolete. Furthermore, recent amendments to 27 MRSA §505.D in PL 2023, c. 9, §1 make the rule inconsistent with Maine law because the quality of work performed through state financed grants for the preservation and restoration of historic properties must now be guided by the Standards.* *This action repeals the rule.*

94-089 Maine Historic Preservation Commission	
2024-178: Chapter 811, Historic Property Preservation and Restoration Grants	
Statutory Authority:	27 MRSA §504
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*$0.00*
Principal purpose:	*Recent amendments to 27 MRSA §505.D in PL 2023, c. 9, §1 necessitate revisions to the rule. The amended rule would also accommodate the matching share provisions of the bond authorized by PL 2023, c. 653, should it be approved by voters.*
Basis Statement:	*This rule was originally adopted in 1986 in response to the establishment of a program of state financed grants for the restoration of historic buildings (27 MRSA §505.D). Recent amendments to 27 MRSA §505.D in PL 2023, c. 9, §1 necessitate revisions to the rule. The amended rule would also accommodate the matching share provisions of the bond authorized by PL 2023, c. 653, should it be approved by voters.*

94-270 Commission on Governmental Ethics and Election Practices

94-270 Commission on Governmental Ethics and Election Practices	
2024-073: Chapter 1, Procedures	
Statutory Authority:	1 M.R.S. § 1003(1); 21-A M.R.S. § 1126
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*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.*
Principal purpose:	*The Commission wishes to conform its rules to statute.*
Basis Statement:	***Chapter 1, § 3(1)&(6) – Selection of Meeting Dates and Quorum Requirements*** *Factual and policy basis for amendment: Under the proposed amendment, the Commission's executive director would circulate proposed meeting dates for approval by the members of the Commission, which is the Commission's current practice for setting its meeting schedule. The proposed amendments also modify the quorum rule to reflect that Commission members may participate in meetings remotely consistent with the Commission's written policy on remote participation. The amendment removes a paragraph concerning the number of members that must be present in person to hold a formal hearing. In the future, this issue could be addressed on a case-by-case basis, or (if the Commission prefers) in the Commission's policy on remote participation.* *Comments received: No comments were received concerning this amendment.* *Commission's response to comments: The Commission adopted the amendment as proposed.* ***Chapter 1, § 6(12) – Revenue to a Political Committee from a Game Night*** *Factual and policy basis for amendment: The Legislature enacted P.L. 2023, Ch. 391 (attached) which authorizes political action committees, party committees, and ballot question committees to hold a once annual "game night" to raise revenue. The proposed amendments require the committee sponsoring the event to keep records of all participants that pay more than $50 at the event as an entry fee or to purchase chips, food, etc. The committee is required to disclose these amounts as contributions in its next campaign finance report. For purposes of keeping records and reporting contributions, the committee may deduct from each payment the value of food or goods purchased by the participant.* *Comments received: No comments were received concerning this amendment.* *Commission's response to comments: The Commission adopted the amendment as proposed.* ***Chapter 1, § 10(3)(E) – Receiving Independent Expenditure Reports by Fax*** *Factual and policy basis for amendment: In P.L. 2023, Chapter 324, § 14 (attached), the Legislature removed statutory provisions allowing campaign finance reports to be filed provisionally by fax. The proposed rule amendment reflects this change in statute.* *Comments received: No comments were received concerning this amendment.* *Commission's response to comments: The Commission adopted the amendment as proposed.*

Chapter 1, § 10(5) – Independent Expenditure Determinations by the Commission

Factual and policy basis for amendment: Under 21-A M.R.S. § 1019-B, if an individual or organization spends money on a communication that names or depicts a clearly identified candidate and is disseminated to the public in the 28 days before a primary election or after Labor Day, the spender is required to file an independent expenditure (IE) report unless the Commission determines that the communication was not intended to influence an election.

The proposed rule amendments to Chapter 1, § 10(5) reflect 2023 statutory changes to the procedures used by the Commission to make this determination. P.L. 2023, Chapter 324, §§ 10-13 (attached). The amendments incorporate a new "purpose or effect of" standard in Chapter 324. The Commission's executive director would make the initial determination, which could be appealed to the Commission within two days. If the Commission or its executive director determined that an IE report was required and the report was filed late, the Commission's standard late-filing penalty procedures would apply. The Commission or its executive director would have the discretion to extend the deadline for a short period for good cause. If the report was filed within this extension period, the report would be considered filed on time.

Comments received: At the November 29, 2023 public hearing, Mr. William Hayward, on behalf of Maine Citizens for Clean Elections, expressed support for this amendment. He said that shifting the language of the rule to focus on the effect of a communication, rather than trying to determine the spender's subjective intent, made the law more effective and reflects how money influences elections. Mr. Hayward did not submit written comments.

Commission's response to comments: Because the Commission received only positive comments on the proposed amendment, the Commission adopted the amendment as proposed.

Chapter 1, § 15 – Simplified Procedures for Certain Political Action Committees and Ballot Question Committees

Factual and policy basis for amendment: In 2021, the Legislature enacted a bill intended to equalize the requirements for political action committees and ballot question committees (registration, bank account, record-keeping, and financial reporting). P.L. 2021, Chapter 217, attached. The legislation included a requirement that all election-influencing contributions and expenditures flow through a separate "campaign bank account," rather than a bank account containing the general funds of the persons or organization that established the committee.

Chapter 217 contained three provisions that would allow the Commission to adopt simplified procedures, particularly in the case where an individual qualifies as a ballot question committee because they have spent more than $5,000 to support or oppose a ballot question:

21-A M.R.S. § 1052-A(6): the Commission is authorized to adopt simplified registration procedures for an individual registering as a ballot question committee,

21-A M.R.S. § 1054(3): the Commission may adopt procedures by rule for waiving the requirement to maintain a separate campaign account upon a showing by a committee that a separate account would be administratively burdensome,

including but not limited to committees organized outside Maine or an individual who registers as a ballot question committee, and
21-A M.R.S. § 1057(5): the Commission may adopt by rule simplified record-keeping requirements for an individual registering as a ballot question committee.
The proposed amendment sets out these simplified procedures.

Comments received: No comments were received concerning this amendment.
Commission's response to comments: The Commission adopted the amendment as proposed.

Chapter 3, § 9(2) – Qualifying Period for Replacement Candidates
Factual and policy basis for amendment: In 2023, the Legislature enacted a bill that addressed the qualifying period for Maine Clean Election Act candidates who are seeking to replace a candidate who has withdrawn, died, or has become ineligible. P.L. 2023, Chapter 211, attached. The new law stated that the qualifying period begins when the Secretary of State receives a notice of withdrawal or declares a vacancy. Chapter 211 also specified that if a person seeking to replace a party nominee has collected qualifying contributions and then fails to win their party's nomination at a nominating caucus, the Commission must return the qualifying contributions to the contributors unless the contributors authorize the deposit of the qualifying contributions into the Maine Clean Election Fund. The proposed amendment incorporates these requirements into the Commission's rules.
Comments received: No comments were received concerning this amendment.
Commission's response to comments: The Commission adopted the amendment as proposed.

94-270 Commission on Governmental Ethics and Election Practices	
2024-074: Chapter 3, Maine Clean Election Act and Related Provisions	
Statutory Authority:	1 M.R.S. § 1003(1); 21-A M.R.S. § 1126
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*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.*
Principal purpose:	*The Commission wishes to conform its rules to statute.*
Basis Statement:	*See* Basis Statement at 2024-073, *supra*.

94-270 Commission on Governmental Ethics and Election Practices	
2024-160: Chapter 1, Procedures	
Statutory Authority:	21-A M.R.S. § 1064
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*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.*
Principal purpose:	*On November 7, 2023, Maine voters approved a new law, 21-A M.R.S. § 1064, which forbids foreign governments and businesses or associations they own or control from making expenditures to influence candidate and ballot question elections in Maine. On January 31, 2024, the Commission proposed amendments to its rules to implement the new law. In response to comments received, the Commission invited a second round of comments on changes to the amendments proposed in January.*
Basis Statement:	***SUMMARY:*** *On January 31, 2024, the Commission decided to invite comments on a new § 15 of Chapter 1 of the Commission's rules. The new section will implement 21-A M.R.S. § 1064, which prohibits foreign governments and entities controlled or influenced by foreign governments from making contributions or expenditures to influence elections in Maine. Comments were accepted through March 11, 2024. At a meeting on March 27, 2024, the Commission invited a second round of comments on revised amendments that were proposed by Commission staff.* *The Commission carefully considered comments submitted by eight organizations during the two rounds of comment and accepted some changes suggested by one commenter, the Campaign Legal Center. In addition, the Commission made changes to the amendments responsive to constitutional concerns raised by an order by the U.S. District Court for the District of Maine granting a preliminary injunction to plaintiffs in Central Maine Power Co., et al. v. Maine Comm'n on Governmental Ethics and Election Practices, et al., No. 1:23-cv-00450-NT, 2024 U.S. Dist. LEXIS 34853 (D. Me. Feb. 29, 2024).* *This statement contains two parts. Part 1 describes the factual and policy basis for each subsection of the amendments. If the Commission received a comment relative to that subsection, the comment is summarized, along with the Commission's response to the comment. Part 2 summarizes more general comments received in the first round that did not suggest changes to the amendments.* ***Part 1 – Factual and Policy Basis for Each Subsection of Amendments*** ***Chapter 1, § 15(1) – Definitions*** *Factual and policy basis for amendment: In § 15(1), the Commission has adopted definitions for terms used but not defined in § 1064. The definitions provide guidance on which entities are considered foreign government-influenced entities ("FGIEs") that are forbidden from spending money to influence Maine elections. The definitions also address which media companies must establish policies to avoid publishing campaign advertisements by FGIEs. The definitions describe certain campaign finance activities that are prohibited under § 1064.*

Comments received: The Commission did not receive comments concerning most of the 14 definitions proposed on January 31, 2024. The comments received concerning proposed
§ 15(1)(C), (G), (H), (I) & (M) are summarized in the following sections.

Chapter 1, § 15(1)(C)&(H) – Definitions of Direct and Indirect Participation in a Decision-Making Process
Factual and policy basis for amendment: The definition of FGIE in § 1064(1)(E) contains three subparts. Under § 1064(1)(E)(2)(b), an entity qualifies as a FGIE if a foreign government directs, controls, or "directly or indirectly participates" in the entity's decisions regarding electoral activities.

In the amendments proposed on January 31, 2024, § 15(1)(C) & (H) defined "direct participation" and "indirect participation" as communicating a direction or preference concerning the outcome of a decision-making process. Participation would be indirect if made through an intermediary.

