

MAINE STATE LEGISLATURE

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STATE OF MAINE

OFFICE
OF THE
SECRETARY OF STATE

MATTHEW DUNLAP
SECRETARY OF STATE

February 1, 2017

RECEIVED FEB 01 2017

Mr. Grant Pennoyer, Executive Director
Maine State Legislative Council
115 State House Station
Augusta, ME 04333-0115

Dear Mr. Pennoyer,

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 2016.

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 2016, there were 232 rules adopted by 24 agencies. Following is a list of the agencies with the number of rules adopted:

Agency	Total Rules	Routine Technical	Major Substantive	Emergency	Non Emergency
Department of Agriculture, Conservation and Forestry	31	30	1	12	19
Department of Professional and Financial Regulation	31	31	0	0	31
Department of Corrections	5	5	0	0	5
Department of Education	6	5	1	0	6
Department of Environmental Protection	14	11	3	0	14
Department of Inland Fisheries and Wildlife	17	17	0	1	16
Department of Health and Human Services	53	48	5	13	40
Department of Labor	2	2	0	0	2
Department of Marine Resources	25	25	0	12	13
Department of Public Safety	2	1	1	0	2

Agency	Total Rules	Routine Technical	Major Substantive	Emergency	Non Emergency
Department of Transportation	3	3	0	0	3
Department of Administrative and Financial Services	14	14	0	0	14
Department of Economic and Community Development	1	1	0	0	1
Secretary of State	5	5	0	0	5
Public Utilities Commission	4	4	0	0	4
Maine Health Data Organization	2	0	2	0	2
Commission on Governmental Ethics and Election Practices	2	2	0	0	2
Maine Public Employee Retirement System	4	4	0	0	4
Finance Authority of Maine	2	2	0	0	2
Motor Carrier Review Board	1	1	0	0	1
Commission on Indigent Legal Services	2	0	2	0	2
Maine State Housing Authority	4	4	0	0	4
Maine Turnpike Authority	1	1	0	0	1
Maine Rural Development Authority	1	1	0	0	1
Totals for 2016	232	217	15	38	194

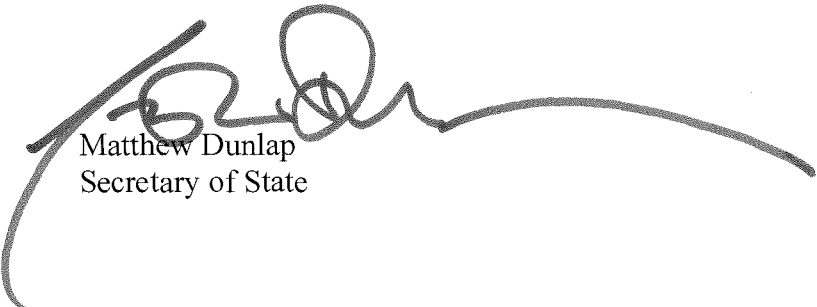
The report is presented in multiple files:

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

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

If you have any questions regarding the Administrative Procedure Act, please contact me at 626-8400 or Julie Flynn, Deputy Secretary of State at the Bureau of Corporations, Elections and Commissions at 624-7650.

Sincerely,



Matthew Dunlap
Secretary of State

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-035	01-001	Department of Agriculture, Conservation and Forestry	Ch. 701	Rules Governing Animal Welfare	7 MRS §3906-B, PL ch. 223, 127th Maine State Legislature, An Act To Revise the Animal Welfare Laws	Routine Technical	No	03/12/16
2016-046	01-001	Department of Agriculture, Conservation and Forestry	Ch. 61	Maine Milk Pool Cost of Administration	7 MRS §3154	Routine Technical	No	03/11/16
2016-058	01-001	Department of Agriculture, Conservation and Forestry	Ch. 274	Rules for Growing Industrial Hemp	7 MRS ch. 406-A §2231	Routine Technical	No	04/04/16
2016-097	01-001	Department of Agriculture, Conservation and Forestry	Ch. 252	Rules Governing Certification of Seed Potatoes in the State of Maine	7 MRS ch. 401 §§ 2101-2105; ch. 1 §12; ch. 411 §2352	Routine Technical	No	05/29/16
2016-011	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #02-16	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	01/31/16
2016-027	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #03-16	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	02/28/16
2016-051	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #04-16	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	04/03/16
2016-071	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #05-16	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	05/01/16
2016-096	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #06-16	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	05/29/16
2016-111	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #07-16	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	07/03/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

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2016-127	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #08-16	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	07/31/16
2016-143	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #09-16	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	09/04/16
2016-159	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #10-16	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	10/02/16
2016-180	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #11-16	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	10/29/16
2016-204	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #12-16	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	12/04/16
2016-230	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #01-17	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	01/01/17
2016-229	01-017	Department of Agriculture, Conservation and Forestry, Maine State Harness Racing Commission	Ch. 11	Medication and Testing	8 MRS §§ 263-A, 268, 279-A, 279-B, 281	Routine Technical	No	12/26/16
2016-103	01-669	Department of Agriculture, Conservation and Forestry, Bureau of Forestry (Maine Forest Service)	Ch. 30	Prior Approval Process and Stop Work Orders	12 MRS ch. 805 sub-ch. 3-A, as amended by PL 2013 ch. 412; Resolves 2015 ch. 58	Major Substantive	No	07/15/16
2016-010	01-672	Department of Agriculture, Conservation and Forestry, Land Use Planning Commission	Ch. 10	Land Use Guidance Maps (Amended Zoning Maps), Zoning Petition ZP 757: (Big Moose Twp. - Piscataquis County)	12 MRS §§ 685-A(7-A), 689	Routine Technical	No	01/19/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-073	01-672	Department of Agriculture, Conservation and Forestry, Land Use Planning Commission (LUPC)	Ch. 10	Land Use Districts and Standards: 10.02, Definitions ("Rural Business"); 10.21(I), Rural Business Development Subdistrict (D-RB); 10.25(Q)(6), Subdivision and Lot Creation: Subdivision Filing with Registry of Deeds and Sale of Lots; 10.27(R), Rural Businesses	12 MRS §§ 685-A(3), 685-A(7-A), 685-C(5)	Routine Technical	No	05/09/16
2016-074	01-672	Department of Agriculture, Conservation and Forestry, Land Use Planning Commission (LUPC)	Ch. 10	Land Use Districts and Standards: Appendix F, Expedited Wind Energy Development Area	12 MRS §685-A(13), 350A MRS §3453-A(1), (3), (7)	Routine Technical	No	05/09/16
2016-075	01-672	Department of Agriculture, Conservation and Forestry, Land Use Planning Commission	Ch. 10	Land Use Guidance Maps (Amended Zoning Maps), Zoning Petition ZP 760: (Maine Land Use Planning Staff; Stacie Beyer - Hancock and Knox Counties)	12 MRS §§ 685-A(7-A), 689	Routine Technical	No	04/29/16
2016-104	01-672	Department of Agriculture, Conservation and Forestry, Land Use Planning Commission	Ch. 10	Land Use District and Standards: Appendix E, FEMA Maps for the LUPC Jurisdiction	12 MRS §§ 685-A(7-A)	Routine Technical	No	05/19/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-110	01-672	Department of Agriculture, Conservation and Forestry, Land Use Planning Commission	Ch. 10	Land Use Guidance Maps (Amended Zoning Maps): Zoning Petitions: ZP 674A: Michael Beaulieu, St. John Plt., N Aroostook County; ZP 753: ME Land Use Planning Commission Staff, & Jason Bouchard Family Trust, T9 R8 WELS, S Aroostook County; ZP 754: Marianne McEnrue, T10 R11 WELS, Piscataquis County; ZP 761: Peter Lee, Freeman Twp., Franklin County; ZP 762: ME Land Use Planning Commission Staff, & Norvest LLC, T4 R8 & T5 R8 WELS, Penobscot County	12 MRS §§ 685-A(7-A), 689	Routine Technical	No	06/28/16
2016-134	01-672	Department of Agriculture, Conservation and Forestry, Land Use Planning Commission	Ch. 10	Land Use Districts and Standards: Road Setbacks and Accessory Structures	12 MRS §685-A sub-§§ (3),(7-A), §685-C sub-§(5)(A)	Routine Technical	No	08/09/16
2016-135	01-672	Department of Agriculture, Conservation and Forestry, Land Use Planning Commission	Ch. 10	Land Use Districts and Standards: Appendix F, Expedited Wind Energy Development Area	35 MRS §3453-A; 12 MRS §685-C(5)(A)	Routine Technical	No	08/09/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

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2016-183	01-672	Department of Agriculture, Conservation and Forestry, Land Use Planning Commission	Ch. 10	Land Use Guidance Maps (Amended Zoning Maps): Zoning Petition ZP 265 (Wyman Twp., Franklin County)(petitioner Maine LUPC Staff) <i>(Supersedes 9-20-2016 filing (not accepted); later superseded by 2016-203)</i>	12 MRS §§ 685-A(7-A), 689	Routine Technical	No	10/19/16
2016-184	01-672	Department of Agriculture, Conservation and Forestry, Land Use Planning Commission	Ch. 10	Land Use Districts and Standards (Miscellaneous Rule Revisions)	12 MRS §§ 685-A(3), 685-A(7-A), 685-C(5)	Routine Technical	No	11/18/16
2016-185	01-672	Department of Agriculture, Conservation and Forestry, Land Use Planning Commission	Ch. 10	Land Use Districts and Standards: Appendix F, Expedited Wind Energy Development Area	35 MRS §3453-A; 12 MRS §685-C(5)(A)	Routine Technical	No	11/18/16
2016-186	01-672	Department of Agriculture, Conservation and Forestry, Land Use Planning Commission	Ch. 10	Land Use Districts and Standards: Appendix F, Expedited Wind Energy Development Area	35 MRS §3453-A; 12 MRS §685-C(5)(A)	Routine Technical	No	11/18/16
2016-203	01-672	Department of Agriculture, Conservation and Forestry, Land Use Planning Commission	Ch. 10	Land Use Guidance Maps (Amended Zoning Maps): Zoning Petition ZP 265 (Wyman Twp., Franklin County) (petitioner Maine LUPC staff) <i>(Supersedes 9 20 2016 filing (not accepted) and 2016-183)</i>	12 MRS §§ 685-A(7-A), 689	Routine Technical	No	11/29/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

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2016-125	02-029	Department of Professional and Financial Regulation, Bureau of Financial Institutions	Ch. 119	Alternative Mortgage Transactions (a joint rule with 02-030 - Bureau of Consumer Credit Protection - Ch. 250)	9-A MRS §§ 1-102(2), 1-110, 6-104(I)(E), 8-504, 8-507(1), 8-508, 9-302(1); 9-B MRS §§ 111, 215, 241(3)	Routine Technical	No	07/20/16
2016-126	02-030	Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection	Ch. 250	Alternative Mortgage Transactions (a joint rule with 02-029 - Bureau of Financial Institutions - Ch. 119)	9-A MRS §§ 1-102(2), 1-110, 6-104(I)(E), 8-504, 8-507(1), 8-508, 9-302(1); 9-B MRS §§ 111, 215, 241(3)	Routine technical	No	07/25/16
2016-005	02-031	Department of Professional and Financial Regulation, Bureau of Insurance	Ch. 740	Credit for Reinsurance	24-A MRS §§ 212, 731-B	Routine Technical	No	01/24/16
2016-021	02-031	Department of Professional and Financial Regulation, Bureau of Insurance	Ch. 545	Producer and Business Entity License and Appointment Fees	24-A MRS §§ 212, 545	Routine Technical	No	02/13/16
2016-036	02-031	Department of Professional and Financial Regulation, Bureau of Insurance	Ch. 380	Provider Profiling Disclosures	24-A MRS §§ 212, 4303-A	Routine Technical	No	03/12/16
2016-037	02-031	Department of Professional and Financial Regulation, Bureau of Insurance	Ch. 180	Insurance Holding Company System Model Rule	24-A MRS §§ 212, 222	Routine Technical	No	03/13/16
2016-052	02-031	Department of Professional and Financial Regulation, Bureau of Insurance	Ch.540	Premium Trust Account Fiduciary Duties	24-A MRS §§ 212, 1449	Routine Technical	No	04/03/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-069	02-031	Department of Professional and Financial Regulation, Bureau of Insurance	Ch. 940	Requirements for Health Insurance Rate Filings and Data Reporting	Title 24 MRS § 2321, Title 24-A MRS §§ 212, 405-A(2)(E), 2413, 2736, 2736-C, 2808-B, 2839, 4207, 4309-A	Routine Technical	No	04/19/16
2016-133	02-031	Department of Professional and Financial Regulation, Bureau of Insurance	Ch. 830	Valuation of Life Insurance Policies	24-A MRS §§ 212, 953-A, 957	Routine Technical	No	08/08/16
2016-022	02-032	Department of Professional and Financial Regulation, Office of Securities	Ch. 528	Federal "Regulation A" Tier 2 Notice Filings and Fees	32 MRS §§ 16302, 16605	Routine Technical	No	02/15/16
2016-003	02-041	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation	Ch. 10	Establishment of License Fees	Many agencies represented	Routine Technical	No	01/16/16
2016-214	02-041	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation	Ch. 20	Definitions and References	5 MRS §9001(4); 10 MRS §§ 8003(5-A)(A), 8003-E, 32 MRS §§ 14202(13), 14212-A(2), 14228(3), 14231, 14232(3), 14233, 14234, 14236-A, 14246	Routine Technical	No	12/11/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

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2016-215	02-041	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation	Ch. 21	Licensure of Aestheticians, Barbers, Cosmetologists, Limited Barbers and Nail Technologists	5 MRS §9001(4); 10 MRS §§ 8003(5-A)(A), 8003-E; 32 MRS §§ 14202(13), 14212-A(2), 14228(3), 14231, 14232(3), 14233, 14234, 14236-A, 14246	Routine Technical	No	12/11/16
2016-216	02-041	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation	Ch. 22	Licensure of Demonstrators	5 MRS §9001(4); 10 MRS §§ 8003(5-A)(A), 8003-E; 32 MRS §§ 14202(13), 14212-A(2), 14228(3), 14231, 14232(3), 14233, 14234, 14236-A, 14246	Routine Technical	No	12/11/16
2016-217	02-041	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation	Ch. 23	Trainee Aesthetician, Barber, Cosmetologist, Limited Barber and Nail Technologist	5 MRS §9001(4); 10 MRS §§ 8003(5-A)(A), 8003-E; 32 MRS §§ 14202(13), 14212-A(2), 14228(3), 14231, 14232(3), 14233, 14234, 14236-A, 14246	Routine Technical	No	12/11/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

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2016-218	02-041	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation	Ch. 24	Licensure of Instructors	5 MRS §9001(4); 10 MRS §§ 8003(5-A)(A), 8003-E; 32 MRS §§ 14202(13), 14212-A(2), 14228(3), 14231, 14232(3), 14233, 14234, 14236-A, 14246	Routine Technical	No	12/11/16
2016-219	02-041	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation	Ch. 25	Licensure of Establishments and Independent Booths	5 MRS §9001(4); 10 MRS §§ 8003(5-A)(A), 8003-E; 32 MRS §§ 14202(13), 14212-A(2), 14228(3), 14231, 14232(3), 14233, 14234, 14236-A, 14246	Routine Technical	No	12/11/16
2016-220	02-041	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation	Ch. 26	Establishment, Independent Booth and School Operation, Sanitation and Infection Control Standards, and Safe Practice Procedures	5 MRS §9001(4); 10 MRS §§ 8003(5-A)(A), 8003-E; 32 MRS §§ 14202(13), 14212-A(2), 14228(3), 14231, 14232(3), 14233, 14234, 14236-A, 14246	Routine Technical	No	12/11/16

Annual List of Rule-making Activity
 Rules Adopted 1/1/2016 to 12/31/2016
 Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-221	02-041	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation	Ch. 27	Rules for Licensure and Operation of Schools Offering One or More Courses of Study in Aesthetics, Barbering, Cosmetology, Limited Barbering, Nail Technology, and Instructing	5 MRS §9001(4); 10 MRS §§ 8003(5-A)(A), 8003-E; 32 MRS §§ 14202(13), 14212-A(2), 14228(3), 14231, 14232(3), 14233, 14234, 14236-A, 14246	Routine Technical	No	12/11/16
2016-222	02-041	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation	Ch. 28	Special Event Services Permit	5 MRS §9001(4); 10 MRS §§ 8003(5-A)(A), 8003-E; 32 MRS §§ 14202(13), 14212-A(2), 14228(3), 14231, 14232(3), 14233, 14234, 14236-A, 14246	Routine Technical	No	12/11/16
2016-223	02-041	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation	Ch. 29	Grounds for Discipline	5 MRS §9001(4); 10 MRS §§ 8003(5-A)(A), 8003-E; 32 MRS §§ 14202(13), 14212-A(2), 14228(3), 14231, 14232(3), 14233, 14234, 14236-A, 14246	Routine Technical	No	12/11/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

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2016-224	02-041	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation	Ch. 30	Citations	5 MRS §9001(4); 10 MRS §§ 8003(5-A)(A), 8003-E; 32 MRS §§ 14202(13), 14212-A(2), 14228(3), 14231, 14232(3), 14233, 14234, 14236-A, 14246	Routine Technical	No	12/11/16
2016-040	02-373	Department of Professional and Financial Regulation, Board of Licensure in Medicine	Ch. 5	Collaborative Drug Therapy Management (a joint rule with 02-392 - Board of Pharmacy - Ch. 39)	32 MRS §§ 13720, 13846 (Board of Pharmacy), 32 MRS §3269(3), (7) (Board of Licensure in Medicine)	Routine Technical	No	03/14/16
2016-122	02-373	Department of Professional and Financial Regulation, Board of Licensure in Medicine	Ch. 2	Joint Rule Regarding Physician Assistants (a joint rule with 02-383 - Board of Osteopathic Licensure - Ch. 2)	32 MRS §§ 3269(7), 3270-E	Routine Technical	No	718/2016
2016-209	02-373	Department of Professional and Financial Regulation, Board of Licensure in Medicine	Ch. 6	Telemedicine Standards of Practice (a joint rule with 02-383 - Board of Osteopathic Licensure - Ch. 6)	32 MRS §§ 3269(3), 3269(7)	Routine Technical	No	12/10/16
2016-123	02-383	Department of Professional and Financial Regulation, Board of Osteopathic Licensure	Ch. 2	Joint Rule Regarding Physician Assistants (a joint rule with 02-373 - Board of Licensure in Medicine - Ch. 2)	32 MRS §§ 2562, 2594-E	Routine Technical	No	07/18/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

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2016-210	02-383	Department of Professional and Financial Regulation, Board of Osteopathic Licensure	Ch. 6	Telemedicine Standards of Practice (a joint rule with 02-373 - Board of Licensure in Medicine - Ch. 6)	32 MRS §2562	Routine Technical	No	12/10/16
2016-041	02-392	Department of Professional and Financial Regulation, Board of Pharmacy	Ch. 39	Collaborative Drug Therapy Management (a joint rule with 02-373 - Board of Licensure in Medicine - Ch. 5)	32 MRS §§ 13720, 13846 (Board of Pharmacy), 32 MRS §3269(3), (7) (Board of Licensure in Medicine)	Routine Technical	No	03/14/16
2016-145	02-395	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Plumbers' Examining Board	Ch. 4	Installation Standards	32 MRS §3403-B(1)	Routine Technical	No	10/01/16
2016-007	02-416	Department of Professional and Financial Regulation, Office of Professional and Financial Regulation, Board of Social Worker Licensure	Ch. 13	Licensure	32 MRS §§ 7030(2), 7060	Routine Technical	No	01/25/16
2016-008	02-416	Department of Professional and Financial Regulation, Office of Professional and Financial Regulation, Board of Social Worker Licensure	Ch. 17	Record Retention Requirements	32 MRS §7030(2)	Routine Technical	No	01/25/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-009	03-201	Department of Corrections	Ch. 12	Policy and Procedures Manual – Juvenile: Subsection 15.3, Resident Discipline System	34-A MRS §§ 1402, 1403, 3032	Routine Technical	No	02/01/16
2016-016	03-201	Department of Corrections	Ch. 10	Policy and Procedures Manual – Adult: Subsection 27.3, Community Transition Program	34-A MRS §3035	Routine Technical	No	02/03/16
2016-026	03-201	Department of Corrections	Ch. 10	Policy and Procedures Manual – Adult: Subsection 20.1, Prisoner Discipline	34-A MRS §§ 1402, 1403, 3032	Routine Technical	No	02/29/16
2016-169	03-201	Department of Corrections	Ch. 11	Policy and Procedure Manual – Adult and Juvenile: Subsection 2.12, Prisoner and Resident Accounts	34-A MRS §3039	Routine technical	No	10/12/16
2016-170	03-201	Department of Corrections	Ch. 11	Policy and Procedure Manual – Adult and Juvenile: Subsection 18.19.1, Use of Mechanical Restraints on a Pregnant Prisoner or Pregnant Resident	34-A MRS §§ 3101, 3102, 3103, 3104	Routine Technical	No	10/12/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-061	05-071	Department of Education	Ch. 40	Rules for Medication Administration in Maine Schools	20-A MRS §§ 254(5)(A-C), 6305(1-9); PL 2013 ch. 526	Major Substantive	No	05/11/16
2016-171	05-071	Department of Education	Ch. 23	Collection of Staff Information	None	Routine Technical	No	10/18/16
2016-172	05-071	Department of Education	Ch. 41	Offering Instruction Related to Cardiopulmonary Resuscitation, and the Use of an Automated Defibrillator in Maine Public Schools	20-A MRS §6304	Routine Technical	No	10/18/16
2016-211	05-071	Department of Education	Ch. 221	Adult Education Administrative Costs Reimbursement	20-A MRS §8602	Routine Technical	No	12/11/16
2016-212	05-071	Department of Education	Ch. 229	Adult Education Fees	20-A MRS §8602	Routine Technical	No	12/11/16
2016-227	05-071	Department of Education	Ch. 126	Immunization Requirements for School Children (a joint rule with the Department of Health and Human Services -- Ch. 261)	20-A MRS §§ 6352-6358	Routine Technical	No	12/21/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-002	06-096	Department of Environmental Protection	Ch. 106	Low Sulfur Fuel Regulation	38 MRS §§ 585, 585-A	Routine Technical	No	01/12/16
2016-030	06-096	Department of Environmental Protection	Ch. 415	Reasonable Costs for Handling and Recycling of Electronic Wastes	5 MRS §§ 8001-11008; 38 MRS §§ 1610(10), 341-H	Routine Technical	No	03/07/16
2016-053	06-096	Department of Environmental Protection	Ch. 600	Oil Discharge Prevention and Pollution Control Rules for Marine Oil Terminals, Transportation Pipelines and Vessels	38 MRS §§ 561 et seq., 341-H, 568-A(3), 341-D(1-B), 546(4)	Routine Technical	No	04/03/16
2016-054	06-096	Department of Environmental Protection	Ch. 685	Payment and Reimbursement of Oil Transfer Fees	38 MRS §§ 561 et seq., 341-H, 568-A(3), 341-D(1-B), 546(4)	Routine Technical	No	04/03/16
2016-055	06-096	Department of Environmental Protection	Ch. 686	Standards for Assessing Ability to Pay Deductibles Under the State Insurance Program for Oil Storage Tanks	38 MRS §§ 561 et seq., 341-H, 568-A(3), 341-D(1-B), 546(4)	Routine Technical	No	04/03/16
2016-056	06-096	Department of Environmental Protection	Ch. 691	Rules for Underground Oil Storage Facilities	38 MRS §§ 561 et seq., 341-H, 568-A(3), 341-D(1-B), 546(4)	Routine Technical	No	04/03/16
2016-076	06-096	Department of Environmental Protection	Ch. 373	Financial and Technical Capacity Standards for the Site Location of Development Act	38 MRS §§ 341-D(1-B), 343, 485-A(1-C)	Major Substantive	No	07/02/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-077	06-096	Department of Environmental Protection	Ch. 375	No Adverse Environmental Effects Standards of the Site Location of Development Act	38 MRS §§ 341-D(1-B), 343, 485-A(1-C)	Major Substantive	No	07/02/16
2016-078	06-096	Department of Environmental Protection	Ch. 380	Long-Term Construction Projects under the Site Location of Development Act	38 MRS §§ 341-D(1-B), 343, 485-A(1-C)	Major Substantive	No	07/02/16
2016-093	06-096	Department of Environmental Protection	Ch. 100	Definitions Regulation	38 MRS §585-A	Routine Technical	No	05/22/16
2016-094	06-096	Department of Environmental Protection	Ch. 501	Stormwater Management Compensation Fees and Mitigation Credit	38 MRS §420-D(11)	Routine Technical	No	05/22/16
2016-160	06-096	Department of Environmental Protection	Ch. 424	Lead Management Regulations	38 MRS §§ 1291 <i>et seq.</i>	Routine Technical	No	10/02/16
2016-201	06-096	Department of Environmental Protection	Ch. 100	Definitions Regulation	38 MRS §585-A	Routine Technical	No	11/27/16
2016-025	06-481	Department of Environmental Protection, Board of Underground Storage Tank Installers	Ch. 1	Administrative Rules	32 MRS §10004	Routine Technical	No	02/21/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-014	09-137	Department of Inland Fisheries and Wildlife	Ch. 1	Open Water and Ice Fishing Regulations (Kennebec River)	12 MRS §§ 10104, 12452	Routine Technical	No	02/01/16
2016-044	09-137	Department of Inland Fisheries and Wildlife	Ch. 1	Open Water and Ice Fishing Regulations (Early Open Water Season)	12 MRS §§ 10104, 12456	Routine Technical	Yes	03/17/16
2016-062	09-137	Department of Inland Fisheries and Wildlife	Ch. 4	Hunting and Trapping: 4.02, Migratory Birds (B, F, H, I)	12 MRS §§ 10104, 11855	Routine Technical	No	04/16/16
2016-065	09-137	Department of Inland Fisheries and Wildlife	Ch. 4	Hunting and Trapping: 4.06, Wild Turkey	12 MRS §11701	Routine Technical	No	04/17/16
2016-066	09-137	Department of Inland Fisheries and Wildlife	Ch. 25	Leashed Dog Tracking Permit Rules	12 MRS §11111	Routine Technical	No	04/17/16
2016-067	09-137	Department of Inland Fisheries and Wildlife	Ch. 20	Taxidermy License	12 MRS §§ 12952, 12953	Routine Technical	No	04/18/16
2016-088	09-137	Department of Inland Fisheries and Wildlife	Ch. 4	Hunting and Trapping: 4.04, Bear Hunting Season (Youth Day)	12 MRS §11251	Routine Technical	No	05/14/16
2016-089	09-137	Department of Inland Fisheries and Wildlife	Ch. 4	Hunting and Trapping: 4.05, Moose Hunting Season	12 MRS §§ 11551, 11552	Routine Technical	No	05/14/16
2016-141	09-137	Department of Inland Fisheries and Wildlife	Ch. 4	Hunting and Trapping: 4.03, Deer Hunting Seasons	12 MRS §§ 11152, 11401	Routine Technical	No	08/28/16
2016-142	09-137	Department of Inland Fisheries and Wildlife	Ch. 6	Educational and Scientific Collection Permit Rules	12 MRS §§ 10104, 12704	Routine Technical	No	08/28/16
2016-144	09-137	Department of Inland Fisheries and Wildlife	Ch. 7	Rules for Importation, Possession, Propagatiobn, Rehabilitaton, and Exhibition of Wildlife	12 MRS §§ 10104, 12152	Routine Technical	No	08/30/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-168	09-137	Department of Inland Fisheries and Wildlife	Ch. 4	Hunting and Trapping: 4.01(G), Open Seasons for Hunting and Trapping of Furbearing Animals: (1), Beaver Trapping; (1.a) (no title); (1.b), Open and Closed Areas for Beaver Trapping (4) Statewide Hunting Seasons for Furbearing Animals 4.01(O), Mandatory Submission of Teeth	12 MRS §10104	Routine Technical	No	10/12/16
2016-173	09-137	Department of Inland Fisheries and Wildlife	Ch. 4	Hunting and Trapping: 4.03, Deer Hunting Seasons: A-6. Verification Required for Nonresidents Owning Land in Maine to Hunt on Resident's Only Day	12 MRS §§ 10104, 11401	Routine Technical	No	10/19/16
2016-174	09-137	Department of Inland Fisheries and Wildlife	Ch. 1	Open Water and Ice Fishing Regulations	12 MRS §§ 10104, 12452, 12461	Routine Technical	No	01/01/17
2016-175	09-137	Department of Inland Fisheries and Wildlife	Ch. 1-A	State Heritage Fish Waters	12 MRS §§ 10104, 12452, 12461	Routine Technical	No	01/01/17
2016-205	09-137	Department of Inland Fisheries and Wildlife	Ch. 4	Hunting and Trapping: 4.03, Deer Hunting Season: I. Open and Closed Seasons: 8. City of Eastport...	12 MRS §11402	Routine Technical	No	12/03/16
2016-206	09-137	Department of Inland Fisheries and Wildlife	Ch. 5	State Owned Wildlife Management Areas and Shooting Ranges	12 MRS §§ 10104, 12701	Routine Technical	No	12/03/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-006	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II & III Section 96, Private Duty Nursing and Personal Care Services	22 MRS §§ 42(8), 3173; PL 2015 Ch. 267 Part A	Routine Technical	No	01/25/16
2016-017	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. III Section 2, Adult Family Care Services	22 MRS §§ 42(8), 3173, PL 2015 ch. 267, 702 – LD 1019 Parts A, UUUU	Routine Technical	No	07/01/15
2016-024	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. III Section 67, Principles of Reimbursement for Nursing Facilities	22 MRS §§ 42, 3173; PL 2015 Parts A & UU; LD 87	Routine Technical	No	02/15/16
2016-038	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. III Section 97, Private Non-Medical Institution Services	22 MRSA §§ 42(8), 3173; Resolves 2015 ch. 45; PL 2015 ch. 267 Parts A (Section A-32) and UU	Major Substantive	Yes	03/08/16
2016-043	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II & III Section 19, Home and Community Benefits for the Elderly and for Adults with Disabilities	22 MRSA §§ 42(8), 3173; PL 2015 ch. 267 Parts A (Section A-32) and UU (Section UU-1)	Routine Technical	No	03/15/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-048	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II & III Section 17, Community Support Services, <i>and</i> Allowances for Community Support Services	22 MRSA §§ 42(8), 3173	Routine Technical	No	03/22/16
2016-059	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II & III Section 2, Adult Family Care Services	22 MRS §§ 42(8), 3173, 8054; Resolves 2015 ch. 45	Routine Technical	Yes	04/05/16
2016-063	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. I Section 1, General Administrative Policies and Procedures	22 MRS §§ 42, 3173	Routine Technical	No	04/16/16
2016-064	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. I Section 4, Telehealth Services	22 MRS §§ 42, 3173; Resolve 2015 ch. 105 (LD 1596)	Routine Technical	No	04/16/16
2016-068	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. III Section 12, Allowances for Consumer Directed Attendant Services	22 MRS §§ 42(8), 3173; Resolve 2015 ch. 50	Routine Technical	No	04/18/16
2016-098	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II & III Section 65, Behavioral Health Services	22 MRS §§ 42(8), 3173; 5 MRS §8054	Routine Technical	Yes	03/22/16
2016-101	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II Section 4, Ambulatory Surgical Center Services	22 MRS §§ 42, 3173	Routine Technical	No	06/15/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-105	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II & III Section 2, Adult Family Care Services	22 MRS §3173; Resolves 2015 ch. 45	Routine Technical	No	06/22/16
2016-124	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II Section 90, Physician Services	22 MRS §§ 42, 3173; 22 MRS §3174-WW; PL 2015 ch. 267 Part A, "Patient Protection and Affordable Care Act", PL 111-148 Section 6505	Routine Technical	No	07/20/16
2016-129	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. III Section 15, Chiropractic Services	22 MRS §§ 42, 3173	Routine Technical	No	08/01/16
2016-140	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual; Ch. II & III Section 43, Hospice Services	22 MRS §§ 42, 3173; 42 CFR §§ 418.302, 306	Routine Technical	No	08/26/16
2016-148	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual; Ch. II & III Section 17, Community Support Services	22 MRS §§ 42, 42(8), 3173; 5 MRS §8054; PL 2016 ch. 477; Resolves 2016 ch. 82	Routine Technical	Yes	09/02/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-155	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual; Ch. X Section 4, Limited Family Planning Benefit	22 MRS §§ 42, 3173, 3173-G	Routine Technical	No	10/01/16
2016-161	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. III Section 21, Allowances for Home and Community Benefits for Adults with Intellectual Disabilities or Autistic Disorder	22 MRS §§ 42, 42(8), 3173; 5 MRS §§ 8073, 8054; PL 2016 ch. 477	Major Substantive	Yes	09/28/16
2016-162	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. III Section 29, Allowances for Support Services for Adults with Intellectual Disabilities or Autistic Disorder	22 MRS §§ 42, 42(8), 3173; 5 MRS §§ 8073, 8054; PL 2016 ch. 477	Major Substantive	Yes	09/28/16
2016-166	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. III Section 2, Adult Family Care Services	22 MRS §§ 42(8), 3173; 5 MRS §8054; PL 2016 ch. 481 Part C; Resolves 2015 ch. 45	Routine Technical	Yes	10/04/16
2016-167	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. III Section 20, Allowances for Home and Community Based-Services for Adults with Other Related Conditions	22 MRS §§ 42, 42(8), 3173; 5 MRS §8054; PL 2016 ch. 477	Routine Technical	Yes	10/05/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-182	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. III Section 97 (<i>including appendices</i>), Private Non-Medical Institution (PNMI) Services	22 MRS §§ 42(8), 3173; 5 MRS §8073; PL 2016 ch. 477; Resolve 2015 ch. 45	Major Substantive	Yes	10/25/16
2016-187	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II Section 55, Laboratory Services	22 MRS §§ 42, 3173	Routine Technical	No	11/09/16
2016-194	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II & III Section 31, Federally Qualified Health Center Services	22 MRS §§ 42, 3173	Routine Technical	No	12/01/16
2016-195	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II & III Section 103, Rural Health Clinic Services	22 MRS §§ 42, 3173	Routine Technical	No	12/01/16
2016-196	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. III Section 18, Allowances for Home and Community Based Services for Adults with Brain Injury	22 MRS §§ 42, 3173; 5 MRS §8054; PL 2016 ch. 477	Routine Technical	Yes	11/15/16
2016-198	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II & III Section 65, Behavioral Health Services	22 MRS §§ 42, 3173	Routine Technical	No	11/23/16
2016-202	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. III Section 109, Speech and Hearing Services	22 MRS §§ 42, 3173; 45 CFR §§ 162.1000, 162.1002, 162.1011	Routine Technical	No	11/28/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-231	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. III Section 2, Adult Family Care Services	22 MRS §§ 42(8), 3173; PL 2015 ch. 481 Part C; Resolves 2015 ch. 45	Routine Technical	No	01/02/17
2016-082	10-144	Department of Health and Human Services,, Maine CDC, Division of Environmental and Community Health, Drinking Water Program	Ch. 231	Rules Relating to Drinking Water	22 MRS §§ 2605, 2611, 2620-C	Routine Technical	No	05/09/16
2016-083	10-144	Department of Health and Human Services,, Maine CDC, Division of Environmental and Community Health, Drinking Water Program	Ch. 235	Rules Relating to Bulk Water	22 MRS §§ 2605, 2611, 2620-C	Routine Technical	No	05/09/16
2016-228	10-144	Department of Health and Human Services, Center for Disease Control and Prevention	Ch. 261	Immunization Requirements for School Children (a joint rule with the Department of Education -- Ch. 126)	20-A MRS §§ 6352-6358	Routine Technical	No	12/21/16
2016-149	10-144	Department of Health and Human Services, Maine Center for Disease Control and Prevention, Childhood Lead Control Program	Ch. 292	Rules Relating to the <i>Lead Poisoning Control Act</i>	22 MRS ch. 252 §1315-A	Routine Technical	No	09/12/16
2016-090	10-144	Department of Health and Human Services, Division of Licensing and Regulatory Services	Ch. 298	Rules Governing the Certification Program for Primary Care Tax Credit	PL 2015 ch. 108; 36 RS §5219-LL; 22 MRS §42; 22- A MRS §205	Routine Technical	No	05/19/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-001	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 301	Food Supplement Program Certification Manual, Rule #192A: Simplified Reporting to Change Reporting	22 MRS §§ 42(1), 3104	Routine Technical	No	01/11/16
2016-163	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 301	Food Supplement Program Certification Manual, Rule #197E – SUA Changes for FFY 2017: Section FS-555-5, Income and Deductions	22 MRS §§ 42, 3104; 5 MRS §8054; 7 CFR 273.9(d)(6)(iii)(B)	Routine Technical	Yes	10/01/16
2016-197	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 301	Food Supplement Program Certification Manual, Rule #194A – Section FS-444-12, Households with Special Circumstances (Lottery Winning)	7 USC §2015(s); 22 MRS §§ 42(1), 3103	Routine Technical	No	11/21/16
2016-226	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 301	Food Supplement Program Certification Manual, Rule #197A – SUA Changes for FFY 2017: Section FS-000-1, Basis of Issuance; Section FS-555-5 pages 1-11, Income and Deductions	22 MRS §§ 42, 3104; 7 CFR 273.9(a), (d)(6)(iii)(B)	Routine Technical	No	10/01/16
2016-079	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 323	Maine General Assistance Manual: Section 3 pages 4,6; Section 5 pages 1,2	22 MRS §§ 42(1), 4301(3)	Routine Technical	No	05/16/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-060	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 331	Maine Public Assistance Manual (TANF): Ch. IV, Budgeting Process; Ch. V, Post-TANF Benefits; Appendices	22 MRS §§ 42(1), 3762(3)(A), 3762(8) and 3769- A, and PL 2015 ch. 267 Pt. RRRR- 2, Pt. RRRR-3	Routine Technical	No	04/10/16
2016-128	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 332	MaineCare Eligibility Manual, Rule #283A: Chart 6: Federal Poverty Levels	22 MRS §§ 42, 3173, 3174 <i>et</i> <i>seq.</i> ; 42 USC §1396a, 9902(2)	Routine Technical	No	08/01/16
2016-153	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 332	MaineCare Eligibility Manual Rule #278A: MaineCare Eligibility Manual (multiple revisions)	42 CFR §431231(c)(2); 42 CFR §431916(a)(3)(i)(B); 42 CFR §431916(a)(3)(iii); 42 CFR §457805; American Taxpayer Relief Act of 2012; PL 2005 ch. 12 DDD- 12	Routine Technical	No	10/01/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-154	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 332	MaineCare Eligibility Manual, Rule #281A - Premium Increase for Benefit for Special Benefits Waiver	22 MRS §§ 42, 3173; 42 USC §1396a <i>et seq.</i>	Routine Technical	No	10/01/16
2016-181	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 332	MaineCare Eligibility Manual, Rule #282A – Family Planning: Part 9, Special Groups – HIV/AIDS Waiver, Breast and Cervical, Family Planning: Section 4, Family Planning Coverage; Part 18, Presumptive Eligibility Determined by Hospitals: Section 2, Eligibility for Presumptive Eligibility Determination by Hospitals	22 MRS §§ 42, 3173; 42 USC §1396a; 22 MRS §3173-G	Routine Technical	No	10/01/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-028	10-144	Department of Health and Human Services, Division of Support Enforcement and Recovery	Ch. 351	Maine Child Support Enforcement Manual (internal chapters 2, 3, 8, 9, 15, 17, 18, 27)	22 MRS §42(1); PL 2015 ch. 296; 19-A MRS §§ 1601-1616, 2304; Ch. 65 Article 3 sub-Article 3, and Ch. 67; 10 MRS §4013; 26 MRS §1191(7); 36 MRS §5276-A(2); 45 CFR §§ 302.51(a)(1), 303.7	Routine Technical	No	03/01/16
2016-029	10-144	Department of Health and Human Services, Division of Support Enforcement and Recovery	Ch. 351	Maine Child Support Enforcement Manual (internal Chapter 6)	22 MRS §42(1); 19-A MRS §2011	Routine Technical	No	07/01/16
2016-102	10-144	Department of Health and Human Services, Division of Support Enforcement and Recovery	Ch. 351	Maine Child Support Enforcement Manual (internal Chapter 6)	22 MRS §42(1); 19-A MRS §2011	Routine Technical	Yes	06/15/16
2016-114	10-144	Department of Health and Human Services, Division of Support Enforcement and Recovery	Ch. 351	Maine Child Support Enforcement Manual: Ch. 7, Implementation of Child Support Guidelines; Ch. 13, Disposition of Proceedings by Settlement, Stipulation or Consent Decision; Waivers	22 MRS §42(1); 19-A MRS §§ 2001, 2006, 2007; 5 MRS §9053(2)	Routine Technical	No	07/06/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-139	10-144	Department of Health and Human Services, Division of Support Enforcement and Recovery	Ch. 351	Maine Child Support Enforcement Manual (internal Chapter 6)	22 MRS §42(1); 19-A MRS §2011	Routine Technical	No	08/22/16
2016-050	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 607	ASPIRE-TANF Program Rules (Sections 3, 4)	22 MRS §§ 42(1), 3762(3)(A), 3785, 3785-A, 3786	Routine Technical	No	03/26/16
2016-232	14-118	Department of Health and Human Services, Office of Substance Abuse and Mental Health Services	Ch. 11	Rules Governing the Controlled Substances Prescription Monitoring Program and Prescription of Opioid Medications	22 MRS §7252; PL 2015 ch. 488; 5 MRS §§ 8054, 8073	Routine Technical and Major Substantive	Yes	01/01/17
2016-070	14-197	Department of Health and Human Services, Office of Aging and Disability Services	Ch. 5	Regulations Governing Behavioral Support, Modification and Management for People with Intellectual Disabilities or Autism in Maine	34-B MRS §§ 5201, 5604, 5605, 5201(9), 5604(3)(D), 5605(17)	Routine Technical	No	04/25/16