Comments received: In its March 11, 2024 comments, the Campaign Legal Center suggested that a foreign government's communication of a direction or preference should qualify as participation only if the foreign government is actually involved in the entity's decision-making process. Drawing on concerns expressed by the U.S. District Court in the preliminary injunction order, the Campaign Legal Center commented that if a foreign government sends an unsolicited communication to an entity making a decision on election spending, that unsolicited communication should not count as participation. The Campaign Legal Center suggested providing examples that illustrate when expressing a direction or preference would or would not constitute participation.

Commission's response to comments: The Commission agrees generally with the concerns raised by the Campaign Legal Center. To address them, in § 15(1)(L) the Commission adopted a definition for a new term, "participate," that is narrower than the definitions proposed on January 31, 2024. In § 15(1)(L), "participate" is defined to mean "to deliberate or vote on a decision" "with the invitation, consent, or acquiescence of" the entity making the decision. As part of the definition, the Commission has provided three examples of situations that do not constitute participation, including two that are variations of examples suggested by the Campaign Legal Center. The Commission has changed the definitions of "direct participation" and "indirect participation" in § 15(1)(C) & (H) to incorporate the new definition of participate in § 15(1)(L).

Chapter 1, § 15(1)(G) – Definition of Indirect Beneficial Ownership
Factual and policy basis for the amendment: Under § 1064(1)(E)(2)(a), a firm, association, or other entity qualifies as a FGIE if a foreign government indirectly owns 5% or more of the total equity of the firm, association, or other entity. In January, the Commission proposed defining "indirect beneficial ownership" to mean "having an ownership interest in an entity as a result of owning an interest in an intermediate entity that either directly owns part or all of the entity or indirectly

owns part or all of the entity through other intermediate entities. For example, if a foreign government wholly owns a firm that has a 10% interest in a Maine corporation, the foreign government indirectly owns 10% of that corporation."

Comments received: In its February 27, 2024 comments, the Campaign Legal Center suggests including a second example to illustrate how a foreign government's partial ownership of an intermediate entity can result in indirect ownership of a firm, association, or entity.

Commission's response to comments: The Commission has included the example in the adopted amendments.

Chapter 1, § 15(1)(I) – Definition of Internet Platform

Factual and policy basis for amendment: Under § 1064(7), internet platforms are among the media providers that must establish a policy and advertising procedures designed to avoid publishing election messages funded by FGIEs. The definition of internet platform proposed on January 31, 2024 was intended to focus on publishers of internet content primarily intended for audiences within Maine.

Comments received: In its February 27, 2024 comments, the Campaign Legal Center suggested alternative language to cover a wider scope of internet platforms (e.g., national streaming platforms such as Netflix).

Commission's response to comments: Requiring national internet platforms to change their advertising procedures to avoid foreign government influence would be difficult for the Commission to implement. It would result in a large number of unintentional legal violations by national companies that are unaware of Maine's requirement. It would be challenging to effectively educate internet platforms nationally. The Commission would have no way of detecting violations nationwide by companies that failed to adopt the policies and procedures. Also, the Commission has doubts whether requiring national internet platforms to change their advertising procedures will have a significant marginal impact on Maine elections. For these reasons, the Commission has adopted the definition of "internet platform" as originally proposed in January.

Chapter 1, § 15(1)(M) – Structuring a Transaction

Factual and policy basis for amendment: Under § 1064(5), a person may not structure a contribution, expenditure, or other campaign transaction to evade the prohibitions in § 1064. The Commission proposed a definition for the term "structure" that included the example of: "creating a business entity whose ownership is difficult to ascertain for the purpose of concealing ownership or control by a foreign government."

Comments received: With regard to the example, the Campaign Legal Center suggested in its February 27, 2024 comments changing the standard from "difficult to ascertain" to "cannot be readily ascertained," which would be more clear.

Commission's response to comments: The Commission made the language change suggested by the Campaign Legal Center.

Chapter 1, § 15(2) – Ownership or Control by a Foreign Government
Factual and policy basis for amendment: The language of § 1064(1)(E) defines the term "foreign government-influenced entity." Under § 1064(1)(E)(2)(a), a business entity qualifies as an FGIE if a foreign government owns 5% or more of the business entity. Section 15(2) was proposed to reflect this requirement and to clarify that an entity does not qualify as a FGIE merely because multiple governments, combined, own 5% or more of the entity.

Comments received: American Promise commented favorably on this section as proposed. In its March 11, 2024 comments, the Campaign Legal Center proposed that § 15(2) be modified to be even more explicit that an entity qualifies as a FGIE if it is majority- or wholly owned by a foreign government.

Commission's response to comments: The Commission declines to make the changes proposed by the Campaign Legal Center in the interest of simplicity and because § 1064(1)(E)(2)(a) and
§ 15(2) are already clear. An entity is a FGIE if a foreign government owns or controls more than 5% of the equity of the entity. By implication, if an entity is majority- or wholly owned by a foreign government, it is a FGIE.

Chapter 1, § 15(3) – Campaign Spending by Foreign Governments Prohibited
Factual and policy basis for amendment: The amendment reflects the language in 21-A M.R.S.
§ 1064(2) that prohibits spending of any kind by foreign governments in any Maine election.

Comments received: The Commission received no comments concerning this subsection.

Chapter 1, § 15(4) – Solicitation or Acceptance of Contributions from Foreign Governments Prohibited
Factual and policy basis for amendment: The amendment reflects the language in 21-A M.R.S.
§ 1064(3) stating that a person cannot knowingly solicit, accept, or receive a contribution from a foreign government for any Maine election.

Comments received: The Commission received no comments concerning this subsection.

Chapter 1, § 15(5) – Substantial Assistance Prohibited
Factual and policy basis for amendment: The amendment reflects the language in 21-A M.R.S.
§ 1064(4) that prohibits persons from knowingly or recklessly providing substantial assistance in a contribution or expenditure that violates § 1064(2) or (3).

Comments received: The Commission received no comments concerning this subsection.

Chapter 1, § 15(6) – Circumvention through Structuring Financial Activity

Factual and policy basis for amendment: The amendment reflects the language in § 1064(5) that prohibits persons from attempting to structure a campaign finance transaction to evade the prohibitions in § 1064.

Comments received: The Commission received no comments concerning this subsection.

Chapter 1, § 15(7)(B) – Disclaimers in Paid Communications to Influence Policy

Factual and policy basis for amendment: Section 15(7) reflects the requirement in § 1064(6) that public communications paid for by a FGIE must include a disclaimer if they influence the public, or a state, county or local official/agency, regarding:
any state or local government policy, or
the political or public interest of a foreign country/political party, or government relations with a foreign country/political party.
Under § 1064(6), the disclaimer must include "sponsored by [name of FGIE]," and a statement that the FGIE is a "foreign government" or a "foreign government-influenced entity."
The § 15(7)(B) proposed on January 31, 2024 was drafted to allow a FGIE to add "truthful and accurate information" to the disclaimer, such as a statement that foreign government and foreign government-influenced entity are defined terms under state law.

Comments received: In its February 27, 2024 comments, the Campaign Legal Center expressed concern that generally allowing the insertion of "truthful and accurate information" could result in inconsistent disclaimers that would confuse the public and increase the burden on Commission staff in determining whether the additional language was accurate. It suggested limiting the additional language to a statement that "foreign government" or "foreign government-influenced entity" are defined terms under state law.

Commission response to comments: The Commission agrees that it should not be engaged in making determinations about the truthfulness of information in disclaimers and has adopted the language suggested by the Campaign Legal Center.

Chapter 1, § 15(7)(C) – Applicability of Disclaimer Requirement (proposed as § 15(7)(B))

Factual and policy basis for amendment: In January, the Commission proposed that the disclaimer requirement would apply "only to public communications purchased from media providers or otherwise intended to be viewed primarily by Maine residents."

Comments received: In its February 27, 2024 comments, the Campaign Legal Center suggests broadening the disclaimer requirements to cover public communications "that can be received directly by" residents of Maine.

Commission's response to comments: The Commission is concerned that the language suggested by the Campaign Legal Center would require an advertisement received by a national audience to include the sponsorship disclaimer merely because some residents in Maine received the ad. For example, under the Campaign Legal Center proposal, an advertisement by a FGIE to influence national foreign policy directed at the entire U.S. population during a major sporting event could be required to include the "sponsored by" disclaimer. The Commission questions whether a subsection of Maine campaign finance law should have this nationwide effect on advertising. As another example, a FGIE that purchased a digital ad from the Washington Post to influence Virginia residents regarding legislation in that state would need to include the disclaimer in the ad merely because some Maine residents consume the Washington Post online.

In addition to the issue of overreach, Commission has concerns that the Campaign Legal Center proposal would result in many unintentional legal violations by FGIEs nationwide that have no awareness of the "sponsored by" disclaimer requirement in § 1064. For the above reasons, the Commission declines to make the change proposed by the Campaign Legal Center.

Chapter 1, § 15(8)(A) – Requirements for Media Providers – Policies, Procedures, Controls

Factual and policy basis for amendment: The Commission has adopted § 15(8) to implement the requirement in § 1064(7) that media companies must establish due diligence policies, procedures and controls that are reasonably designed to ensure they do not publish campaign advertising by FGIEs. Subsection 15(8)(A) restates this requirement using terms defined in the adopted rule.

Comments received: American Promise commented that the safe harbor provision is a reasonable set of compliance procedures for media providers. The Campaign Legal Center suggested inserting language in § 15(8)(A) confirming that the Commission's rules do not prohibit a media provider from reproducing a campaign advertisement prohibited by § 1064 as part of a news story, commentary or editorial.

Commission's response to comments: The Commission has adopted the change suggested by the Campaign Legal Center.

Chapter 1, § 15(8)(B) – Optional Safe Harbor Policy

Factual and policy basis for amendment: This amendment sets out an optional set of procedures that a media provider may adopt to avoid broadcasting or distributing a campaign advertisement by a FGIE. This "safe harbor" policy includes features numbered § 15(B)(1) - (5). If a media provider adopts a policy containing these five features, the Commission will view their policy as compliant (i.e., reasonably designed to avoid broadcasting or publishing campaign ads by FGIEs). The safe harbor policy is intended to provide media companies with a practical set of inexpensive procedures they can use to comply with § 1064(7). The two key elements of the policy are:

when a media provider or their agent sells a campaign ad, they need to provide the

purchaser an opportunity to certify through checkbox or similar means that the purchaser is not an FGIE, and
the media provider will decline to publish a campaign ad if the purchaser fails to certify that it is not a FGIE or if the media provider has actual knowledge of facts indicating that the purchaser is a FGIE.
The media provider would need to keep the purchasers' certifications for at least two years. The policy must expressly allow the media provider to publish a campaign advertisement by a FGIE in a news story to which the advertisement is relevant. Further, if the media provider is an internet platform, the policy must require the platform to remove any communications that it discovers were funded by a FGIE.

Comments received: In its February 27, 2024 comments, the Campaign Legal Center suggests that the safe harbor policy (§ 15(8)(B)(4)(c)) should contain a provision stating that a media provider will decline to publish a campaign advertisement if the media provider should have known of facts indicating that the purchaser is a FGIE.