Annual List of Rule-making Activity
 Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-156	12-179	Department of Labor, Bureau of Labor Standards, Board of Occupational Safety and Health	Ch. 2	Occupational Safety and Health Standards for General Industry Employment in the Public Sector	26 MRS §565	Routine Technical	No	09/28/16
2016-157	12-179	Department of Labor, Bureau of Labor Standards, Board of Occupational Safety and Health	Ch. 3	Occupational Safety and Health Standards for Construction Industry Employment in the Public Sector	26 MRS §565	Routine Technical	No	09/28/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-004	13-188	Department of Marine Resources	Ch. 11	Scallops: 11.22, Targeted Closures (6), (15), (16)	12 MRS §6171(3)	Routine Technical	Yes	01/16/16
2016-012	13-188	Department of Marine Resources	Ch. 11	Scallops: 11.22, Targeted Closures 2nd paragraph, and (1), Muscle Ridge; (17), Western Penobscot Area	12 MRS §6171(3)	Routine Technical	Yes	01/23/16
2016-019	13-188	Department of Marine Resources	Ch. 11	Scallops: 11.22, Targeted Closures: (18) Cobscook Bay; (19) St. Croix River; (20) Owls Head	12 MRS §6171(3)	Routine Technical	Yes	02/06/16
2016-031	13-188	Department of Marine Resources	Ch. 25	Lobster and Crab: 25.45, Crab Fishing Limitations	12 MRS §6171(3)	Routine Technical	No	03/07/16
2016-032	13-188	Department of Marine Resources	Ch. 25	Lobster and Crab: 25.97, Management Framework for Island Limited Entry Program	12 MRS §6449	Routine Technical	No	03/07/16
2016-033	13-188	Department of Marine Resources	Ch. 32	Eels: 32.03, Commercial Harvesting Regulations; 32.06, Recreational Eel Harvesting Regulations; 32.30, Elver Gear and Fishing License Lottery 32.35, Elver Quota System for 2016 Elver Season	12 MRS §§ 6171, 6505-A	Routine Technical	No	03/07/16
2016-034	13-188	Department of Marine Resources	Ch. 45	Shrimp: 45.05, Shrimp Season Closure	12 MRS §6171	Routine Technical	No	03/07/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-049	13-188	Department of Marine Resources	Ch. 11	Ch. 11, Scallops: 11.22, Targeted Closures: (21) Inner Machias Area; (22) Wohoa / Western Bay; (23) Gouldsboro / Dyer Bay; (24) Upper Blue Hill Bay / Union River; (25) Eggemoggin Reach / Southeast Harbor; (26) Lower Jericho Bay; (27) Casco Bay.	12 MRSA §6171(3)	Routine Technical	Yes	03/20/16
2016-087	13-188	Department of Marine Resources	Ch. 34	Groundfish Regulations: Recreational Cod Federal Compliance	12 MRS §6171(3)	Routine Technical	Yes	05/06/16
2016-106	13-188	Department of Marine Resources	Ch. 25	Lobster and Crab: 25.65, Lobster and Crab Closure in Penobscot River	12 MRS §§ 6171-A(4-A), 6192	Routine Technical	Yes	06/21/16
2016-107	13-188	Department of Marine Resources	Ch. 36	Herring Regulations: 36.01, Herring Management Plan	12 MRS §§ 6171, 6192	Routine Technical	Yes	06/22/16
2016-115	13-188	Department of Marine Resources	Ch. 36	Herring Regulations: 36.01, Herring Management Plan	12 MRS §§ 6171, 6192	Routine Technical	Yes	07/02/16
2016-116	13-188	Department of Marine Resources	Ch. 36	Herring Regulations: 36.01, Herring Management Plan; D. Catch Restrictions, (3) Effort Restrictions	12 MRS §§ 6171, 6192	Routine Technical	Yes	07/09/16
2016-117	13-188	Department of Marine Resources	Ch. 10	Clams and Quahogs	12 MRS §§ 6171, 6171-A	Routine Technical	No	07/17/16
2016-118	13-188	Department of Marine Resources	Ch. 11	Scallops	12 MRS §6171	Routine Technical	No	07/17/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-119	13-188	Department of Marine Resources	Ch. 26	Sea Urchin Regulations	12 MRS §§ 6171, 6173, 6749	Routine Technical	No	07/17/16
2016-120	13-188	Department of Marine Resources	Ch. 34	Groundfish Regulations	12 MRS §6171	Routine Technical	No	07/17/16
2016-130	13-188	Department of Marine Resources	Ch. 41	Menhaden	12 MRS §6171(3)(C)	Routine Technical	Yes	07/31/16
2016-137	13-188	Department of Marine Resources	Ch. 41	Menhaden	12 MRS §6171(3)(A)	Routine Technical	Yes	08/05/16
2016-138	13-188	Department of Marine Resources	Ch. 41	Menhaden	12 MRS §6171(3)(A)	Routine Technical	Yes	08/15/16
2016-152	13-188	Department of Marine Resources	Ch. 36	Herring Regulations	12 MRS §6171	Routine Technical	No	09/25/16
2016-190	13-188	Department of Marine Resources	Ch. 4	Municipal Shellfish Conservation Warden Certification	12 MRS §6671	Routine Technical	No	11/15/16
2016-191	13-188	Department of Marine Resources	Ch. 11	Scallops	12 MRS §6171	Routine Technical	No	11/15/16
2016-192	13-188	Department of Marine Resources	Ch. 25	Lobster and Crab: 25.65, Lobster and Crab Closure in Penobscot River	12 MRS §6171-A	Routine Technical	No	11/15/16
2016-193	13-188	Department of Marine Resources	Ch. 25	Lobster and Crab: 25.08, Lobster Trap Tag System; 25.90, Swans Island Area Lobster Trap Regulation; 25.97, Management Framework for Island Limited Entry Program	12 MRS §§ 6171, 6431-B, 6446, 6449, 6482	Routine Technical	No	11/15/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-084	16-219	Department of Public Safety, Office of State Fire Marshal	Ch. 4	Water-based Fire Protection Systems	25 MRS §2452; 32 MRS §§ 1373, 1374, 1382	Major Substantive	No	06/04/16
2016-109	16-219	Department of Public Safety, Office of the Commissioner	Ch. 71	Uniform Standardized Forensic Examination Kit for Gross Sexual Assault Evidence Collection <i>(replaces 16-222 Ch. 20)</i>	25 MRS §2915(4)	Routine Technical	No	07/03/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-045	17-229	Department of Transportation	Ch. 208	Rules for the Selection of Interchange and Supplemental Guide Signs	23 MRS §1912-C; 23 MRS §§ 52, 4206	Routine Technical	No	03/21/16
2016-047	17-229	Department of Transportation	Ch. 110	Urban Compact Area Definition Rule	23 MRS §§ 52, 4206	Routine Technical	No	03/21/16
2016-225	17-229	Department of Transportation	Ch. 308	Rules to Establish Seasonal Load Restrictions on Certain State and State Aid Highways	29-A MRS §2395; 23 MRS §§ 52, 4206	Routine Technical	No	12/18/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-013	18-125	Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services)	Ch. 104	Filing of Maine Tax Returns	36 MRS §112	Routine Technical	No	01/31/16
2016-085	18-125	Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services)	Ch. 202	Tree Growth Tax Law Valuations - 2016	36 MRS §576	Routine Technical	No	05/10/16
2016-095	18-125	Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services)	Ch. 603	Maine Estate Tax after 2012	36 MRS §112	Routine Technical	No	5/24/216
2016-164	18-125	Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services)	Ch. 104	Filing of Maine Tax Returns	36 MRS §112	Routine Technical	No	10/04/16
2016-165	18-125	Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services)	Ch. 803	Withholding Tax Reports and Payments	36 MRS §112	Routine Technical	No	10/08/16
2016-176	18-125	Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services)	Ch. 301	Sales for Resale and Sales of Packaging Materials	36 MRS §§ 112, 1754-B	Routine Technical	No	10/19/16
2016-177	18-125	Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services)	Ch. 308	Direct Pay Permits	36 MRS §112	Routine Technical	No	10/19/16
2016-178	18-125	Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services)	Ch. 504	Shrinkage Allowance for Retail Gasoline Dealers	36 MRS §§ 112, 2906	Routine Technical	No	10/19/16
2016-179	18-125	Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services)	Ch. 703	Exempt Sales of Cigarettes	36 MRS §112	Routine Technical	No	10/19/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-188	18-125	Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services)	Ch. 205	Certification of Assessors	36 MRS §§ 310-314	Routine Technical	No	11/12/16
2016-189	18-125	Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services)	Ch. 324	ConnectME Tax Reimbursements	36 MRS §§ 112, 2018	Routine Technical	No	11/12/16
2016-086	18-553	Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations / Maine State Liquor and Lottery Commission	Ch. 20	Powerball Rules	8 MRS §§ 372 sub-§2 ¶I, 374	Routine Technical	No	07/02/16
2016-207	18-553	Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations / Maine State Liquor and Lottery Commission	Ch. 20	Powerball Rules	8 MRS §§ 372 sub-§2 ¶I, 374	Routine Technical	No	12/05/16
2016-208	18-553	Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations / Maine State Liquor and Lottery Commission	Ch. 40	Mega Millions Rules	8 MRS §§ 372 sub-§2 ¶I, 374	Routine Technical	No	12/05/16

Annual List of Rule-making Activity
 Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-199	19-498	Department of Economic and Community Development, Office of Community Development	Ch. 45	Community Development Block Grant Program: 2017 Final Program Statement	5 MRS §13058 sub-§3	Routine Technical	No	11/26/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-080	29-250	Secretary of State, Bureau of Motor Vehicles	Ch. 3	Physical, Emotional and Mental Competence to Operate a Motor Vehicle	29-A MRS §§ 153, 1258	Routine Technical	No	12/31/16
2016-136	29-250	Secretary of State, Bureau of Motor Vehicles	Ch. 8	Rules for Ignition Interlock Devices	29-A MRS §153	Routine Technical	No	08/09/16
2016-150	29-250	Secretary of State, Bureau of Motor Vehicles	Ch. 168	The Administration of USDOT Numbers for Certain Intrastate Motor Carriers	29-A MRS §555-A	Routine Technical	No	09/14/16
2016-158	29-250	Secretary of State, Bureau of Motor Vehicles	Ch. 110	Non-Governmental Registration Agent Requirements	29-A MRS §204	Routine Technical	No	09/28/16
2016-020	29-255	Secretary of State, Maine State Archives	Ch. 10	Rules for Disposition of Local Government Records	22 MRS §2706	Routine Technical	No	02/09/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-015	65-407	Public Utilities Commission	Ch. 396	Efficiency Maine Trust Procurement Funding Cap	35-A MRS §§ 104, 111, 10110(4-A)	Routine Technical	No	02/01/16
2016-042	65-407	Public Utilities Commission	Ch. 895	Underground Facility Damage Prevention Requirements	23 MRS §3360-A; 35-A MRS §§ 104, 111; PL 2015 ch. 213	Routine Technical	No	03/01/16
2016-200	65-407	Public Utilities Commission	Ch. 201	Provider of Last Resort Service Quality	35-A MRS §§ 101, 111, 7225, 7225-A	Routine Technical	No	11/26/16
2016-146	65-625	Public Utilities Commission, Emergency Services Communications Bureau	Ch. 5	Standards for the Implementation and Administration of Emergency Fire Dispatch Protocols	25-A MRS §2927(3-C)	Routine Technical	No	09/03/16

Annual List of Rule-making Activity
 Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-072	90-590	Maine Health Data Organization	Ch. 270	Uniform Reporting System for Quality Data Sets	22 MRS §§ 8704 sub-§4, §8708; 24-A MRS §6951(2),(3); Resolve 2015 ch. 71	Major Substantive	No	06/01/16
2016-108	90-590	Maine Health Data Organization	Ch. 120	Release of Data to the Public	PL 2013 ch. 528; 22 MRS §8704(4); Resolves 2015 ch. 79; 22 MRS ch. 1683	Major Substantive	No	07/28/16

Annual List of Rule-making Activity
 Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-023	94-270	Commission on Governmental Ethics and Election Practices	Ch. 1	Procedures	1 MRS §1003(1); 21-A MRS §1126	Routine Technical	No	02/16/16
2016-151	94-270	Commission on Governmental Ethics and Election Practices	Ch. 1	Procedures	1 MRS §1003(1)	Routine Technical	No	09/26/16

Annual List of Rule-making Activity
 Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-081	94-411	Maine Public Employee Retirement System	Ch. 204	Waiver of Member Payment Requirement Where Caused by Employer Error or Omission	5 MRS §17103(4)	Routine Technical	No	05/08/16
2016-099	94-411	Maine Public Employee Retirement System	Ch. 803	Participating Local District Consolidated Plan	5 MRS §§ 17103(4), 18801	Routine Technical	No	06/05/16
2016-112	94-411	Maine Public Employee Retirement System	Ch. 501	Eligibility of M.S.R.S. Members to Apply for Disability Retirement Benefits	5 MRS §§ 1031(5), 17103(4)	Routine Technical	No	07/04/16
2016-113	94-411	Maine Public Employee Retirement System	Ch. 508	Disability Retirement under 5 MRSA §1122 as in Effect Prior to July 1, 1977	5 MRS §§ 1031(5), 17103(4)	Routine Technical	No	07/04/16

Annual List of Rule-making Activity
 Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-018	94-457	Finance Authority of Maine	Ch. 612	Maine Dental Education Loan and Loan Repayment Programs	20-A MRS §12305	Routine Technical	No	02/07/16
2016-100	94-457	Finance Authority of Maine	Ch. 611	Maine College Savings Program	10 MRS §969-A(14); 20-A MRS §11617(2); Protecting Americans from Tax Hikes (PATH) Act of 2015 (PL 114-113)	Routine Technical	No	06/05/16

Annual List of Rule-making Activity
 Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-039	94-591	Motor Carrier Review Board	Ch. 24	The Process for the Selection and Review of Motor Carriers	29-A MRS §562(4)	Routine Technical	No	03/14/16

Annual List of Rule-making Activity
 Rules Adopted 1/1/2016 to 12/31/2016
 Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-091	94-649	Maine Commission on Indigent Legal Services	Ch. 3	Eligibility Requirements for Specialized Case Types	4 MRS §1804(2)(B),(2)(G),(3)(E)(4)(D); Resolve 2015 ch. 75	Major Substantive	No	06/10/16
2016-092	94-649	Maine Commission on Indigent Legal Services	Ch. 301	Fee Schedule and Administrative Procedures for Payment of Commission Signed Counsel	4 MRS §1804(2)(F),(3)(B),(3)(F),(4)(D); Resolve 2015 ch. 74	Major Substantive	No	06/10/16

Annual List of Rule-making Activity
Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-057	99-346	Maine State Housing Authority	Ch. 25	Weatherization Assistance Program Rule	30-A MRS §§ 4722(1)(W), 4741(15)	Routine Technical	No	04/03/16
2016-131	99-346	Maine State Housing Authority	Ch. 16	Low Income Housing Tax Credit Rule	30-A MRS §§ 4741(1),(14); Section 42 of the <i>Internal Revenue Code of 1986</i> , as amended	Routine Technical	No	08/07/16
2016-132	99-346	Maine State Housing Authority	Ch. 24	Home Energy Assistance Program Rule	30-A MRS §§ 4722(1)(W), 4741(15), 4991 <i>et seq.</i> ; 42 USCA §§ 8621 <i>et seq.</i>	Routine Technical	No	08/07/16
2016-213	99-346	Maine State Housing Authority	Ch. 33	Home Modification Tax Credit Rule	30-A MRS §4741(1); 36 MRS §5219-NN	Routine Technical	No	12/11/16

Annual List of Rule-making Activity
 Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-121	99-420	Maine Turnpike Authority	Ch. 2	Regulations for the Installation of Logo Signs on the Maine Turnpike	23 MRS §1965(U)	Routine Technical	No	07/18/16

Annual List of Rule-making Activity
 Rules Adopted 1/1/2016 to 12/31/2016
Prepared by the Secretary of State

Log #	Umbrella/ unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2016-147	99-626	Maine Rural Development Authority	Ch. 2	Commercial Facilities Development Program	5 MRS §§ 13120-L, 13120-N(1)(D)	Routine Technical	No	09/03/16

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Administrative and Financial Services,
Bureau of Revenue Services (Maine Revenue Services)

Umbrella-Unit: **18-125**

Statutory authority: 36 MRS §112

Chapter number/title: **Ch. 104**, Filing of Maine Tax Returns

Filing number: **2016-013**

Effective date: 1/31/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

MRS amends Rule 104 (“Filing of Maine Tax Returns”) from what was originally proposed as follows: first, by removing that section of the proposed rule mandating the electronic filing of real estate transfer tax returns and, second, by delaying application of the reduction in the corporate mandatory electronic filing threshold from \$10 million in assets to \$5 million in assets to apply to returns filed for tax years beginning on or after January 1, 2016. The rule further describes the requirements for filing certain Maine tax returns, including mandatory electronic filing of certain Maine tax returns. Amendments also include miscellaneous technical changes, updates to the definitions of “Maine tax return” and “Tax return preparer” to simplify the language and make it easier to understand. Obsolete references to mandates effective in previous years are also being removed.

Basis statement:

MRS has amended Rule 104 ("Filing of Maine Tax Returns"). The rule describes the requirements for filing certain Maine tax returns, including mandatory electronic filing of certain Maine tax returns. Along with miscellaneous technical changes, MRS amended the rule by updating the definition of "Maine tax return", and "Tax return preparer" to simplify the language and make it easier to understand. In addition, the amendments reduce the corporate mandatory electronic filing threshold from \$10 million in assets to \$5 million in assets for returns filed for tax years beginning on or after January 1, 2016. Obsolete references to mandates effective in previous years were also removed.

Fiscal impact of rule:

Minimal.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Administrative and Financial Services,
Bureau of Revenue Services (Maine Revenue Services)

Umbrella-Unit: **18-125**

Statutory authority: 36 MRS §576

Chapter number/title: **Ch. 202**, Tree Growth Tax Law Valuations - 2016

Filing number: **2016-085**

Effective date: 5/10/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

There is a statutory requirement that each year the State Tax Assessor determine the 100% valuation for an acre of forestland, according to forest type (softwood, mixed wood or hardwood) by economic region for parcels classified under the Tree Growth Law. The State Tax Assessor must certify his determination and transmit rules to the municipal assessors of each municipality with forestland therein on or before April 1, of each year.

Basis statement:

Amended Rule 202 provides updated valuation rates for each forest type by region.

36 MRS §576 requires the State Tax Assessor to establish annually by rule current use valuations for classified forestlands after considering area timber stumpage sales during previous calendar years. Taxpayers with land classified under Tree Growth Tax Law and municipal assessors require guidance in appropriate valuation of forestland based on representative proportions of forest growth and products generated.

Fiscal impact of rule:

Annual establishment of valuations produces no additional cost to the State. The anticipated FY 2016-17 amount appropriated to reimburse anticipated municipal claims for "taxes lost" due to the use of Tree Growth Valuations on classified forestland is \$7,600,000.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Administrative and Financial Services,
Bureau of Revenue Services (Maine Revenue Services)

Umbrella-Unit: **18-125**

Statutory authority: 36 MRS §112

Chapter number/title: **Ch. 603**, Maine Estate Tax after 2012

Filing number: **2016-095**

Effective date: 5/24/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

Maine Revenue Services (MRS) amends Rule 603 ("Maine Estate Tax After 2012"). The rule explains in further detail the estate tax laws of the State of Maine for estates of decedents dying on or after January 1, 2013. In addition to miscellaneous technical changes, MRS is amending an incorrect section reference to the *Internal Revenue Code*.

Basis statement:

Maine Revenue Services (MRS) has amended Rule 603 ("Maine Estate Tax After 2012"). The rule explains in further detail the estate tax laws of the State of Maine for estates of decedents dying on or after January 1, 2013. In addition to miscellaneous technical changes, MRS amended an incorrect section reference to the *Internal Revenue Code*. A copy of the rule can be found on the MRS website at <http://www.maine.gov/revenue/rules/homepage.html>.

Fiscal impact of rule:

Minimal.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Administrative and Financial Services,
Bureau of Revenue Services (Maine Revenue Services)

Umbrella-Unit: **18-125**

Statutory authority: 36 MRS §112

Chapter number/title: **Ch. 104**, Filing of Maine Tax Returns

Filing number: **2016-164**

Effective date: 10/8/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

MRS has amended Rule 104 ("Filing of Maine Tax Returns"). The rule describes the requirements for filing certain Maine tax returns, including mandatory electronic filing of certain Maine tax returns. Along with miscellaneous technical changes, MRS amended definitions in the rule by: adding "business trust" to the definition of Person; amending the definition of Software Developer to include a person that develops computer generated forms used in connection with unemployment compensation laws; and removing an obsolete reference to the lowest individual income tax bracket in the definition of Threshold Amount. MRS also removed Section .03(3) as the waiver provisions are provided elsewhere in the rule. A copy of the rule can be found on the MRS website at <http://www.maine.gov/revenue/rules/homepage.html> .

Fiscal impact of rule:
Minimal.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Administrative and Financial Services,
Bureau of Revenue Services (Maine Revenue Services)

Umbrella-Unit: **18-125**

Statutory authority: 36 MRS §112

Chapter number/title: **Ch. 803**, Withholding Tax Reports and Payments

Filing number: **2016-165**

Effective date: 10/8/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

MRS has amended Rule 803 ("Withholding Tax Reports and Payments"). The rule identifies income subject to Maine withholding and prescribes the methods for determining the amount of Maine income tax to be withheld. It also explains the related reporting requirements. MRS has moved the filing due date for pass-through entity withholding returns from April 30th to March 15th following the end of the calendar year. This change is based on changes at the federal level and is effective for tax periods beginning on or after January 1, 2016. MRS also updated references to Maine individual income tax rates based on recently enacted legislation. In addition, miscellaneous technical changes such as changing references to employee and employer to payee and payer, respectively, and removing references to Form 941/CIME were made. A copy of the rule can be found on the MRS website at <http://www.maine.gov/revenue/rules/homepage.html>.

Fiscal impact of rule:
Minimal.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Administrative and Financial Services,
Bureau of Revenue Services (Maine Revenue Services)

Umbrella-Unit: **18-125**

Statutory authority: 36 MRS §§ 112, 1754-B

Chapter number/title: **Ch. 301**, Sales for Resale and Sales of Packaging Materials

Filing number: **2016-176**

Effective date: 10/19/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

Maine Revenue Services is adopting amendments to Rule 301 in order to update it. The changes will have no substantive impact on taxpayers. This is routine annual rule-making.

Basis statement:

The statutory authority for amending Rule 301 is Title 36 MRS §§ 112 and 1754-B. This is not major substantive rule-making.

Fiscal impact of rule:

N/A

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Administrative and Financial Services,
Bureau of Revenue Services (Maine Revenue Services)

Umbrella-Unit: **18-125**

Statutory authority: 36 MRS §112

Chapter number/title: **Ch. 308**, Direct Pay Permits

Filing number: **2016-177**

Effective date: 10/19/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

Maine Revenue Services is adopting amendments to Rule 308 in order to update it. The changes will not result in any substantive change for taxpayers. This is routine annual rule-making.

Basis statement:

The statutory authority for amending Rule 308 is Title 36 MRS §112. This is not major substantive rule-making.

Fiscal impact of rule:

N/A

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Administrative and Financial Services,
Bureau of Revenue Services (Maine Revenue Services)

Umbrella-Unit: **18-125**

Statutory authority: 36 MRS §§ 112, 2906

Chapter number/title: **Ch. 504** (*Repeal*), Shrinkage Allowance for Retail Gasoline Dealers

Filing number: **2016-178**

Effective date: 10/19/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The rule is unnecessary, since everything addressed in the rule is covered by the relevant statute (36 MRS §2906). Repealing the rule will result in no change whatsoever in Maine Revenue Services policy and practice regarding gasoline shrinkage allowances.

Basis statement:

The statutory authority for repealing Rule 504 is Title 36 MRS §112. This is not major substantive rule-making.

Fiscal impact of rule:

N/A

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Administrative and Financial Services,
Bureau of Revenue Services (Maine Revenue Services)

Umbrella-Unit: **18-125**

Statutory authority: 36 MRS §112

Chapter number/title: **Ch. 703** (*Repeal*), Exempt Sales of Cigarettes

Filing number: **2016-179**

Effective date: 10/19/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

Maine Revenue Services is repealing this rule as it is unnecessary and obsolete. Repeal will have no impact whatsoever on cigarette distributors, cigarette wholesales, or any other taxpayers.

Basis statement:

The statutory authority for repealing Rule 504 is Title 36 MRS §112. This is not major substantive rule-making.

Fiscal impact of rule:

N/A

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Administrative and Financial Services,
Bureau of Revenue Services (Maine Revenue Services)

Umbrella-Unit: **18-125**

Statutory authority: 36 MRS §§ 310-314

Chapter number/title: **Ch. 205**, Certification of Assessors

Filing number: **2016-188**

Effective date: 11/12/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

Rule 205 (Certification of Assessors) is being amended to expand the levels of assessor certification to recognize advanced professional education and make other, housekeeping, changes. Certification and the continuing education of property tax assessors in the State of Maine is the responsibility of the State Tax Assessor. This rule governs the nature and content of the certification examinations as well as the enforcement of the continuing education requirements required under 36 MRS §311.

Basis statement:

Amended Rule 205 ("Certification of Assessors") governs the nature and content of assessor certification examinations as well as the enforcement of the continuing education requirements required under 36 MRS §311.

The amendment expands the levels of assessor certification to recognize advanced professional education and make other, housekeeping, changes. Certification and the continuing education of property tax assessors in the State of Maine is the responsibility of the State Tax Assessor.

Fiscal impact of rule:

Minimal.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Administrative and Financial Services,
Bureau of Revenue Services (Maine Revenue Services)
Umbrella-Unit: **18-125**
Statutory authority: 36 MRS §§ 112, 2018
Chapter number/title: **Ch. 324** (*Repeal*), ConnectME Tax Reimbursements
Filing number: **2016-189**
Effective date: 11/12/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Maine Revenue Services repeals this rule as it is unnecessary and obsolete. It pertains to the administration of ConnectME tax reimbursements pursuant to 36 MRS §2018, which was repealed several years ago. Repeal of the rule will have no impact whatsoever on any Maine taxpayers.

Basis statement:

The statutory authority for repealing Rule 324 is Title 36 MRS §112. This is not major substantive rule-making.

Fiscal impact of rule:

N/A

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Administrative and Financial Services,
Bureau of Alcoholic Beverages and Lottery Operations /
Maine State Liquor and Lottery Commission

Umbrella-Unit: **18-553**

Statutory authority: 8 MRS §§ 372 sub-§2 ¶I, 374

Chapter number/title: **Ch. 20**, Powerball Rules

Filing number: **2016-086**

Effective date: 7/2/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To conform to the procedures for the operation of the multi-jurisdictional lottery game Powerball in Maine as required by the Multi State Lottery Association. These rules will allow Maine to continue to sell the Powerball game.

Basis statement:

This amendment updates the existing rules governing the jackpot draw game Powerball. This amendment is establishing a new Grand Prize Carry Forward Pool within the Multistate Lottery Association (MUSL) that its members including Maine will contribute to and utilize to fund starting Powerball jackpots. Under this amended rule, when an actual jackpot is supported, based on the accumulation of funds in the Grand Prize Pool, exceeds \$300 million annuity value, an additional set-aside goes into effect. Up to 10% of sales for MUSL members will be used to fund a Grand Prize Carry Forward Pool. When an actual jackpot is supported, based on the accumulation of funds in the Grand Prize Pool, exceeds \$800 million annuity value, an increased set-aside goes into effect. Up to 20% of sales for MUSL members will be used to fund a Grand Prize Carry Forward Pool. If funds are available in the Grand Prize Carry Forward Pool, they will be used to supplement the funds in the Grand Prize Pool for the starting jackpot, such that the total Grand Prize Pool is sufficient to fund a \$40 million annuity on the first drawing. If the MUSL Grand Prize Carry Forward Pool exceeds a balance of \$199 million prior to a drawing, the Grand Prize Carry Forward Pool set-asides will cease until such time as the Grand Prize Carry Forward Pool drops below \$199 million.

Fiscal impact of rule:

There is no known fiscal impact.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Administrative and Financial Services,
Bureau of Alcoholic Beverages and Lottery Operations /
Maine State Liquor and Lottery Commission

Umbrella-Unit: **18-553**

Statutory authority: 8 MRS §§ 372 sub-§2 ¶I, 374

Chapter number/title: **Ch. 20**, Powerball Rules

Filing number: **2016-207**

Effective date: 12/5/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To conform to the procedures for the operation of the multi-jurisdictional lottery game Powerball in Maine as required by the Multi State Lottery Association. These rules will allow Maine to continue to sell the Powerball game.

Basis statement:

This amendment updates the existing rules governing the jackpot draw game Powerball. This amendment makes technical changes on procedures dealing with payment of pari-mutuel prizes. This amendment also makes other non-technical changes to clarify language, fix cross references and fix typographical errors. The changes do not impact the way the game is played by consumers or sold by lottery retailers.

Fiscal impact of rule:

There is no known fiscal impact.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Administrative and Financial Services,
Bureau of Alcoholic Beverages and Lottery Operations /
Maine State Liquor and Lottery Commission

Umbrella-Unit: **18-553**

Statutory authority: 8 MRS §§ 372 sub-§2 ¶I, 374

Chapter number/title: **Ch. 40**, Mega Millions Rules

Filing number: **2016-208**

Effective date: 12/5/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To conform to the procedures for the operation of the multi-jurisdictional lottery game Mega Millions in Maine as required by the Multi State Lottery Association. These rules will allow Maine to continue to sell the Mega Millions game.

Basis statement:

This amendment updates the existing rules governing the jackpot draw game Mega Millions. This amendment makes numerous technical changes including adding definitions, clarifying definition, establishing new prize reserve accounts and establishing procedures dealing with payment prizes generally. This amendment also makes other non-technical changes to clarify language, fix cross references and fix typographical errors. The changes do not impact the way the game is played by consumers or sold by lottery retailers.

Fiscal impact of rule:

There is no known fiscal impact.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry
Umbrella-Unit: 01-001
Statutory authority: 7 MRS §3906-B, PL ch. 223 (LD 1023), 127th Maine State Legislature, *An Act To Revise the Animal Welfare Laws*
Chapter number/title: Ch. 701, Rules Governing Animal Welfare
Filing number: 2016-035
Effective date: 3/12/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Much needed updates to animal care in animal shelters.

Basis statement:

Over the past few years there have been changes to the way animals are kept in shelters. New advances in shelter medicine and animal behavior have changed how the different problems are solved within the shelter system. These rule changes reflect these improvements.

- Creates new definitions for: Housing facilities, impervious surfaces and Veterinarian of Reference
- Requires all facilities to use their license number on advertisements
- Improves record keeping for fostering agreements, pharmaceutical records and importation records
- Prevents dangerous animals that are a risk to public safety from being adopted out
- Changes a solid type of material to an impervious surface
- Improves controlled substances controls
- Ensures proper medical waste disposal
- Ensures isolation areas for imported animals
- Removes the veterinarian exemption for the rules of animal shelters and boarding kennels

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry
Umbrella-Unit: 01-001
Statutory authority: 7 MRS §3154
Chapter number/title: Ch. 61, Maine Milk Pool Cost of Administration
Filing number: 2016-046
Effective date: 4/11/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

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

Basis statement:

Costs incurred for the Maine Milk Pool for personnel services and for operation was approximately \$59,000 in 2015. Based on the last twelve months expenses, it is estimated that the Pool costs for similar expenses for 2016 will be about \$59,000.

The total pounds in the Pool for the last twelve months (December 2015 - November 2015) were 591,242,002. It is estimated that the total pounds in the Pool for 2016 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 2016 at \$0.01/cwt.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry
Umbrella-Unit: 01-001
Statutory authority: 7 MRS §2231
Chapter number/title: Ch. 274 (*New*), Rules for Growing Industrial Hemp
Filing number: 2016-058
Effective date: 4/4/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The reason for this rule is that the Department of Agriculture, Conservation & Forestry was required to promulgate this rule based on amendments to 7 MRS ch. 406-A §2231 passed during the last legislative session. The amendment made it legal to grow hemp in Maine and required the Department to establish a program in rule.

Basis statement:

In June 2015 changes to Title 7 MRS ch. 406-A §2231, *Industrial Hemp*, instructed the Department to adopt rules establishing guidelines for monitoring the growth and harvest of industrial hemp and an application fee, license fee and per acre fees for monitoring, sampling and testing industrial hemp crops. The rule presented here was written to comply with this legislation.

Fiscal impact of rule:

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

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry
Umbrella-Unit: 01-001
Statutory authority: 7 MRS ch. 401 §§ 2101-2105; ch. 1 §12; ch. 411 §2352
Chapter number/title: Ch. 252, Rules Governing Certification of Seed Potatoes in the State of Maine
Filing number: 2016-097
Effective date: 5/29/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The principal reasons for amending this rule are 1) decrease the Field Year eligibility of seed to be certified 2) to modify the potato seed certification program's visual field tolerances for blackleg 3) allow the state to do a lab test when conducting the post-harvest test. It will also decrease by one Field Year the eligibility of seed to be recertified, but will make it allowable for that year's seed to be sold for table stock or processing use. This change will also bring Maine's program more in line with other states' programs and improve the chances of removing from the system any possible high disease seed related to *Pectobacterium spp.* or *Dickeya spp.* One additional visual field inspection is proposed focusing on blackleg symptoms in an effort to flush out any blackleg diseases, including *Dickeya spp.*, from the system. One change would allow for lab testing of post-harvest samples as an alternative to the winter grow out in Florida.

Basis statement:

This rule change for Ch. 252 - 7 MRS ch. 401 §§ 2101-2105, 7 MRS ch. 1 §12, and 7 MRS ch. 411 §2352 - came about from input from the Executive Seed Council of the Maine Potato board and other industry members in order to address crop losses from the potato disease blackleg in the 2014 and 2015 growing seasons in Maine and other states that import Maine seed potatoes for the commercial market.

The changes, including adding a tolerance and third field reading for Blackleg were added since the department did not have the authority to regulate this disease under the current Ch. 252 rules. Other changes including eliminating field year 6 (FY6) generation potatoes from recertification was done to flush out seed more quickly, as seed borne Blackleg tends to increase as the seed generations increase.

Potato disease Y or (PVY) continues to challenge seed growers and affect commercial potato production with reduced crop yields. Phasing out the Florida post-harvest test which is a visual field test used to identify seed lots for virus and replacing it with a laboratory test in the department's certification lab will produce better, more consistent results for the industry.

Fiscal impact of rule:

The Department does not anticipate any significant fiscal impact from the adoption of this amendment.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry, **Maine Milk Commission**
Umbrella-Unit: **01-015**
Statutory authority: 5 MRS §8054; 7 MRS §2954
Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #02-16**
Filing number: **2016-011**
Effective date: 1/31/2016
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

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

The final February 2016 minimum Class I price is \$16.89/cwt. plus \$1.45/cwt. for Producer margins and a \$1.53/cwt. that reflects premiums being offered and prevailing in Southern New England and \$4.19/cwt. handling fee for a total of \$24.26/cwt., which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at \$3.75.

Basis statement:

Pursuant to 5 MRS §8054 and 7 MRS §2954 the Maine Milk Commission conducted an emergency rule-making hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$14.44/cwt.** and a Class IV price of **\$15.52/cwt.** for **December 2015.**

The Class II price for **December 2015** is **\$16.71/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$16.89/cwt. plus \$1.45/cwt. for cost of production and an over-order premium of \$1.53/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on January 22, 2016 and therefore should be passed on in minimum prices effective January 31, 2016. These prices also include a handling fee of \$4.19/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission
Umbrella-Unit: **01-015**
Statutory authority: 5 MRS §8054; 7 MRS §2954
Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #03-16**
Filing number: **2016-027**
Effective date: 2/28/2016
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

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

The final March 2016 minimum Class I price is \$17.03/cwt. plus \$1.45/cwt. for Producer margins and a \$1.53/cwt. that reflects premiums being offered and prevailing in Southern New England and \$3.72/cwt. handling fee for a total of \$23.93/cwt., which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at \$3.70.

Basis statement:

Pursuant to 5 MRS §8054 and 7 MRS §2954 the Maine Milk Commission conducted an emergency rule-making hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$13.72/cwt.** and a Class IV price of **\$13.31/cwt.** for **January 2016.**

The Class II price for **January 2016** is **\$14.19/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$17.03/cwt. plus \$1.45/cwt. for cost of production and an over-order premium of \$1.53/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on February 19, 2016 and therefore should be passed on in minimum prices effective February 28, 2016. These prices also include a handling fee of \$3.72/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission
Umbrella-Unit: **01-015**
Statutory authority: 5 MRS §8054; 7 MRS §2954
Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #04-16**
Filing number: **2016-051**
Effective date: 4/3/2016
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

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

The final April 2016 minimum Class I price is \$16.99/cwt. plus \$1.45/cwt. for Producer margins and a \$1.53/cwt. that reflects premiums being offered and prevailing in Southern New England and \$4.19/cwt. handling fee for a total of \$24.36/cwt., which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at \$3.74.

Basis statement:

Pursuant to 5 MRS §8054 and 7 MRS §2954 the Maine Milk Commission conducted an emergency rule-making hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$13.80/cwt.** and a Class IV price of **\$13.49/cwt.** for **February 2016.**

The Class II price for **February 2016** is **\$14.30/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$16.99/cwt. plus \$1.45/cwt. for cost of production and an over-order premium of \$1.53/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on March 24, 2016 and therefore should be passed on in minimum prices effective April 3, 2016. These prices also include a handling fee of \$4.19/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission

Umbrella-Unit: **01-015**

Statutory authority: 5 MRS §8054; 7 MRS §2954

Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #05-16**

Filing number: **2016-071**

Effective date: 5/1/2016

Type of rule: Routine Technical

Emergency rule: Yes

Principal reason or purpose for rule:

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

The final **May 2016** minimum Class I price is **\$16.95/cwt. plus \$1.45/cwt.** for Producer margins and a **\$1.53/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$4.19/cwt.** handling fee for a total of **\$24.32/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$3.74.**

Basis statement:

Pursuant to 5 MRS §8054 and 7 MRS §2954 the Maine Milk Commission conducted an emergency rule-making hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$13.74/cwt.** and a Class IV price of **\$12.74/cwt.** for **March 2016.**

The Class II price for **March 2016** is **\$13.57/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$16.95/cwt. plus \$1.45/cwt. for cost of production and an over-order premium of \$1.53/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on April 21, 2016 and therefore should be passed on in minimum prices effective May 1, 2016. These prices also include a handling fee of \$4.19/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission
Umbrella-Unit: **01-015**
Statutory authority: 5 MRS §8054; 7 MRS §2954
Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #06-16**
Filing number: **2016-096**
Effective date: 5/29/2016
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

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

The final **June 2016** minimum Class I price is **\$16.39/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.53/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$4.65/cwt.** handling fee for a total of **\$24.35/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$3.74.**

Basis statement:

Pursuant to 5 MRS §8054 and 7 MRS §2954 the Maine Milk Commission conducted an emergency rule-making hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$13.63/cwt.** and a Class IV price of **\$12.68/cwt.** for **April 2016.**

The Class II price for **April 2016** is **\$13.54/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$16.39/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.53/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on May 19, 2016 and therefore should be passed on in minimum prices effective May 29, 2016. These prices also include a handling fee of \$4.65/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission

Umbrella-Unit: **01-015**

Statutory authority: 5 MRS §8054; 7 MRS §2954

Chapter number/title: **Ch. 3, Schedule of Minimum Prices, Order #07-16**

Filing number: **2016-111**

Effective date: 7/3/2016

Type of rule: Routine Technical

Emergency rule: Yes

Principal reason or purpose for rule:

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

The final **July 2016** minimum Class I price is **\$16.95/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.53/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$4.19/cwt.** handling fee for a total of **\$24.45/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$3.75.**

Basis statement:

Pursuant to 5 MRS §8054 and 7 MRS §2954 the Maine Milk Commission conducted an emergency rule-making 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 **\$12.76/cwt.** and a Class IV price of **\$13.09/cwt.** for **May 2016.**

The Class II price for **May 2016** is **\$13.53/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$16.95/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.53/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on June 23, 2016 and therefore should be passed on in minimum prices effective July 3, 2016. These prices also include a handling fee of \$4.19/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission

Umbrella-Unit: **01-015**

Statutory authority: 5 MRS §8054; 7 MRS §2954

Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #08-16**

Filing number: **2016-127**

Effective date: 7/31/2016

Type of rule: Routine Technical

Emergency rule: Yes

Principal reason or purpose for rule:

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

The final **August 2016** minimum Class I price is **\$18.32/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.53/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$2.79/cwt.** handling fee for a total of **\$24.42/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$3.75.**

Basis statement:

Pursuant to 5 MRS §8054 and 7 MRS §2954 the Maine Milk Commission conducted an emergency rule-making hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$13.22/cwt.** and a Class IV price of **\$13.77/cwt.** for **June 2016.**

The Class II price for **June 2016** is **\$14.12/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$18.32/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.53/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on July 21, 2016 and therefore should be passed on in minimum prices effective July 31, 2016. These prices also include a handling fee of \$2.79/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission

Umbrella-Unit: **01-015**

Statutory authority: 5 MRS §8054; 7 MRS §2954

Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #09-16**

Filing number: **2016-143**

Effective date: 9/4/2016

Type of rule: Routine Technical

Emergency rule: Yes

Principal reason or purpose for rule:

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

The final **September 4, 2016** minimum Class I price is **\$19.81/cwt. plus \$1.53/cwt.** for Producer margins and a **\$1.53/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$1.40/cwt.** handling fee for a total of **\$24.47/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$3.77.**

Basis statement:

Pursuant to 5 MRS §8054 and 7 MRS §2954 the Maine Milk Commission conducted an emergency rule-making 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 **\$15.24/cwt.** and a Class IV price of **\$14.84/cwt.** for **July 2016.**

The Class II price for **July 2016** is **\$15.16/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$19.81/cwt. plus \$1.53/cwt. for cost of production and an over-order premium of \$1.53/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on August 18, 2016 and therefore should be passed on in minimum prices effective September 4, 2016. These prices also include a handling fee of \$1.40/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission

Umbrella-Unit: **01-015**

Statutory authority: 5 MRS §8054; 7 MRS §2954

Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #10-16**

Filing number: **2016-159**

Effective date: 10/2/2016

Type of rule: Routine Technical

Emergency rule: Yes

Principal reason or purpose for rule:

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

The final **October 2016** minimum Class I price is **\$19.85/cwt. plus \$1.48/cwt.** for Producer margins and a **\$1.53/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$1.40/cwt.** handling fee for a total of **\$24.46/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$3.76.**

Basis statement:

Pursuant to 5 MRS §8054 and 7 MRS §2954 the Maine Milk Commission conducted an emergency rule-making 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 **\$16.91/cwt.** and a Class IV price of **\$14.65/cwt.** for **August 2016.**

The Class II price for **August 2016** is **\$15.21/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$19.85/cwt. plus \$1.48/cwt. for cost of production and an over-order premium of \$1.53/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on September 22, 2016 and therefore should be passed on in minimum prices effective October 2, 2016. These prices also include a handling fee of \$1.40/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission
Umbrella-Unit: **01-015**
Statutory authority: 5 MRS §8054; 7 MRS §2954
Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #11-16**
Filing number: **2016-180**
Effective date: 10/29/2016
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

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

The final **November 2016** minimum Class I price is **\$18.03/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.53/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$2.79/cwt.** handling fee for a total of **\$24.13/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$3.73.**

Basis statement:

Pursuant to 5 MRS §8054 and 7 MRS §2954 the Maine Milk Commission conducted an emergency rule-making 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 **\$16.39/cwt.** and a Class IV price of **\$14.25/cwt.** for **September 2016.**

The Class II price for **September 2016** is **\$14.66/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$18.03/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.53/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on October 20, 2016 and therefore should be passed on in minimum prices effective October 30, 2016. These prices also include a handling fee of \$2.79/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission

Umbrella-Unit: **01-015**

Statutory authority: 5 MRS §8054; 7 MRS §2954

Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #12-16**

Filing number: **2016-204**

Effective date: 12/4/2016

Type of rule: Routine Technical

Emergency rule: Yes

Principal reason or purpose for rule:

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

The final **December 2016** minimum Class I price is **\$20.13/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.53/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.93/cwt.** handling fee for a total of **\$24.37/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$3.74.**

Basis statement:

Pursuant to 5 MRS §8054 and 7 MRS §2954 the Maine Milk Commission conducted an emergency rule-making hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$14.82/cwt.** and a Class IV price of **\$13.66/cwt.** for **October 2016.**

The Class II price for **October 2016** is **\$14.09/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$20.13/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.53/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on November 23, 2016 and therefore should be passed on in minimum prices effective December 4, 2016. These prices also include a handling fee of \$0.93/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission
Umbrella-Unit: **01-015**
Statutory authority: 5 MRS §8054; 7 MRS §2954
Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #01-17**
Filing number: **2016-230**
Effective date: 12/17/2016
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

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

The final **January 2017** minimum Class I price is **\$20.70/cwt. plus \$1.53/cwt.** for Producer margins and a **\$1.53/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.93/cwt.** handling fee for a total of **\$24.89/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$3.79**.

Basis statement:

Pursuant to 5 MRS §8054 and 7 MRS §2954 the Maine Milk Commission conducted an emergency rule-making 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 **\$16.76/cwt.** and a Class IV price of **\$13.76/cwt.** for **November 2016**.

The Class II price for **November 2016** is **\$14.60/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$20.70/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.53/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on December 22, 2016 and therefore should be passed on in minimum prices effective January 1, 2017. These prices also include a handling fee of \$0.93/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Maine State Harness Racing Commission

Umbrella-Unit: **01-017**

Statutory authority: 8 MRS §§ 263-A, 268, 279-A, 279-B, 281

Chapter number/title: **Ch. 11**, Medication and Testing

Filing number: **2016-229**

Effective date: 12/26/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The amendment updates Ch. 11 to remove the responsibility of the Commission to prove that a substance was in excess of the normal concentration if it affects the performance of a horse. The amendment also clarifies that the substances listed in the *Uniform Guidelines for Foreign Substances* published by the Association of Racing Commissioners International are prohibited.

Basis statement:

The Commission amends Section 4, subsection 4 of Ch. 11 in order to update the rule to adopt by reference the Alphabetical Substance List contained in the April 8, 2016 *Uniform Classification Guidelines for Foreign Substances* published by the Association of Racing Commissioners International, Inc. Further, the amendment removes the responsibility for proving that a substance is performance enhancing from the Commission.

Fiscal impact of rule:

The amendment should not have a fiscal impact.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry, **Bureau of Forestry (Maine Forest Service)**
Umbrella-Unit: **01-669**
Statutory authority: 12 MRS ch. 805 sub-ch. 3-A, *as amended by* PL 2013 ch. 412; Resolves 2015 ch. 58
Chapter number/title: **Ch. 30**, Prior Approval Process and Stop Work Orders
Filing number: **2016-103**
Effective date: 7/15/2016
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

See §8057-A (l) (A) &(C)] Legislative direction. This rule establishes standards for Maine Forest Service approval of timber harvesting activities by any person who has been convicted of two or more violations of Title 17 §2510 sub-§1.

Basis statement:

The statutory authority for this rule is 12 MRS §8869-A, as enacted by PL 2013 ch. 412.

The law requires the Commissioner of Agriculture, Conservation and Forestry, through the Bureau of Forestry, aka the Maine Forest Service (MFS), "establish a prior approval process for harvesting trees by a person that has committed 2 violations of unlawful cutting of trees pursuant to Title 17, section 2510, subsection 1."

Process involved in developing this rule

Following enactment of the law, a MFS senior staff person drafted rule. Because the statutory direction was clear, the MFS determined that an extensive public process was not necessary. The MFS consulted with the Attorney General's Office prior to undertaking rule-making.

The MFS released the draft rule for public comment in July 2015. A public hearing was conducted in July 2015. No one attended. The MFS received two sets of comments on this proposal.

Economic impact of the rule

Multiple sections of the law governing state rule-making (5 MRS ch. 375 sub-ch. 2) require agencies to conduct economic impact analyses of proposed rules, including, but not limited to, effects on small businesses, fiscal impact (on the state treasury), and any effects on municipalities and counties. Agencies may, within existing resources, also conduct a cost-benefit analysis of proposed rules.

The MFS has determined that the operation of this rule will not have a fiscal impact on the state treasury, municipalities, or counties.

Further, the MFS has determined that this rule will have no discernible impact on small businesses or the regulated community. Only a small handful of loggers meet the criteria necessary to be regulated by this rule.

The MFS has lost several enforcement related positions in recent years due to budget reductions. The positions lost include ten Forest Ranger III positions in Forest Protection. The MFS may need to redirect staff priorities away from existing programs and initiatives to absorb additional enforcement work within existing resources.

Fiscal impact of rule:

None. MFS will reassign priorities as needed to accomplish with existing resources.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry, **Land Use Planning Commission**
Umbrella-Unit: **01-672**
Statutory authority: 12 MRS §§ 685-A(7-A), 689
Chapter number/title: **Ch. 10**, Land Use Guidance Maps (Amended Zoning Maps), Zoning Petition ZP 757: Big Moose Twp. - Piscataquis County
Filing number: **2016-010**
Effective date: 1/19/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

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

Basis statement:

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

ZONING PETITION

ZP 757

**PETITIONER OR
COPETITIONER**

OFLC, Inc.

LOCATION

Big Moose Twp.
Piscataquis County

Fiscal impact of rule:

N/A

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Land Use Planning Commission

Umbrella-Unit: **01-672**

Statutory authority: 12 MRS §§ 685-A(3), 685-A(7-A), 685-C(5)

Chapter number/title: **Ch. 10**, Land Use Districts and Standards: **10.02**, Definitions (“Rural Business”); **10.21(I)**, Rural Business Development Subdistrict (D-RB); **10.25(Q)(6)**, Subdivision and Lot Creation: Subdivision Filing with Registry of Deeds and Sale of Lots; **10.27(R)**, Rural Businesses

Filing number: **2016-073**

Effective date: 5/9/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The Maine Land Use Planning Commission sought public comment on proposed amendments to Ch. 10, *Land Use Districts and Standards*, regarding a proposed new subdistrict developed for certain areas in Aroostook County in partnership with Northern Maine Development Commission (NMDC) through the Commission's Community Guided Planning and Zoning program. This regional planning effort implements the directive in PL 2011 ch. 682 §34, for the Commission to initiate prospective zoning in the unorganized and deorganized parts of the state. The purpose of the new Rural Business Development Subdistrict (D-RB) is to encourage an appropriate range of business development in rural areas, and locate development in or at the edge of existing development and in concentrated areas along appropriate portions of major transportation corridors. The locations for the D-RB are selected to maintain the rural character of the region and avoid significant visual, natural resource, and fiscal impacts of unplanned growth. The D-RB subdistrict would include areas to accommodate a range of small commercial, light manufacturing, and institutional facilities and businesses that are generally compatible with, and complementary to, natural resource-based land uses but may create some adverse impacts to residential uses, recreation uses, or resource protection.

Basis statement:

The Maine Land Use Planning Commission (LUPC) adopts rule changes to its Ch. 10, *Land Use Districts and Standards*, regarding a new subdistrict developed for certain areas in Aroostook County in partnership with Northern Maine Development Commission (NMDC) through the Commission's Community Guided Planning and Zoning (CGPZ) program 1• This regional planning effort implements the directive in PL 2011 ch. 682 §34, for the Commission to initiate prospective zoning in the unorganized and deorganized parts of the state. The purpose of the new Rural Business Development Subdistrict (D-RB) is to encourage an appropriate range of business development in rural areas, and locate development in or at the edge of existing development and in concentrated areas along appropriate portions of major transportation corridors.

Fiscal impact of rule:

There will be no measurable fiscal impact of these rule changes.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry, **Land Use Planning Commission**
Umbrella-Unit: **01-672**
Statutory authority: 12 MRS §685-A(13), 350A MRS §3453-A(1), (3), (7)
Chapter number/title: **Ch. 10**, Land Use Districts and Standards: **Appendix F**, Expedited Wind Energy Development Area
Filing number: **2016-074**
Effective date: 5/9/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

The 123rd Legislature enacted, "An Act to Implement Recommendations of the Governor's Task Force on Wind Power Development," PL 2007 ch. 661, that became effective April 18, 2008. The Act established the expedited permitting area for wind energy development, encompassing all of the organized area of the State and a portion of the unorganized and deorganized areas now served by the Land Use Planning Commission (LUPC or Commission). As directed by that legislation, the Commission adopted through rule-making the description and map of the expedited permitting area located in the Commission's rules as Appendix F to Ch. 10, *Land Use Districts and Standards*.

In 2015, the legislature enacted "An Act To Improve Regulatory Consistency within the Jurisdiction of the Maine Land Use Planning Commission," PL 2015 ch. 265, that became effective January 1, 2016. The statutory change creates a six month time window within which registered voters in a given town, township, or plantation within the Commission's jurisdiction may petition to have a place removed from the expedited area. Title 35-A §3453-A describes the mechanism by which the petition process is to take place, and provides the opportunity for any person to object to the removal of the specified place by requesting "substantive review" of the petition. Pursuant to the provisions of this section, when a valid petition is filed, the specified place automatically will be removed unless a person requests substantive review.

Each of the petitions comply with the requirements of Title 35-A §3453-A(l) and (5). Specifically each individual petition:

- Was received between January 1 and June 20, 2016;
- Clearly states that the persons signing the petition are requesting the removal of the specified place from the expedited permitting area;
- Is signed by at least 10% of the number of registered voters residing in the township, plantation, municipality or portion thereof that voted in the most recent gubernatorial election;
- Is on a form provided by the Maine Land Use Planning Commission; and
- Does not include any land area within:
 - the project boundary of an existing or proposed, legally permitted expedited wind energy development;
 - the project boundary of a proposed expedited wind energy development, as described in the development permit application, that has been accepted for processing by the Department of Environmental Protection; and
 - any specified place added by rule to the expedited permitting area in accordance with section 3453 prior to January 1, 2016.

Fiscal impact of rule:

There will be no measurable fiscal impact of these rule changes.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Land Use Planning Commission
Umbrella-Unit: **01-672**
Statutory authority: 12 MRS §§ 685-A(7-A), 689
Chapter number/title: **Ch. 10**, Land Use Guidance Maps (Amended Zoning Maps),
Zoning Petition **ZP 760**: Maine Land Use Planning Staff; Stacie
Beyer – Hancock and Knox Counties
Filing number: **2016-075**
Effective date: 4/29/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

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

Basis statement:

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

ZONING PETITION

ZP 760

**PETITIONER OR
COPETITIONER**

Maine Land Use
Planning Staff;
Stacie Beyer

LOCATION

Hancock and Knox Counties

Fiscal impact of rule:

N/A

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry, **Land Use Planning Commission**
Umbrella-Unit: **01-672**
Statutory authority: 12 MRS §§ 685-A(7-A)
Chapter number/title: **Ch. 10**, Land Use District and Standards: **Appendix E**, FEMA Maps for the LUPC Jurisdiction
Filing number: **2016-104**
Effective date: 5/9/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

The LUPC repeals and replaces Appendix E to facilitate a reorganization of the list by county and by minor civil division. Other changes to the appendix include adding references to new county-wide Flood Insurance Rate Maps for Knox and Hancock Counties, removing asterisks indicating that base flood elevation data is available, and improving consistency in formatting.

Fiscal impact of rule:
N/A

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Land Use Planning Commission

Umbrella-Unit: **01-672**

Statutory authority: 12 MRS §§ 685-A(7-A), 689

Chapter number/title: **Ch. 10**, Land Use Guidance Maps (Amended Zoning Maps):
 Zoning Petitions: **ZP 674A:** Michael Beaulieu, St. John Plt.,
 N Aroostook County; **ZP 753:** ME Land Use Planning
 Commission Staff, & Jason Bouchard Family Trust, T9 R8
 WELS, S Aroostook County; **ZP 754:** Marianne McEnrue, T10
 R11 WELS, Piscataquis County; **ZP 761:** Peter Lee, Freeman
 Twp., Franklin County; **ZP 762:** ME Land Use Planning
 Commission Staff, & Norvest LLC, T4 R8 & T5 R8 WELS,
 Penobscot County

Filing number: **2016-110**

Effective date: 6/28/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

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

Basis statement:

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

ZONING PETITION	PETITIONER OR COPETITIONER	LOCATION
ZP 674A ZP 753	Michael Beaulieu ME Land Use Planning Commission Staff, & Jason Bouchard Family Trust	St. John Plt., N Aroostook County T9 R8 WELS, S Aroostook County
ZP 754 ZP 761 ZP 762	Marianne McEnrue Peter Lee ME Land Use Planning Commission Staff, & Norvest LLC	T10 R11 WELS, Piscataquis County Freeman Twp., Franklin County T4 R8 & T5 R8 WELS, Penobscot County

Fiscal impact of rule:
 N/A

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry, **Land Use Planning Commission**
Umbrella-Unit: **01-672**
Statutory authority: 12 MRS §685-A sub-§§ (3),(7-A), §685-C sub-§(5)(A)
Chapter number/title: **Ch. 10**, Land Use Districts and Standards: Road Setbacks and Accessory Structures
Filing number: **2016-134**
Effective date: 8/9/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Commission updates its rules to reduce the distance structures must be set back from the road to 30 feet in Residential Development (D-RS) and General Development (D-GN) subdistricts with corresponding reductions in vegetative buffers. The Commission also reduces the road setback requirement for residential structures on State and Federal Routes from 75 feet to either 50 or 30 feet, dependent on subdistrict. The Commission allows flexible road setbacks of no less than 20 feet from interior roads for non-residential development on a case by case basis according to performance criteria. The Commission also allows, under certain conditions, residential accessory structures to be placed on new or existing, nonconforming lots across the road from the residence. In addition, the Commission adopts edits to the accessory structure by standard use listing to clarify that accessory structures must be located in subdistricts which allow their associated principal use. Changes to the subdistrict use listings clarify that accessory structures may be allowed in LUPC jurisdiction by permit or special exception.

Basis statement:

The primary objective of this rule-making is to revise the Commission's rules regarding road setbacks and the placement of residential accessory buildings.

Often, in more densely developed areas, it is appropriate to permit structures closer to the road than has been allowed. This rule revision will reduce, for all structures, the required road setback and corresponding vegetative buffer to 30 feet in the more densely developed D-RS and D-GN subdistricts. This will allow property owners in those subdistricts more choices in where to place their structures. Because the D-RS and D-GN subdistricts are more densely developed and because historical development in many locations within these subdistricts is close to the road, this change will not adversely affect the character of most areas within those subdistricts.

Prior to this proposed rule revision, 75 foot road setbacks have been required for residential structures on Federal and State routes. While researching vehicular safety topics associated with road setbacks, Commission Staff found that there was not a public safety basis for this large setback requirement. Therefore, the proposed rule revisions would eliminate the road setback requirement specific to Federal and State routes. The effect of this will be to reduce the road setback requirement for residential structures on Federal and State routes to either 50 or 30 feet, dependent on subdistrict.

On some internal roads in commercial developments, the required road setbacks are excessive to meet the Commission's goals. The rule revisions would allow flexible road setbacks of no less than 20 feet from interior roads in non-residential developments on a case by case basis according to performance criteria. The performance criteria are intended to ensure that effects on the scenic character are confined to those visiting the facility.

In some locations the best place for a residential accessory structure is on a smaller sized lot across the road from the residence. In cases where the road is not owned by the applicant, it has been problematic to permit such accessory structures. The rule revision allows residential accessory structures to be permitted on new or existing nonconforming lots across the road from residences under certain conditions. These conditions include: that the residential and accessory

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

lots would be continuous except for the road between them; the residential and accessory lots are owned or leased in common; zoning and accessory use conditions are met; and the accessory lot and accessory structure meet certain dimensional requirements. The rule revision also requires an applicant to record the permit for such an accessory structure in the county registry of deeds along with the accessory lot deed. This provision is intended to help avoid future nonconforming uses or development of the accessory lot. The revision also spells out various options for when the accessory structure must be removed or when it may remain if the common ownership or lease of the two lots is terminated.