Commission's response to comments received: The Commission views the primary purpose of the statutory requirements in § 1064(7) as serving as an enforcement backstop against FGIE election spending and not as an independent regulation on Maine media. As described below, some media providers in Maine have expressed concern that they may be found "liable" by the State of Maine for unintentionally violating § 1064. In turn, the purpose of § 15(8)(B) is to implement the statute's aims while also supplying media providers a level of certainty that they can adopt minimally burdensome policies and procedures that satisfy the legal requirement in § 1064(7). Section 15(8)(B) accomplishes these goals by establishing a safe harbor regime that would remove nearly all due diligence burdens from media providers and place them on ad-purchasers by requiring entities to self-certify that they are not FGIEs at the time of purchase. The only minimal burden remaining on media providers in such a safe harbor regime would be adopting a policy of not publishing FGIE advertisements in circumstances where the media provider has actual knowledge that such an ad would violate the statute's ban on FGIE political spending. The change suggested by the Campaign Legal Center could erode a potential media provider's certainty that it has complied with the safe harbor provision by introducing a less objective "should have known" standard. Similarly, the Commission should not be engaged in making determinations about whether a media entity "should have known" that any specific advertisement violates the statute. For these reasons, the Commission has not adopted the language suggested by the Campaign Legal Center.

Chapter 1, § 15(8)(C) – Other Policies, Procedures and Controls are Permitted
Factual and policy basis for amendment: The amendment confirms that media companies are not required to adopt the safe harbor provision set out in § 15(8)(B). They may adopt other policies, procedures and controls that are reasonably designed to avoid publishing a campaign advertisement by a FGIE.

Comments received: The Commission received no comments concerning this subsection.

Chapter 1, § 15(8)(D) – Investigations not Required

Factual and policy basis for amendment: The amendment confirms that a media provider is not required to conduct an investigation of their advertisers and is not required to monitor any comments section or similar forum that the media provider makes available to its users.

Comments received: The Commission received no comments concerning this subsection.

Chapter 1, § 15(8)(E) – Requirements for Media Providers – Public List

Factual and policy basis for amendment: The proposed § 15(8)(E) required the Commission to maintain a list on its website of all entities the Commission has determined to be FGIEs in enforcement actions. The list was intended as a reference tool to assist media providers in not publishing campaign ads by FGIEs. The optional safe harbor policy set out in proposed
§ 15(8)(B)(4)(b) contained a provision that media providers must decline to publish a campaign advertisement if the purchaser is on the Commission's list of FGIEs.

Comments received: In its February 27, 2024 submission, the Campaign Legal Center commented that a public list of entities determined by the Commission in enforcement proceedings to be FGIEs could quickly become out of date, causing an entity to be listed as a FGIE when it no longer meets the definition. Rather than posting this type of list, the Campaign Legal Center recommended that the Commission post a repository of materials related to § 1064, such as guides, advisory opinions, and final outcomes of enforcement actions.

Commission response to comments: After considering the comments of the Campaign Legal Center, the Commission has decided to withdraw the public list provision. If the federal courts find that § 1064 is valid and enforceable, the Commission expects that most foreign government-influenced entities will refrain from spending money to influence Maine elections. Consequently, the Commission expects to make relatively few determinations that a FGIE violated § 1064 by spending money to influence a Maine election. Therefore, the Commission has decided to withdraw the public list provision in § 15(8)(E) and the related safe harbor provision in 15(8)(B)(4)(b).
The Commission declines to adopt the suggested provision requiring the Commission to post written guidance concerning § 1064. If the statute is found to be valid by the courts, the Commission intends to issue guidance and publish it on the agency's website, as it regularly does on a variety of campaign finance topics. A legal requirement in the Commission's rules is unnecessary.

Chapter 1, § 15(8)(F) – Requirements for Media Providers – Takedown Requirement

Factual and policy basis for amendment: This subsection reflects the requirement in § 1064(7) that an internet platform must take down any campaign advertisement that it discovers was purchased by a FGIE.

Comments received: The Commission received no comments concerning this

subsection.

Chapter 1, § 15(9) & 10 – Effective Date and Severability

Factual and policy basis for amendment: Subsection 15(9) states that § 15 will take effect on the date, if any, that the U.S. District Court for Maine removes the injunction against enforcement of § 1064. The Commission finds that § 15(9) is advisable due to the February 29, 2024 order granting plaintiffs' motion for a preliminary injunction in Central Maine Power Company, et al. v. Maine Comm'n on Governmental Ethics and Election Practices, et al., Docket No. 1:23-cv-00450-NT, 2024 U.S. Dist. LEXIS 34853 (D. Me. Feb. 29, 2024). The added language makes clear to the public and the regulated community that no enforcement of § 1064 will occur except to the extent the federal courts later permit such enforcement. If the federal courts permit the Commission to enforce § 1064, the § 15 amendments would take effect automatically.

Similarly, in § 15(10) the Commission is adopting a policy that if any portion of § 1064 is finally determined to be invalid or unenforceable, § 15 is enforceable only to the extent that the corresponding provisions of § 1064 are valid and enforceable. The Commission finds that clarification of how the rule would be implemented if only parts of § 1064 are ultimately permitted to go into effect would benefit the public and the regulated community.

Comments received: During the first round of comments, the Commission received no comments concerning § 15(9) & (10) because these subsections were not part of the amendments proposed for public comment. The general topic, however, was addressed in rulemaking comments submitted by Versant Power and other plaintiffs. In summary, the plaintiffs urge the Commission to suspend the rulemaking, characterizing it as imprudent and a waste of agency resources. Versant Power suggests that completing the rulemaking may be illegal because § 1064 is currently unenforceable.

In its second set of comments dated May 1, 2024, Versant Power asserts that § 15(9) & (10) will create uncertainty regarding which provisions of § 15 are enforceable. It argues that "[p]ersons and entities potentially subject to the Act and Proposed Rule will be forced to predict how a judgment in [the constitutional challenge] affects the different provisions of the Proposed Rule and how to adjust their actions as necessary—without any guidance from the Commission." Versant Power asks the Commission to suspend the rulemaking.

Commission's response to comments: The Commission has considered the plaintiffs' arguments, including Versant Power's second set of comments, but finds them unpersuasive. By the terms of § 15(9), section 15 would take effect only if the U.S. District Court removes the injunction against the enforcement of § 1064. If the federal courts determine that portions of § 1064 are invalid, the corresponding parts of § 15 would be unenforceable under § 15(10). Because the effectiveness of the proposed rule would, by the rule's own terms, be entirely contingent upon a lifting or modification of the injunction currently in effect, the Commission is in no sense "enforcing" § 1064 by proceeding with the mandated rulemaking process. The values

of efficiency, agency resources, and providing guidance to regulated constituencies all point to proceeding with the rulemaking but conditioning the effectiveness of § 15 on the outcome of the litigation. If § 1064 is determined by the courts to be valid and enforceable, it would benefit the regulated community to have implementing rules that reasonably interpret § 1064 take effect automatically, rather than wait for the Commission to conduct a second rulemaking.

In response to Versant Power's second submission, the Commission disagrees that § 15(9) & (10) will result in uncertainty. Each rule provision clearly corresponds with a specific statutory provision in § 1064, which should make it straightforward to determine which parts of the rule are effective in the event of a less-than-total injunction on enforcement of § 1064. In the event of any change in the status quo, the Commission can and would provide public guidance to the regulated community as to which portions of the rule it might regard as having taken effect under the severability provision. Any benefits to suspending the rulemaking process are outweighed by the prospect of having the injunction lifted and having § 1064 go into effect with no implementing rules to guide enforcement.

Part 2 – General Comments Received During First Round

During the first round of comments, the Commission received comments from seven organizations which are summarized in this section. These comments were more general and did not suggest any changes to specific amendments. The Commission considered the comments and determined they do not require any revisions to the original amendments proposed in January.

Maine Citizens for Clean Elections

Anna Kellar, the Executive Director of the Maine Citizens for Clean Elections provided written comments dated February 28, 2024. The organization expresses its appreciation to the Commission for developing the rules and endorses the comments of the Campaign Legal Center.

Protect Maine Elections

Kaitlin LaCasse is the campaign manager for Protect Maine Elections, the ballot question committee that promoted Question 2 on the November 2023 ballot. Ms. LaCasse testified at the February 28, 2024 public hearing and submitted written comments.

Protect Maine Elections states that § 1064 closes a dangerous loophole created by a ruling of the Federal Elections Commission. It argues that § 1064 is necessary because of the volume of recent spending by FGIEs to influence Maine elections. Protect Maine Elections supports the amendments that were proposed on January 31, 2024.

American Promise

The Commission received written comments from Brian Boyle, Chief Program Officer and General Counsel of American Promise, a nonprofit advocacy organization which promotes an amendment to the U.S. Constitution allowing for

greater regulation of money in U.S. politics. American Promise supports the proposed amendments. In particular, it views the proposed "safe harbor" policy for media providers as reasonable and it agrees that an entity should not qualify as a FGIE solely because the combined ownership of an entity by two or more foreign governments exceeds 5%.

American Promise also commented on a topic other than the rulemaking. In addition to § 1064, Question 2 required the Commission to receive public comment and issue an annual report on congressional proposals to amend the U.S. Constitution to allow for greater campaign finance regulation. American Promise encourages the Commission to hold public hearings before issuing the report so that the people of Maine can voice their support for this type of amendment. The Commission will address these issues in public meetings during 2024.

Versant Power

Arielle Silver Karsh, the Vice President for Legal and Regulatory Affairs for Versant Power, submitted written comments dated March 11, 2024. Versant Power initiated one of the four constitutional challenges of § 1064. The utility does not comment on any specific provision of the amendments. It believes the proposed amendments share and exacerbate the constitutional flaws in § 1064. In light of the District Court's order enjoining the enforcement of § 1064, Versant Power suggests it would be a waste of administrative resources for the Commission to adopt the proposed rule. It suggests suspending the rulemaking. For the reasons expressed above in the section concerning § 15(9) & (10), the Commission completed the rulemaking notwithstanding the objections by Versant Power and the other plaintiffs.

Central Maine Power Company

Carlisle Tuggey, General Counsel for Central Maine Power Company ("CMP"), submitted written comments dated March 11, 2024. CMP does not comment on any specific provision of the proposed amendments. The utility summarizes the order enjoining enforcement of § 1064. It argues that it is generally unwise to engage in rulemaking while litigation is ongoing and it is indefensible to adopt rules meant to enforce a law that a federal court has found to be facially unconstitutional. If § 1064 is struck down, CMP submits that the Commission's rules would be meaningless. It suggests not adopting any rules until the litigation concludes. For the reasons expressed above in the section concerning § 15(9) & (10), the Commission completed the rulemaking notwithstanding the objections by CMP and the other plaintiffs.