Since the prior rule revision that added a separate "Accessory Structure" use listing to the "Without a Permit Subject to Standards" sections of some subdistricts, there has been some ambiguity about whether accessory structures are allowed with a permit. These rule revisions clarify that accessory structures may be allowed in LUPC jurisdiction by permit or special exception. In addition, the rule edits the accessory structure by standard use listing to clarify that accessory structures must be located in subdistricts which allow their associated principal use.

Fiscal impact of rule:

There will be no measurable fiscal impact of these rule changes.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry, **Land Use Planning Commission**
Umbrella-Unit: **01-672**
Statutory authority: 12 MRS §685-C(5)(A); 35-A MRS §3453-A
Chapter number/title: **Ch. 10**, Land Use Districts and Standards: **Appendix F**, Expedited Wind Energy Development Area
Filing number: **2016-135**
Effective date: 8/9/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

The 123rd Legislature enacted, "An Act to Implement Recommendations of the Governor's Task Force on Wind Power Development," Public Law 2007, Ch. 661 that became effective April 18, 2008. The Act established the expedited permitting area for wind energy development, encompassing all of the organized' area of the State and a portion of the unorganized and deorganized areas now served by the Land Use Planning Commission (LUPC or Commission). As directed by that legislation, the Commission adopted through rule-making the description and map of the expedited permitting area located in the Commission's rules as Appendix F to Ch. 10, *Land Use Districts and Standards*.

In 2015, the legislature enacted "An Act To Improve Regulatory Consistency within the Jurisdiction of the Maine Land Use Planning Commission," Public Law 2015, Ch. 265 that became effective January 1, 2016. The statutory change creates a six month time window within which registered voters in a given town, township, or plantation within the Commission's jurisdiction may petition to have a place removed from the expedited area. Title 35-A, section 3453-A describes the mechanism by which the petition process is to take place, and provides the opportunity for any person to object to the removal of the specified place by requesting "substantive review" of the petition. Pursuant to the provisions of this section, when a valid petition is filed, the specified place automatically will be removed unless a person requests substantive review.

Each of the petitions listed below comply with the requirements of Title 35-A, Section 3453-A(l) and (5). Specifically each individual petition:

- Was received between January 1 and June 20, 2016;
- Clearly states that the persons signing the petition are requesting the removal of the specified place from the expedited permitting area;
- Is signed by at least 10% of the number of registered voters residing in the township, plantation, municipality or portion thereof that voted in the most recent gubernatorial election;
- Is on a form provided by the Maine Land Use Planning Commission; and
- Does not include any land area within:
 - the project boundary of an existing or proposed, legally permitted expedited wind energy development;
 - the project boundary of a proposed expedited wind energy development, as described in the development permit application, that has been accepted for processing by the Department of Environmental Protection; and
 - any specified place added by rule to the expedited permitting area in accordance with section 3453 prior to January 1, 2016.

Fiscal impact of rule:
(No Fact Sheet included)

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Land Use Planning Commission
Umbrella-Unit: **01-672**
Statutory authority: 12 MRS §§ 685-A(7-A), 689
Chapter number/title: **Ch. 10**, Land Use Guidance Maps (Amended Zoning Maps):
Zoning Petition **ZP 265** (Wyman Twp., Franklin County) (petitioner
Maine LUPC staff) (*Supersedes 9-20-2016 filing (not accepted); later
superseded by 2016-203*)
Filing number: **2016-183**
Effective date: 10/19/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

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

Basis statement:

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

ZONING PETITION

ZP 265

**PETITIONER OR
COPETITIONER**

Maine Land Use
Planning Commission
Staff

LOCATION

Wyman Twp., Franklin County

Fiscal impact of rule:

N/A

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry, **Land Use Planning Commission**
Umbrella-Unit: **01-672**
Statutory authority: 12 MRS §§ 685-A(3), 685-A(7-A), 685-C(5)
Chapter number/title: **Ch. 10**, Land Use Districts and Standards (Miscellaneous Rule Revisions)
Filing number: **2016-184**
Effective date: 11/18/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Commission adopted miscellaneous rule revisions to Ch. 10, *Land use Districts and Standards*, in order to ensure that the rules are up-to-date, accurate, and as clear as possible. The revisions cover numerous general housekeeping matters, such as correcting citation and typographical errors, updating references, and clarifying certain provisions.

Basis statement:

At its meeting on September 28th, 2016, the Commission adopted miscellaneous rule revisions to Ch. 10, *Land use Districts and Standards*, in order to ensure that the rules are up-to-date, accurate, and as clear as possible. The revisions cover numerous general housekeeping matters, such as correcting citation and typographical errors, updating references, and clarifying certain provisions.

Key changes to the rules include:

- Clarification of certain provisions by adding or removing words or phrases to better communicate the intent of the rule. Clarifications include:
 - Replacing "and" with "or";
 - Removing the phrase "this section", and replacing it with the appropriate legal reference;
 - Adding simple diagrams;
 - Adding specific subdistricts to existing tables, including adding the Rural Business Development Subdistrict (D-RB) to Table 10.25,F-1 in the Noise and Lighting Standards (Section 10.25,F);
 - Adding, removing, or correcting legal references; and
 - Adding clarifying language or cross-references to certain provisions.
- Correction of references to state and federal agencies, outside documents referred to in rule, and statutes. Corrections include:
 - Specific names of state and federal agencies;
 - Standardization of various references to outside documents referred to in rule; and
 - Standardization of statutory quotes and citations.
- Updates to lake and Minor Civil Division (MCD) place names and outside documents that are referred to in rule. Updates include:
 - References to natural features, waterbodies, and MCDs to reflect changed place names;
 - References to outside documents referred to in rule to reflect the most current versions. The documents include:
 - *Corps of Engineers Wetland Delineation Manual* and the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual, North central and Northeast Region* (U.S. Army Corps of Engineers);
 - *Maine Stormwater Best Management Practices Manual, Volume II: Phosphorous Control in Lake Watersheds: A Technical Guide to Evaluating New Development* (Maine Departments of Environmental Protection);

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

- "Maine Erosion and Sediment Control Practices Field Guide for Contractors" (Maine Department of Environmental Protection);
 - "Dealing with Unnumbered A Zones in Maine Floodplain Management" (Maine Floodplain Management Program); and
 - *Coastal Construction Manual* (Federal Emergency Management Agency).
- Correction of typos and formatting. Corrections include misspelled words, punctuation, and holding section headings.

Fiscal impact of rule:

There will be no measurable fiscal impact of these rule changes.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry, **Land Use Planning Commission**
Umbrella-Unit: **01-672**
Statutory authority: 35 MRS §3453-A; 12 MRS §685-C(5)(A)
Chapter number/title: **Ch. 10**, Land Use Districts and Standards: **Appendix F**, Expedited Wind Energy Development Area (*re: nine petitions*)
Filing number: **2016-185**
Effective date: 11/18/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

The 123rd Legislature enacted *An Act to Implement Recommendations of the Governor's Task Force on Wind Power Development*, PL 2007 ch. 661 that became effective April 18, 2008. The Act established the expedited permitting area for wind energy development, encompassing all of the organized area of the State and a portion of the unorganized and deorganized areas now served by the Land Use Planning Commission (LUPC or Commission). As directed by that legislation, the Commission adopted through rule-making the description and map of the expedited permitting area located in the Commission's rules as Appendix F to Ch. 10, *Land Use Districts and Standards*.

In 2015, the legislature enacted *An Act To Improve Regulatory Consistency within the Jurisdiction of the Maine Land Use Planning Commission*, PL 2015 ch. 265, that became effective January 1, 2016. The statutory change creates a six month time window within which registered voters in a given town, township, or plantation within the Commission's jurisdiction may petition to have a place removed from the expedited area. Title 35-A §3453-A describes the mechanism by which the petition process is to take place, and provides the opportunity for any person to object to the removal of the specified place by requesting "substantive review" of the petition. Pursuant to the provisions of this section, when a valid petition is filed, the specified place automatically will be removed unless a person requests substantive review.

This rule adoption deals with nine relevant petitions. Each of the petitions complies with the requirements of Title 35-A §3453-A(1) and (5). Specifically each individual petition:

- Was received between January 1 and June 20, 2016;
- Clearly states that the persons signing the petition are requesting the removal of the specified place from the expedited permitting area;
- Is signed by at least 10% of the number of registered voters residing in the township, plantation, municipality or portion thereof that voted in the most recent gubernatorial election;
- Is on a form provided by the Maine Land Use Planning Commission; and
- Does not include any land area within:
 - the project boundary of an existing or proposed, legally permitted expedited wind energy development;
 - the project boundary of a proposed expedited wind energy development, as described in the development permit application, that has been accepted for processing by the Department of Environmental Protection; and
 - any specified place added by rule to the expedited permitting area in accordance with §3453 prior to January 1, 2016.

Fiscal impact of rule:
(No Fact Sheet included)

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry, **Land Use Planning Commission**
Umbrella-Unit: **01-672**
Statutory authority: 35 MRS §3453-A; 12 MRS §685-C(5)(A)
Chapter number/title: **Ch. 10**, Land Use Districts and Standards: **Appendix F**, Expedited Wind Energy Development Area (*re: three petitions*)
Filing number: **2016-186**
Effective date: 11/18/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

The 123rd Legislature enacted *An Act to Implement Recommendations of the Governor's Task Force on Wind Power Development*, PL 2007 ch. 661 that became effective April 18, 2008. The Act established the expedited permitting area for wind energy development, encompassing all of the organized area of the State and a portion of the unorganized and deorganized areas now served by the Land Use Planning Commission (LUPC or Commission). As directed by that legislation, the Commission adopted through rule-making the description and map of the expedited permitting area located in the Commission's rules as Appendix F to Ch. 10, *Land Use Districts and Standards*.

In 2015, the legislature enacted *An Act To Improve Regulatory Consistency within the Jurisdiction of the Maine Land Use Planning Commission*, PL 2015 ch. 265, that became effective January 1, 2016. The statutory change creates a six month time window within which registered voters in a given town, township, or plantation within the Commission's jurisdiction may petition to have a place removed from the expedited area. Title 35-A §3453-A describes the mechanism by which the petition process is to take place, and provides the opportunity for any person to object to the removal of the specified place by requesting "substantive review" of the petition. Pursuant to the provisions of this section, when a valid petition is filed, the specified place automatically will be removed unless a person requests substantive review.

This rule adoption deals with three relevant petitions. Each of the petitions complies with the requirements of Title 35-A §3453-A(1) and (5). Specifically each individual petition:

- Was received between January 1 and June 20, 2016;
- Clearly states that the persons signing the petition are requesting the removal of the specified place from the expedited permitting area;
- Is signed by at least 10% of the number of registered voters residing in the township, plantation, municipality or portion thereof that voted in the most recent gubernatorial election;
- Is on a form provided by the Maine Land Use Planning Commission; and
- Does not include any land area within:
 - the project boundary of an existing or proposed, legally permitted expedited wind energy development;
 - the project boundary of a proposed expedited wind energy development, as described in the development permit application, that has been accepted for processing by the Department of Environmental Protection; and
 - any specified place added by rule to the expedited permitting area in accordance with §3453 prior to January 1, 2016.

Fiscal impact of rule:
(No Fact Sheet included)

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Land Use Planning Commission

Umbrella-Unit: **01-672**

Statutory authority: 12 MRS §§ 685-A(7-A), 689

Chapter number/title: **Ch. 10**, Land Use Guidance Maps (Amended Zoning Maps):
Zoning Petition **ZP 265** (Wyman Twp., Franklin County) (petitioner
Maine LUPC staff) (*Supersedes 9-20-2016 filing (not accepted) and
2016-183*)

Filing number: **2016-203**

Effective date: 11/29/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

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

Basis statement:

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

ZONING PETITION

ZP 265

**PETITIONER OR
COPETITIONER**

Maine Land Use
Planning Commission
Staff

LOCATION

Wyman Twp., Franklin County

Fiscal impact of rule:

N/A

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: **Commission On Governmental Ethics and Election Practices**
Umbrella-Unit: **94-270**
Statutory authority: 1 MRS §1003(1); 21-A MRS §1126
Chapter number/title: **Ch. 1, Procedures**
Filing number: **2016-023**
Effective date: 2/16/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule amendments are necessary to conform the Commission's Rules to statutory changes in the November 3, 2015 citizen initiative.

Basis statement / summary:

This chapter describes the nature and operation of the Commission, and establishes procedures by which the Commission's actions will be governed.

Fiscal impact of rule:

The Commission anticipates that the rule amendments will not have a fiscal impact on municipalities and counties, and will not impose an economic burden on small businesses.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Commission On Governmental Ethics and Election Practices
Umbrella-Unit: 94-270
Statutory authority: 1 MRS §1003(1)
Chapter number/title: Ch. 1, Procedures
Filing number: 2016-151
Effective date: 9/20/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Commission seeks better definition of house party exception in Maine campaign finance law.

Basis statement / summary:

Factual and policy basis: Generally, if candidates for state office request that other persons pay for goods or services promoting the candidate's nomination or election, those costs constitute a contribution to the candidate. (21-A MRS §§ 1012(2)(A)(1) & 1015(5)). Each candidate must disclose contributions that he or she has received. Contributions are generally subject to a per-donor limit (e.g., for the 2016 general election, each donor may contribute money, goods and services to a legislative candidate worth no more than \$375).

The Election Law contains an exception to the definition of "contribution" for certain costs paid for by volunteers. (21-A MRS §1012(2)(B)(2)). Under this exception, individuals may pay for the costs of food, beverages or invitations in rendering voluntary personal services for candidate-related activities, as long as the volunteer's costs do not exceed \$250 per election. Because these costs are exempt, they are not contributions. The candidate does not need to report them, and the costs do not count toward the contribution limit.

Recently, an enforcement matter came before the Commission concerning a State Senate candidate in a contested primary election who encouraged a number of volunteers to pay for the printing and mailing of invitations to two house parties. The candidate was participating in the *Maine Clean Election Act* program, which limited the campaign funds available to him for purposes of the primary election.

This effort, coordinated by the candidate, resulted in a large mailing to voters in the candidate's Senate district having some resemblance to a traditional campaign mailing. After reviewing the circumstances, the Commissioners identified a need to interpret the house party exception in the Commission's Rules.

The Commission invited comments on a proposed rule amendment stating that:

- individuals could pay for the cost of food, beverages or invitations as an "incidental cost" of providing voluntary personal services to a candidate;
- the cost of food or beverages would be exempt only if they relate to personal services provided by the volunteer to the candidate. For example, if a supporter wished to pay for food at a campaign event, she would need to volunteer at the event or provide some voluntary services related to the event in advance. Writing a check to pay for the food would not, in itself, constitute a personal service provided to the candidate; and
- the costs of invitations could not be shared among volunteers, and would be exempt only if paid by a single volunteer who provided the home or premises for the event.

Fiscal impact of rule:

The Commission anticipates that the rule amendments will not have a fiscal impact on municipalities and counties, and will not impose an economic burden on small businesses.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: **Maine Commission on Indigent Legal Services**
Umbrella-Unit: **94-649**
Statutory authority: 4 MRS §1804(2)(B),(2)(G), (3)(E) *and* (4)(D); Resolve 2015 ch. 75
Chapter number/title: **Ch. 3**, Eligibility Requirements for Specialized Case Types
Filing number: **2016-091**
Effective date: 6/10/2016
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

Pursuant to 5 MRS §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 of these types of cases requires counsel with experience and specialized training in that field."

Basis statement / summary:

This rule amends the MCILS eligibility requirements to receive assignments in specialized case types by removing involuntary commitment from the list of specialized case types and adding appeal and post-conviction review to that list. The amendment also amends the list of serious violent felonies and sex offenses to add some charges and remove others. Finally, the amendment changes various eligibility and application requirements with respect to specialized case types.

Fiscal impact of rule:

No fiscal impact.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: **Maine Commission on Indigent Legal Services**
Umbrella-Unit: **94-649**
Statutory authority: 4 MRS §1804(2)(F), (3)(B),(3)(F),(4)(D); Resolve 2015 ch. 74
Chapter number/title: **Ch. 301**, Fee Schedule and Administrative Procedures for Payment of Commission Signed Counsel
Filing number: **2016-092**
Effective date: 6/10/2016
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

Pursuant to 5 MRS §1804(3)(F) the Commission is required to establish the rate of compensation for assigned counsel. This amendment raises the hourly rate paid to attorneys as directed by the Legislature to bring the hourly rate into alignment with the amount of funds appropriated by the Legislature for that purpose.

Basis statement / summary:

Prior to July 1, 2015, the MCILS fee schedule set the hourly rate paid to attorneys providing indigent legal services at \$55.00/hr. In Sec. A-41 of the biennial budget passed by the Legislature for fiscal years 2015-2016 and 2016-2017, the Legislature appropriated sufficient funds to pay lawyers \$60.00/hr. for the 2015-2016 fiscal year and for the 2016-2017 fiscal year. The Legislature also directed the Commission, in Sec. Y-1 of that budget, to amend its rules to set the hourly rate in accordance with the hourly rate set forth in the budget. On July 1, 2015, the Commission promulgated an emergency rule to set the rate at \$60/hr. This amendment will make that change permanent.

Fiscal impact of rule:

Yes. As compared to the rule in effect prior to the emergency amendment adopted on July 1, 2015, the rate increase contained in this rule-making will increase the cost of providing indigent legal services by \$1,470,790 in fiscal year 2015-2016 and by \$1,592,773 in fiscal year 2016-2017.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Corrections
Umbrella-Unit: 03-201
Statutory authority: 34-A MRS §§ 1402, 1403, 3032
Chapter number/title: Ch. 12, Policy and Procedures Manual – Juvenile:
Subsection 15.3, Resident Discipline System
Filing number: 2016-009
Effective date: 2/1/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

The Maine Department of Corrections repeals the existing rule, Ch. 12 Subsection 15.3, “Resident Discipline”, pursuant to 34-A MRSA §§ 1402, 1403, and 3032. The revisions include removing the word “punishment” and replacing that with the word “consequence”. Also, the DOC is eliminating room restriction as a punishment based on current nationally recognized practices.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Corrections
Umbrella-Unit: 03-201
Statutory authority: 34-A MRS §3035
Chapter number/title: Ch. 10, Policy and Procedures Manual – Adult:
Subsection 27.3, Community Transition Program
Filing number: 2016-016
Effective date: 2/3/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department of Corrections adopted by an emergency rule on November 12, 2015 a revision to C. 10 Subsection 27.3, “Community Transition Program”, pursuant to 34-A MRS §3035 that allowed the Commissioner to permit prisoners to participate in a special work release project for a specified period of time. This emergency rule assists employers in the State of Maine, especially seasonal employers who are having difficulties in finding employees, to have an additional pool of potential employees, while at the same time providing additional and more extensive work opportunities for prisoners to assist with community reintegration. These revisions ensure a viable work force for Maine employers who otherwise might be unable to sustain their businesses.

Also, an emergency rule on the Community Transition Program was adopted on October 21, 2015 extending the eligibility for community transition programs from one year to two years prior to a prisoner’s current release date and changing the requirement of requiring a prisoner to serve 120 days in a Department facility to 30 days. This filing adopts through the regular rule making process the provisions of the 10/21/15 and the 11/12/15 emergency rules along with other revisions.

Basis statement:

The revised rule would make changes that include: aligning the application, approval and review process for the Community Transition Program (work release, education release or public service release) with the Ch. 10 Subsection 27.4, “Furlough Pass/Furlough Leave Program”, that was recently adopted on November 9, 2015; changing the 30 day requirement in the emergency rule to refer to time served in the facility from which the prisoner is allowed to participate in the program; adopting the two year eligibility requirement; requiring sex offenders to complete sex offender treatment to be considered for the program; prohibiting domestic violence offenders and sex offenders with minor victims from participating in the program if contact with his or her victim is likely, unless granted a waiver by the Commissioner; provisions for monitoring participation; and including an appeal process.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Corrections
Umbrella-Unit: 03-201
Statutory authority: 34-A MRS §§ 1402, 1403, 3032
Chapter number/title: Ch. 10, Policy and Procedures Manual – Adult:
Subsection 20.1, Prisoner Discipline
Filing number: 2016-026
Effective date: 2/29/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

The Maine Department of Corrections has adopted a new rule to repeal and replace the existing rule governing Prisoner Discipline pursuant to 34-A MRS §3032. The adopted rule seeks to clarify the discipline process; eliminate some violations; add clarifying language to existing violations; add new violations; incorporate an option for the suspension of dispositions based on a contract for positive behavior; allow other supervisory security staff to be involved in the disciplinary process for efficiency of operations; address emerging issues such as social networking; and other, minor changes.

It is anticipated that disciplinary hearing process will flow more efficiently because of the changes in the new rule that adds other supervisory security staff that can be involved in the disciplinary process; stipulates an earlier timeframe for the prisoner to notify staff of witnesses that he or she would like to call; states that only arguments raised during the hearing can be appealed are some of the major revisions. It is also anticipated that the clarifications to some of the violations will assist staff and prisoners in better understanding prohibited behavior. Some violations were eliminated and some were added to address changing issues in the Department.

Fiscal impact of rule:
None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Corrections
Umbrella-Unit: 03-201
Statutory authority: 34-A MRS §3039
Chapter number/title: **Ch. 10**, Policy and Procedure Manual – Adult; and **Ch. 12**, Policy and Procedure Manual – Juvenile: Subsection 2.12 (*from both Chapters*), Prisoner and Resident Accounts, *are being combined, amended and relocated to Ch. 11 (New)*, Policy and Procedure Manual – Adult and Juvenile
Filing number: 2016-169
Effective date: 10/12/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Maine Department of Corrections is repealing the existing rule, Ch. 10 and 12 Subsection 2.12, “Prisoner and Resident Accounts”, and replacing them with new Ch. 11 Subsection 2.12, “Prisoner and Resident Accounts”. The reason this rule is being replaced is to align the rule with federal statutes requiring a person to open a bank account in person and not allowing funds from Veterans Administration benefit checks to be used toward non-elective withdrawals. Other changes include stipulating the amount of time check(s) must be held prior to posting the check(s) to a prisoner’s or resident’s account; clarifying the disposition of a prisoner’s or resident’s account when he or she is released, transferred or dies; incorporating Department Policy 25.4, “Prisoner Savings Plan” into Policy 2.12, “Prisoner and Resident Accounts”, and other updates to reflect generally accepted accounting principles.

Basis statement:

Revisions make this rule consistent with federal statutes that do not allow a person to open a bank account for another person and limit what Veterans Administration benefit checks may be used for as obligations. Other changes include stipulating the amount of time check(s) must be held prior to posting the check(s) to a prisoner’s or resident’s account; clarifying the disposition of a prisoner’s or resident’s account when he or she is released, transferred or dies; incorporating Department Policy 25.4, “Prisoner Savings Plan” into Policy 2.12, “Prisoner and Resident Accounts”, and other updates to reflect generally accepted accounting principles.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Corrections
Umbrella-Unit: 03-201
Statutory authority: 34-A MRS §§ 3101, 3102, 3103, 3104
Chapter number/title: Ch. 11, Policy and Procedure Manual – Adult and Juvenile:
Subsection 18.19.1 (*New*), Use of Mechanical Restraints
on a Pregnant Prisoner or Pregnant Resident
Filing number: 2016-170
Effective date: 10/12/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

The Maine Department of Corrections is adopting a new rule, Ch. 11 Subsection 18.19.1, “Use of Mechanical Restraints on a Pregnant Prisoner or Pregnant Resident”.

This rule is being adopted because the Maine State Legislature passed a law, Title 34-A MRS Sections 3101, 3102, 3103 and 3104, that requires that the Maine Department of Corrections to adopt a rule restricting the use of mechanical restraints on a pregnant prisoner or juvenile who are in the custody of the Maine Department of Corrections and restricts an officer from being in the hospital room when women are giving birth unless there are extraordinary circumstances, and requires that female prisoners and residents be told about the law.

Fiscal impact of rule:
None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Economic and Community Development, **Office of Community Development (OCD)**
Umbrella-Unit: **19-498**
Statutory authority: 5 MRS §13058 sub-§3
Chapter number/title: **Ch. 45** (*New*), Community Development Block Grant Program: 2017 Final Program Statement
Filing number: **2016-199**
Effective date: 11/26/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule will allow the DECD to allocate federal CDBG funds in accordance with the U.S. Department of Housing and Community Development regulations. It describes the design and method of distribution of the funds for the State of Maine Community Development Block Grant Program.

Basis statement / summary:

The Program Statement for the 2017 State of Maine Community Development Block Grant Program includes rules and regulations for administering the State of Maine Community Development Block Grant Program's 2017 funding allocation. The Community Development Block Grant Program is administered pursuant to 5 MRS §13073.

The federal Department of Housing and Urban Development (HUD), on a yearly basis, makes an allocation of funds available to the State of Maine Community Development Block Grant Program. This final rule will enable adjustments in program definition, information and eligibility requirements on a regular and timely basis, provide the forum for regular and timely input about program operation and effectiveness from the public and from local governments, and allows the Office of Community Development the yearly opportunity to incorporate changes within the program that will improve and refine administration of the Maine CDBG Program.

The Community Development Block Grant Program is federally administered by the U.S. Department of Housing and Urban Development through Title I of the *Housing and Community Development Act of 1974*, as amended. The primary objective of the programs authorized under Title I of the *Housing and Community Development Act of 1974*, as amended, is described in section 101(c) of the Act (42 U.S.C. 5301(c). [53 Fr 34437, September 6, 1988, as amended at 56 FR 56126, October 31, 1991; 61 Fr 11475, March 20, 1996]

The primary objective of Title I of the *Housing and Community Development Act of 1974*, as amended, and of the community development program of each grantee under the Title is the development of viable communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income.

In promulgating this Program Statement, the Office of Community Development was careful to adhere to the primary objective of the Act and to minimize potential costs to society wherever possible. To that end, the Office of Community Development will offer grant programs in an attempt to benefit Maine communities and low and moderate citizens in achieving their community and economic development objectives. Overall, the Office of Community Development believes that the regulatory approach taken in this Program Statement involves the least net cost to society and the greatest positive impact on low and moderate-income persons in the State of Maine. The Program Statement complies with federal and state statutes that mandate and describe program objectives maximizing net benefit to society and low and moderate-income persons.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Fiscal impact of rule:

The Maine CDBG Program receives an annual allocation of federal funds from the U.S. Department of Housing and Urban Development. The State of Maine has recently received annual allocations in the range of \$10,400,000 to \$15,000,000. The DECD match for these funds for 2017 is \$272,811

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Education
Umbrella-Unit: 05-071
Statutory authority: 20-A MRS §§ 254(5)(A-C), 6305(1-9); PL 2013 ch. 526
Chapter number/title: Ch. 40, Rule for Medication Administration in Maine Schools
Filing number: 2016-061
Effective date: 5/11/2016
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

Revisions to address the guidelines and emergency administration of epinephrine autoinjectors pursuant to state statute 20-A MRSA §6305(1-9).

Basis statement / summary:

This rule provides directions to public and private schools approved pursuant to 20-A MRSA §2902 in the administration of medication to students during the students' attendance in school programs. It is to assist school administrative units in implementing the provision of the medication statute [20-MRSA §254(5 (A-C))] that provides direction for training of unlicensed school personnel in the administration of medication, and requires that students be allowed to carry and self-administer prescribed emergency medications; specifically, asthma inhalers or epinephrine auto-injectors with health care provider approval and school nurse assessment demonstrating competency.

Fiscal impact of rule:

N/A

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Education
Umbrella-Unit: 05-071
Statutory authority: None
Chapter number/title: Ch. 23 (*Repeal*), Collection of Staff Information
Filing number: 2016-171
Effective date: 10/18/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement / summary:

The Department of repealing the original regulation of 1979. There is no legal basis for this regulation.

Fiscal impact of rule:
N/A

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Education
Umbrella-Unit: 05-071
Statutory authority: 20-A MRS §6304
Chapter number/title: Ch. 41 (New), Offering Instruction Related to Cardiopulmonary Resuscitation, and the Use of an Automated Defibrillator in Maine Public Schools
Filing number: 2016-172
Effective date: 10/18/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement / summary:

This rule requires public schools to offer training to students on how to perform cardiopulmonary resuscitation and use automated external defibrillators. The rules must be designed to ensure that the training requirements can be met without public schools being required to expand or modify its activity so as to necessitate additional expenditures from local revenues.

Fiscal impact of rule:
None

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Education
Umbrella-Unit: 05-071
Statutory authority: 20-A MRS §8602
Chapter number/title: Ch. 221, Adult Education Administrative Costs Reimbursement
Filing number: 2016-211
Effective date: 12/11/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement / summary:

To update the rule to make accurate statutory references and several minor clarifications as follows:

1. **Definitions**

A. **Administrative salaries**

- Change proposed to align rule with definition of adult education adopted in statute (p.245)
- Replace GED with high school equivalency to align with statute language due to GED no longer being the sole vendor of high school equivalency assessments

B. **Supervisory salaries**

- Change proposed to align rule with definition of adult education adopted in statute
- Counselors deleted because they have a different reimbursement rate and noted specifically in 8607-A. 10 (p.249)

C. **Clerical salaries**

- Change proposed to align rule with definition of adult education adopted in statute

G. Replace GED with high school equivalency to align with statute language due to GED no longer being the sole vendor of high school equivalency assessments

Fiscal impact of rule:

N/A

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Education
Umbrella-Unit: 05-071
Statutory authority: 20-A MRS §8602
Chapter number/title: Ch. 229, Adult Education Fees
Filing number: 2016-212
Effective date: 12/11/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement / summary:

To update the regulation with several minor clarifications as follows:

1. **Registration fees**
 - A.1. Language change to reflect term used in the federal law
 - A.2. Separate courses are no longer offered specifically for students with disabilities.
 - B.1. College transition program was not offered at time of rule origination
2. **Lab and Materials Fees** –Simple language clarification and removal of “courses for students with disabilities” phrase since they are no longer offered.

Fiscal impact of rule:

None

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Education
Umbrella-Unit: 05-071
Statutory authority: 20-A MRS §§ 6352-6358
Chapter number/title: **Ch. 126**, Immunization Requirements for School Children (*jointly with the Department of Health and Human Services, Ch. 261*)
Filing number: 2016-227
Effective date: 12/21/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These changes include adding a Tdap vaccine to the required school entry for children entering 7th grade, to protect Maine students. Maine is one of only three remaining states yet to implement this requirement. The update to the number of Varicella exclusion days align with recommendations issued by the U.S. Centers for Disease Control and Prevention. These changes also remove outdated implementation language and more clearly reflect the DHHS Office names and structure, to reduce confusion in following the rules.

Basis statement / summary:

These joint rules are established to ensure a safe and healthful school environment for all Maine students by requiring all children attending public or private schools in the State of Maine receive the required vaccines recommended by the federal Centers for Disease Control (CDC) and the Advisory Committee on Immunization Practices (ACIP). These rules prescribe the dosage for required immunization and refine record-keeping and reporting requirements for school officials.

In recent years, new vaccines against pertussis have been introduced to the routine immunization schedule for children and adolescents, recommended for youths aged 11 to 12 years, with a catch-up vaccination for older adolescents. Pertussis is a highly contagious infection often causing school or community outbreaks. Among healthy adolescents, pertussis is usually a self-limited illness characterized by a prolonged cough. However, secondary complications can occur, and adolescents serve as an important reservoir for transmission to infants, for whom infection can lead to pneumonia, respiratory failure, apnea, and even death. The tetanus toxoid, reduced diphtheria toxoid, and acellular pertussis vaccine (Tdap) has been shown to be 92% effective in preventing culture-confirmed pertussis. Maine is one of only five states in the nation without a current Tdap school requirement.

Changes to the rules include updating the vaccine dosage requirement to include 1 dose of Tdap vaccine for 7th grade entry. This will align with the CDC and ACIP current recommendations. Additionally, the required number of exclusion dates for varicella disease will change from 16 days to 21 days to reflect the current CDC school exclusion guidelines, an oversight from the previous substantive change to this rule. Outdated implementation requirements for the varicella vaccination have also been removed. A number of non-substantive changes to the rule have also been made, including: (1) inserting a cover page, table of contents, and pagination; (2) updating department names to reflect current DHHS department names; and (3) and making minor formatting changes to align the DOE and DHHS rules.

As this is a joint rule adoption, both DHHS and DOE have concurrently updated their chaptered rules to reflect the above changes.

Fiscal impact of rule:

None

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 585, 585-A
Chapter number/title: Ch. 106, Low Sulfur Fuel Regulation
Filing number: 2016-002
Effective date: 1/12/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department implements P.L. 2015 c. 66.

Basis statement:

The amendments to the Department's 06-096 CMR 106 rule reflect statutory changes enacted by the 127th session of the Maine Legislature. P.L. 2015 c. 66 revised 38 MRS §603-A to prohibit the importation, distribution and offering for sale of noncompliant fuels. In addition, the timeline for the Maine's transition to lower sulfur fuels was also amended pursuant to statute.

Fiscal impact of rule:

The Department does not expect these amendments to result in any fiscal impacts.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 5 MRS §§ 8001-11008; 38 MRS §§ 1610(10), 341-H
Chapter number/title: Ch. 415, Reasonable Costs for Handling and Recycling of Electronic Wastes
Filing number: 2016-030
Effective date: 3/7/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

The Department is proposing to amend Ch. 415 to:

1. Make the Department's rule consistent with Maine's *Electronic Waste Law*, 38 MRS §1610, which has been amended since the last time the Department undertook rule-making (e.g., the term "covered entity" is defined and integrated into the rule);
2. Update and clarify certain definitions, clarify various terms and expectations (codifying the Department's implementation of the chapter), and remove unnecessary language;
3. Reorganize and clarify various sections of the rule;
4. Ensure the Department may request records and reports from consolidators — anytime not only when there is a "significant change" — to determine compliance with Maine's *Electronic Waste Law* and Ch. 415; and
5. Clarify that the Department may request records identifying all downstream handlers of electronics, electronic components, and hazardous waste and also to request shipping records of those materials.