Jane Pringle, Kenneth Fletcher, Bonnie Gould, Brenda Garrand and Lawrence Wold

A group of Maine voters who filed a constitutional challenge to § 1060 also submitted comments on the rulemaking. Similar to Versant Power and CMP, they do not refer to any specific section of the amendments and they urge the Commission not to proceed with the rulemaking. For the reasons expressed above in the section concerning § 15(9) & (10), the Commission completed the rulemaking notwithstanding the objections by the individual and business/association plaintiffs.

Comments by Maine Association of Broadcasters

Mr. Timothy Moore, the Executive Director of the Maine Association of Broadcasters, testified at the Commission's February 28, 2024 public hearing and provided written testimony. The association believes § 1064 is vague, burdensome on media outlets, and unconstitutional because it would silence legitimate political voices. The association encourages the Commission to refrain from taking any action on the rulemaking until the U.S. District Court decides on the association's petition for a permanent injunction. In its February 28 comments, the association did not refer to any specific part of the amendments. For the reasons expressed above in the section concerning § 15(9) & (10), the Commission completed the rulemaking notwithstanding the objections by Maine Association of Broadcasters and the other plaintiffs.

In supplemental written comments submitted February 29, 2024, Mr. Moore posed nine questions "regarding a station's liability in some real-world situations." The Commission has considered the questions and determined they do not need to be addressed in the Commission's rulemaking. Two of the practical questions will be resolved if the Commission agrees with the staff's recommendation to eliminate the public list requirement, discussed above. Some of the questions are apparently based on a misconception that the Commission will punish broadcasters for publishing campaign advertisements that are funded by FGIEs. The text of § 1064 makes this unlikely. Mr. Moore's questions may be more appropriately handled in an advice session if the due diligence provisions in § 1064(7) are found to be valid and enforceable by the courts.

94-391 State Board of Property Tax Review

94-391 State Board of Property Tax Review	
2024-227: Chapter 1, Rules of Practice and Procedure in Appeals before the State Board of Property Tax Review	
Statutory Authority:	36 M.R.S. § 271(2)(C)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None anticipated.*
Principal purpose:	*The Board is proposing these amendments to Chapter 1 to update the Board's rules of practice and procedure, which have not been updated for many years.*
Basis Statement:	*The Board is proposing these amendments to Chapter 1 to update the Board's rules of practice and procedure to make them consistent with statutory changes; streamline the pre-hearing and hearing process; clarify existing language; correct minor errors; and update outdated language. The amendments now address the Board's authority over appeals of adjusted municipal valuation under 36 M.R.S. § 272-A (Public Law 2019, c. 401, Pt. A, § 6) and the Board's renewed authority over property tax deferral appeals arising under 36 M.R.S. § 6251(6) (Public Law 2021, c. 483, § AA-20). The proposed amendments would improve the efficiency of the pre-hearing and hearing process, including allowing prefiled testimony and exhibits. In addition, the amendments lay out the procedures for voluntary withdrawal or dismissal of an appeal and involuntary dismissal of an appeal for want of prosecution. These latter changes would give parties and the Board a formal process by which to resolve appeals.*

94-411 Maine Public Employees Retirement System

94-411 Maine Public Employees Retirement System	
2024-011: Chapter 803, Participating Local District Consolidated Retirement Plan	
Statutory Authority:	5 M.R.S. §§ 17103(4), 18801
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*None*
Principal purpose:	*This rule governs the Consolidated Plan for Participating Local Districts.*
Basis Statement:	*The proposal for rulemaking was noticed on November 22, 2023. A public hearing was held on December 14, 2023.* *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, 2023 was 3.0%. The proposed amendment to the rule authorizes an additional one-time, non-cumulative COLA payment equal to 0.5% of retirement benefits to be paid to retirees who were eligible for a COLA in September 2023.* *The current rule includes several special plans that can be adopted by a participating local district (PLD) for its employees. Special Plan 4N is a non-COLA plan that provides for retirement after twenty-five (25) years of service at age 55. This plan is available only to certain classifications of employees. There currently are no employers participating in Special Plan 4N, and the proposed amendment removes that plan option effective February 1, 2024.* *The PLD Advisory Committee was provided with information about the cost-of-living adjustment provision and discussed various options to address the recent unusually high inflation. By unanimous vote, Committee members voted to recommend an additional one-time payment of 0.5% of benefits to eligible retirees. The Committee was also provided with information about Special Plan 4N no longer being utilized because it is less attractive to employers and employees than other plans, and the Committee voted unanimously to make that plan no longer available for adoption. MainePERS staff brought these recommendations to the Board of Trustees for consideration through the proposed rule amendments.* *No members of the public provided comments at the public hearing, and no written comments were submitted prior to the December 26, 2023 comment deadline.* *At the Board's regular meeting held on January 11, 2024, Shirrin Blaisdell made the motion, seconded by Ken Williams to adopt the amended rule. Voted unanimously by all trustees present.*

94-411 Maine Public Employees Retirement System	
2024-163: Chapter 103, Qualified Domestic Relations Orders	
Statutory Authority:	5 M.R.S. §§ 17103(4), 17059(13)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None*
Principal purpose:	*This rule implements the provisions in statutes relating to qualified domestic relations orders, which provide the statutory authority for the retirement system to pay benefits to the alternate payee of a member or retiree when the right to such payment is established by a qualified domestic relations order. This Chapter provides the standards for such orders, procedures for their filing, and the procedures to be followed by the retirement system in reviewing and administering the statute.*
Basis Statement:	*The proposal for rule-making was noticed on May 22, 2024. A public hearing was held on June 13, 2024. No members of the public provided comments at the public hearings, and no written comments were submitted prior to the June 24, 2024 comment deadline.* *This rule implements the provisions in statutes relating to qualified domestic relations orders, which provide the statutory authority for the retirement system to pay benefits to the alternative payee of a member or retiree when the right to such payment is established by a qualified domestics relations order. This Chapter provides the standards for such orders, procedures for their filing, and the procedures to be followed by the retirement system in reviewing and administering the statute.* *The amendments: (1) streamline the rule by deleting unnecessary language, updating language and reorganizing language for improved clarity; (2) clearly state what happens in each situation when the alternate payee deceases before the member; (3) specify that payments to the alternate payee may begin before the member retires only if the order so specifies; (4) provide that where the alternate payee's benefits initiate before the member's retirement, the alternate payee's benefit will be recalculated if necessary at the time the member retires using the same actuarial factors used at the time the alternate payee initiated benefits; and (5) incorporate into rule the longstanding practice of requiring an additional filing fee when review is not completed within 18 months and the delay is not caused by the retirement system.* *At the Board's regular meeting held on July 11, 2024, Henry Beck made the motion, seconded by Shirrin Blaisdell to adopt the amended rule. Five Trustees (Beck-Beliveau-Blaisdell-Duplessis-Metivier) voted in favor of the motion, and one (Kimball) voted in opposition. Motion to adopt the amended rule carried.*

94-411 Maine Public Employees Retirement System	
2024-164: Chapter 506, Eligibility for Disability Retirement Benefits	
Statutory Authority:	5 M.R.S. § 17103(4)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None*
Principal purpose:	*This rule sets forth the standards and processes for determining eligibility for disability retirement benefits.*
Basis Statement:	*This proposal for rule-making was noticed on May 22, 2024. A public hearing was held on June 13, 2024. One member of the public provided oral comments at the public hearing, and that same member of the public submitted written comments prior to the June 24, 2024 comment deadline. One additional member of the public submitted written comments prior the June 24, 2024 comment deadline. The comments are summarized below, and MainePERS' responses are in italics.* *This rule sets forth the standards and processes for determining eligibility for disability retirement benefits. The amendment to the rule changes the definition of "earnings" to align with the definition of that term in the new Rule Chapter 513.* *One member of the public[1] made two recommendations regarding the proposed amended rule. First, the commenter opined that the new definition of "earnings' lacked clarity for those less knowledgeable about federal tax laws. The commenter suggested that the definition be more specific in its reference to federal tax forms and information found on those forms.* *The language has been made more specific, but MainePERS declines to refer to particular line numbers because federal tax forms are revised annually, and it would be unwieldly to require rulemaking every time a line number changed on a federal form. MainePERS also declines to extend the definition of "earnings" to other contexts as suggested because "earnable compensation" is defined by statute and the ability to earn may not be reflected on tax filings.* *Second, the commenter opined that how individuals report rental income on federal tax filings could result in that income being arbitrarily counted as "earnings" under the proposed definition. The commenter suggests that the rule provide guidance on the tax reporting of rental income as part of the definition of earnings.* *MainePERS declines to depart from the clear guidance provided by the rule in favor of a more ambiguous standard.* *One member of the public[2] offered written comments regarding the disability retirement program that were outside the scope of the current rulemaking.* *Based on consideration of the comments received, staff recommends a change to the proposed amended rule to provide increased specificity on the tax information that*

[1] Susan Hawes, Portland
[2] Wendy Fenderson, Limerick

	will be used to determine earnings. The Board concurs with this recommendation. *At the Board's regular meeting held on July 11, 2024, Henry Beck made the motion, seconded by Shirrin Blaisdell to adopt the amended rule. Five Trustees (Beck-Beliveau-Blaisdell-Duplessis-Metivier) voted in favor of the motion, and one (Kimball) voted in opposition. Motion to adopt the amended rule carried.*

94-411 Maine Public Employees Retirement System	
2024-165: Chapter 513, Disability Retirement Compensation Limitations and Benefit Offsets	
Statutory Authority:	5 M.R.S. § 17103(4)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*[N]one*
Principal purpose:	*This proposed new rule sets forth guidance on compensation limitations and offsets applicable to disability retirement benefits and the submission of annual statements of compensation by disability retirees.*
Basis Statement:	*This proposal for rulemaking was noticed on May 22, 2024. A public hearing was held on June 13, 2024. Three members of the public provided oral comments at the public hearing, and two of those same members of the public submitted written comments prior to the June 24, 2024 comment deadline. Two additional members of the public submitted written comments prior to the June 24, 2024 comment deadline. The comments are summarized below, and MainePERS' responses are in italics.* *This proposed new rule sets forth guidance on compensation limitations and offsets applicable to disability retirement benefits and the submission of annual statements of compensation by disability retirees. It establishes applicable definitions and the process for submission of an annual statement of compensation, including the required documentation and filing deadlines.* *One member of the public[3] commented that the rule should more clearly address the procedures that apply when a disability benefit recipient exceeds earnings limitations and must repay MainePERS. The commenter suggested the Social Security Administration limits on garnishment of benefits as an approach to follow rather than withholding the entire monthly benefit towards the repayment of the overpayment of benefits.* *One member of the public[4] spoke in support of the first commenter, a prior coworker, and opined that a 100% claw back of benefits to repay amounts due is catastrophic for the impacted individual.* *Language has been added to the proposed rule to reflect that the steps to be taken when a disability retiree exceeds earnings limitations are set forth in statute. See, e.g., 5 M.R.S. § 17930(2)(A)&(B). No further procedural guidance is necessary in this rule. The Social Security garnishment limit was announced in March of 2024 and applies to recovery of overpaid benefits generally. MainePERS will consider whether rulemaking on the topic of overpayment recoveries generally would be appropriate.* *One member of the public[5] made several comments and recommendations regarding the proposed new rule. First, the commenter opined that MainePERS should not require disability retirees to submit SSA-1099's and that it has no legal authority for this requirement. Further, that the proposed rule would require all disability retirees*

[3] John York, Bangor
[4] Andy Williger, Bangor
[5] Susan Hawes, Portland

to submit their SSA-1099, regardless of the basis on which the Social Security payments are paid. The commenter further opined that information reported on the SSA-1099 is not "compensation received from gainful occupation" and therefore is not needed to accurately apply benefit reductions as stated in the proposed rule. The commenter further opined that only a small subset of disability retirees are likely to also receive a Social Security disability benefit and that for those individuals who do, the information needed to determine any offset cannot be obtained from the SSA-1099. The commenter further opined that requiring the submission of SSA-1099's creates unnecessary work for MainePERS staff, increases the chances of an inaccurate calculation of the offset and creates an unnecessary burden for disability retirees to submit the annual documents as part of the Annual Statement of Compensation filing process.

Second, the commenter suggests alternative wording to Section 2(3) of the rule to eliminate consideration of other benefits.

MainePERS has the authority and responsibility to administer the statutory provisions that require disability retirement benefits to be reduced when Social Security disability benefits are received for the same disability. See 5 M.R.S. § 17103(4)&(6); 17105(1)(A). It is clear from the proposed rule's language that the information about other benefits is distinct from the annual statement of compensation requirement but for convenience is reported at the same time and on the same form. Doing so is efficient and minimizes the burden on retirees and staff. Language has been added to the proposed rule to clarify that the SSA-1099 is not used in isolation to change benefit reductions, but rather it is an indicator that leads to further inquiry if it shows unexplained increases or decreases in benefits. The burden of including this form with the annual statement of compensation filing is slight and is justified by its value in avoiding an underpayment or overpayment of benefits.

Third, the commenter suggests alternative wording to the definition of "earnings" in Section 1(1) of the proposed rule, with the stated intent to make it more understandable to those less knowledgeable about federal tax laws. The commenter suggests that the definition be more specific in its reference to federal tax forms and information found on those forms. The commenter also suggests inserting additional statutory references into the definition of "earnings" to apply it in other situations.

The language has been made more specific, but MainePERS declines to refer to particular line numbers because federal tax forms are revised annually, and it would be unwieldly to require rulemaking every time a line number changed on a federal form. MainePERS also declines to extend the definition of "earnings" to other contexts as suggested because "earnable compensation" is defined by statute and the ability to earn may not be reflected on tax filings.

Fourth, the commenter opined that how individuals report rental income on federal tax filings could result in that income being arbitrarily counted as "earnings" under the proposed definition. The commenter suggests that the rule incorporate the IRS definitions of "significant services" with respect to rental income; and "materially

participate" with respect to farming income.

MainePERS declines to depart from the clear guidance provided by the rule in favor of a more ambiguous standard.

The commenter also opined that the rule should be expanded to include various additional procedures and provisions pertaining to benefit offsets, overpayments, compensation limits, deadlines, and dates.

MainePERS believes that statute and the proposed rule provide sufficient guidance on the subject matter of this rule. As noted above, MainePERS will consider whether rulemaking on the topic of overpayment recoveries generally would be appropriate.

The commenter requested the Board to require the Chief Executive Officer to engage in consensus-based rulemaking on the proposed rule to include those directly impacted by the rule.

Formal consensus-based rule development is optional for an agency. Here, where stakeholder input was solicited informally during development and the proposed rule has gone through the formal rulemaking process including a public hearing, there is no need for further development.

Finally, the commenter alleged that "it appears MainePERS has been unlawfully reducing the benefit amounts of disability retirees based on what is reflected on SSA-1099s or some other benefit reduction" and submitted as support for this allegation a document the commenter had prepared listing payments to seven disability retirees that appeared to reduce in amount over time. She identified data provided by MainePERS as the source of these benefit payment amounts.

This allegation is false. While MainePERS did provide information to this commenter on all disability payments made over a seven year period in response to freedom of access requests, the document created by the commenter did not accurately reflect the data produced. The accurate data shows benefits to all seven of the disability retirees increased year-to-year – there were no reduced benefits, let alone "unlawfully" reduced benefits.

Written comments were received from one member of the public[6] who opined that the rules pertaining to earnings for a disability retiree need to limit the impact on members who are attempting to improve their situations. The commenter also opined that repayment of overpaid benefits should never result in the garnishment of an individual's entire benefit. Finally, the commenter opined that it should not be necessary for disability retirees to submit SSA-1099's as part of the financial documents requested by MainePERS since all income information is available on the tax schedules that must be submitted and some retirees were not covered by Social Security.

[6] Rick Cailler, Professional Firefighters of Maine

	See response above to the first set of comments. Additionally, under the proposed rule, MainePERS no longer will require disability retirees to submit their entire tax filing, so the information on the SSA-1099 will not be available through other tax schedules submitted. Language has been added to the proposed rule to clarify that the Social Security reporting does not apply to those retirees who were not covered by Social Security. *Written comments were also received from a member of the public[7] who opined that the rule should more clearly address how MainePERS uses the financial information collected from disability retirees to determine whether earnings limitations have been met, and should better articulate guidance on earnings limitations and how exceeding those limitations might result in the need for repayment of benefits, as well as how those repayments are expected to be made, including through the withholding of future benefits.* *MainePERS believes that statute and the proposed rule provide sufficient guidance on the subject matter of this rule. As noted above, MainePERS will consider whether rulemaking on the topic of overpayment recoveries generally would be appropriate.* *Based on consideration of the comments received, MainePERS staff recommends changes to the proposed new rule to: (1) provide increased specificity on the tax information that will be used to determine earnings; (2) specify that a disability retiree who was not covered by Social Security during the period of employment associated with the disability retirement is not required to report Social Security benefits or provide a SSA-1099; (3) include statutory context; (4) reorder the rule for clarity; (5) correct statutory cites; and (6) explain the steps to be taken if documentation submitted by a disability retiree reflects an unexplained change in other benefits being received by that retiree. The Board concurs with these recommendations.* *At the Board's regular meeting held on July 11, 2024, Henry Beck made the motion, seconded by Shirrin Blaisdell to adopt the new rule. Five Trustees (Beck-Beliveau-Blaisdell-Duplessis-Metivier) voted in favor of the motion, and one (Kimball) voted in opposition. Motion to adopt the new rule carried.*

[7] Lance Sanborn, Hermon

94-457 Finance Authority of Maine

94-457 Finance Authority of Maine	
2024-005: Chapter 612, Maine Dental Education Loan and Loan Repayment Programs	
Statutory Authority:	10 M.R.S. § 969-A(14), 20-A M.R.S. § 12305
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The rule is not anticipated to have any fiscal impact.*
Principal purpose:	*The rule implements changes to the Maine Dental Education Loan and Loan Repayment Programs as enacted by the Legislature through P.L 2023, ch. 130. The new law expands, without additional funding, eligibility for the Maine Dental Education Loan and Loan Repayment Programs, which are administered by FAME, to include dental hygienists, dental therapists, expanded function dental assistants, and dental assistants. FAME will continue to award up to three loans or loan repayment agreements annually for dentists (or more if funds permit), and also award up to six loans or loan repayment agreements annually for dental hygienists, dental therapists, expanded function dental assistants, or dental assistants if funds permit.*
Basis Statement:	*This rule implements changes to the Maine Dental Loan and Loan Repayment Programs enacted during the First Regular Session of the 131st Legislature via L.D. 1256, An Act to Increase Access to Oral Health Care by Expanding the Maine Dental Education Loan Program, and now set forth in law as P.L. 2023, chapter 130. The new law expands eligibility for the Maine Dental Education Loan and Loan Repayment Programs, which are administered by the Finance Authority of Maine (FAME), to include dental hygienists, dental therapists, expanded function dental assistants, and dental assistants. The language of the bill provides that FAME will continue to award up to three loans or loan repayment agreements annually for dentists (or more if funds permit), and also award up to six loans or loan repayment agreements annually for dental hygienists, dental therapists, expanded function dental assistants, or dental assistants. FAME may award additional loans or loan repayment agreements annually as funds permit.*

94-457 Finance Authority of Maine	
2024-006: Chapter 617, Health Professions Loan Program	
Statutory Authority:	10 M.R.S. § 969-A(14), 20-A M.R.S. § 12107
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The rule is not anticipated to have any fiscal impact.*
Principal purpose:	*The rule makes a change to the term "financial need" within the Health Professions Loan Program rule as a result of enactment at the federal level of the FAFSA Simplification Act, which made significant changes to federal student aid, including the FAFSA form. In addition to greatly simplifying the form, the act replaced the term "Expected Family Contribution" (EFC) with the term "Student Aid Index" (SAI) beginning in the 2024–25 award year.*
Basis Statement:	*This rule implements changes to the definition of "financial need" in the program. The changes are necessitated by enactment at the federal level of the FAFSA Simplification Act, which made significant changes to federal student aid, including the Free Application for Federal Student Aid (FAFSA) form. The act replaced the term "Expected Family Contribution" (EFC) with the term "Student Aid Index" (SAI) beginning in the 2024–25 award year. The change updates the current program rule, which referenced the outdated EFC terminology in one part (the term "financial need" in the definitions section), with new and simpler language with respect to determining financial need. In summary, FAME is adopting this Rule to conform the Health Professions Loan Program to federal changes.*

94-457 Finance Authority of Maine	
2024-007: Chapter 618, Maine Veterinary Medicine Loan Program	
Statutory Authority:	10 M.R.S. § 969-A(14), 20-A M.R.S. § 12124
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The rule is not anticipated to have any fiscal impact.*
Principal purpose:	*The amendment proposes a change to the term "financial need" within the Maine Veterinary Medicine Loan Program rule as a result of enactment at the federal level of the FAFSA Simplification Act, which made significant changes to federal student aid, including the FAFSA form. In addition to greatly simplifying the form, the act replaced the term "Expected Family Contribution" (EFC) with the term "Student Aid Index" (SAI) beginning in the 2024–25 award year.*
Basis Statement:	*This rule implements changes to the definition of "financial need" in the program. The changes are necessitated by enactment at the federal level of the FAFSA Simplification Act, which made significant changes to federal student aid, including the Free Application for Federal Student Aid (FAFSA) form. The act replaced the term "Expected Family Contribution" (EFC) with the term "Student Aid Index" (SAI) beginning in the 2024–25 award year. The change updates the current program rule, which referenced the outdated EFC terminology in one part (the term "financial need" in the definitions section), with new and simpler language with respect to determining financial need. In summary, FAME is adopting this rule to conform the Maine Veterinary Medicine Loan Program to federal changes.*