Fiscal impact of rule:

No significant fiscal impact is anticipated.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 561 *et seq.*, 341-H, 568-A(3), 341-D(1-B), 546(4)
Chapter number/title: **Ch. 600**, Oil Discharge Prevention and Pollution Control Rules for Marine Oil Terminals, Transportation Pipelines and Vessels
Ch. 685, Payment and Reimbursement of Oil Transfer Fees
Ch. 686, Standards for Assessing Ability to Pay Deductibles under the State Insurance Program for Oil Storage Tanks
Ch. 691, Rules for Underground Oil Storage Facilities
Filing number: 2016-053 *thru* 056
Effective date: 4/3/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of these amendments is to align the Department's rules with changes in the underlying statutes made by the Legislature in PL 2015 c. 319.

Basis statement:

The amendments to these chapters were made to align the Department's rules with changes in the underlying statutes made by the 127th Legislature in PL 2015 c. 319. As a result of this legislation these amendments reflect:

- The combination of the Maine Coastal and Inland Surface Oil Clean-up Fund and the Ground Water Oil Clean-up Fund to create the Maine Ground and Surface Waters Clean-up and Response Fund;
- The combination of the Fund Insurance Review Board and the Oil Spill Advisory Committee to create the Clean-up and Response Fund Review Board;
- Clarification of certain definitions;
- Changes in statutory citation;
- A change in the fund threshold from \$5 million to \$6 million when the Clean-up and Response Fund Review Board may increase oil transfer fees;
- Clarification of when fees are refunded for exported oil products; and
- Various minor stylistic and formatting revisions.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 341-D(1-B), 343, 485-A(1-C)
Chapter number/title: **Ch. 373**, Financial and Technical Capacity Standards for the *Site Location of Development Act*
Filing number: 2016-076
Effective date: 6/2/2016
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

The Department adopts a suite of three rule-makings to update and incorporate new provisions in its *Site Location of Development Law* (Site Law) permitting program. The Site Law (38 MRS §481 *et seq.*) requires review of developments that may have a substantial effect upon the environment. These types of development have been identified by the Legislature, and include developments such as projects occupying more than 20 acres, large structures and subdivisions, and oil terminal facilities. A permit is issued if the project meets applicable standards addressing areas such as stormwater management, groundwater protection, infrastructure, wildlife and fisheries, noise, and unusual natural areas.

The Department is proposing the following rulemakings:

Chapter 373. Ch. 373 establishes “financial capacity” and “technical ability” standards for projects under the *Site Location of Development Law*. The Department is updating the requirements for financial capacity and technical ability to reflect changes in nomenclature and Department practices since the rule was adopted in 1979, remove surplus language, provide greater clarity as to how an applicant may satisfy the requirements of this chapter, and provide examples of common terms and conditions applied to Site Location Law permits issued by the Department. The Department is also reallocating sections currently in Ch. 373 addressing environmental matters (e.g., adequate provision for solid waste disposal) from the existing Ch. 373 to Ch. 375, which deals with environmental standards under *Site Location Law*.

Chapter 375. Ch. 375 establishes the Department’s scope of review in determining an applicant’s compliance with the “no adverse effect on the natural environment” standard of the Site Law (38 MRS §484(3)); the information an applicant must submit (when appropriate), and the terms and conditions the Department may impose on the approval of an application to ensure compliance with the standard. As part of its Site Law rule-making effort, the Department is amending its Ch. 375 rules to incorporate updated requirements that are currently contained within Ch. 373. These standards, which address solid waste, the control of odors and the procurement and maintenance of sufficient and healthful water supplies are more appropriately contained within Ch. 375, since they address environmental impacts.

Chapter 380. Ch. 380 would repeal and replace the existing Ch. 380, *Planning Permit* rule, with a new rule describing requirements associated with long-term construction projects permitted under the *Site Location of Development Law*. The adoption also provides a process for a development issued a planning permit under the

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

original Ch. 380 *Planning Permit* rule to receive approval under the new Ch. 380, *Long-Term Construction Projects under the Site Location of Development Act*.

Basis statement:

The Department is amending Ch. 373 to update the requirements for financial capacity and technical ability to reflect changes in nomenclature and Department practices since the rule was adopted in 1979. The amendments remove surplus language, provide greater clarity as to how an applicant may satisfy the requirements of the *Site Location of Development Act* (“Site Law”), and provide examples of common terms and conditions applied to Site Law permits issued by the Department.

The final adoption of the amendments to this major substantive rule was authorized by Resolve 2015 ch. 62.

Fiscal impact of rule:

The amendments to the Ch. 373 (*Financial Capacity...*) rules may have an indeterminate, but potentially minor negative fiscal impact on the regulated community as they must demonstrate they have the financial capacity to design, construct, operate, and maintain the development in a manner consistent with state environmental standards and the provisions of the Site Law. While this will not increase the cost of the project, the requirement of the demonstration of that fiscal capacity may be perceived as an increased burden.

The amendments to Ch. 375 (*No Adverse Environmental Effect...*) are not expected to have a fiscal impact.

The Ch. 380 (*Long-Term Construction Projects...*) rules are expected to provide a significant cost-savings for some applicants, as owners and operators of phased-in projects may avoid the need for frequent permit amendments and project delays.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 341-D(1-B), 343, 485-A(1-C)
Chapter number/title: **Ch. 375**, No Adverse Environmental Effects Standards of the *Site Location of Development Act*
Filing number: **2016-077**
Effective date: 6/2/2016
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

(See 2016-076 (Ch. 373) above)

Basis statement:

The Department is amending Ch. 375 to incorporate updated requirements that are currently contained within Ch. 373. These standards, which address solid waste, the control of odors and the procurement and maintenance of sufficient and healthful water supplies are more appropriately contained within Ch. 375, since they address environmental impacts. In addition to the relocation of the three provisions, some clarifications and minor updates are adopted.

The final adoption of the amendments to this major substantive rule was authorized by Resolve 2015 ch. 63.

Fiscal impact of rule:

(See 2016-076 (Ch. 373) above)

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 341-D(1-B), 343, 485-A(1-C)
Chapter number/title: **Ch. 380**, Long-Term Construction Projects under the *Site Location of Development Act*
Filing number: **2016-078**
Effective date: 6/2/2016
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

(See 2016-076 (Ch. 373) above)

Basis statement:

The Department is repealing and replacing the existing Ch. 380, *Planning Permit* rule, with a new rule describing the requirements associated with long-term construction projects permitted under the *Site Location of Development Act* ("Site Law").

The new rule also provides a process for a development issued a planning permit under the original Ch. 380, *Planning Permit* rule, to receive approval under the new Ch. 380, *Long-Term Construction Projects* rule.

The Department made other non-substantive changes after consultation with the Maine Office of Attorney General.

The final adoption of the amendments to this major substantive rule was authorized by Resolve 2015 ch. 64.

Fiscal impact of rule:

(See 2016-076 (Ch. 373) above)

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §585-A
Chapter number/title: Ch. 100, Definitions Regulation
Filing number: 2016-093
Effective date: 5/22/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

On February 14, 2013, the Department submitted amendments to the Ch. 100 Definitions rule into Maine's State Implementation Plan (SIP) as part of its efforts to implement federal new source review (NSR) requirements for the PM 2.5 National Ambient Air Quality Standards and greenhouse gas emissions. The amendments to Ch. 100 included revisions and/or additions to a number of definitions.

During their review, the U.S. Environmental Protection Agency identified two additional changes that will be necessary for approval of this SIP submittal. The Department is now amending Ch. 100 to incorporate these changes.

Basis statement:

Ch. 100 is being amended to correct definitions required for implementation of the federal new source review (NSR) requirements for the PM 2.5 and ozone National Ambient Air Quality Standards.

Fiscal impact of rule:

No fiscal impact is anticipated.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §420-D(11)
Chapter number/title: Ch. 501, Stormwater Management Compensation Fees and Mitigation Credit
Filing number: 2016-094
Effective date: 5/22/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department is amending Ch. 501 to better allocate mitigation credits among the various classes of mitigation activities, based on the type of development and stormwater control. Table 2 of Ch. 501 indicates the on-site or off-site mitigation credit earned by a mitigation project in the direct watershed of an urban impaired stream for a variety mitigation activities.

The Department is revising Table 2 to more accurately reflect the effectiveness of different mitigation activities on each of the following sites: 1) Road or high use parking lots; 2) Medium use parking lots; 3) Other parking lots; 4) Roof or impervious areas; and 5) Landscaped areas.

Basis statement:

The amendments to the Department's Ch. 501, *Stormwater Management Compensation Fees and Mitigation Credit* rule, revise the on-site or off-site mitigation credit earned by a mitigation project in the direct watershed of an urban impaired stream to more accurately reflect the effectiveness of different mitigation activities on each of the following sites: 1) Road or high use parking lots; 2) Medium use parking lots; 3) Other parking lots; 4) Roof or impervious areas; and 5) Landscaped areas.

Fiscal impact of rule:

No fiscal impact is anticipated.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 1291 *et seq.*
Chapter number/title: Ch. 424, Lead Management Regulations
Filing number: 2016-160
Effective date: 10/3/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department is adopting minor revisions to Ch. 424, *Lead Management Regulations*, to harmonize this rule with EPA/HUD requirements for lead abatement professionals and update and clarify practices for lead professionals providing lead-related services to Maine citizens. For example, the definition of “sampling technician” required revision to be consistent with the recently enacted federal rules relating to lead-based paint activities in residential and child-occupied facilities requiring that “sampling technicians” have 8 hours of training rather than 6 hours, while the definition of “paint condition” has been updated to incorporate the most recent HUD nomenclature. There are also additional changes proposed to further simplify and clarify the rule. An Appendix pertaining to the Lead Inspection protocol has been added to the regulation, thereby removing the incorporation by reference of the “HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing”, 1997 Revision. Potential cost saving measures have been added to the proposed revisions, such as revising the Training Provider licensure requirements to allow for on-line “Train the Trainer” programs for entities seeking licensure as new Training Providers. Similarly, an option to allow for the use of “EPA recognized test kits” during lead determination inspections and optional water sampling had been added to the proposal. Other revisions include updating and reorganizing abatement work practices and inspection protocol.

Basis statement:

Routine and technical revisions to 06-096 CMR Ch. 424, *Lead Management Regulations*, were made to update and clarify practices for lead professionals providing lead-related services to Maine citizens; the rule has not been revised since 2004. These include:

- Updating definitions for harmonization with EPA/HUD requirements;
- Reorganizing application requirements for lead professionals into initial and renewal application requirements;
- Updating and reorganizing abatement work practices;
- Revising and updating Inspection and Risk Assessment protocols including optional paint characterization during lead inspections;
- Updating Training Provider licensure requirements to allow for on-line “Train the Trainer” programs for entities seeking licensure as new Training Providers;
- Adding a new Appendix on Inspection protocol and removing incorporation by reference of HUD’s Chapter 7 Inspection;
- Revisions to simplify and clarify the rule; and
- Various minor stylistic and formatting revisions.

Fiscal impact of rule:

Overall it is not expected that the proposal will increase the cost of lead-based paint activities. The revisions may reduce the cost of lead determinations (i.e., limited lead inspections) by providing lead inspectors with the option of using EPA recognized lead check kits rather than having to use the more costly XRF device and will reduce costs for entities seeking licensure as Training Providers by allowing for the use of on-line “Train the Trainer” programs, rather than requiring attendance in a traditional classroom environment.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §585-A
Chapter number/title: Ch. 100, Definitions Regulation
Filing number: 2016-201
Effective date: 11/27/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department is updating Ch. 100, *Definitions Regulation*, to add a number of compounds that were previously exempted from the definition of “volatile organic compound” by EPA. Instead of listing all exempt compounds, the Department incorporates the federal exemptions by reference. As part of this rule-making, we are also deleting the definition for “negligibly photochemically reactive”, since it is no longer needed.

Basis statement:

The amendments to 06-096 CMR ch. 100, *Definitions Regulation*, were adopted to make the Department’s list of compounds excluded from the definition of volatile organic compounds due to a determination of negligible photochemical reactivity consistent with the U.S. EPA’s list by incorporating the relevant portions of the *Code of Federal Regulations* (CFR) and repealing an unnecessary definition.

The Department also made minor non-substantive changes to the rule.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Environmental Protection, **Board of Underground Storage Tank Installers**
Umbrella-Unit: **06-481**
Statutory authority: 38 MRS §10004
Chapter number/title: **Ch. 1**, Administrative Rules
Filing number: **2016-025**
Effective date: 2/21/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The amendments reflect a change to the name of the fund that fees are paid into, and changes the statutory citation to the fund; both changes are as a result of PL 2015 c. 319.

Basis statement:

The amendments to the Board's Ch. 1 rule reflect statutory changes enacted by the 127th session of the Maine Legislature. PL 2015 ch. 319, changed the name of the fund that fees are paid into, and changed the statutory citation to the fund.

Fiscal impact of rule:

The rule-making conforms the rules with statutory changes already in effect; therefore no financial impact is expected as a result of the rule-making.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Finance Authority of Maine
Umbrella-Unit: 94-457
Statutory authority: 20-A MRS §12305
Chapter number/title: Ch. 612, Maine Dental Education Loan and Loan Repayment Programs
Filing number: 2016-018
Effective date: 2/7/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule amendment makes changes to the loan repayment program by requiring that payments be made directly to the holders of the loans and clarifying the timing of such payments. The rule amendment also makes changes to the loans to dental students program primarily by (a) modifying the application requirements; (b) providing for partial loan forgiveness in the event of eligible but part-time employment of at least 20 hours per week; and (c) changing the interest rates for first loans made after January 1, 2016, and renewals of those loans.

Basis statement / summary:

This rule establishes the criteria to be met by students to obtain a loan to pursue dental education or by dentists to enter into an agreement with the Authority for the repayment of their dental education loans.

Fiscal impact of rule:

The amendment will not impose any costs on municipalities or counties.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Finance Authority of Maine
Umbrella-Unit: 94-457
Statutory authority: 10 MRS §969-A(14); 20-A MRS §11617(2); *Protecting Americans from Tax Hikes (PATH) Act of 2015* (PL 114-113, 12/18/2015)
Chapter number/title: Ch. 611, Maine College Savings Program, *Amendment 15*
Filing number: 2016-100
Effective date: 6/5/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To conform the rule to recent changes to federal law affecting Section 529 qualified tuition programs and to make a minor modification to the maximum contribution limit formula.

Basis statement / summary:

The rule amendments conform the rule to provisions of the *Protecting Americans from Tax Hikes (PATH) Act of 2015* affecting Section 529 qualified tuition programs, and also make a minor modification to the maximum contribution limit formula.

Fiscal impact of rule:

The amendment will not impose any costs on municipalities or counties.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 42(8), 3173; PL 2015 Ch. 267 Part A

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 96**, Private Duty Nursing and Personal Care Services

Filing number: **2016-006**

Effective date: 1/25/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The purpose of the rule is to increase the reimbursement rates for Personal Support Services (PSS) provided under the *MaineCare Benefits Manual*, Ch. II and III, Section 96, “Private Duty Nursing and Personal Care Services”. This rate increase, retroactive to July 1, 2015, accords with the State’s biennial budget. PL 2015 ch. 267 Part A. To avoid a reduction in services available to members as a result of the increase in PSS reimbursement rates, the Department adopts a proportional increase in the monthly cost caps for each affected member’s level of care.

Basis statement:

The Department of Health and Human Services (the “Department”) adopts this rule to increase reimbursement rates for personal support services.

Pursuant to the State’s biennial budget, the Department is increasing the reimbursement rate for providers of personal support services. On June 30, 2015, the Maine State Legislature enacted the budget, Public Law 2015, Ch. 267. Specifically, Part A, Section A-32, “Medical Care – Payments to Providers 0147,” which provides funding to increase the rates for personal support services beginning July 1, 2015.

Services reimbursed by *MaineCare Benefits Manual*, Section 96, “Private Duty Nursing and Personal Care Services” must be delivered in accordance with an authorized plan of care that meets medical necessity criteria and is reimbursable within a pre-determined monthly cost cap. The monthly cap is based on the members’ eligibility category. To avoid a reduction in services available to members as a result of the increase in reimbursement rates for personal support services, the Department is adopting a proportional increase in the applicable monthly cost caps set forth in Ch. II Section 96, Appendix #2.

The Department submitted a state plan amendment for this change to the Centers for Medicare and Medicaid Services with a proposed effective date of July 1, 2015.

Fiscal impact of rule:

The Department expects that this routine rule-making, in conjunction with the emergency rule-making for Ch. II and III, Section 96, will cost the Department \$1,112,552 in SFY 2016, including \$417,513 in State dollars and \$1,118,512 in SFY 2017, including \$417,540 in State dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 42(8), 3173, PL 2015 ch. 267, 702 – LD 1019
Parts A, UUUU

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 2**,
Adult Family Care Services

Filing number: **2016-017**

Effective date: retroactive to 7/1/2015

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The purpose of this rule is to increase the reimbursement rates by 4% for Adult Family Care Services at residential care facilities provided under the *MaineCare Benefits Manual*, Ch. III Section 2. This rate increase, retroactive to July 1, 2015, accords with the State’s biennial budget, PL 2015 ch. 267 Parts A and UUUU.

Basis statement:

The Department of Health and Human Services adopts this rule to increase reimbursement rates by 4% for Adult Family Care Services at residential care facilities.

In conjunction with the development of the State’s biennial budget, the Department proposed to increase the reimbursement rate for providers of Adult Family Care Services at residential care facilities. The Maine State Legislature approved this rate increase when it enacted the budget, PL 2015 ch. 267 (702 – LD 1019). Specifically, Part A, Section A-32, “Medical Care – Payments to Providers 0147” provides funding to increase the reimbursement rates by 3% beginning July 1, 2015. Part UUUU, Section UUUU-1, “Medical Care – Payments to Providers 0147” provides additional funding to increase that rate from 3% to 4%.

Given that the budget approved the rate increase as of July 1, 2015, the Department’s adoption of this rule makes the rate increases retroactively effective to July 1, 2015. The Department has authority for the retroactive effective date under 22 MRS §42(8) because these changes increase reimbursement for providers, ensure that members have access to medically necessary covered services, and otherwise have no adverse impact on either MaineCare providers or members.

Fiscal impact of rule:

The Department expects that this rule-making, in conjunction with an emergency rule adoption to implement the rule immediately, will cost the Department approximately \$82,987 in SFY 2016.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173; PL 2015 Parts A & UU; LD 87
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 67**, Principles of Reimbursement for Nursing Facilities
Filing number: **2016-024**
Effective date: 2/15/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule change implements the following:

1. Increase the final prospective rate from 95.12 percent to 97.44 percent;
2. Include the cost of continuing education for direct care staff as a direct care cost component rather than a routine cost component.

These changes are being done in order to comply with PL 2015 ch. 267, Part A, and LD 87, *An Act To Implement the Recommendations of the Commission to Continue the Study of Long-term Care Facilities*. If the Centers for Medicare and Medicaid Services (CMS) approves, the final prospective rate increase will be effective retroactive to July 1, 2015.

Basis statement:

The Department of Health and Human Services (“Department”) adopts this rule to effectuate the following changes:

- (1) Increase the final prospective per diem rate to be paid to each facility by increasing the reimbursement calculation, excluding fixed costs, from 95.12 percent to 97.44 percent of all of the calculated direct care cost components and all of the routine cost components; and
- (2) Include the cost of continuing education for direct care staff as a direct care cost component rather than a routine cost component.

The Department is adopting these changes pursuant to the State’s biennial budget, Public Law 2015 ch. 267 Part A, and Resolves 2015 ch. 34, *Resolve, To Implement the Recommendations of the Commission to Continue the Study of Long-term Care Facilities*. Inadequate resources have made it challenging, particularly for small rural facilities, to stay in business and continue to provide essential long-term services to their communities. Further, the adoption of this rule-making is necessary to ensure funding to nursing facilities in rural and underserved areas in the state.

The Department is seeking approval from the Centers for Medicare and Medicaid Services (CMS) for a State Plan Amendment for these changes. If CMS approves, the final prospective rate increase and the cost of continuing education for direct care staff as a direct care cost component will be effective retroactive to July 1, 2015.

The Department is authorized to adopt these changes retroactively under 22 MRS §42(8) because these changes increase reimbursement for providers, ensure that members have access to medically necessary covered services, and otherwise have no adverse impact on either MaineCare providers or members.

Fiscal impact of rule:

For Fiscal Year 2016, there will be a General Fund cost of \$9,522,360 and federal expenditures of \$15,850,303. For Fiscal Year 2017, there will be a General Fund cost of \$9,532,078 and federal expenditures of \$16,002,554.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRSA §§ 42(8), 3173; Resolves 2015 ch. 45; PL 2015 ch. 267 Parts A (Section A-32), UU

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 97**, Private Non-Medical Institution Services

Filing number: **2016-038**

Effective date: 3/8/2016

Type of rule: Major Substantive

Emergency rule: Yes

Principal reason or purpose for rule:

These changes are being done in order to comply with:

- 1) Resolves 2015, ch. 45 *Resolve, To Require the Department of Health and Human Services to Provide Supplemental Reimbursement to Residential Care Facilities in Remote Island Locations.*
- 2) In addition, this rule-making increases the Private Non-Medical Institutions' (PNMI) assisted living reimbursement rate for Appendix C and F PNMIs by four (4) percent pursuant to PL 2015 ch. 267 Parts A (Section A-32) & UU.

The Department shall seek approval from the federal Centers for Medicare and Medicaid Services (CMS) for a State Plan Amendment. Pursuant to 22 MRSA §42(8), if CMS approves, the supplemental payment for PNMI C facilities that satisfy the definition of "remote island facility" will be effective retroactive to October 1, 2015. A Reimbursement Methodology Notice was published on September 30, 2015.

The increase for Appendix C and F PNMIs' assisted living reimbursement to four (4) percent will be effective retroactive to July 1, 2015. A Reimbursement Methodology Notice was published on August 7, 2015.

This emergency major substantive rule will remain in effect for up to one year or earlier if the Legislature approves the provisionally adopted major substantive rule.

Basis statement:

The Department of Health and Human Services (the "Department") adopts this emergency major substantive rule to increase reimbursement for Appendix C, Private Non-Medical Institutions (PNMI) located in remote island locations and to increase Appendix C and F PNMIs' assisted living reimbursement rate by four (4) percent.

Pursuant to Resolves 2015, ch. 45, *Resolve, To Require the Department of Health and Human Services to Provide Supplemental Reimbursement to Residential Care Facilities in Remote Island Locations*, eligible Appendix C PNMIs will receive supplemental payment representing a fifteen (15) percent rate increase from their MaineCare reimbursement rate effective retroactive to October 1, 2015. This increase will apply only to facilities located on an island not connected to the mainland by a bridge.

In addition, pursuant to PL 2015 ch. 267 Parts A (Section A-32) & UU, this rule-making seeks to increase Appendix C and F PNMIs' assisted living reimbursement rate by four (4) percent, effective retroactive to July 1, 2015.

The Department shall seek approval from the federal Centers for Medicare and Medicaid Services (CMS) for a State Plan Amendment for these changes. If CMS approves, the fifteen (15) percent supplemental payments to Appendix C remote island facilities will be effective retroactive to October 1, 2015. The Department published a notice of change of reimbursement methodology, pursuant to 42 CFR §447.205, on September 30, 2015.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Appendix C and F PNMI's assisted living reimbursement rate increase of four (4) percent will be effective retroactive to July 1, 2015. The Department published a change in reimbursement methodology on August 7, 2015.

To implement the rate increase for PNMI's, the budget authorized the Department to adopt emergency rules pursuant to 5 MRSA §8054 "without the necessity of demonstrating that immediate adoption is necessary to avoid a threat to public health, safety or general welfare." Part UU Sec. UU-1.

The Department has authority for the retroactive effective dates under 22 MRSA §42(8) because these changes increase reimbursement for providers, ensure that members have access to medically necessary covered services, and otherwise have no adverse impact on either MaineCare providers or members.

This emergency major substantive rule adoption for 10-144 CMR ch. 101, *MaineCare Benefits Manual*, Ch. III Section 97, "Private Non-Medical Institution Services" will remain in effect for up to one year or earlier if the Legislature approves the provisionally adopted major substantive rule, pursuant to 5 MRSA §8073(3).

Fiscal impact of rule:

The Department expects that this rule-making will cost the Department approximately \$8,855,344.91 in SFY 2016 including \$3,643,910.92 in State dollars and \$8,859,678.36 in SFY 2017 including \$3,629,368.28 in State dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS § 42(8), 3173; PL 2015 ch. 267 Parts A (Section A-32) and UU (Section UU-1)

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 19**, Home and Community Benefits for the Elderly and for Adults with Disabilities

Filing number: **2016-043**

Effective date: 3/15/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

In conjunction with the development of the state’s biennial budget, the Department of Health and Human Services (Department) is adopting an increase to the reimbursement rate for providers of Attendant Care Services and Personal Care Services in the *MaineCare Benefits Manual*, Ch. III Section 19, “Home and Community Benefits for the Elderly and for Adults with Disabilities”. The Department is also adopting an increase to the monthly limits in Ch. II for members’ Section 19 services so that no member is penalized as a result of these rate increases. The Maine State Legislature approved these increases when it enacted the budget, PL 2015 ch. 267 (702 – LD 109) (Sec. A-32). On June 30, 2015, the Legislature voted to override the Governor’s veto of the budget, with the budget becoming effective on July 1, 2015.

Pursuant to 5 MRS §8054 and to Part UU Sec. UU-1 of the budget, the Department filed these emergency rule changes for Section 19 Ch. II and III, on October 28, 2015, and effective retroactive to July 1, 2015. To prevent lapse of the emergency rule changes, which are effective for ninety (90) days, the Department simultaneously engaged in routine rule-making pursuant to 5 MRS §8052 and filed a rule proposal with the Secretary of State on October 28, 2015.

In addition to implementing the rate changes resulting from the budget, the Department also updated the Adult Day Health Services rate through the routine rule-making to be consistent with other Departmental rules.

The Department held a public hearing on the rule proposal on December 1, 2015, and accepted written comments until the December 10, 2015, comment deadline. No changes to the proposed rule resulted from these comments.

In Ch. III Section 19, the Department now adopts an increase to: (1) Attendant Care Services (Personal Care Services, Participant Directed Option), billing code S5125, from \$2.93 per quarter hour to \$3.21 per quarter hour; and (2) Personal Care Services (Agency PSS), billing code T1019, from \$3.75 per quarter hour to \$4.10 per quarter hour. In Ch. II Section 19.06(A), the Department adopts an increase in the monthly program cap from \$4,200/month per member to \$4,603/month per member.

Given that the budget was effective on July 1, 2015, the Department adopts these changes retroactive to July 1, 2015. The Department has authority to do so under 22 MRS §42(8), because these changes increased reimbursement for providers, ensuring that members have access to medically necessary covered services, and otherwise have no adverse impact on either MaineCare providers or members.

In addition to these rate changes resulting from the budget, the Ch. III rule adoption also increases the rate for Adult Day Health Services, billing code S5100, from \$2.34 to \$3.14

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

per quarter hour, retroactive to November 1, 2014. See 22 MRS 42(8). The increase in Adult Day Health Services assures consistency with the rates for the same service provided under Section 26, “Day Health Services”, of the *MaineCare Benefits Manual*, as well as under the state-funded Office of Aging and Disability Services rule, 10 CMR 149 Ch. 5 Section 61, “Adult Day Services”. To avoid adversely impacting members, costs for Section 19, “Adult Day Health Services” will no longer be counted towards the monthly program cap in Ch. II effective retroactive to November 1, 2014.

Section 19 services are governed by a Section 1915(c) waiver approved by the Centers for Medicare and Medicaid Services (CMS). The Department is in the process of submitting a waiver amendment for approval by CMS that reflects these rate increases.

The Department has made no substantive changes from the rule proposal to this adoption, however the rule adoption encompasses some minor technical edits as outlined in the Summary of Comments document. For example, the rule proposal inadvertently deleted inapplicable language in the header of the previously adopted version of the rule (effective December 15, 2014) without indicating that language as stricken. That language regarding past rule changes being dependent upon approval by CMS is now included but stricken in the redline version of the adopted rule, as CMS has since approved those changes made in December 2014.

Fiscal impact of rule:

The Department expects that this rule-making will cost an additional \$883,727.00 in state funding annually.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRSA §§ 42(8), 3173

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 17**, Community Support Services, *and* Allowances for Community Support Services

Filing number: **2016-048**

Effective date: 3/22/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

The Department of Health and Human Services (“Department”) adopts this rule to effectuate the following changes:

- 1)** The Table of Contents has been updated to reflect new page numbers and includes 17.01-18, Primary Diagnosis.
- 2)** List of Definitions includes:
 - a.** Primary Diagnosis, 17.01-18 which reads “for the purposes of this policy, primary diagnosis shall mean the diagnosis that results in qualifying functional deficits.” In response to public comments, Primary Diagnosis has been added to clarify 17.02-3 Specific Requirements for eligibility.
 - b.** 17.01-5, Clinician reads “is an individual appropriately licensed or certified in the state or province in which he or she practices, practicing within the scope of that licensure or certification, and qualified to deliver treatment under this section. A clinician includes the following: licensed clinical professional counselor (LCPC); licensed clinical professional counselor-conditional (LCPC-conditional); licensed clinical social worker (LCSW); licensed master social worker conditional (LMSW-conditional clinical); physician; psychiatrist; advance practice registered nurse psychiatric and mental health practitioner (APRN-PMH-NP); advance practice registered nurse psychiatric and mental health clinical nurse specialists (APRN-PMH-CNS); physician assistant (PA); or licensed psychologist.” Clinical has been removed from Licensed Clinical Psychologist as it appeared in the proposed language, as suggested by a commenter.
 - c.** 17.01-21, Substance Abuse Counselor reads “means an individual who is licensed by the Maine State Board of Alcohol and Drug Counselors as a Certified Alcohol and Drug Counselor (CADC), Licensed Alcohol and Drug Counselor (LADC); or an Advanced Practice Registered Nurse (APRN), Licensed Physician (MD or DO), Physician Assistant (PA), Licensed Psychologist, Licensed Clinical Social Worker (LCSW), Licensed Clinical Professional Counselor (LCPC), or Licensed Marriage and Family Therapist (LMFT), who has a minimum one (1) year of clinical experience providing substance abuse treatment. Physician Assistant has been added to this definition based on public comment.
- 3)** 17.02-3(A)(2)(a), Specific Requirements for Eligibility reads “has a written opinion from a clinician, based on documented or reported history, stating that he/she is likely to

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

have future episodes, related to mental illness, with a non-excluded DSM 5 diagnosis, that would result in or have significant risk factors of homelessness, criminal justice involvement or require a mental health inpatient treatment greater than 72 hours, or residential treatment unless community support program services are provided; based on documented or reported history; for the purposes of this section, reported history shall mean an oral or written history obtained from the member, a provider or caregiver; or...". The additional language of "significant risk factors" and "reported history" have been included to clarify eligibility criteria based on comments made.

4) 17.02-3(A)(2)(f), As a result of comments, the Department changed the eligibility criteria to make it a less restrictive criteria (more generous to recipients). The changed provision, reads "until the age of 21, the recipient was eligible as a child with severe emotional disturbance, and the recipient has a written opinion from a clinician, in the last 12 months, stating that the recipient had risk factors for mental health inpatient treatment or residential treatment, unless ongoing case management or community support services are provided." The proposed language, read "and the recipient has a written opinion from a clinician, in the last 12 months, stating that he/she is reasonably likely to have future episodes requiring mental health inpatient or residential treatment, unless ongoing case management or community support services are provided," and thus was more restrictive.

5) 17.02-3(B), reads: "Has significant impairment or limitation in adaptive behavior or functioning directly related to the primary diagnosis and defined by the LOCUS or other acceptable standardized assessment tools approved by the Department." This language was added to clarify the need for significant impairment or limitation in adaptive behavior or functioning as it relates to the primary diagnosis.

6) 17.02-4(C), now reads: "For Community Integration Services only, verify that a member meets specific Eligibility Requirements under 17.02-3 within thirty (30) days of the start date of services. If Eligibility Verification is not submitted by close of business on day thirty (30), MaineCare will cease paying for services, under this section, on day thirty one (31)." In response to public comments indicating that the proposed language was confusing additional language has been included.

7) 17.04-3, Assertive Community Treatment (Medication services), now reads: "capacity to administer medications daily in a member's home or community by an appropriately licensed/certified ACT team. In response to public comment "CRMAs are allowed to administer medications as delegated by the RN or other licensed medical providers" has been removed.

8) 17.07-1(B), now reads: "A psychologist who is a licensed psychologist by the Maine Board of Examiners of Psychologists or by the state or province where services are provided, as documented by written evidence from that Board." Proposed language read "a licensed clinical psychologist", clinical has been removed in response to public comment.

9) 17.07-1(J), now reads: "A registered nurse, under the direction of a psychiatrist, who is a graduate of an accredited nursing program and holds a valid license to practice in the state or province in which services are to be provided." Proposed language read "a registered nurse, under the supervision of a psychiatrist". In response to public comment "under the supervision" has been changed to "under the direction of".

10) Changing the eligibility so that individuals with a sole diagnosis of either autism or intellectual disability ("neurodevelopmental disorders"), are no longer eligible for Section 17 services. However, individuals with neurodevelopmental disorders who also have a qualifying or co-occurring diagnosis, would remain eligible for Section 17 services.

11) Deletion of AMHI Consent Decree Class Member as a stand-alone criterion for eligibility to receive Community Integration services.

12) Deletion of Intensive Case Management as a covered service.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

13) Exceptions for face to face visit requirements members through Assertive Community Treatment includes:

- a.** All attempts to reach and meet with the member, including if the member was unavailable or the contact occurred through a closed door.
- b.** Contacts to transition the member to another level of care.
- c.** Variations in the number of weekly face-to-face contacts i.e. two (2) contacts in one week and four (4) the next.

In response to public comment, “contacts assessed to be clinically inappropriate” has been removed as an exception.

Changes made to the eligibility for Section 17 services were made so that only those individuals for whom Section 17 was clinically appropriate would be eligible for the service. Section 17 services are designed to serve those most in need of intensive support. The Department believes that some of the individuals currently receiving Section 17 services are more appropriately served under other sections of the MaineCare manual, such as Section 65 (“Behavioral Health Services”), or Section 21 (“Home and Community Benefits for Members with Intellectual Disabilities or Autistic Disorder”), Section 29 (“Support Services for Adults with Intellectual Disabilities or Autistic Disorders”), or Section 92 (“Behavioral Health Homes”).

The Department carefully evaluated the need for changes to the Section 17 rule and spent nearly a year meeting with a group that included a psychiatrist and other clinicians. The Department spent a great deal of time reviewing and discussing clinical criteria for the appropriate treatment of individuals with severe mental illness and concluded that treating individuals with mild or moderate mental illness (individuals with conditions such as anxiety, mild or moderate depression, and PTSD) with the types of community supports provided in Section 17 is not clinically appropriate and can even be counter indicated. These individuals are better served with counseling and/or medication, and those services are available in Section 65, or through the holistic support provided in the behavioral health home model, Section 92. Individuals with severe and persistent mental illness do benefit from intensive community supports, and they will remain eligible for these Section 17 services. The Department determined that it was in the best interest of the MaineCare population to make these changes to the eligibility criteria. As such, the Department tailored the eligibility criteria to meet the needs of individuals for whom Section 17 is clinically appropriate.

Intensive Case Management services were deleted because the Department determined, after conducting studies, that this service was not being utilized. Case management services continue to be available under Section 13.

The Department deleted the status of an AMHI Consent Decree class member as a stand-alone criterion for eligibility for Section 17 “Community Integration Services”, because that is not a standard recognized or authorized in federal Medicaid law or regulation. It is likely that that there will be many Consent Decree class members who will remain eligible for Section 17 Community Integrity services. For those class members who will no longer be eligible for Section 17 Community Integration services, the Department acknowledges its duty to provide services required under the Consent Decree, as provided and funded through non-MaineCare state contracts.

The fiscal impact of this rule-making is largely indeterminable. While the Department is unable to estimate how many recipients will no longer be eligible for Section 17 services because of these rule changes, the Department also cannot accurately predict how many of those recipients will seek out other services, most notably Section 92, “Behavioral Health Homes” and Section 65, “Behavioral Health Services”, or Section 29 “Home and Community Benefits for Members with Intellectual Disability or Autistic Disorder”. In addition, as regards the Consent decree, if individuals in this group do not meet Section 17 Community Integration eligibility criteria, they will no longer be eligible for Section 17 Community Integration services.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

However they would remain eligible to receive Community Integration services, as required by the Consent decree, and as provided and funded through non-Medicaid state contracts.

It is anticipated that this rule-making will not impose any costs on municipal or county governments, or on small businesses employing fewer than twenty employees.

Fiscal impact of rule:

The fiscal impact of this rule-making is largely indeterminable. While the Department anticipates that approximately 8,000 individuals will no longer be eligible for Section 17 services, the Department is unable to determine what percentage of these individuals will seek out other services, most notably Section 92, “Behavioral Health Homes”, and Section 65, “Behavioral Health Services”.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(8), 3173, 8054; Resolves 2015 ch. 45
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 2**, Adult Family Care Services
Filing number: **2016-059**
Effective date: 4/5/2016
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

The Department of Health and Human Services (the “Department”) adopts this emergency rule to increase reimbursement for Adult Family Care Homes located in remote island locations.

These changes are being done in order to comply with: Resolves 2015 ch. 45 *Resolve, To Require the Department of Health and Human Services to Provide Supplemental Reimbursement to Adult Family Care Homes in Remote Island Locations*. This law went into effect on July 12, 2015 without the Governor’s signature.

The Department is seeking approval from the Centers for Medicare and Medicaid Services (CMS) for a State Plan Amendment. Pursuant to 22 MRSA §42(8), if CMS approves, the supplemental payment for Adult Family Care Homes that satisfy the definition of “remote island facility” will be effective retroactive to October 1, 2015. A Change in Reimbursement Methodology Notice was published on September 30, 2015.

Resolves 2015, ch. 45 provided that the Department is authorized to adopt these changes on an emergency basis, without demonstrating emergency findings pursuant to 5 MRSA §8054. Following the adoption of these emergency rule changes, the Department shall proceed with “regular” proposed routine technical rulemaking in order to make these changes permanent.

Fiscal impact of rule:

The Department expects that this rulemaking will cost the Department \$6,421.00 in State dollars in SFY 2016, and \$7,004.72 in State dollars in SFY 2017.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 42, 3173

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. I Section 1**, General Administrative Policies and Procedures

Filing number: **2016-063**

Effective date: 4/16/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

This adopted rule removes the Telehealth section (1.06-2) from Ch. 101, *MaineCare Benefits Manual*, Ch. 1 Section 1, “General Administrative Policies and Procedures”, concurrent with the implementation of Ch. 101, *MaineCare Benefits Manual*, Ch. I Section 4, “Telehealth Services”.

Fiscal impact of rule:

The fiscal impact associated with this rule-making is accounted for in the Telehealth rule-making.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173; Resolve 2015 ch. 105
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. I Section 4** (*New*), Telehealth Services
Filing number: **2016-064**
Effective date: 4/16/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(*See Basis Statement*)

Basis statement:

This adopted rule provides a new standalone Telehealth policy, as opposed to a subsection of Ch. I Section 1, as it was previously. Current MaineCare policy in Ch. I Section 1.06-2, allows a limited group of providers to provide services remotely to patients through the use of telehealth, which is defined as “the use of electronic communication by a health care provider to deliver clinical services at a distance for the purpose of diagnosis, disease monitoring, or treatment.” MaineCare staff and MaineCare providers have found the current telehealth policy to be too restrictive. Providers have found it difficult to obtain approval for telehealth in some cases, and staff has found it challenging to implement a consistent system of review. This rule will be effective upon the repeal of the current telehealth rule (Ch. I Section 1.06-2).

This rule is adopted in order to comply with LD 1596, which was passed by the Legislature in 2014. LD 1596 directed the Department to “convene a working group to review the MaineCare rules regarding the definition of telehealth and the technologies used for provider patient interaction involving MaineCare patients” and to make according changes to MaineCare policy.

MaineCare staff convened a workgroup consisting of providers, industry stakeholders, advocates, and lawmakers. The group met several times over late spring and summer 2014, and a draft policy was written based on the feedback provided by the group and upon extensive research conducted by MaineCare staff. The drafted policy combined stakeholder recommendations with industry best practices. A working draft of the policy was submitted to the stakeholder group for comments in fall 2014, and the comments were compiled in written form and responded to by MaineCare staff.

The major components of the new telehealth rule are as follows:

1. Removes the prior approval process for use of telehealth;
2. Allows telehealth for all medically necessary services that can be delivered remotely at comparable quality;
3. Provides for an “originating site fee” to be paid to the site housing the patient, while the remote, or provider site, bills for the services rendered;
4. Provides for visual/audio, or, if video/audio is not available, the provision of telephonic services;
5. Requires providers to use secure, HIPAA compliant equipment; and;
6. Requires member choice, written informed consent, and member education.

In addition to Interactive Telehealth Services, the policy also provides for a new service known as “Telemonitoring.” Telemonitoring provides electronic communication between a member and healthcare provider whereby health-related data is collected, such as pulse and

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

blood pressure readings that assist healthcare providers in monitoring and assessing the member's medical conditions. Telemonitoring takes place in the home environment. Home Health agencies deliver Telemonitoring Services. In order to be eligible, a member must have had two or more hospitalizations or emergency department visits related to their diagnosis in the past calendar year, or have continuously received telemonitoring services during the past calendar year and have a continuing need for such services, as documented by an annual note from a licensed healthcare provider.

Fiscal impact of rule:

This rule-making is estimated to result in a total cost savings in SFY 2016 of \$687,087, including \$256,489.58 state dollars and a total cost savings in SFY 2017 of \$2,637,328, including \$984,514.54 state dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 42(8), 3173; Resolve 2015 ch. 50

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 12**, Allowances for Consumer Directed Attendant Services

Filing number: **2016-068**

Effective date: 4/18/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The purpose of the rule is to comply with Resolve 2015 ch. 50 which requires the Department to increase the reimbursement rate for Attendant Care Services provided under the provisions of 10-144 CMR ch. 101, *MaineCare Benefits Manual*, Ch. III Section 12. The Department shall seek approval from the federal Centers for Medicare and Medicaid Services (CMS) for a State Plan Amendment for this change. Pursuant to 22 MRS §42(8), if CMS approves, the increased reimbursement rates will be effective retroactive to October 1, 2015. The Department published a notice of change in reimbursement methodology, pursuant to 42 CFR §447.205, on September 30, 2015.

In addition to the rate increase, the Department removes from Section 12, Ch. III references Levels I, II, and III for Attendant Care Services (procedure codes S5125, S5125 TF and S5125 TG), since a single procedure code (S5125 U2) is used for all three levels of service. The three Levels of Care are based on the hours of need, as determined by the assessment process, and remain referenced in Ch. II Section 12.

Finally, pursuant to 5 MRS §8052(6), the Department proposes to remove the references to the Maine Integrated Health Management Systems (MIHMS), which was implemented on September 1, 2010. Procedure codes H2014, G9001, and G9002 have been utilized since that time.

Basis statement:

The Department of Health and Human Services (Department) adopts this rule to effectuate the following changes to Ch. III Section 12, “Allowances for Consumer Directed Attendant Services”:

- (1) Increase the reimbursement rate for Attendant Care Services to \$2.93 per quarter hour.
- (2) Removal references to Levels I, II, and III for Attendant Care Services (procedure codes S5125, S5125 TF, and S5125 TG), since a single procedure code (S5125 U2) is used for all three levels of service. The three levels of care are based on the hours of need, as determined by the assessment process, and they remain referenced in Ch. II Section 12.
- (3) Removal of the reference to the Maine Integrated Health Management Solution (MIHMS), which was implemented on September 1, 2010. Procedure codes H2014, G9001, and G9002 have been utilized since that time.

The Department is adopting these rate changes pursuant to Resolves 2015 ch. 50, *To Increase the Reimbursement Rate for Direct-care Workers Serving Adults with Long-term Care Needs*, which provides funding and requires the Department to amend Ch. III Section 12, “Allowances for Consumer Directed Attendant Services”.

The Department is seeking approval from the Centers for Medicare and Medicaid Services (CMS) for a state plan amendment for these changes. If CMS approves, the increased reimbursement rates will be effective retroactive to October 1, 2015. The Department

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

published a notice of change in reimbursement methodology, pursuant to 42 CFR §447.205, on September 30, 2015.

The Department is authorized to adopt these changes retroactively under 22 MRS §42(8) because these changes increase reimbursement for providers, ensure that members have access to medically necessary covered services, and otherwise have no adverse impact on either MaineCare providers or members.

The Department estimates that the General Fund impact for these changes is \$125,000 in SFY 2016 and \$125,000 in SFY 2017, and estimates federal expenditures of \$208,067 in SFY 2016 and \$209,851 in SFY 2017.

This rule-making will not impose any costs on municipal or county governments, or on small businesses employing fewer than twenty employees.

Fiscal impact of rule:

The Department expects that this rule-making will cost the Department approximately \$333,067 in SFY 2016 including \$125,000 in State dollars and \$334,851 in SFY 2017 including \$125,000 in State dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 42(8), 3173; 5 MRS §8054

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 65**, Behavioral Health Services

Filing number: **2016-098**

Effective date: retroactive to 3/22/2016

Type of rule: Routine Technical

Emergency rule: Yes

Principal reason or purpose for rule:

The Department is adding coverage of Mental Health Psychological Clubhouse Services and Specialized Group Services to Section 65 on an emergency basis so as to avoid an immediate and adverse impact on the general welfare of members who stand to lose coverage of these services due to recent changes in the Section 17 eligibility criteria.

Basis statement:

The Department of Health and Human Services adopts this emergency rule to transition coverage and reimbursement of two services to Section 65, “Behavioral Health Services”, from Section 17, “Community Support Services”.

First, this adoption adds coverage to Ch. II Section 65 for Mental Health Psychosocial Clubhouse Services. These services are currently part of Ch. II Section 17’s “Day Support Services”. In transitioning the Clubhouse Services to Section 65, the Department has decided to separate these particular services from other Day Supports Services. This rule-making also replaces the per-hour Behavioral Health Day Treatment HCPCS procedure code (H2012) utilized in Ch. III Section 17 with the more appropriate per-fifteen minute Mental Health Clubhouse Services HCPCS procedure code (H2030). Reimbursement rates to providers of Clubhouse Services will not be impacted in transitioning from the more general per-hour code to a more specific per-fifteen minute code.

Second, this adoption adds coverage of Specialized Group Services to Ch. II Section 65. These services are currently covered under Ch. II Section 17. This rule-making also adopts reimbursement rates in Ch. III Section 65 that mirror those set forth in Ch. III Section 17.

In adding coverage of these two services to Section 65, the Department has also incorporated a few minor changes to the Ch. II rule, including: adding new definitions related to these services and updating formatting and numbering as a result of the changes.

This Section 65, “Behavioral Health Services” emergency rule-making is precipitated by recent changes to Section 17, “Community Support Services”, and is necessary to prevent barriers to services for members that would pose an immediate threat to their general welfare. Specifically, effective March 22, 2016, the Department adopted clinical criteria changes to Section 17, and the Department has determined that some members may no longer be able to access Mental Health Psychosocial Clubhouse Services or Specialized Group Services under Section 17. Recognizing the clinical importance of these services for appropriate members, these services are being transitioned to Section 65 as an emergency measure.

To avoid any lapse in coverage for members who receive Clubhouse and Specialized Group Services, the Department is adopting changes to Ch. II and III Section 65 on an emergency basis and retroactive to March 22, 2016 (the effective date of the Ch. II and III Section 17 rule adoption). 22 MRS §42(8). This emergency rule shall then be effective for ninety (90) days from the date of adoption. 5 MRS §8054(3). To prevent a lapse in this rule and

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

these services following the expiration of the emergency period, the Department is concurrently engaging in the routine rule-making process for this rule.

Fiscal impact of rule:

The Department anticipates that this rule-making will cost approximately \$402.83 in FFY 2016, which includes \$150.38 in state dollars and \$252.45 in federal dollars, and \$1,611.31 in FFY 2017, which includes \$580.88 in state dollars and \$1,030.43 in federal dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 4**, Ambulatory Surgical Center Services
Filing number: **2016-101**
Effective date: 6/15/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department is aligning ASC policy with the current reimbursement methodology of the all-inclusive rate defined by the outpatient prospective payment system (OPPS) by the Centers for Medicare and Medicaid Services (CMS). This includes clarification on what is included in the all-inclusive rate, what is paid separately under the OPPS, and what is non-covered. The Department is also reimbursing physicians or other qualified providers at the facility rate listed in the MaineCare Fee Schedule for services delivered in ASCs. This is in recognition that ASCs are facilities and that the facility portion of the service is reimbursed through the all-inclusive rate.

CMS-defined all-inclusive rates include prosthetic devices that are considered integral to covered surgical services; therefore, MaineCare will no longer reimburse ASCs separately for prosthetic devices that are outside of the all-inclusive rate for covered surgical procedures. Language is added to Section 4.04(B), “Ancillary Services”, to reflect that certain radiology services are eligible for separate payment under the OPPS. Section 4.05, “Non-covered Services”, is amended to clarify that per CMS determination, surgeries performed in ASCs are not expected to result in extensive blood loss; when there is a need for blood products, MaineCare considers this a facility service and no separate charge is permitted. Language is also added to describe in more detail which services and supplies are non-covered and where else these services may be covered in the MBM.

This rule-making also adds a general description of which surgical procedures are approved for delivery in an ASC, deletes components of the all-inclusive rate that were listed twice, more closely aligns reimbursement language with the CMS approved State Plan Amendment, removes the disclaimer that the section is dependent upon approval from CMS because approval has been granted, updates the MaineCare provider website URL, and makes minor formatting edits.

Basis statement:

This rule-making more closely aligns Ambulatory Surgical Center policy with the reimbursement methodology used by the Centers for Medicare and Medicaid Services (CMS). Specifically, MaineCare will no longer reimburse ASCs separately for prosthetic devices that are outside of the all-inclusive rate for covered surgical procedures, as defined by CMS. Members may procure any additional medically necessary prosthetics that are not included in the all-inclusive rate through a durable medical equipment provider, physician, or other appropriately licensed provider in accordance with the applicable section of the *MaineCare Benefits Manual* (MBM). Language is also added to Section 4.04(B), “Ancillary Services”, to reflect that certain radiology services are eligible for separate payment under the outpatient prospective payment system (OPPS). Section 4.05, “Non-Covered Services”, is amended to clarify that surgeries performed in ASCs are not expected to result in extensive blood loss.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

When there is a need for blood products, MaineCare considers this a facility service and no separate charge is permitted.

This rule-making also adds a general description of which surgical procedures are approved for delivery in an ASC, deletes components of the all-inclusive rate that were listed twice, more closely aligns reimbursement language with the CMS approved State Plan, removes the disclaimer that the section is dependent upon approval from CMS because approval has been granted, further clarifies which services and supplies are Non-Covered Services under this section, and where else these services may be covered in the MBM, updates the MaineCare provider website URL, and makes minor formatting edits.

As part of this rule-making, physicians delivering covered services in an ASC will be reimbursed for their professional services at the “facility rate” listed in the MaineCare Fee Schedule (<https://mainecare.maine.gov/>) under MBM, Section 90, “Physician Services”.

As a result of public comments, the adopted rule-making improved language around physician reimbursement to clarify that physician and anesthesiologists professional services are still separately billable under MBM, Section 90, “Physician Services”. In addition, the Department added citations to the *Code of Federal Regulations* to assure that the Department’s interpretation of “implantable prosthetic devices” will be aligned with CMS.

Fiscal impact of rule:

There is a minimal estimated cost savings due to the reimbursement reduction for physician services delivered in the ASC is \$26,063 in SFY 2017, including, \$9,729 in State dollars. The other changes in this rule-making are not estimated to carry any costs or cost savings.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §3173; Resolves 2015 ch. 45
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 2**, Adult Family Care Services
Filing number: **2016-105**
Effective date: 6/22/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This change is being done in order to comply with Resolves 2015 ch. 45, *Resolve, To Require the Department of Health and Human Services to Provide Supplemental Reimbursement to Adult Family Care Homes in Remote Island Locations*. This law went into effect on July 12, 2015 without the Governor's signature.

The Department is seeking approval from the Centers for Medicare and Medicaid Services (CMS) for a State Plan Amendment. Pursuant to 22 MRS §42(8), if CMS approves, the supplemental payment for Adult Family Care Homes that satisfy the definition of "remote island facility" will be effective retroactive to October 1, 2015. A Change in Reimbursement Methodology Notice was published on September 30, 2015.

Basis statement:

The Department of Health and Human Services (the "Department") adopts this rule to increase the reimbursement for Adult Family Care Homes located in remote island locations.

These changes comply with Resolves 2015 ch. 45: *Resolve, To Require the Department of Health and Human Services to Provide Supplemental Reimbursement to Adult Family Care Homes in Remote Island Locations*. This law went into effect on July 12, 2015 without the Governor's signature. This rule effectuates supplemental payment to representing fifteen (15) percent rate increase, from the MaineCare rate, to Adult Family Care Homes that satisfy the definition of a "remote island facility".

The Department is seeking approval from the Centers for Medicare and Medicaid Services (CMS) for a State Plan Amendment for these changes. Pursuant to 22 MRS §42(8), if CMS approves, the supplemental payment for Adult Family Care Homes that satisfy the definition of "remote island facility" will be effective retroactive to October 1, 2015. A Change in Reimbursement Methodology Notice was published on September 30, 2015.

This rule-making adopts changes that have already been in effect since April 5, 2016, pursuant to emergency rule-making authorized by Resolves 2015 ch. 45 and 5 MRS §8054. This rule-making adoption avoids a lapse in the rule by implementing the identical changes effective June 22, 2016.

Fiscal impact of rule:

The Department expects that this rule-making will cost the Department approximately \$13,944.90 in SFY 2016 including \$6,421.00 in State dollars and \$15,212.61 in SFY 2017 including \$7,004.72 in State dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 42, 3173; 22 MRS §3174-WW; PL 2015 ch. 267 Part A; "Patient Protection and Affordable Care Act", PL 111-148 Section 6505

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 90**, Physician Services

Filing number: **2016-124**

Effective date: 7/20/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The Department adopts numerous changes to Section 90, "Physician Services" in order to align with Centers for Medicare and Medicaid Services ("CMS") requirements, comply with recently passed state and federal laws (PL 2015 ch. 267 Part A) *An Act to Reduce Tobacco-related Illness and Lower Health Care Costs in MaineCare* (22 MRS §3174-WW); *Patient Protection and Affordable Care Act*, PL 111-148, Section 6505), ensure alignment with state licensing laws, provide additional clarification to service descriptions and coverage limits, and remove limits and other restrictions for specific behavioral and physical health services.

Basis statement:

The Department is adopting this rule in order to more closely align with Centers for Medicare and Medicaid Services ("CMS") requirements, comply with recently passed state and federal laws, align services and limits across the *MaineCare Benefits Manual* (MBM), align with state licensing laws, provide additional clarification to service descriptions and coverage limits, and remove limits and other restrictions for specific behavioral and physical health services. Changes include revisions made as a result of public comments.

Fiscal impact of rule:

Four components of this rulemaking change may have a financial impact. First, the increase in primary care payments is estimated to result in a total cost in SFY 2016 of \$8,103,233, including \$2,992,924 State dollars, and a total cost in SFY 2017 of \$8,103,233, including \$2,977,173 State dollars. The removal of certain limits on psychiatric services, the increased coverage for tobacco cessation treatment, and the allowance of medical providers to deliver select oral health services are expected to result in a minimal increase in costs.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 42, 3173

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 15**, Chiropractic Services

Filing number: **2016-129**

Effective date: 8/1/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

This rule is being adopted in order to update current billing practices by removing the basic value language that utilizes the units system and replacing the units with rates. Additionally, chiropractic codes will be updated to align with current 2016 CPT codes. These changes include the elimination of code 72090 with the addition of codes 72081, 72082, 72083, and 72084.

Basis statement:

This rule is being adopted to update current billing practices by removing the basic value language that utilizes the units system and replaces the units with rates. The Department converted Medicaid Management Information Systems (MMIS) on September 1, 2010 and implemented the direct rates referenced in Ch. III. Previous to the MMIS system conversion, providers of chiropractic services were reimbursed for radiology services based on the basic value multiplied by the number of units. The Department sought to clarify the reimbursement for these services by using solely the CPT codes. The providers' reimbursement shall not be negatively impacted.

Additionally, chiropractic codes were updated to align with current 2016 CPT codes in accordance with 45 CFR §§ 162.1000, 162.1002, 162.1011 and the *National Correct Coding Initiative Policy Manual for Medicare Services*, C.M.S. These changes include the elimination of code 72090 ("Radiologic exam, spine, scoliosis study, including supine and erect studies") and replacement with codes 72081, 72082, 72083, and 72084, which more specifically break down this particular chiropractic service/reimbursement. Other codes and allowances were added as well, which generally break down reimbursement amounts into professional and technical components for each chiropractic service.

On March 16, 2016, the Department submitted proposed State Plan Amendment changes to the Centers for Medicare and Medicaid Services (CMS), with a requested retroactive effective date of January 1, 2016. Those changes remain pending. The Department published a change in reimbursement methodology notice, pursuant to 42 CFR § 447.205, on December 29, 2016.

Fiscal impact of rule:

The Department anticipates that this rule-making will have a minimal fiscal impact on State funds.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 42, 3173; 42 CFR §§ 418.302, 306

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 43**, Hospice Services

Filing number: **2016-140**

Effective date: 8/26/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

This rule is being adopted to comply with the implementation of hospice payment reforms as set out in the Centers for Medicare & Medicaid Services Rule, 42 CFR §§ 418.302, 306. The final rule requires that State Medicaid programs make revisions to their methodologies for determining the payment rate for Routine Home Care (RHC) and other services. These changes include a new payment methodology for Routine Home Care (RHC) to implement two rates that will result in 1) a higher base payment for the first sixty (60) days of hospice care and 2) a reduced base rate for days thereafter. A new Service Intensity Add-on (SIA) payment for services provided by a Registered Nurse (RN) or clinical social worker during the last seven (7) days of a member's life has also been added. The rule proposes a retroactive effective date of January 1, 2016. The rule-making also updates the policy titles and section numbers listed in §43.05-4, "Coverage Restrictions during Hospice Election", to correlate with the current version of the *MaineCare Benefits Manual*.

Basis statement:

This adopted rule implements hospice payment reforms to comply with the CMS September 1, 2015, Directive regarding annual change in Medicaid Hospice payment rate. This directive reflects changes made under the final Medicare hospice rule published on August 6, 2015 (CMS- 1629-F) (42 CFR §§ 418.103, 418.306). This rule changes the payment methodology for Routine Home Care to implement two (2) rates that result in a higher base payment for the first sixty (60) days of hospice care and a reduced base rate for days thereafter. This adopted rule requires hospice providers to set their charge rate to appropriately reflect the transition to the lower Routine Home Care rate after sixty (60) days.

The rule also establishes a Service Intensity Add-on (SIA) payment that provides increased payments for services provided by a registered nurse (RN) or clinical social worker during a visit during the last seven (7) days of a member's life.

In implementing the Service Intensity Add-On (SIA) payment for skilled visits (provided by a registered nurse (RN) and/or medical social worker) it was necessary to add two new G-codes for use when billing SIA direct skilled nursing services in home health or hospice setting (G0299) and SIA services of a clinical social worker (G0155) in home health or hospice setting. These services can be billed in fifteen (15) minutes increments, up to a total of four hours total per day within the Routine Home Care level.

The rule-making also updates the policy titles and section numbers listed in §43.05-4 ("Coverage Restrictions during Hospice Election"), to correlate with the current version of the *MaineCare Benefits Manual*, as well as the list of Professional and other Qualified Staff to include Physician Assistants.

The Department anticipates that this rule-making will not have a direct impact on members. Services provided to members will remain the same.

Fiscal impact of rule:

The Department anticipates that this rule-making will have any impact on municipalities or counties. There is no expected economic impact on small businesses.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 42, 42(8), 3173; 5 MRS §8054; PL 2016 ch. 477 (effective April 15, 2016); Resolves 2016 ch. 82 (effective April 26, 2016)

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 17**, Community Support Services

Filing number: **2016-148**

Effective date: 9/2/2016

Type of rule: Routine Technical

Emergency rule: Yes

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

Following various changes to Ch. II Section 17, “Community Support Services”, adopted by the Department on March 22, 2016, certain members no longer met clinical criteria for Community Support Services. This prompted a legislative review of the Section 17 rule changes, after which the legislature enacted Resolves 2016 ch. 82 (eff. Apr. 26, 2016). This Resolve requires the Department to extend the authorized service period for certain individuals who no longer meet clinical criteria for Section 17 services after the rule changes adopted on March 22, 2016. For members affected by the March 22nd rule change, the Department shall authorize a 120 day extension for the member's Section 17 services. Additionally, 90-day extensions may be granted, provided the member is able to reasonably demonstrate to the Department, or Authorized Entity, that he or she has attempted to and has been unable to access medically necessary covered services under any other section of the *MaineCare Benefits Manual*. The Ch. II changes shall be effective retroactive to April 26, 2016. The temporary transition period shall end on June 30, 2017.

Separately, the legislature enacted *An Act to Increase Payments to MaineCare Providers that are Subject to Maine's Service Provider Tax*, PL 2016, ch. 477 (eff. Apr. 15, 2016). Certain MaineCare providers subject to the service provider tax have experienced an increase in the tax to 6% since January 1, 2016. The legislature thus provided additional appropriations to certain MaineCare providers, including Section 17 providers, in an effort to offset the increase in the provider tax. The Department is seeking and anticipates CMS approval of the reimbursement changes for Section 17 providers. Pending approval, the Department will reimburse providers under the new increased rates retroactively to July 1, 2016 pursuant to PL 2016, ch. 477 (eff. Apr. 15, 2016).

Each of the new laws were enacted by the Legislature on an emergency basis. Given that each law provides benefits to the regulated community, and the time-sensitive, limited nature of the extension in eligibility, the Department is authorized to enact these changes to Section 17 on an emergency basis, without the findings required by 5 MRS § 8054(2). These emergency rule changes shall be effective for ninety (90) days. The Department shall engage in proposed routine technical rulemaking to permanently adopt these Section 17 rule changes.

Finally, the Department notes that on April 29, 2016, the legislature overrode the Governor's veto of LD 1696, *Resolve, To Establish a Moratorium on Rate Changes Related to Rule Chapter 101: MaineCare Benefits Manual, Sections 13, 17, 28 and 65* (Resolves 2016 ch. 88). That law imposes a moratorium on rule-making to change reimbursement rates, including Section 17, until after a rate study has been completed and presented to the Legislature. The Department consulted with the Office of Attorney General and the Office of the Attorney General determined and has advised the Department that Resolves 2016 ch. 88 does not prevent the instant rule changes because (1) the separate law, PL 2016 ch. 477, is more specific in regard to changing

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

reimbursement for providers impacted by the Service Provider Tax increase; and (2) these are reimbursement rate increases, thus providing a benefit to MaineCare providers.

Fiscal impact of rule:

The fiscal impact for the Section 17 change in eligibility requirements is unable to be determined because any impact would depend on utilization, and eligibility determinations that have not yet been completed.

The Department anticipates that the Ch. III rule-making will cost approximately \$152,861 in SFY 2016, including \$57,063 in State dollars and \$95,798 in Federal dollars, and \$917,163 in SFY 2017, including \$330,637 in State dollars and \$586,526 in Federal dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173, 3173-G
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. X Section 4**, Limited Family Planning Benefit
Filing number: **2016-155**
Effective date: 10/1/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Ch. 356, *An Act to Strengthen the Economic Stability of Qualified Maine Citizens by Expanding Coverage of Reproductive Health Care and Family Services*, enacted by the Maine Legislature on July 12, 2015, ordered the provision of these services. The Limited Family Planning Benefit provides a targeted set of family planning services and supplies and family-planning related services to individuals with income equal to or below 209% of the federal poverty level. These individuals are not otherwise eligible to receive Medicaid services.

Basis statement:

This rule is adopted to comply with PL 2015 ch. 356, *An Act to Strengthen the Economic Stability of Qualified Maine Citizens by Expanding Coverage of Reproductive Health Care and Family Services*, enacted by the Maine Legislature on July 12, 2015, in accordance with the federal *Patient Protection and Affordable Care Act*, PL 111-148, as amended by the federal *Health Care and Education Reconciliation Act of 2010*, PL 111-152.

This rule establishes the Limited Family Planning Benefit. Under the Limited Family Planning Benefit, the Department provides for the delivery of federally approved Medicaid services for reproductive health care and family planning services to qualified individuals when their income is equal to or below 209% of the nonfarm income official poverty line. The Limited Family Planning Benefit establishes a new MaineCare eligibility group (males and females) who are not otherwise qualified to receive MaineCare services. Services include pregnancy prevention, testing and treatment for sexually transmitted infection, access to contraception, reproductive health care, cancer screening and vaccines to prevent cervical cancer and sexually transmitted infections. The goal is to improve the health of individuals and families in Maine by improving access to family planning services and decreasing the overall costs of healthcare by helping to prevent or delay pregnancies and to improve overall reproductive health of enrollees.

State Plan Amendment (SPA) #15-025 clarifying the state's coverage of family planning and family planning related services in combination with SPA-15-026, which added the Family Planning eligibility option to the State Plan, was approved by the Centers for Medicare and Medicaid Services on March 14, 2016, with an effective date of July 1, 2016.

Fiscal impact of rule:

The Department anticipates that this rule-making will result in savings of approximately \$298,743 in State funds in SFY 17. The anticipated Federal cost is \$1,122,776, for a State savings of \$1,421,519. The Department anticipates savings in SFY18 to be approximately the same as SFY17.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 42, 42(8), 3173; 5 MRS §§ 8073, 8054; PL 2016 ch. 477 (effective April 15, 2016)

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 21**, Allowances for Home and Community Benefits for Adults with Intellectual Disabilities or Autistic Disorder

Filing number: **2016-161**

Effective date: 9/28/2016

Type of rule: Major Substantive

Emergency rule: Yes

Principal reason or purpose for rule:

The Department is adopting via emergency major substantive rulemaking an increase to the rates in Ch. III Section 21 in accordance with PL 2016 ch. 477 (*An Act To Increase Payments to MaineCare Providers That Are Subject to Maine’s Service Provider Tax*). The Legislature enacted this law as an emergency measure, effective April 15, 2016, to provide additional appropriations to certain MaineCare providers that are subject to the service provider tax and that have experienced an increase in the tax from 5% to 6% since January 1, 2016. This emergency major substantive rule increases the rates of reimbursement by 1% for affected providers on an emergency basis and retroactive to April 15, 2016, when the legislation appropriating additional funding took effect. The emergency adoption will enable the rule to take effect immediately and retroactively, ensuring that providers receive the appropriated funding that will enable them to continue providing MaineCare services.

Basis statement:

The Department is adopting via this emergency major substantive rule-making an increase in the provider reimbursement rates set forth in Ch. III Section 21, in accordance with PL 2016 ch. 477 (*An Act to Increase Payments to MaineCare Providers That Are Subject to Maine’s Service Provider Tax*). Effective April 15, 2016, the Legislature enacted PL 2016 ch. 477 to provide funding for an increase in reimbursement rates to eligible MaineCare providers for the last three months of fiscal year 2015-16 and for fiscal year 2016-17. The purpose of the additional funding is to offset an increase in the service provider tax, which took effect January 1, 2016. Ch. III Section 21 lists the procedure codes, descriptions and reimbursement rates for covered services provided to members under its companion rule, Ch. II Section 21, *Home and Community Benefits for Adults with Intellectual Disabilities or Autistic Disorder*. Ch. III Section 21 is a major substantive rule.