94-649 Maine Commission on Public Defense Services
(Formerly Maine Commission on Indigent Legal Services)

94-649 Maine Commission on Indigent Legal Services	
2024-023: Chapter 301, Fee Schedule and Administrative Procedures for Payment of Court or Commission Assigned Counsel	
Statutory Authority:	4 M.R.S. §§ 1804(2)(F), (3)(B), (3)(F), and (4)(D)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*No fiscal impact.*
Principal purpose:	*Pursuant to 4 M.R.S.A. § 1804(3)(B) the Commission is obligated to "[d]evelop and maintain an assigned counsel voucher review and payment authorization system that includes disposition information[.] This proposed rule would allow the fee amounts that trigger presumptive review to be revised following the recent increase to the hourly rate paid to assigned counsel. The proposed rule also provides a graduated penalty for late submitted vouchers.*
Basis Statement:	*The Commission is statutorily obligated to "Establish rates of compensation for assigned counsel..." (4 M.R.S. §1804(3)(F)) and develop "Standards for the reimbursement of expenses incurred by assigned counsel and contract counsel ..." 4 M.R.S. §1804(2)(F). Chapter 301 is promulgated to satisfy the Commission's statutory duty to satisfy these obligations. Chapter 301 sets rates of compensation and procedures for payment to private assigned counsel, establishes rules for the reimbursement of eligible expenses, and sets fee amounts that trigger presumptive voucher review.*

94-649 Maine Commission on Indigent Legal Services	
2024-077: Chapter 3, Eligibility Requirements for Specialized Case Types	
Statutory Authority:	4 M.R.S. §§ 1804(2)(B), (2)(G), (3)(E), and (4)(D)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*No fiscal impact.*
Principal purpose:	*Pursuant to 5 M.R.S.A. § 1804(3)(E) the Commission is obligated to "ensure that attorneys are qualified and capable of providing quality representation in the case types to which they are assigned, recognizing that quality representation in each case specialized case type requires counsel with experience and specialized training in that field."*
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 also statutorily obligated to develop standards for "minimum experience, training and other qualifications for contract counsel and assigned counsel..." 4 M.R.S. § 1804(B). The right to effective counsel is protected by the United States Constitution and the Constitution of Maine.* *Chapter 3 is promulgated to ensure that the Commission fulfills its statutory and constitutional obligations to ensure the delivery of high-quality representation to indigent persons by setting eligibility standards for determining which attorneys are qualified to represent clients in specialized cases.*

94-649 Maine Commission on Indigent Legal Services	
2024-115: Chapter 2, Standards for Qualifications of Contract and Assigned Counsel	
Statutory Authority:	4 M.R.S. § 1804(2)(B), (2)(G), and (4)(D)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*No fiscal impact*
Principal purpose:	*Pursuant to 5 M.R.S.A. § 1804(2)(B) the Commission is required to promulgate standards for the qualifications assigned counsel. This rule sets forth those eligibility standards and the amendment enhances the Commission's authority to track and regulate attorney eligibility when events giving rise to questions about attorney's fitness to provide quality indigent legal services occur.*
Basis Statement:	*The Commission is charged with providing "efficient, 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.A. § 1801. The Commission is also obligated to adopt certain rules, including "Standards prescribing minimum experience, training and other qualifications for contract counsel, assigned counsel and public defenders." 4 M.R.S.A. § 1804(2)(B).* *This Chapter establishes the standards prescribing minimum experience, training, and other qualifications for contract counsel and assigned counsel to be Eligible to receive assignments to represent indigent people who are entitled to a statutorily and/or constitutionally required attorney.* *No public comments on the rule were received.*

94-649 Maine Commission on Indigent Legal Services	
2024-174: Chapter 3, Eligibility Requirements for Specialized Panels	
Statutory Authority:	4 M.R.S.A. §§ 1804(2)(B), (2)(G), (3)(E), and (4)(D)
Type:	Routine Technical
Emergency?:	Yes
Fiscal Impact:	*No fiscal impact.*
Principal purpose:	*Pursuant to 4 M.R.S.A. § 1804(3)(E) the Commission is obligated to "ensure that attorneys are qualified and capable of providing quality representation in the case types to which they are assigned, recognizing that quality representation in each case specialized case type requires counsel with experience and specialized training in that field."*
Basis Statement:	*Findings of Emergency:* *WHEREAS, 5 MRS section 8054 authorizes emergency rulemaking by state agencies to avoid immediate threats to public health, safety or general welfare;* *WHEREAS, demand for attorneys to provide indigent criminal defense services has outpaced the supply of attorneys doing this work;* *WHEREAS, there are nearly 1000 cases in Maine where someone is entitled to court appointed counsel and no counsel is available;* *WHEREAS, in response to challenges brought by defendants that allege violations of the Sixth Amendment to the U.S. Constitution, courts have now begun finding violations of Sixth Amendment rights and as a remedy modifying bail conditions or dismissing individual cases; and* *WHEREAS, recent events in Auburn in the Hinckley case have gained notoriety in the media and the violence there and comments by some officials could undermine the public confidence in the criminal justice system.* *NOW to address the above emergency, the Maine Commission on Public Defense Services finds emergency rulemaking pursuant to section 8054 is necessary and proper. In order to increase the flexibility to make experienced counsel available to those without counsel, the Commission finds that altering chapter 3 of the Commission Rules is necessary to address the immediate threat to public welfare caused by the current situation. Specifically, the Commission makes the following findings. First, that it is necessary to increase the scope of the discretion afforded the Executive Director to grant waivers of certain requirements under chapter 3 in order for counsel to take particular case types. Second, chapter 3 was recently amended to change all of the years of practice experience from years of criminal law experience to years of criminal defense experience. This has the effect of making waivers necessary for some attorneys that would otherwise have many years of criminal law experience and only a limited portion of that criminal law experience as criminal defense practice. The Commission finds that altering the years of practice requirement would provide greater flexibility to the bar to participate at a greater level.* *In order to address the emergency identified above, the Commission adopts the following emergency rulemaking procedure. Because there was already a July 22 Commission meeting scheduled at the June meeting, the Commission finds that taking up the emergency rulemaking at that pre-existing meeting time best balances the need to quickly adopt the emergency rule with the need for public input into the proposed changes. Therefore, notice will be given for public hearing for July 22 at*

1:00pm, and an abbreviated comment period will end prior to the meeting at 9:00am Monday, July 22.

94-649 Maine Commission on Public Defense Services (Formerly Maine Commission on Indigent Legal Services)

94-649 Maine Commission on Public Defense Services	
2024-204: Chapter 301, Fee Schedule and Administrative Procedures for Payment of Court or Commission-Assigned Counsel	
Statutory Authority:	4 M.R.S.A. §§ 1804(2)(F), (3)(B), (3)(F), and (4)(D)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*[N]one*
Principal purpose:	*Pursuant to 4 M.R.S.A. § 1804(3)(B) the Commission is obligated to "[d]evelop and maintain an assigned counsel voucher review and payment authorization system that includes disposition information[.]*
Basis Statement:	*The Commission is statutorily obligated to "Establish rates of compensation for assigned counsel..." (4 M.R.S. §1804(3)(F)) and develop "Standards for the reimbursement of expenses incurred by assigned counsel and contract counsel ..." 4 M.R.S. §1804(2)(F). Chapter 301 is promulgated to satisfy the Commission's statutory duty to satisfy these obligations. Chapter 301 sets rates of compensation and procedures for payment to private assigned counsel, establishes rules for the reimbursement of eligible expenses, and sets fee amounts that trigger presumptive voucher review.*

94-649 Maine Commission on Public Defense Services	
2024-205: Chapter 4, Caseload Standards for Assigned Counsel and Contract Counsel	
Statutory Authority:	4 M.R.S.A. §§ 1804 (2)(C), (2)(G), and (4)(D)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*No fiscal impact.*
Principal purpose:	*Pursuant to 4 M.R.S.A. § 1804(3)(B) the Commission is obligated to "[d]evelop and maintain an assigned counsel voucher review and payment authorization system that includes disposition information[.]*
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. PDS is statutorily obligated to develop standards for the caseloads of assigned and contract counsel. 4 M.R.S. § 1804(2)(C). 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 high-quality representation to indigent persons.*

94-649 Maine Commission on Public Defense Services	
2024-206: Chapter 301-A, Payment for Attending and Reimbursement of Expenses Incidental to Attending Trainings	
Statutory Authority:	4 M.R.S.A. §§ 1804(2)(F), (3)(B), and (4)(D)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None*
Principal purpose:	*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.*

94-649 Maine Commission on Public Defense Services	
2024-207: Chapter 302, Procedures Regarding Funds for Experts and Investigators	
Statutory Authority:	4 M.R.S.A. § 1804(3)(L) and (4)(D)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*No fiscal impact.*
Principal purpose:	*Pursuant to 4 M.R.S.A. § 1804(3)(L) the Commission is obligated to "[e]stablish processes and procedures to acquire investigative and expert services that may be necessary for a case, including contracting for such services[.]"*
Basis Statement:	*Pursuant to 4 M.R.S.A. § 1804(3)(L) the Commission is obligated to "[e]stablish processes and procedures to acquire investigative and expert services that may be necessary for a case, including contracting for such services[.]" This amended rule provides that the request for funds must be filed according to the procedure directed by the Executive Director. This change would create flexibility on how the information is received by the Commission staff.*

95-592 Small Enterprise Growth Board

94-592 Small Enterprise Growth Board	
2024-175: Chapter 701, Small Enterprise Growth Program	
Statutory Authority:	10 M.R.S.A. §385
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None Expected.*
Principal purpose:	*This amendment incorporates legislative changes to statute governing the Program made by P.L. 2021, Chapter 502, including addition of qualifying funds as permitted Program investments, as well as making other technical updates.*
Basis Statement:	*This Amendment 7 makes changes to the rule to address changes in the program statute made by PL 2021, Ch. 502. Primarily, the rule amendment adds the ability of the Board to invest in qualifying venture funds, in addition to qualifying businesses, and establishes the terms and conditions of such fund investments. The rule amendment also makes a limited number of technical changes to the Rule to address changes in the Board's operations, including adding the Board's remote meeting policy requirements to comply with applicable law. No comments were received from the public during the comment period.*