The Legislature enacted PL 2016 ch. 477 on an emergency basis, and therefore the legislation took effect on the date that it was approved, April 15, 2016. Pursuant to 22 MRS §42(8), the Department may authorize the adoption of rules that retroactively increase provider reimbursement on an emergency basis “if needed to ensure that MaineCare members have access to covered medically necessary services.” The Department makes the following findings in support of this emergency rulemaking, pursuant to 5 MRS §8054. As recognized by the Legislature in PL 2016 ch. 477, MaineCare providers have insufficient reserves to withstand cost increases. Effective January 1, 2016, however, certain MaineCare providers were subject to an increase in the service provider tax, thus increasing their cost of providing services. The providers need the additional funding appropriated by the Legislature as soon as possible in order to continue providing MaineCare services. Given that the law provides benefits to the community, and the time sensitive nature of the law, the Department finds that these changes to Section 21 should be made on an emergency basis.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Under 22 MRS §42(9), because the Department has determined that an emergency rule is necessary pursuant to 5 MRS §8054, and because the rule affects reimbursement rates for licensed health care providers, the increased rates will be effective retroactive to April 15, 2016, the date that the legislation took effect. Further, pursuant to 5 MRS §8073, this emergency major substantive rule will be effective for up to 12 month, or until the Legislature has completed its review. The Department intends to proceed with major substantive rule-making, which will be provisionally adopted, and then submitted to the Legislature for its review.

The following services will have a 1% increase as a result of this rule-making:

- T2017, Home Support (habilitation, residential, waiver);
- T2017 SC, Home Support (habilitation, residential, waiver) - with Medical Add-On;
- T2017 QC, Home Support (habilitation, residential, waiver) - Remote Support-Monitor Only;
- T2017 GT, Home Support (habilitation, residential, waiver) - Remote Support-Interactive Support;
- T2016, Agency Home Support (habilitation, residential, waiver);
- T2016 SC, Agency Home Support (habilitation, residential, waiver) with Medical Add-On;
- T2016 SC, Agency Home Support (habilitation, residential, waiver);
- S5140, Shared Living (Foster Care, adult) - Shared Living Model-One member served;
- S5140 TG, Shared Living (Foster Care, adult) - Shared Living Model-One member served - increased level of support;
- S5140 UN, Shared Living (Foster Care, adult) - Shared Living Model-Two members served;
- S5140 UN TG, Shared Living (Foster Care, adult) - Shared Living Model - Two members served - Increased level of support;
- T2016 U5, Home Support (habilitation, residential, waiver) - Family Centered Support - One member served;
- T2016 TG U5, Home Support (habilitation, residential, waiver) - Family Centered Support - One member served - Increased level of support;
- T2016 UN U5, Home Support (habilitation, residential, waiver) - Family Centered Support - Two members served;
- T2016 UN TG U5, Home Support (habilitation, residential, waiver) - Family Centered Support - Two members served - Increased level of support;
- T2016 UP U5, Home Support (habilitation, residential, waiver) - Family Centered Support - Three members served;
- T2016 UP TG U5, Home Support (habilitation, residential, waiver) - Family Centered Support - Three members served-Increased level of support;
- T2016 UQ U5, Home Support (habilitation, residential, waiver) - Family Centered Support - Four members served;
- T2016 UQ TG U5, Home Support (habilitation, residential, waiver) - Family Centered Support - Four members served - Increased level of support;
- T2016 UR U5, Home Support (habilitation, residential, waiver) - Family Centered Support - Five or members served;
- T2016 UR TG U5, Home Support (habilitation, residential, waiver) - Family Centered Support - Five or members served - Increased level of support;
- T2021, Community Support (day habilitation, waiver);
- T2021 SC, Community Support (day habilitation, waiver);
- Replaced H023 HQ Work Support (supported employment) with the following modifiers below;
 - H2023 UN Work Support (supported employment - Group 2 members served);
 - H2023 UP Work Support (supported employment - Group 3 members served);
 - H2023 UQ Work Support (supported employment - Group 4 members served);

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

- H2023 UR Work Support (supported employment - Group 2 members served);
- H2023 US Work Support (supported employment - Group 2 members served).

Fiscal impact of rule:

The Department anticipates that this rule-making will cost approximately \$144,502 in SFY 2016, which includes \$53,943 state dollars and \$90,560 in federal dollars and \$867,014 in SFY 2017, including \$312,559 in state dollars and \$554,456 in federal dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 42, 42(8), 3173; 5 MRS §§ 8073, 8054; PL 2016 ch. 477 (effective April 15, 2016)

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 29**, Allowances for Support Services for Adults with Intellectual Disabilities or Autistic Disorder

Filing number: **2016-162**

Effective date: 9/28/2016

Type of rule: Major Substantive

Emergency rule: Yes

Principal reason or purpose for rule:

The Department is adopting via emergency major substantive rule-making an increase to the rates in Ch. III Section 29 in accordance with PL 2016 ch. 477 (*An Act To Increase Payments to MaineCare Providers That Are Subject to Maine’s Service Provider Tax*). The Legislature enacted this law as an emergency measure, effective April 15, 2016, to provide additional appropriations to certain MaineCare providers that are subject to the service provider tax and that have experienced an increase in the tax from 5% to 6% since January 1, 2016. This emergency major substantive rule increases the rates of reimbursement by 1% for affected providers on an emergency basis and retroactive to April 15, 2016, when the legislation appropriating additional funding took effect. The emergency adoption will enable the rule to take effect immediately and retroactively, ensuring that providers receive the appropriated funding that will enable them to continue providing MaineCare services.

Basis statement:

The Department is adopting via this emergency major substantive rule-making an increase in the provider reimbursement rates set forth in Ch. III Section 29, in accordance with PL 2016 ch. 477 (*An Act to Increase Payments to MaineCare Providers That Are Subject to Maine’s Service Provider Tax*). Effective April 15, 2016, the Legislature enacted PL 2016 ch. 477 to provide funding for an increase in reimbursement rates to eligible MaineCare providers for the last three months of fiscal year 2015-16 and for fiscal year 2016-17. The purpose of the additional funding is to offset an increase in the service provider tax, which took effect January 1, 2016. Ch. III Section 29 lists the procedure codes, descriptions and reimbursement rates for covered services provided to members under its companion rule, Ch. II Section 29, *Support Services for Adults with Intellectual Disabilities or Autistic Disorder*. Ch. III Section 29 is a major substantive rule.

The Legislature enacted PL 2016 ch. 477 on an emergency basis, and therefore the legislation took effect on the date that it was approved, April 15, 2016. Pursuant to 22 MRS §42(8), the Department may authorize the adoption of rules that retroactively increase provider reimbursement on an emergency basis “if needed to ensure that MaineCare members have access to covered medically necessary services.” The Department makes the following findings in support of this emergency rule-making, pursuant to 5 MRS §8054. As recognized by the Legislature in PL 2016 ch. 477, MaineCare providers have insufficient reserves to withstand cost increases. Effective January 1, 2016, however, certain MaineCare providers were subject to an increase in the service provider tax, thus increasing their cost of providing services. The providers need the additional funding appropriated by the Legislature as soon as possible in order to continue providing MaineCare services. Given that the law provides benefits to the community, and the time sensitive nature of the law, the Department finds that these changes to Section 29 should be made on an emergency basis.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Under 22 MRS §42(9), because the Department has determined that an emergency rule is necessary pursuant to 5 MRS §8054, and because the rule affects reimbursement rates for licensed health care providers, the increased rates will be effective retroactive to April 15, 2016, the date that the legislation took effect. Further, pursuant to 5 MRS §8073, this emergency major substantive rule will be effective for up to 12 month, or until the Legislature has completed its review. The Department intends to proceed with major substantive rulemaking, which will be provisionally adopted, and then submitted to the Legislature for its review.

The following services will have a 1% increase as a result of this rule making:

- T2017, Home Support-Quarter Hour;
- T2017 QC, Home Support-Remote Support - Monitor Only;
- T2017 GT, Home Support-Remote Support - Interactive Support;
- T2021, Community Support (day habilitation);
- T2021 SC, Community Support (day habilitation) with Medical Add-On;
- Replaced H023 HQ Work Support (supported employment) with the following modifiers below:
 - H2023 UN Work Support (supported employment) - Group 2 members served;
 - H2023 UP Work Support (supported employment) - Group 3 members served;
 - H2023 UQ Work Support (supported employment) - Group 4 members served;
 - H2023 UR Work Support (supported employment) - Group 2 members served;
 - H2023 US Work Support (supported employment) - Group 2 members served).

Fiscal impact of rule:

The Department anticipates that this rule-making will cost approximately \$38,338 in SFY 2016, which includes \$14,311 in state dollars and \$24,026 in federal dollars and \$230,027 in SFY 2017, including \$82,925 in state dollars and \$147,102 in federal dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(8), 3173; 5 MRS §8054; PL 2016 ch. 481 Part C; Resolves 2015 ch. 45
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 2**, Adult Family Care Services
Filing number: **2016-166**
Effective date: 10/4/2016
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

These changes are being done to comply with:

1) PL 2016 ch. 481 Part C, *An Act To Provide Funding to the Maine Budget Stabilization Fund and To Make Additional Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2016 and June 30, 2017*. Effective retroactive to July 1, 2016, this emergency adopted rule implements a four (4) percent cost-of-living rate increase for Adult Family Care Services for the fiscal year ending June 30, 2017.

2) Resolves 2015 ch. 45, *Resolve, To Require the Department of Health and Human Services to Provide Supplemental Reimbursement to Adult Family Care Homes and Residential Care Facilities in Remote Island Locations*. Although the Department previously engaged in emergency and routine technical rule-making to add language to the rule providing for a supplemental rate payment of fifteen (15) percent to adult family care homes that qualify as remote island facilities, the Department did not include a case mix chart specific to these providers and seeks to do so through this emergency adoption. The supplemental rate payment is effective retroactive to October 1, 2015.

These increases for Adult Family Care Services ensure vulnerable members have access to medically necessary covered services, and otherwise have no adverse impact on either MaineCare providers or members. The emergency adoption will enable the rule to take effect immediately and retroactively.

Basis statement:

The Department of Health and Human Services (“Department”) adopts this emergency rule to increase the rates of reimbursement for Adult Family Care Services pursuant to: (1) PL 2016 ch. 481 Part C, *An Act To Provide Funding to the Maine Budget Stabilization Fund and To Make Additional Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2016 and June 30, 2017*; and (2) Resolves 2015 ch. 45, *Resolve, To Require the Department of Health and Human Services to Provide Supplemental Reimbursement to Adult Family Care Homes and Residential Care Facilities in Remote Island Locations*.

First, following the Governor’s approval, the Legislature enacted PL 2016 ch. 481, as emergency legislation effective April 16, 2016. In part, the law directed the Department to amend the MaineCare Benefits Manual, Ch. III Section 2, “Adult Family Care Services”, to provide a four (4) percent cost-of-living rate increase for adult family care homes for the fiscal year ending June 30, 2017. The Legislature determined that the legislation should take effect immediately on the grounds certain obligations and expenses incident to the operation of state

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

departments and institutions would be becoming due and immediately payable, thus emergency legislation was required for the immediate preservation of the public peace, health and safety. The Department now adopts this four percent inflation rate increase to the Ch. III Section 2 rule by increasing the unadjusted price from \$44.99 to \$46.79 and the resource-adjusted prices accordingly. The Department is seeking and anticipates receiving approval from the federal Centers for Medicare and Medicaid Services (CMS) for this change. Pending approval, the four (4) percent cost-of-living increase will be effective retroactive to July 1, 2016. A Change in Reimbursement Methodology Notice was published on June 28, 2016. To comply with future cost-of-living increases set forth in PL 2016 ch. 481, the Department will engage in subsequent rulemaking at a later date.

Second, the Department is making changes to this rule pursuant to Resolves 2015 ch. 45, which effectuates a supplemental rate payment of fifteen (15) percent to adult family care homes that satisfy the definition of remote island facilities. This legislation was enacted as an emergency measure, effective July 12, 2015, without the Governor's signature, and on the grounds that current reimbursement rates to remote island facilities did not account for higher prices compared to the mainland. The Legislature directed the Department to amend its rule by October 1, 2015, to implement the fifteen percent supplemental payment and authorized the Department to do so via emergency rule-making without the necessity of demonstrating emergency findings. The Department engaged in emergency rule-making followed by routine technical rule-making that added a provision to the rule about the supplemental payment. The Department also indicated in these prior rule-makings that it was seeking CMS approval of this change retroactive to October 1, 2015. However, the Department did not include a case mix chart specific to remote island facilities that identifies the increased rates. The Department now seeks to do so with the emergency adoption of this rule. The Department has added a new case mix chart reflecting an unadjusted price of \$51.74 (a fifteen percent increase from \$44.99) for the period of October 1, 2015, through June 30, 2016, and an unadjusted price of \$53.81 (reflecting the fifteen percent supplemental payment and the four percent cost-of-living increase) for the period beginning July 1, 2016.

As noted, the increased rates will be retroactive to October 1, 2015 (rate increase for remote island facilities) and to July 1, 2016 (rate increase for inflation). These increases for Adult Family Care Services are in accordance with 22 MRS §42(8). They ensure vulnerable members have access to medically necessary covered services, and otherwise have no adverse impact on either MaineCare providers or members.

Further, in support of emergency rule-making pursuant to 5 MRS §8054, the Department makes the following findings. Both PL 2016 ch. 481, and Resolves 2015 ch. 45 were enacted as emergency measures to provide additional funding to Adult Family Care Services providers. For the cost-of-living increase, the immediate adoption of this rule is necessary given the time-sensitive nature the law and the fact the law provides benefits to the regulated community. Regarding the supplemental remote island facility payment, the Legislature authorized the Department to implement the change on an emergency basis without the need to demonstrate emergency findings. Although the Department has already engaged in this process, it seeks to do so again so as to provide clarity to providers as to the exact rate increases, especially in light of the additional rate cost-of-living rate increase. These emergency changes to Ch. III Section 2 shall be effective for ninety (90) days. The Department shall proceed with "regular" routine technical rule-making in order to permanently adopt these rule changes.

Fiscal impact of rule:

This rule-making is estimated to cost the Department \$197,981 in SFY 2017, which includes \$81,501 in state dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 42, 42(8), 3173; 5 MRS §8054; PL 2016 ch. 477
(effective April 15, 2016)

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 20**, Allowances for Home and Community Based-Services for Adults with Other Related Conditions

Filing number: **2016-167**

Effective date: 10/5/2016

Type of rule: Routine Technical

Emergency rule: Yes

Principal reason or purpose for rule:

The Department is adopting via emergency rule-making an increase to the rates in Ch. III Section 20 in accordance with PL 2016 ch. 477 (*An Act To Increase Payments to MaineCare Providers That Are Subject to Maine’s Service Provider Tax*). The Legislature enacted this law as an emergency measure, effective April 15, 2016, to provide additional appropriations to certain MaineCare providers that are subject to the service provider tax and that have experienced an increase in the tax from 5% to 6% since January 1, 2016. The Department now seeks to increase the rates of reimbursement by 1% for affected providers on an emergency basis and retroactive to April 15, 2016, when the legislation appropriating additional funding took effect. The emergency adoption will enable the rule to take effect immediately and retroactively, ensuring that providers receive the appropriated funding that will enable them to continue providing MaineCare services.

Basis statement:

The Department is adopting via emergency rule-making an increase to the rates in Ch. III Section 20 in accordance with LD 1638. Effective April 15, 2016, the legislature enacted PL 2016 ch. 477 (*An Act To Increase Payments to MaineCare Providers That Are Subject to Maine’s Service Provider Tax*) providing additional appropriations to certain MaineCare providers that are subject to the service provider tax and that have experienced an increase in the tax from 5% to 6% since January 1, 2016.

Ch. III Section 20 lists the procedure codes, descriptions and reimbursement rates for covered services provided to members under its companion rule, Ch. II Section 20, “Home and Community-Based Services for Adults with Other Related Conditions”.

The following services will be increased as a result of this rule-making:

- T2021 U8, Community Support (Day Habilitation) from \$5.28 to \$5.33 per quarter hour.
- T2016 U8, Home Support (Residential Habilitation) from \$285.19 to \$287.91 per diem.
- T2017 U8, Home Support (Residential Habilitation) from \$6.33 to \$6.39 per quarter hour.
- T2017 U8 QC Home Support (Residential Habilitation) - Remote Support - Monitor Only from \$1.62 to \$1.63 per quarter hour.
- T2017 U8 GT Home Support (Residential Habilitation) - Remote Support - Interactive Support from \$6.33 to \$6.39 per quarter hour.
- T1019 U8 Personal Care from \$3.75 to \$3.78 per quarter hour.
- T2019 U8 Employment Specialist Services (Habilitation - Supported Employment) from \$7.42 to \$7.49 per quarter hour.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

The increased rates will be effective retroactive to April 15, 2016, pursuant to 22 MRS §42(8). These changes increase the reimbursement for providers, ensure that members have access to medically necessary covered services, and otherwise have no adverse impact on either MaineCare providers or members. In addition, the Department makes the following findings in support of emergency rule-making pursuant to 5 MRS §8054. The Legislature enacted the new law as an emergency measure with an immediate effective date of April 15, 2016. As recognized by the Legislature within PL 2016 ch. 477, MaineCare providers have insufficient reserves to withstand cost increases. Effective January 1, 2016, however, certain MaineCare providers were subject to an increase (from 5 to 6%) in the service provider tax, thus increasing their cost of providing services. The providers needed additional funding appropriated by the Legislature as soon as possible in order to continue providing MaineCare services. Given that the law provides benefits to the regulated community, and the time sensitive nature of the law, the Department finds that these changes to Section 20 should be made on an emergency basis. These emergency rule changes shall be effective for ninety (90) days. The Department shall engage in “regular” routine technical rule-making to permanently adopt these Section 20 rule changes.

Fiscal impact of rule:

The Department anticipates that this rule-making will cost approximately \$3,931 in SFY 2016, which includes \$1,467 in state dollars and \$2,464 in federal dollars, and \$23,587 in SFY 2017, which includes \$8,503 in state dollars and \$15,084 in federal dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 42(8), 3173; 5 MRS §8073; PL 2016 ch. 477; Resolve 2015 ch. 45

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 97** (*including appendices*), Private Non-Medical Institution (PNMI) Services

Filing number: **2016-182**

Effective date: 10/25/2016

Type of rule: Major Substantive

Emergency rule: Yes

Principal reason or purpose for rule:

These changes are being done to comply with:

1) PL 2016 ch. 477, *An Act to Increase Payments to MaineCare Providers that are Subject to Maine’s Service Provider Tax*, Private Non-Medical Institutions have experienced an increase in the tax since January 1, 2016. PNMIs are in need of increased funding to continue providing these services to Maine’s vulnerable citizens, including children, individuals with substance use disorders, and adults with intellectual disabilities and autistic disorder. Pursuant to 22 MRS §42(8), the increased reimbursement rates will be effective retroactive to July 1, 2016.

2) Ch. III Section 97 (the “Main Rule”) and Ch. III Section 97, Appendix C only, the Department repeals and replaces the March 8, 2016 emergency major substantive rule, which made changes pursuant to Resolves 2015 ch. 45: Resolve, *To Require the Department of Health and Human Services to Provide Supplemental Reimbursement to Residential Care Facilities in Remote Island Locations*. Those changes are incorporated into this emergency major substantive rule-making.

These rate increases to PNMI providers ensure vulnerable members have access to medically necessary covered services, and otherwise have no adverse impact on either MaineCare providers or members. The emergency adoption will enable the rule to take effect immediately and retroactively.

This emergency major substantive rule will remain in effect for up to one year or until the Legislature approves the provisionally adopted major substantive rule.

Basis statement:

The Department of Health and Human Services (“Department”) adopts this emergency major substantive rule to increase the rates of reimbursement for Private Non-Medical Institution Services providers pursuant to PL 2016 ch. 477, *An Act To Increase Payments to MaineCare Providers That are Subject to Maine’s Service Provider Tax*. In addition, for Ch. III Section 97 (the “Main Rule”) and Ch. III Section 97, Appendix C only, the Department repeals and replaces the March 8, 2016 emergency major substantive rule, which made changes pursuant to Resolves 2015 ch. 45, Resolve, *To Require the Department of Health and Human Services to Provide Supplemental Reimbursement to Residential Care Facilities in Remote Island Locations*. Those changes are incorporated into this emergency major substantive rule-making.

Following the Governor’s approval, PL 2016 ch. 477 was enacted, as an emergency, effective April 15, 2016. In part, the law directed the Department to increase funding to MaineCare providers subject to the Maine Service Provider Tax pursuant to 36 MRS §2552. The Department implements the new law in Ch. III Section 97 rule by increasing the direct care component rate by an additional one percent to Private Non-Medical Institution (PNMI) service providers.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

The Department makes the following findings in support of this emergency major substantive rule-making. Similar to the determinations made by the Legislature in PL 2016 ch. 477, the Department finds that these rule changes should be implemented immediately to preserve public health and safety. Section 97 providers have insufficient reserves to withstand cost increases and have experienced an increase in the Service Provider Tax since January 1, 2016. In addition, Appendix C providers who are “remote island facilities” also require that the reimbursement increases implemented pursuant to Resolves 2015 ch. 45 and the Department’s March 8, 2016 emergency major substantive rule be continued, so that providers are not negatively affected. Remote Island Facilities are facilities located on an island not connected to the mainland by a bridge. All of these changes provide benefits to the Section 97 providers, and ensure the continued provision of services to MaineCare members.

The Change in Reimbursement Methodology Notices required by 42 CFR §447.205 relating to the Service Provider Tax reimbursement increase were published on June 16, 2016 (for Appendices B and D) and August 11, 2016 (for Appendices C, E and F). The Department is seeking and anticipates receiving approval from the federal Centers for Medicare and Medicaid Services (CMS) for these changes to Appendices B and D. Pending approval, the one percent direct care component increase will be effective retroactive to July 1, 2016.

In regard to the remote island facility rule changes, in the “Main Rule” and Appendix C, the Department published its Notice of Change in Reimbursement Methodology on September 30, 2015. The Department is seeking and anticipates receiving approval from CMS for the remote island facility reimbursement increases. Pending CMS approval, those changes shall be effective retroactive to October 1, 2015.

Each of these retroactive effective dates are consistent with 22 MRS §42(8), because they provide benefits to MaineCare providers, ensure that vulnerable members have access to medically necessary covered services, and otherwise have no adverse impact on members or providers.

These emergency rule changes shall be effective for one (1) year or until the Legislature approves the rule. The Department shall engage in “regular” major substantive rule-making to permanently adopt these Section 97 rule changes.

Fiscal impact of rule:

This rule-making is estimated to cost the Department approximately \$7,903,979 in SFY 2017, which includes \$3,093,823 in state dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 55**, Laboratory Services
Filing number: **2016-187**
Effective date: 11/9/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

This rule was adopted to limit and align urine drug testing to current industry standards. The Department adopted the following from the proposed rule:

- Drug testing must be supported by documentation in the medical record.
- The frequency and choice of assay used should be based on an assessment of the individual member's risk potential.
- Separate payment for testing of adulterants or specimen validity is not reimbursable.
- Substance abuse treatment is to be measured by random testing rather than scheduled testing.
- Routine urine drug screening should focus on detecting specific drugs of concern.
- Standing orders for presumptive testing must be signed and dated no more than sixty (60) days prior to the date of specimen collection. Standing orders for conformation and/or quantitative testing is prohibited.
- The Department clarifies what is considered not medically necessary.
- The Department added language for Prior Authorization to the Definitions.

The Department made the following changes to the final rule based on public comments:

- Confirmation testing is covered only to:
 1. Confirm an unexpected result; or
 2. Identify specific drugs or metabolites that cannot be detected on a urine drug screen.

Confirmation tests should be based on the member's presentation and history and only include what is needed for safe patient management. The definitive test(s) must be supported by documentation that specifies the rationale for each definitive test ordered. Drug confirmation testing must be performed by a second method. A presumptive test cannot be performed to confirm a presumptive test. Confirmation testing must be requested in writing by the ordering provider.

- Urine drug testing is limited to three (3) specimens per rolling month. Additional test(s) may be requested with a Prior Authorization to be issued in six (6) month authorizations. Individuals meeting the following criteria are exempt from this limitation, and are not required to seek Prior Authorization for testing beyond three (3) specimens per month:
 1. Pregnant members;
 2. Members involved with an active Office for Child and Family Services (OCFS) case;
 3. Members in Intensive Outpatient Treatment (IOP);
 4. Members being established in Medicated Assistant Treatment (MAT) up to six months (including methadone, suboxone, and other MAT treatments);
 5. Members receiving services in an Emergency Department; and
 6. Members in Residential Treatment for substance abuse (Ch. 97 Appendix B facilities)

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

- The Department removed the limit of reflex testing by the lab based on standing order.
 - The Department removed the limit of urine drug testing for the courts.
- Finally, the Department made minor clerical edits to the final rule.

Fiscal impact of rule:

The Department does not have enough reliable claims history to prepare a fiscal estimate at this time, but anticipates that this rule-making will have a cost savings in the adopted rule.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 42, 3173

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 31**, Federally Qualified Health Center Services

Filing number: **2016-194**

Effective date: 12/15/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To establish and implement consistent and reasonable parameters around the rate setting for the prospective payment system (PPS) used to reimburse Federally Qualified Health Centers (FQHCs).

Basis statement:

This rule amends the rate setting and rate-adjustment processes for the prospective payment system (PPS) used to reimburse Federally Qualified Health Centers (FQHCs).

This rule-making clarifies and expands the current FQHC policy and procedures as follows:

- Provides additional guidance and consistency in the methodology for adjustments of PPS rates;
- Amends the process of rate establishment for newly qualifying FQHCs;
- Provides specific guidance in what constitutes “a change in scope of services”; and
- Expands the reporting requirements in conjunction with a request for rate adjustment due to a “change in scope of services”.

The Centers for Medicare and Medicaid Services (“CMS”) has approved a Maine State Plan Amendment related to initial rate-setting and “change in scope of services.” The payment methodology for FQHCs conforms to Section 702 of the *Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000*. According to this methodology, FQHCs are reimbursed based on average reasonable costs of providing MaineCare scope of services during calendar years 1999 and 2000, adjusted annually by the Medicare Economic Index (MEI) for primary care services, and also adjusted to take into account any increase or decrease based on Department approved “change in scope of services.”

The Department outlines the types of changes that may or may not be eligible for a rate adjustment based on a “change in scope of services” request, and includes examples as guidance. In addition, MaineCare has changed the data requirements for submitting a “change in scope of services” request. Adjustments to the PPS rate will be effective the first day of the month immediately following either the date the Department approves the “change in scope of services” adjustment or the date an anticipated change will begin, whichever is later.

The rule-making also amends the current process for establishing rates for newly qualifying FQHCs. Newly qualifying sites currently have PPS payments established by reference to payments to other FQHCs in the same or adjacent areas, or in the absence of such other centers, through cost reporting methods. This change requires that reference sites must also have a “similar caseload” in order to provide a basis for the new FQHC’s rate.

Additional changes to the rule include broadening the tobacco cessation treatment services to comply with 22 MRS §3174-WW, including a new reference to coverage of tobacco cessation products in Ch. III. Also in Ch. III, the Department has removed various contraceptive procedure codes that have expired or are included in the core services, so should not be listed separately. For example, the Department removed the expired Depo Provera code and replaced it with reference to

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

a generic version of the drug. No restrictions are being implemented on contraception services; in fact, the array of contraception options has been expanded by the addition to Ch. III of all FDA-approved IUDs.

This rule is being adopted in order to comply with the State Plan Amendment that was approved in February 2016 related to FQHC reimbursement.

Fiscal impact of rule:

The Department anticipates that changes to PPS rate setting and adjustments will be cost neutral in SFY 16/17.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 103**, Rural Health Clinic Services
Filing number: **2016-195**
Effective date: 12/1/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To establish and implement consistent and reasonable parameters around the rate setting and billing for the prospective payment system (PPS) used to reimburse Rural Health Clinic Services (RHCs).

Basis statement:

This rule amends the rate setting and rate-adjustment processes for the prospective payment system (PPS) used to reimburse Rural Health Clinic Services (RHCs).

This rule-making clarifies and expands the current RHC policy and procedures as follows:

- Provides additional guidance and consistency in the methodology for adjustments of PPS rates;
- Amends the process of rate establishment for newly qualifying RHCs;
- Provides specific guidance in what constitutes “a change in scope of services”; and
- Expands the reporting requirements in conjunction with a request for rate adjustment due to a “change in scope of services”.

The Centers for Medicare and Medicaid Services (“CMS”) has approved a Maine State Plan Amendment related to initial rate-setting and “change in scope of services.” The payment methodology for RHCs conforms to Section 702 of the *Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000*. According to this methodology, RHCs are reimbursed based on average reasonable costs of providing MaineCare scope of services during calendar years 1999 and 2000, adjusted annually by the Medicare Economic Index (MEI) for primary care services, and also adjusted to take into account any increase or decrease based on Department approved “change in scope of services.”

The Department outlines the types of changes that may or may not be eligible for a rate adjustment based on a “change in scope of services” request, and includes examples as guidance. In addition, MaineCare has changed the data requirements for submitting a “change in scope of services” request. Adjustments to the PPS rate will be effective the first day of the month immediately following either the date the Department approves the “change in scope of services” adjustment or the date an anticipated change will begin, whichever is later.

The rule-making also amends the current process for establishing rates for newly qualifying RHCs. Newly qualifying sites currently have PPS payments established by reference to payments to other RHCs in the same or adjacent areas, or in the absence of such other centers, through cost reporting methods. This change requires that reference sites must also have a “similar caseload” in order to provide a basis for the new RHC’s rate.

Additional changes to the rule include broadening the tobacco cessation treatment services to comply with 22 MRS §3174-WW, including a new reference to coverage of tobacco cessation products in Ch. III. Also in Ch. III, the Department has removed various contraceptive procedure codes that have expired or are included in the core services, so should not be listed separately. For example, the Department removed the expired Depo Provera code and replaced it with

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

reference to a generic version of the drug. No restrictions are being implemented on contraception services; in fact, the array of contraception options has been expanded by the addition to Ch. III of all FDA-approved IUDs.

This rule is being adopted in order to comply with the State Plan Amendment that was approved in February 2016 related to RHC reimbursement.

Fiscal impact of rule:

The Department anticipates that changes to PPS rate setting and adjustments will be cost neutral in SFY 16/17.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 42, 3173; 5 MRS §8054; PL 2016 ch. 477
(effective April 15, 2016)

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 18**, Allowances for Home and Community Based Services for Adults with Brain Injury

Filing number: **2016-196**

Effective date: 11/15/2016

Type of rule: Routine Technical

Emergency rule: Yes

Principal reason or purpose for rule:

The Department is adopting via emergency rule-making an increase to the rates in Ch. III Section 18 in accordance with PL 2016 ch. 477 (*An Act To Increase Payments to MaineCare Providers That Are Subject to Maine’s Service Provider Tax*). The Legislature enacted this law as an emergency measure, effective April 15, 2016, to provide additional appropriations to certain MaineCare providers that are subject to the service provider tax and that have experienced an increase in the tax from 5% to 6% since January 1, 2016. The Department now seeks to increase the rates of reimbursement by 1% for affected providers on an emergency basis and retroactive to April 15, 2016, when the legislation appropriating additional funding took effect. The emergency adoption will enable the rule to take effect immediately and retroactively, ensuring that providers receive the appropriated funding that will enable them to continue providing MaineCare services.

Basis statement:

The Department is adopting via emergency rule-making an increase to the rates in Ch. III Section 18 in accordance with LD 1638. Effective April 15, 2016, the Legislature enacted PL 2016 ch. 477 (*An Act To Increase Payments to MaineCare Providers That Are Subject to Maine’s Service Provider Tax*) providing additional appropriations to certain MaineCare providers that are subject to the service provider tax and that have experienced an increase in the tax from 5% to 6% since January 1, 2016.

Ch. III Section 18 lists the procedure codes, descriptions, and reimbursement rates for covered services provided to members under its companion rule, Ch. II Section 18, “Home and Community Based Services for Adults with Brain Injury”. The following services will have a 1% increase as a result of this rule-making:

- T2019 U9, Employment Specialist Services (Habilitation, supported employment waiver), from \$7.42 to \$7.49 per ¼ hour.
- T2016 U9, Home Support (Residential Habilitation) Level II, from \$298.35 to \$301.39 per diem.
- T2016 U9 TG, Home Support (Residential Habilitation) Level III – Increased Neurobehavioral, from \$485.00 to \$489.61 per diem.
- T2017 U9, Home Support (Residential Habilitation) Level I, from \$6.27 to \$6.33 per ¼ hour.
- T2017 U9 QC, Home Support (Residential Habilitation)-Remote Support-Monitor Only, from \$1.62 to \$1.63 per ¼ hour.
- T2017 U9 GT, Home Support (Residential Habilitation)-Remote Support-Interactive Support, from \$6.27 to \$6.33 per ¼ hour.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

- 97535 U9 Self Care/Home Management Reintegration-Individual, from \$14.39 to \$14.52 per ¼ hour.
- 97535 U9 HQ Self Care/Home Management Reintegration-Group, from \$9.59 to \$9.68 per ¼ hour.

The increased rates will be effective retroactive to April 15, 2016, pursuant to 22 MRS §42(8). These changes increase the reimbursement for providers, ensure that members have access to medically necessary covered services, and otherwise have no adverse impact on either MaineCare providers or members.

In addition, the Department makes the following findings in support of emergency rulemaking pursuant to 5 MRS §8054. The Legislature enacted the new law as an emergency measure with an immediate effective date of April 15, 2016. As recognized by the Legislature within PL 2016 ch. 477, MaineCare providers have insufficient reserves to withstand cost increases. Effective January 1, 2016, however, certain MaineCare providers were subject to an increase (from 5 to 6%) in the service provider tax, thus increasing their cost of providing services. The providers needed additional funding appropriated by the Legislature as soon as possible in order to continue providing MaineCare services. Given that the law provides benefits to the regulated community, and the time sensitive nature of the law, the Department finds that these changes to Section 18 should be made on an emergency basis. These emergency rule changes shall be effective for ninety (90) days. The Department shall engage in “regular” routine technical rule-making to permanently adopt these Section 18 rule changes.