95-648 Efficiency Maine Trust

94-468 Maine Efficiency Trust	
2024-076: Chapter 3, Electric Efficiency and Conservation Programs	
Statutory Authority:	35-A M.R.S. §§ 10102,10103, 10104, 10105, 10106, 10109, 10110
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*No change*
Principal purpose:	*In June of 2023, the Legislature passed L.D. 1724 – An Act to Enact the Beneficial Electrification Policy Act (the Act). The Act amends the statute governing the activities of the Efficiency Maine Trust (the Trust), with principal changes appearing at 35-A M.R.S.A. §10104 and §10110. The purpose of this proposed rule is to update the Trust's existing rule to reflect the changes to statute resulting from the Act and to describe key elements of how cost-effective beneficial electrification measures will be considered in evaluations of maximum achievable cost-effective resources in the Trust's Triennial Plan. A secondary purpose of this proposed rule is to update language in the rule to reflect amendments to 35-A M.R.S.A. §10104 and §10110 made under other recent enactments of the Legislature. These enactments included updates to language that describes goals that the Trust must advance in its triennial plans and criteria for the Trust's electric conservation programs.*
Basis Statement:	*I. Summary* *This statement presents the factual and policy basis for the amendments to Chapter 3 – the Rule for Electric Efficiency and Conservation Programs of the Efficiency Maine Trust (the Trust). The rule was approved by vote of the Board of Trustees on February 28, 2024.* *II. Background* *In June 2023, the Legislature passed L.D. 1724, An Act to Enact the Beneficial Electrification Policy Act (PL 2023, c. 328, or the Act). The Act amends the statute governing the activities of the Trust, with principal changes appearing at 35-A M.R.S.A. § 10104 and § 10110. The Act directs the Trust to plan and implement programs to advance the policy of beneficial electrification. In furtherance of this goal, the Act requires the inclusion of certain cost-effective beneficial electrification measures in the determination of maximum achievable cost-effective (MACE) electric energy efficiency resources in the Trust's Triennial Plan. In this rulemaking, the Trust proposed amendments to Chapter 3 of the Trust's rules reflect the changes to the statute and explain how the Trust will determine the extent to which cost-effective beneficial electrification measures should be included among the MACE electric energy efficiency resources to be factored into the Trust's Triennial Plan budgets.* *In recent years, the Legislature has enacted other amendments to sections of 35-A M.R.S.A. § 10104 and § 10110 describing general objectives of the Trust's conservation programs. These enactments include the codification of certain goals of the State's climate action plan as well as updates to criteria for the Trust's electric conservation programs. Amendments to Chapter 3 also update the rule to reflect these amendments to the statute.* *Over the past year, the Trust researched and vetted approaches to implement the requirements of the Act. The Trust reviewed the regulation of funding for beneficial*

electrification measures in other jurisdictions with the assistance of third-party experts and discussed its proposed approach with relevant stakeholders. The Trust submitted an official rulemaking proposal package to the Secretary of State on November 21, 2023. The Public Notice of Rulemaking Proposal was first published online and in local newspapers on November 29, 2023 and was emailed, with a link to a Trust webpage hosting the proposed rule text, to the contacts who receive notices of all official Board meetings and to other interested parties. A winter storm required the postponement of a public hearing scheduled for December 19, 2023. To provide notice of the rescheduled public hearing and of an extension in the deadline for parties to submit written comments, the Trust submitted an updated rulemaking proposal package to the Secretary of State on December 21, 2023. The updated Public Notice of Rulemaking Proposal was published online and in local newspapers on December 27, 2023, and was again emailed to contacts who receive notices of all Board hearings and to other interested parties. The Trust held a public hearing on January 16, 2024 and accepted written comments through January 26, 2024.

A written summary of the comments the Trust received is provided as an attachment to this statement of factual and policy basis.

III. Summary of Key Elements

A. Definitions

Section 2 of the amended rule incorporates the definition of "Beneficial Electrification" provided in 35-A M.R.S.A. § 10102(3-A), as amended by the Act. The definition, applied to the rule directly from the statute, identifies the scope of activities that may be considered beneficial electrification. The amended rule also adds to the term "beneficial electrification" the definition of "Triennial Plan" included in subsection I. This addition reflects the Act's elevation of support for beneficial electrification as an organizing purpose for the Trust's activities. A clarifying edit to "Maximum Achievable Cost-Effective Energy Conservation (MACE)" reflects the Act's directive that, for beneficial electrification measures, the Trust shall account for all net energy costs including savings from avoided fuels displaced by the measure.

B. Conservation Programs

Amendments to Section 3 align the rule with recent revisions to the statute articulating general criteria and goals for Trust programs. Updates to subsection A(1)(d) align the rule with 35-A M.R.S.A. § 10110(2)(A)(4), as amended by PL 2021, c. 298, An Act to Advance Energy Storage in Maine. New subsection A(1)(f) is added to the rule in accordance the addition to the statute of new part 35-A M.R.S.A. § 10104(2)(E). Amendments to subsection B update the rule to reflect the current language in 35-A M.R.S.A. § 10110(F), as revised by PL 2021, c. 209, An Act To Resolve Conflicts in and Make Other Changes to the Laws Governing the Efficiency Maine Trust, and by PL 2021 c. 693, An Act To Transition State and Local Motor Vehicle Fleets to Plug-in Hybrid Vehicles and Zero-emission Vehicles.

C. Cost Effectiveness

The amended rule makes no change to the structure of the cost-effectiveness test for the Trust's Electric Efficiency and Conservation Programs. Amendments to subsection 4(A)(1)(b) align the description of the determination of "benefits" associated with avoided transmission and distribution costs with the approach the Trust already employs. This approach is consistent with 35-A M.R.S.A. § 10110(4-A)(B), as amended by PL 2019, c. 313. This 2019 legislation had provided additional direction regarding the development and application of avoided costs in evaluations of electric MACE.

Pursuant to the requirements of Section 8 of the Act, the updated rule amends the benefits that must be considered in assessments of the cost-effectiveness of beneficial electrification measures. The amended subsection 4(A)(1)(c) clarifies that, for the purposes of beneficial electrification measures only, determinations of measure cost-effectiveness shall account for all net energy costs, including savings associated with fuels displaced by the measure. This amendment applies language directly from Section 8 of the Act.

D. Funding

Amendments to subsection 5 of Chapter 3 explain how the Trust will implement the Act's requirements for the inclusion of beneficial electrification measures in the determination of MACE electric energy efficiency resources. The amended rule retitles subsection 5(B) and divides it into parts to improve clarity. The amendment to subsection 5(B) reorders existing language from the rule to offer a consolidated description of the approach the Trust must take in preparing budgets in the development of Triennial Plans. These amendments do not change the operation of the existing rule. New subsection 5(C) amends the current rule to incorporate language from the Act describing the beneficial electrification measures that must be included in the determination of MACE resources. As articulated in new subsection 5(C)(4), only those beneficial electrification measures that are cost-effective and that reliability reduce electricity rates over the life of the measures shall be included in determinations of MACE resources. Beneficial electrification measures that either fail to screen for cost-effectiveness or that fail to be determined to reliably reduce electricity rates cannot be included in budgets for MACE electric efficiency opportunity.

While subsection 3 of the Trust's rules already provides a structure for the assessment of cost-effectiveness of individual measures, a new methodology is required to assess whether a measure will reliably reduce electricity rates over the life of the measure. New subsection 5(D) outlines the Trust's approach to conducting this assessment. It also describes the specific steps by which a calculation will compare the net present value of those revenues and costs collected in transmission and distribution (T&D) rates that are attributable to a measure over that measure's useful life. The amended rule identifies three categories of such revenues and costs:

- *Changes in utility revenue collected in T&D rates attributable to whether*

the measure results in the addition or removal of electricity load;

- *Changes in utility costs resulting from the marginal impact of the measure on T&D system costs. This language is consistent with the update to subsection 4(A)(1)(b), which describes how avoided transmission and distribution costs shall be considered for the purposes of the benefit-cost test; and,*
- *The Trust's costs incurred to offer a financial incentive and to administer a program to offer that incentive, where those costs are included in the electric efficiency procurement collected from ratepayers.*

Subsection 5(D)(2) clarifies that the measure life over which revenues and costs are compared will be drawn from the Trust's Technical Reference Manuals. Only those beneficial electrification measures for which the net present value of the change in utility revenues exceeds the net present value of the change in utility costs over the life of those measures are included in the determination of MACE resources.

IV. FISCAL AND ECONOMIC EFFECTS

"Fiscal Impact" is defined in Maine statute as "the estimated cost to municipalities and counties for implementing or complying with the proposed rule." Following guidance in Maine statute, the Trust expects no fiscal impact on municipalities or counties and indicated this finding in the proposed rule.

V. RULEMAKING PROCEDURES

Pursuant to 35-A M.R.S.A. § 10208, this rule is considered to be a "routine technical rule" as defined in Title 5, chapter 375, subchapter 2-A.

On a motion duly made and seconded, the Board approved the following decision and directions:

1. That Chapter 3, Electric Efficiency and Conservation Programs, amended as described in this memorandum, is hereby adopted;

2. That the Executive Director shall submit the adopted rule and related materials to the Attorney General for review and authorization;

3. That the Executive Director shall notify the following of the adoption of the rule:

a. All transmission and distribution utilities in the State;

b. All persons who attended the public hearing and commented in this Rulemaking.

99-346 Maine State Housing Authority

99-346 Maine State Housing Authority	
2024-151: Chapter 24, Home Energy Assistance Program Rule	
Statutory Authority:	30-A M.R.S. §§4722(1)(W), §4741(1) and (15) and 4991 *et seq.*; 42 U.S.C. §§8621, *et seq.*
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*NONE*
Principal purpose:	*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 Fuel Supplemental Benefits, weatherization, heat pumps, and heating system repair and replacement funds to income eligible households in the State of Maine. This replacement rule: removes unnecessary definitions and language from the Rule and places it within the HEAP Handbook and other relevant guidance; clarifies existing definitions; modifies the requirements for Categorical Income Eligibility; reorganizes the sections for a more logical flow; adds additional alternatives to the allowable documentation Applicants must provide to verify citizenship/legal status, identity and social security numbers; establishes a new points system for determining Benefits that will assist with the move to mostly online Applications; and clarifies the limited circumstances in which MaineHousing will allow a waiver of the Rule.*
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 Fuel Supplemental Benefits, weatherization, heat pumps, and heating system repair and replacement funds to income eligible households in the State of Maine. This replacement rule: removes unnecessary definitions and language from the Rule and places it within the HEAP Handbook and other relevant guidance; clarifies existing definitions; modifies the requirements for Categorical Income Eligibility; reorganizes the sections for a more logical flow; adds additional alternatives to the allowable documentation Applicants must provide to verify citizenship/legal status, identity and social security numbers; establishes a new points system for determining Benefits that will assist with the move to mostly online Applications; and clarifies the limited circumstances in which MaineHousing will allow a waiver of the Rule.*

99-346 Maine State Housing Authority	
2024-152: Chapter 16, Low-Income Housing Tax Credit Rule	
Statutory Authority:	30-A M.R.S. §4741(1), 30-A M.R.S. §4741(14) and Section 42 of the Internal Revenue Code of 1986, as amended
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The 2025 State of Maine ceiling of federal low-income housing tax credits is projected to raise approximately $34,700,000 of private investor capital, and the 2026 State of Maine ceiling of federal low-income housing tax credits is projected to raise approximately $35,300,000 of private investor capital. The private investor capital generated by the federal low-income housing tax credits will be used to develop affordable housing for low-income persons. Additionally, it is estimated that 1,400 jobs a year will be created with this investment. The rule will not impose any costs on municipalities or counties for implementation or compliance.*
Principal purpose:	*The rule is the qualified allocation plan for allocating and administering the federal low-income housing tax credit in the State of Maine, including without limitation the State's housing credit ceiling for calendar years 2025 and 2026, as required pursuant to Section 42 of the Internal Revenue Code. The rule repeals and replaces the current Chapter 16, Low-Income Housing Tax Credit Rule, regarding the allocating and administering of the credit for calendar years 2023 and 2024.*
Basis Statement:	*This rule is the qualified allocation plan for allocating and administering federal low income housing tax credits ("LIHTC") in the State of Maine, which MaineHousing, as the State's designated housing credit agency, is required to adopt pursuant to Section 42 of the Internal Revenue Code and the above-referenced sections of the Maine Housing Authorities Act.* *This rule replaces the prior rule and includes the following changes:* *Throughout:* *Updated deadlines* *Updated Section number references* *Repaired grammatical errors (punctuation, typos, correcting defined terms, etc.)* *Section 3A: Added "at least" to clarify that MaineHousing can set aside more than 10% for the Nonprofit Set-Aside.* *Section 3B: Updated Preservation Set-Aside amount to $750,000.* *Section 3C: Increased the amount of credit per unit to $30,000 from $20,000, and changed the maximum amount of credit per project to $1,200,000.* *Section 4A: Pre-apps due July 3, 2024 and July 3, 2025.* *Section 4B2: Applications due September 19, 2024 and September 18, 2025.*

Section 4B3: Added language: "Submitted exhibits must include documentation such as grant award letters, signed documentation on letterhead or evidence of official municipal action to provide evidence of all funding sources and official approvals."

Section 4I4: Updated language to clarify.

Section 4I5: Added language "in the case of a TDC Index Cap waiver, the TDC Index increases substantially"

Section 5A: Removed Section 811 language.

Section 5A3 Revised to revert the language back to the language that was adopted in the 2023-2024 QAP. MaineHousing had made changes to the 2023-2024 QAP after a public hearing and those changes were adopted, however in the version MaineHousing published for the 2025-2026 QAP, those changes were inadvertently left out. MaineHousing did not intend to make any changes to this Section.

Section 5A4 Revised to revert the language back to the language that was adopted in the 2023-2024 QAP. MaineHousing had made changes to the 2023-2024 QAP after a public hearing and those changes were adopted, however in the version MaineHousing published for the 2025-2026 QAP, those changes were inadvertently left out. MaineHousing did not intend to make any changes to this Section.

Section 5B: Increased the TDC Index caps.

Section 5C: Increased Rehabilitation Costs per unit of existing housing from $50,000 to $75,000.

Section 5G: Updated and clarified re-characterization language.

Section 5H: Added a link to the latest version of the Quality Standards and Procedures Manual and noted energy efficiency standards. Additionally, updated Build America, Buy America requirements, removed electrical raceway/conduits language and relocated and updated Section 3 language.

Section 5I3: Revised to revert the language back to the language that was adopted in the 2023-2024 QAP then revised to update the language to be consistent with the changes that were provided in the 2025-2026 version of the QAP that was published. Changed Broadband Capabilities to "Broadband Access" and indicated that the project must include broadband infrastructure with capacity sufficient to support the provision of Telehealth services. Separated out the definition of Broadband infrastructure and removed "ConnectMaine". Deleted "If the broadband capabilities are used for telemedicine services".

Section 5J: Added that the resident service coordinator must be available twice weekly which is the appropriate number of days each week acceptable to

MaineHousing.

Section 6: Renumbered and reorganized the scoring criteria.

Section 6A: Increased the scoring points for Rehabilitation or Reuse of Existing Housing, Structure or Site from 4 to 5.

Section 6B: Increased the scoring points for Historic Rehabilitation from 4 to 5.

Section 6E: Updated the scoring points for Accessibility to increase 6 points to 9 points for Projects that are not specifically for Older Adults or Families, having only 1 BR and/or efficiency units and to add 6 points for Family Projects.

Section 6F: Increased the scoring points for National Housing Trust Fund from 1 to 2.

Section 6G: Increased the scoring points for Acquisition Cost from 4 to 5, increased the average acquisition cost per unit and increased the percentage of project's acquisition cost as comparted to average acquisition cost and the associated points.

Section 6I: Decreased the scoring points for Housing Need from 10 to 8 and updated the Service Center Community Cities/Towns for both Project providing housing for Older Adults and Other Housing Projects and the associated points. Additionally, adjusted the points for Projects located on Native American tribal lands from 10 points to 8 points.

Section 6J: Increased the scoring points for Community Revitalization from 3 to 5 and added two points for Projects located in a QCT with at least 20% of the units at market rate.

Section 6K: Adjusted the scoring points and criteria for proximity to activities important to daily living to up to 5 points for activities important for daily living that are located within not more than a ½ mile of the Project, 1 point per activity.

Section 6L: Increased the scoring points for Readiness and provided a breakdown of the points for different categories.
Section 6M: Added the word "successfully" to the scoring criteria for two categories.

Section 6N: Changed to negative points for bad performance. Added language clarifying that MaineHousing has the discretion to consider whether non-compliance was a direct result of the Applicant's non-performance, the performance of an unaffiliated third-party, or a result of something outside the control of any affiliated party provided it was corrected appropriately within a reasonable timeframe.

Section 6O: Reduced the weight of the scoring criterion from 5 points to 2. Added

	language clarifying that experience successfully managing at least one (1) low income housing property developed under a Federal program that is substantially similar to LIHTC, to be determined at MaineHousing's sole discretion, is experience that qualifies for 1 point. *Section 6P: Changed to negative points for bad performance.* *Section 10F: Added Utility Monitoring to begin in Year 2 of the QAP.* *Section 11H: Added a reference to Appendices for clarity.* *Appendix A: Change made to "Activities Important to Daily Living" definition adjusting retail store to a store that offers regularly purchased household supplies.* *Deleted the definition for "Telemonitoring."* *Appendix B: Language was added to require any available radon test results for the Project site.* *Appendix E: Revised to revert the language back to the language that was adopted in the 2023-2024 QAP. MaineHousing had made changes to the 2023-2024 QAP after a public hearing and those changes were adopted, however in the version MaineHousing published for the 2025-2026 QAP, those changes were inadvertently left out. MaineHousing did not intend to make any changes to Appendix E.*

99-346 Maine State Housing Authority	
2024-242: Chapter 19, Homeless Solutions Rule	
Statutory Authority:	30-A M.R.S. §§4741 (1) and (18); §4766; §4994-A; 42 U.S.C. §§11301, *et seq.*
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None.*
Principal purpose:	*This replacement rule repeals and replaces in its entirety the current Chapter 19, Homeless Solutions Rule, in order to: (i) revise and update language and definitions where appropriate; (ii) remove eligibility criteria from the rule and instead place it in the appropriate program guides; (iii) clarify language; (iv) encourage collaboration with Homeless Service Hubs; (v) provide discretion on HMIS data entry requirements; and (vi) update the compliance monitoring process to include risk based assessments.*
Basis Statement:	*This replacement rule repeals and replaces in its entirety the current Chapter 19, Homeless Solutions Rule, in order to: (i) revise and update language and definitions where appropriate; (ii) remove eligibility criteria from the rule and instead place it in the appropriate program guides; (iii) clarify language; (iv) encourage collaboration with Homeless Service Hubs; (v) provide discretion on HMIS data entry requirements; and (vi) update the compliance monitoring process to include risk based assessments.*

99-346 Maine State Housing Authority	
2024-274: Chapter 36, Housing First Program Administrative Responsibility Rule	
Statutory Authority:	22 M.R.S. § 20-A (2023) and 30-A M.R.S. § 4741(1)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None*
Principal purpose:	*This is a new joint rule by the State of Maine Department of Health and Human Services, Office of Behavioral Health and Maine State Housing Authority setting forth the responsibilities of each agency and their joint responsibilities in administering the State of Maine's Housing First Program. The Housing First Program provides funding for support and stabilization services for residents of properties in the State of Maine that provide permanent housing for persons who are experiencing chronic homelessness.*
Basis Statement:	*The Housing First Program Administrative Responsibility Rule is a joint rule by the State of Maine Department of Health and Human Services, Office of Behavioral Health (the "Department") and Maine State Housing Authority ("MaineHousing") setting forth the responsibilities of each agency and their joint responsibilities in administering the State of Maine's Housing First Program (the "Program"). The Program provides funding for support and stabilization services for residents of properties in the State of Maine that provide permanent housing for persons who are experiencing chronic homelessness.* *The Department is responsible for administering the funding under the Program. The funding is primarily for 24-hour on-site supportive services, except for an annual amount that is set aside for housing stability services available for residents at least 20 hours each week but not necessarily on site or 24 hours per day. Any funding that is not used for these supportive services and the Department's costs of administering the Program will be transferred to MaineHousing to develop affordable permanent housing with 24-hour on-site supportive services, which initially will be the majority of the funding to produce the housing where these services will be provided.* *The Department is also responsible for establishing and administering the requirements for the two types of supportive services that are eligible for funding under the Program, the payment models for the services, and the qualifications of the providers of the services. The Department is obligated to maximize eligibility for reimbursement under existing and future federal programs that provide funding for the supportive services, such as MaineCare, to supplement and expand the use of the funding and to provide technical assistance to providers in navigating these federal programs.* *MaineHousing will work with the Department to administer the permanent housing with 24-hour on-site services. The Department and MaineHousing will identify the areas in the State where the properties should be located to best serve persons who are chronically homeless. The funding under the Program will only be available to teams that are selected under one or more competitive processes and consist of a service provider that the Department has determined is qualified through its procurement process together with an experienced affordable housing developer and*

	property manager that MaineHousing, in consultation with the Department as needed, determines can work together to successfully develop, own and operate permanent housing with 24-hour on-site services for persons who are chronically homeless. MaineHousing will provide technical assistance, approve specific sites, develop construction standards to ensure successful operation and delivery of services at the properties, and offer financing for the development of the properties, including Program funding transferred to MaineHousing, other capital funding, and low-income housing tax credits. *The rule delegates oversight of the service providers to the Department, but the Department and MaineHousing will work together to develop, administer, and enforce the operational guidelines for the permanent housing with 24-hour on-site supportive services to effectively address chronic homelessness and ensure long-term viability of these properties. The rule also addresses other administrative responsibilities of the Department and MaineHousing, including recordkeeping and reporting requirements.*