Fiscal impact of rule:

The Department anticipates that this rule-making will cost approximately \$21,636 in SFY 2016, which includes \$8,077 in state dollars and \$13,559 in federal dollars, and \$129,813 in SFY 2017, which includes \$46,798 in state dollars and \$83,016 in federal dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 65**, Behavioral Health Services
Filing number: **2016-198**
Effective date: 11/23/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule adds a Medication-Assisted Treatment section to help MaineCare policy align better with federal and state guidelines surrounding substance use treatment. Due to clinical criteria changes for Section 17, “Community Support Services”, members may no longer be able to access Clubhouse services or Specialized Group Services under Section 17. Recognizing the clinical importance of these services for appropriate members, the Department is adding these services to Section 65, “Behavioral Health Services”.

Basis statement:

The Department of Health and Human Services adopts this rule in order to more closely align with federal SAMSHA guidelines as well as state licensing rules around opioid treatment, to move certain services from Section 17, “Community Support Services”, to Section 65, “Behavioral Health Services”, and to make minor technical edits. Overall, these changes are being added to support clinical best practices and improve the quality of care for MaineCare members. As a result of public comments and further review by the Department and the Office of the Attorney General, there were additional technical changes, formatting updates, minor adjustments to align with other sections of the MBM, and changes to language for clarity.

Fiscal impact of rule:

For the Medication-Assisted Treatment changes, a fiscal impact could not be determined at this time. For the Clubhouse services changes, the Department anticipates that this rule-making will cost approximately \$805.66 in FFY 2016, which includes \$300.76 in state dollars and \$504.90 in federal dollars, and \$1,611.31 in FFY 2017, which includes \$573.95 in state dollars and \$1,037.36 in federal dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 42, 3173; 45 CFR §§ 162.1000, 162.1002, 162.1011

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 109**, Speech and Hearing Services

Filing number: **2016-202**

Effective date: 11/28/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

This rule is being adopted to reduce rates for codes 92587 (Agency Rate) and 92588 (Agency and Independent Rate) to align with current Medicare rates for Speech and Hearing Services. The Department also adds code 92586 for clarification of limited services. Finally, the Department adopts minor technical edits.

Basis statement:

This adopted rule makes the following changes:

- (1) It reduces the agency rate for Code 92587 (distortion product);
- (2) It reduces both the agency rate and the independent rate for Code 92588 (distortion product);
- (3) It adds a new code: Code 92586 (Limited auditory evoked potentials);
- (4) It clarifies the description for some codes

The Department is seeking, and anticipates receiving, approval from the federal Center for Medicare and Medicaid Services (CMS) for the rate changes, and the addition of a new code. Pending approval, the rate changes and the new code will be effective as of November 28, 2016. A methodology change notice was published on March 4, 2016.

Fiscal impact of rule:

The Department anticipates that this rule-making will save approximately \$1,693.45 in SFY 2016 and \$2,007.90 in SFY 2017 in State funds. Additionally, the Department anticipates that this rule-making will save approximately \$3,004.05 in SFY 2016 and \$3,629.09 in SFY 2017 in Federal funds.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(8), 3173; PL 2015 ch. 481 Part C; Resolves 2015 ch. 45
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 2**, Adult Family Care Services
Filing number: **2016-231**
Effective date: 1/2/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule complies with:

1) PL 2015 ch. 481 (Part C), *An Act To Provide Funding to the Maine Budget Stabilization Fund and To Make Additional Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2016 and June 30, 2017*, which directs the Department of Health and Human Services to amend Ch. III Section 2, “Adult Family Care Services”, to provide a four (4) percent cost-of-living increase for Adult Family Care Services. This rule seeks to implement a four (4) percent cost-of-living rate increase for Adult Family Care Services for the fiscal year ending June 30, 2017.

2) Resolve 2015 ch. 45, *Resolve, To Require the Department of Health and Human Services to Provide Supplemental Reimbursement to Adult Family Care Homes and Residential Care Facilities in Remote Island Locations*. Although the Department previously engaged in emergency and routine technical rule-making to add language to the rule providing for a supplemental rate payment of fifteen (15) percent to adult family care homes that qualify as remote island facilities, the Department did not include a case mix chart specific to these providers and seeks to do so through this rule-making. The supplemental rate payment is effective retroactive to October 1, 2015.

Basis statement:

The Department of Health and Human Services (Department) adopts these rule changes to Ch. III Section 2, “Adult Family Care Services”, to effectuate a four (4) percent cost-of-living rate increase for the fiscal year ending June 30, 2017. In addition, Ch. III includes a case mix chart that identifies a fifteen (15) percent supplemental rate for remote island facilities. While this supplemental rate increase was included in prior rule-makings, the case mix chart was not included, and the Department seeks to adopt this change in this rule-making. These changes were enacted on an emergency basis on October 4, 2016, and the Department now seeks to adopt them permanently.

The Department is seeking and anticipates receiving approval from the federal Centers for Medicare and Medicaid Services (“CMS”) for these changes. Pending approval, the four (4) percent cost-of-living increase will be effective retroactive to July 1, 2016. The Department indicated in prior rulemakings that it was seeking CMS approval for the remote island facility supplemental payment change retroactive to October 1, 2015.

The Department is authorized to adopt these changes retroactively under 22 MRS §42(8) because these changes increase reimbursement for providers, and will have no adverse impact on either MaineCare providers or members. Additionally, because the Department submitted the requested State Plan Amendment changes to CMS by September 30, 2016 and December 31, 2015, respectively, the retroactive effective dates are consistent with federal Medicaid law. 42 CFR §447.256(c).

Fiscal impact of rule:

This rule-making is estimated to cost the Department \$197,981 in SFY, which includes \$81,501 in state dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, Maine CDC, Division of Environmental and Community Health, **Drinking Water Program**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 2605, 2611, 2620-C

Chapter number/title: **Ch. 231**, Rules Relating to Drinking Water

Filing number: **2016-082**

Effective date: 5/9/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The principal reason that the Drinking Water Program is adopting these changes is to update and clarify regulation of public water systems. By removing definitions unused within these rules, adding new definitions related to the upcoming Revised Total Coliform rule and incorporated bottled water regulations, these updates will help operators and managers of public water systems understand what is required much better with these changes.

Basis statement:

These rules are established to protect public health by ensuring that all public water systems in Maine are serving safe drinking water to the residents and visitors of Maine. The following changes further the purpose of protecting public health:

- Clarify the definitions section by removing definitions unused within these rules, because it made no sense to define terms found nowhere in the rule;
- Further explain new sections of the rule by adding new definitions pertaining to those new sections, including bottled water regulation, water vending machine regulation, and the new Revised Total Coliform rule;
- Create a more comprehensive rule for all public water systems to consult, by inserting relevant portions of Ch. 235 (the Bottled Water Bulk Water & Water Vending Machine rules). Currently, bottled water facilities and water vending machines regulations are located in a separate rule, so public water systems must consult different rules, to know whether they are in compliance with drinking water regulations. This change also reflects the 2012 Memorandum of Understanding (MOU) between the Department of Health & Human Services Maine Center for Disease Control & Prevention Drinking Water Program and the Department of Agriculture, Conservation & Forestry;
- Hold transient public water systems demonstrating vulnerabilities to public health threats more accountable by adding a measure that would assure they hire a licensed water operator, which is already required of all other public water systems;
- Help the regulated public water systems understand what exactly must be tested when a new source is approved, by replacing the vague language with individually named contaminants. Because there are so many certified laboratories in Maine, the understanding of screens may vary with each facility. Now, the standards are clearly stated in Section 3 and Appendix A;
- Further assure drinking water is safe, by adding requirements when public water systems make tank and clear well repairs, so that coating and painting of surfaces touching finished water is safe for consumption;
- Improve the timeliness of reporting acute contaminants, including e. coli, from certified laboratories to the Drinking Water Program. Instead of one week, labs must report acute contaminants within 24 hours;

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

- Meet the conditions of the DWP's primacy agreement with EPA and explain the new federal Revised Total Coliform rule, by incorporating the rule into this chapter; and
- Decrease frustration or misunderstanding by updating and correcting outdated or wrong references, citations, and typos throughout the rule.

Fiscal impact of rule:

Counties/Municipalities: These rule changes pose no fiscal impact to counties or municipalities.

Department: The requirement for annual routine inspection of the bottling facility by D.H.H.S. Maine CDC Drinking Water Program has been reduced in scope to only source and treatment oversight, as well as a reduction in frequency from annually to once every three years. These changes will save the Department approximately \$6,000, when considering all 30 facilities and all 8 field inspectors.

Small Businesses: These rule changes would save money for small businesses like bottlers, due to the potential for reducing sampling frequency.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, Maine CDC, Division of Environmental and Community Health, **Drinking Water Program**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 2605, 2611, 2620-C

Chapter number/title: **Ch. 235**, Rules Relating to Bulk Water

Filing number: **2016-083**

Effective date: 5/9/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

This rule revision simplifies the process of licensing and compliance for bottled water producers by eliminating duplicate requirement and inspections. These changes also implement the Memo of Understanding between DHHS and DACF that clarifies the duties of each with regard to bottled water, which is regulated both as a food product and as drinking water.

Basis statement:

These rule changes within Ch. 235 remove all references to bottled water and water vending machines, because they were moved to the *Rules Relating to Drinking Water*, 10-144 CMR Ch. 231. This move allows for all public water systems to refer to one set of rules at Ch. 231.

The removal of references to bottled water reflects the 2012 Memorandum of Understanding (MOU) between the Department of Health and Human Services (DHHS) Maine Center for Disease Control & Prevention (Maine CDC) Drinking Water Program and the Department of Agriculture, Conservation & Forestry (DACF). In that MOU, both parties agreed that DHHS would oversee regulation of the well/source and treatment to prior to the bottling process. DACF then oversees the bottling process, labeling and recall procedures. Therefore, much of the labeling, bottling and recall language was removed entirely and left for DACF to oversee. Changing the Rule to reflect the 2012 MOU and current practice of both Departments creates consistency and clarity in describing each Department's role and responsibility regarding regulation of bottled water facilities and water vending machines. Because Ch. 235 shall only pertain to the regulation of bulk water transportation in Maine, the title of the rule was changed from *Rules Relating to Bottled Water, Bulk Water and Water Vending Machines* to *Rules Relating to Bulk Water*.

Fiscal impact of rule:

With bottled water facility inspections being reduced from annually to once every three years, DHHS Maine CDC Drinking Water Program field inspectors will spend less time performing this inspection work, for a savings of \$6,000 per year (\$750 per inspector). This savings will be realized in a Special Revenue account for the Drinking Water Program.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Maine Center for Disease Control and Prevention**

Umbrella-Unit: **10-144**

Statutory authority: 20-A MRS §§ 6352-6358

Chapter number/title: **Ch. 261**, Immunization Requirements for School Children (*jointly with the Department of Education, Ch. 126*)

Filing number: **2016-228**

Effective date: 12/21/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

These changes include adding a Tdap vaccine to the required school entry for children entering 7th grade, to protect Maine students. Maine is one of only three remaining states yet to implement this requirement. The update to the number of Varicella exclusion days align with recommendations issued by the U.S. Centers for Disease Control and Prevention. These changes also remove outdated implementation language and more clearly reflect the DHHS Office names and structure, to reduce confusion in following the rules.

Basis statement / summary:

These joint rules are established to ensure a safe and healthful school environment for all Maine students by requiring all children attending public or private schools in the State of Maine receive the required vaccines recommended by the federal Centers for Disease Control (CDC) and the Advisory Committee on Immunization Practices (ACIP). These rules prescribe the dosage for required immunization and refine record-keeping and reporting requirements for school officials.

In recent years, new vaccines against pertussis have been introduced to the routine immunization schedule for children and adolescents, recommended for youths aged 11 to 12 years, with a catch-up vaccination for older adolescents. Pertussis is a highly contagious infection often causing school or community outbreaks. Among healthy adolescents, pertussis is usually a self-limited illness characterized by a prolonged cough. However, secondary complications can occur, and adolescents serve as an important reservoir for transmission to infants, for whom infection can lead to pneumonia, respiratory failure, apnea, and even death. The tetanus toxoid, reduced diphtheria toxoid, and acellular pertussis vaccine (Tdap) has been shown to be 92% effective in preventing culture-confirmed pertussis. Maine is one of only five states in the nation without a current Tdap school requirement.

Changes to the rules include updating the vaccine dosage requirement to include 1 dose of Tdap vaccine for 7th grade entry. This will align with the CDC and ACIP current recommendations. Additionally, the required number of exclusion dates for varicella disease will change from 16 days to 21 days to reflect the current CDC school exclusion guidelines, an oversight from the previous substantive change to this rule. Outdated implementation requirements for the varicella vaccination have also been removed. A number of non-substantive changes to the rule have also been made, including: (1) inserting a cover page, table of contents, and pagination; (2) updating department names to reflect current DHHS department names; and (3) and making minor formatting changes to align the DOE and DHHS rules.

As this is a joint rule adoption, both DHHS and DOE have concurrently updated their chaptered rules to reflect the above changes.

Fiscal impact of rule:

None

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, Maine Center for Disease Control and Prevention, **Childhood Lead Control Program**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS ch. 252 §1315-A

Chapter number/title: **Ch. 292**, Rules Relating to the *Lead Poisoning Control Act*

Filing number: **2016-149**

Effective date: 9/12/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The reason for the changes is due to the 127th Legislature amending the *Lead Poisoning Control Act* (LPCA), requiring the Department to adopt by rule a new definition of a lead poisoned child. The definition is required to be based on the new lower federal reference level for blood lead, currently 5 ug/dL. The statutory requirement to perform environmental lead hazard inspections is linked to the definition of a lead poisoned child. These recent amendments provided the Department with the authority to levy administrative fines for violation of the Act.

Basis statement:

These rules were established to protect public health by ensuring that rental properties housing lead-poisoned children are abated and landlords fulfill their responsibilities as identified in the *Lead Poisoning Control Act* (22 MRS §§ 1320 & 1320A).

The adoption of these changes to the *Rules Relating to the Lead Poisoning Control Act* is intended to clarify requirements relating to the scope of Environmental Lead Hazard Investigations when a lead poisoned child is found, clarify requirements for supplying substitute dwelling units to residents of dwellings impacted by lead hazards, describe certain requirements regarding inspections, posting and abatement orders, and also clarify the Department's enforcement authority for violations of the Act.

Specifically, the following changes to the Rules are being adopted, in furtherance of the protection of public health:

- The amended Rules include a new definition of "lead poisoned" or "lead poisoning," as required by changes to the Lead Poisoning Control Act. "Lead poisoned" or "lead poisoning," is now defined as having a blood lead level equal to, or exceeding, 5 micrograms of lead per deciliter of blood (5 ug/dL).
- Definitions have been made consistent with Department of Environmental Protection rules 06-096 CMR ch. 424, where those definitions and requirements overlap with this rule.
- The amendments further explain new sections of the Rule, by adding or modifying definitions pertaining to those new sections, including changes to investigations, relocation, and violations.
- The amendments clarify the sections of the rules identifying when the Department must inspect a dwelling unit and when it may inspect a dwelling unit.
- The amended rules further protect tenants residing in unsafe buildings by clarifying when and how the Department will notify tenants of environmental lead hazards.
- Potential new owners of affected properties have been protected through clarifications of the requirements of landlords who wish to sell a property under an abatement order.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

- The amendments clarify a landlord's requirements when an Order to Abate is placed on a property, including requirements for relocating a family residing in the affected property to a lead-safe location.
- The rule changes correct citations, and delete unnecessary definitions and notes.

The amended rules also include a more thorough explanation of the administrative penalty process for violations of the *Lead Poisoning Control Act*, which was authorized by recent change to that Act. The Department estimates that this rule is likely to require DHHS to increase the number of annual lead inspections performed from approximately 140 per year to more than 900.

Fiscal impact of rule:

Counties/Municipalities: There is expected to be no impact on counties or municipalities.

Department: This rule will require DHHS to increase the number of lead inspections performed from approximately 140 per year to over 900. A fiscal note was prepared for the 127th legislative session that estimates a \$1.3 million impact in 2015/16, decreasing to \$1.1 million by 2018/2019. The fiscal impact is based on increased contractual costs for inspections and increased staff (4 permanent and 4 limited period Environmental Specialist IIIs) to review and act on inspection reports and work with families on interim controls of identified lead hazards while awaiting more permanent corrective action. This fiscal note assumed an estimated 1,300 additional inspections. New blood lead surveillance data on confirmation rates for blood lead testing support a revised estimate of 900 additional inspections in 2016. The above costs and staff estimates may be able to be reduced by 30%.

Small Businesses: Small businesses, specifically landlords, could be impacted if they do not maintain their property as lead safe and a child living in a rented dwelling becomes lead poisoned. An increase in inspections by the Department will result in more landlords receiving an order to abate lead hazards, and landlords will be impacted by the cost of removing lead hazards and could additionally be impacted by fines if they do not comply with the *Lead Poisoning Control Act*. The average lead removal project costs \$12,000 per unit.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Division of Licensing and Regulatory Services (DLRS)**
Umbrella-Unit: **10-144**
Statutory authority: PL 2015 ch. 108; 36 RS §5219-LL; 22 MRS §42; 22-A MRS §205
Chapter number/title: **Ch. 298** (*New*), Rules Governing the Certification Program for Primary Care Tax Credit
Filing number: **2016-090**
Effective date: 5/19/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These new rules administer a “certification program” operated by the Department of Health and Human Services that selects up to 5 primary care professionals to receive a Maine state income tax credit. Professionals identified in the statute who have outstanding student loans are eligible for certification when they agree to work in a primary care practice in an underserved area of Maine for 5 years. The Legislature enacted this five-year income tax credit program to provide an incentive for eligible professionals to practice in areas with an identified shortage of primary health care professionals.

Basis statement:

The adopted *Rules Governing the Certification Program for Primary Care Tax Credit* implement a tax credit certification program enacted by the Maine Legislature. The Division of Licensing and Regulatory Services (DLRS) in consultation with the Maine Revenue Services (MRS) developed these rules to administer the certification program. Up to five eligible primary care professionals, with outstanding student loans who work in a primary care practice located in an underserved area of Maine will be certified by DHHS to receive an income tax credit each year the program is in effect.

The Legislature has funded this program for five tax years: 2014 through 2018. DLRS submits the names of the certified individuals to the Maine Revenue Services (MRS). MRS will manage the income tax credit through the certified professional's annual income tax return.

Two legislative processes supported the promulgation of these rules: (1) the creation of this primary care access credit program via PL 2013 ch. 599, and (2) the amendment of the program via PL 2015 ch. 108. Through that amendment, the single statute 36 MRS §5219-LL supports the promulgation of this rule.

The goal of the five-year program is to test the effectiveness of an income tax credit aimed at offsetting student loan debt as a method of meeting a public need to recruit and retain primary care professionals to work in underserved areas of Maine.

Initial selection is on a competitive process. To encourage retention, once certified for a tax credit, priority is given to certified primary care professionals who reapply for certification in subsequent tax years. The income tax credit that may be claimed is an amount equal to the annual payments made on the student loan (not to exceed statutory caps) each tax year the program is in effect.

Fiscal impact of rule:

This rule is not expected to fiscally impact or create new recording burdens for small businesses. This rule is not expected to yield new costs for municipal or county governments.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office for Family Independence (OFI)**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(1), 3104
Chapter number/title: **Ch. 301**, Food Supplement Program Manual, **Rule #192A:** Simplified Reporting to Change Reporting
Filing number: **2016-001**
Effective date: 1/11/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

According to federal rule 7 CFR §273.12, "Requirements for change reporting households," state agencies have the option to change reporting requirements within specific parameters provided by this federal rule.

Changing reporting requirements to within 10 days of a change becoming known to a household will improve program integrity by incorporating changes as they happen, rather than only at a due date of six months or annual review.

Basis statement:

The purpose of this rule is to change the Food Supplement reporting requirements for changes in circumstance from a six-month period to within 10 days of a change becoming known to the household. According to federal rule 7 CFR §273.12, "Requirements for change reporting households," state agencies have the option to change reporting requirements within specific parameters provided by this federal rule.

Changing reporting requirements to within 10 days of a change becoming known to a household will improve program integrity by incorporating changes as they happen, rather than only at a due date of six months or at annual review.

Although it does not dispute that the Department may adopt this rule, FNS has very recently suggested that doing so would require us to reduce client recertification periods to no more than six months. But, adopting change reporting does not compel that result, and OFI does not intend to reduce the recertification period for the Food Supplement Program from twelve to six months.

Specifically, FNS has cited 7 CFR §273.12(a)(1)(i)(C) for the proposition that such subsection of the CFR requires change reporting households reporting certain earned income to be certified for no more than six months. By its terms, however, that section simply does not impose a maximum reporting period of any kind. 7 CFR §273.12(a) generally sets out the various pieces of information that change reporting households must report. For example, change reporting households must report changes of more than \$50 of unearned income (subject to some exceptions), *id.* §273.12(a)(1)(i)(A), changes in the source of income, *id.* §273.12(a)(1)(i)(B), changes in household composition, *id.* §273.12(a)(1)(ii), and changes in residence, *id.* §273.12(a)(1)(iii). None of those reporting requirements, or any other except the one at issue, makes any reference to certification period. Nor does section 273.12 in general purport to impose any kind of certification period requirements on change reporting households.

Instead, section 273.12(a)(1)(i)(C) - and only that specific section - establishes that one of two things regarding earned income must be reported, "provided that the household is certified for no more than 6 months." (emphasis added). "Provided that" means "if" or "as long as." As such, the only reasonable interpretation of the section in question is: if a household has a certification period of six months or fewer, then it must disclose the specifically enumerated

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

income information. And, correspondingly, if a household does not have a certification period of six months or fewer, then it is not required to report the types of changes in income addressed in 7 CFR §273.12(a)(1)(i)(C).

Because change reporting households in Maine will have twelve month certification periods, it follows only that such households will be required to report all changes listed in section 273.12(a) - such as changes in household composition and income sources - except the specific information concerning earned income set out in section 273.12(a)(1)(i)(C). That is all a natural reading of that section compels, and thus that is what Maine will require of change reporting households. Nevertheless, FNS somehow reads the conditional "provided that" clause to unconditionally impose a six month certification maximum on change reporting households with earned income. That interpretation is neither supported by the text of §273.12(a)(1)(i)(C), nor by that subsection's placement within the regulatory scheme.

Fiscal impact of rule:

This rule can affect both the federally funded, and smaller state funded programs due to more restrictive time frames to report changes that may impact benefit levels in either a positive or negative manner. These types of future changes cannot be determined at this time.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office for Family Independence (OFI)**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3104; 5 MRS §8054; 7 CFR 273.9(d)(6)(iii)(B)
Chapter number/title: **Ch. 301**, Food Supplement Program Manual, **Rule #197E**: SUA Changes for FFY 2017: **Section FS-555-5**, Income and Deductions
Filing number: **2016-163**
Effective date: 10/1/2016
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

An emergency rule change is necessary to remain in compliance with Federal regulation 7 CFR 273.9(d)(6)(iii)(B), which requires annual review and adjustment to the SUA(s).

Basis statement:

This rule implements updated standard utility allowances (SUA), as approved by USDA Food and Nutrition Services (FNS) for FFY 2017, effective October 1, 2016. Federal regulation 7 CFR 273.9(d) (6)(iii)(B) requires that SUA(s) be reviewed and updated annually. The SUA values are based on changes in the Consumer Price Index (CPI) for fuel and utilities from June 2015 to June 2016, subject to approval by FNS, which was obtained by the Department prior to this rule-making.

Findings of Emergency

The final approved values, which will cause benefits to decrease, were not provided in a timeframe that would allow the Department to comply with the non-emergency rule-making process and implement by the required date of October 1, 2016. The Department finds that an emergency rule change is necessary to preclude federal penalties or loss of federal funds.

Fiscal impact of rule:

There are no implementation costs associated with this rule. This rule will not have an impact on municipalities or small businesses.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office for Family Independence (OFI)**
Umbrella-Unit: **10-144**
Statutory authority: 7 USC §2015(s); 22 MRS §§ 42(1), 3103
Chapter number/title: **Ch. 301**, Food Supplement Program Manual, **Rule #194A: Section FS-444-12**, Households with Special Circumstances (Lottery Winnings)
Filing number: **2016-197**
Effective date: 10/21/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule creates a basis for termination of benefits based on substantial lottery and/or gambling winnings. The current Food Supplement rules do not address lottery/gambling winnings and effect on eligibility. The rule would cause immediate termination of benefits when anyone in the benefit household has lottery/gambling winnings of \$5,000.00 or more in one calendar month. The winnings would be treated as assets. Affected households may immediately reapply and are subject to eligibility guidelines to requalify for benefits. The Department will coordinate with the Maine Lottery Commission in implementing this rule to receive confirmation of significant winnings.

Basis statement:

The rule disqualifies a Food Supplement household from receiving benefits after having received substantial lottery and/or gambling winnings. The rule makes a household ineligible for benefits when anyone in the household receives lottery or gambling winnings of \$5,000.00 or more in one calendar month. This amount is calculated based on winnings received after any legally required setoffs or interceptions as required by Maine law. After being disqualified by operation of this rule, a household could immediately reapply and be subject to all applicable financial eligibility guidelines for a new determination of eligibility.

The rule effectuates Section 4009 of the *Agricultural Act of 2014*, PL 113-79 (the “Farm Bill”), codified at 7 USC §2015(s), enacted February 7, 2014, which has not yet been otherwise addressed in the Federal Register or the Maine Food Supplement rules. This omission has made it possible for participants who have won substantial sums of money to continue receiving Food Supplement benefits, notwithstanding Congress’s intent to make such households ineligible. While the Farm Bill requires that the Secretary of Agriculture establish the amount of lottery or gambling winnings necessary to make a household ineligible, he has not done so. Accordingly, this rule sets a limit of \$5,000 – which is equal to the highest asset test currently applied in the Food Supplement Program – and otherwise operates exactly as the Farm Bill provides.

There are three changes in the final rule made after the comment period. The Department removed the requirement that “gross” winnings count against the household and added that only winnings that are actually received count against the household, allowing for required offsets (such as outstanding tax debt or child support arrears). These changes more closely align the rule to the federal statute, and were made upon the recommendation of the Office of the Attorney General. Finally, the Department added a reference to Section FS 333 (Assets) so that it is clear a participant must meet all financial eligibility requirements when re-applying for benefits in addition to FS 444 and FS 555.

Fiscal impact of rule:

No State fiscal impact.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office for Family Independence (OFI)**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3104; 7 CFR 273.9(a), (d)(6)(iii)(B)
Chapter number/title: **Ch. 301**, Food Supplement Program Manual, **Rule #197A** – SUA Changes for FFY 2017: **Section FS-000-1**, Basis of Issuance; **Section FS-555-5** pages 1-11, Income and Deductions
Filing number: **2016-226**
Effective date: 10/1/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

An change is necessary to remain in compliance with Federal regulation 7 CFR 273.9(a), (d)(6)(iii)(B), which require annual review and adjustment to the SUA and COLA values.

Basis statement:

This rule adopts annual changes in the standard utility allowances (SUA) and cost of living allowances (COLA) used to calculate benefits. The annual changes are mandated by federal regulations 7 CFR 273.9(a) and (d), and are based on USDA Food and Nutrition Services (FNS) requirements. To avoid causing overpayments, the SUA values had to be in place on October 1, 2016. Thus, an emergency rule-making was promulgated to meet that deadline. This rule-making makes the emergency rule permanent. The COLA values did not require an emergency rule-making because they represent increases in allowances and, as such, can be applied retroactively to October 1, 2016.

While the COLA values increased, SUA values decreased for FFY 2017. The marginal decrease in the SUAs and marginal increase in the COLAs will have minor impacts on household benefit amounts, and will affect households based on factors distinct to each household. Some members may see a minor increase in benefits, while others will have a minor decrease.

Finally, the rule removes a “note” related to outdated LIHEAP policy that was not deleted when the Department’s rule-making on updated LIHEAP policy was promulgated.

Fiscal impact of rule:

None anticipated

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office for Family Independence (OFI)**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(1), 4301(3)
Chapter number/title: **Ch. 323**, Maine General Assistance Manual: **Section 3** pages 4, 6; **Section 5** pages 1, 2
Filing number: **2016-079**
Effective date: 5/16/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this rule is to implement changes to 22 MRS §4301(3), per PL ch. 324 (*An Act to Clarify the Immigration Status of Noncitizens Eligible for General Assistance*) passed by the 127th Legislature. This rule will clarify who is newly eligible under that law and who is not. It interprets "pursuing a lawful process" to include only an affirmative application for asylum that follows U.S.C.I.S. rules and that it is submitted prior to being placed in removal proceedings. Those lawfully present and those "pursuing a lawful process" will have a 24 month lifetime eligibility limit. The rule also interprets the statute's 24 month limit to include months in which they received G.A. prior to the law's passage.

A paragraph that stated that eligibility is determined solely on the basis of need was removed to clarify that there are other factors used in determining eligibility.

Additionally, the rule establishes a requirement on the municipalities for tracking of the 24 month lifetime limit. And, it sets reporting and verification requirements for the municipalities to follow as a condition of reimbursement. This rule will ensure program integrity is maintained with the implementation of PL ch. 324.

Basis statement:

This rule-making implements new classifications of eligible individuals for General Assistance, as well as a 24 month time limit, made by PL ch. 324 (*An Act to Clarify the Immigration Status of Noncitizens Eligible for General Assistance*), passed by the 127th Legislature and codified under 22 MRS §4301(3).

The rule defines the two new classifications of individuals who are not U.S. citizens, but are "lawfully present" or are "pursuing a lawful process to apply for immigration relief." The Department defines a "lawfully present" individual as one who meets the federal criteria under 8 USC §1621(a)(1)-(3). This rule-making establishes that an individual is "pursuing a lawful process" within the meaning of section 4301(3) when he or she has filed an application for immigration relief with the U.S. Citizenship and Immigration Services. The rule provides that Department reimbursement to municipalities is conditioned upon adhering to reporting and verification requirements of "lawfully present" and "pursuing a lawful process" individuals. The rule also sets a procedure for municipalities to track and report to the Department assistance months for those considered "pursuing a lawful process," because the statute sets a 24 month eligibility limit for such newly eligible noncitizens.

As a result of comments, there were several changes to the final rule after it was proposed. The changes are summarized below and explained in detail at the end of the Summary of Comments and Responses document.

In section III, "Definitions", there are two changes. The definition of "lawfully present" has been changed to add the actual the language of 8 USC §1621(a)(1)-(3), rather than just the citation to the statute. Also, the definition of "pursuing a lawful process to apply for immigration relief" has been changed to provide that both defensive and affirmative

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

applications meet the definition. The latter change expands the rule's coverage of who is eligible for GA, consistent with PL 324.

In section V, the Department made several changes. While, because of the new eligibility requirements in statute, the proposed rule had removed a sentence stating that eligibility is determined solely on the basis of need (page 1),the Department restored this sentence in the final rule, but added a phrase that applicants must also be eligible pursuant to 22 MRS §4301(3). On page 2, Immigration Status, there are three changes. The term "U.S. Citizen" was removed because this paragraph is intended to apply to noncitizens. Likewise, the 24 month time limit should apply only to those individuals "pursuing a lawful process," so the term "lawfully present" was removed. Finally, an added sentence plainly states that only those "pursuing a lawful process" have a 24 month time limit, which limit begins after July 1, 2015.

Several changes were made to the proposed VERIFICATION, RECORDS RETENTION, AND REPORTING RESPONSIBILITIES, section V, page 2. The Department clarified that the applicant is responsible for verifying the lawful pursuit of immigration relief to the municipality, instead of requiring the municipality to confirm the applicant's status. The Department removed reference to "official federal government documentation," and added language to make clear that verification an applicant may provide includes documentation from a federal agency, the USCIS or other court documentation. The Department clarified that GA administrators are only responsible for tracking assistance months provided in their own municipalities, and only for those recipients who are "pursuing a lawful process."

In addition to the rule, in the near future the Department will issue detailed, updated guidance to the municipalities regarding what applicants are eligible for GA, consistent with 22 MRS §4301(3) and the requirements of the rule.

Fiscal impact of rule:

It is estimated that this rule will cost the State of Maine \$3,068,510.05 for SFY 2016 and \$3,221,935.55 for SFY 2017. A reduction was never made in the baseline budget when reimbursements for this population were stopped. Therefore, \$1,752,289.09 in SFY 2016 and \$1,702,403.40 for SFY 2017 will be covered with those funds. The net General Fund fiscal impact will be \$1,316,220.96 for SFY 2016 and \$1,519,532.15 for SFY 2017.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Service, **Office for Family Independence (OFI)**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(1), 3762(3)(A), 3762(8) and 3769-A, and PL 2015 ch. 267 Pt. RRRR-2, Pt. RRRR-3
Chapter number/title: **Ch. 331**, Maine Public Assistance Manual (TANF), **Rule #105A: Ch. IV**, Budgeting Process; **Ch. V**, Post-TANF Benefits; **Appendices**
Filing number: **2016-060**
Effective date: 4/10/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule implements portions of the Fiscal Year 2016-2017 biennial budget, which included the following changes to Maine's TANF Program:

- Eliminates the Gross Income Test for ongoing TANF cases. The test will be used for applications only.
- Increases the duration of the Transitional Assistance Program from 12 months to 18 months, and sets the daily reimbursement cap during months 13-18 at \$15 per day.

Basis statement:

This rule implements the amendment and additions to 22 MRS §§ 3762(3)7-A and 3762(8)B by PL 2015 ch. 267 Pt. RRRR-2 and RRRR-3, thereby adopting into the TANF manual the following:

a) Eliminate the Gross Income Test for ongoing TANF cases. The Gross Income Test will be used for applicants only. The test for ongoing recipients will be the Standard of Need (SON). This rule change is necessary to conform regulations with the new statutory requirement.

b) Increase the duration of the Transitional Assistance Program for transportation costs from twelve (12) months to eighteen (18) months to meet employment related travel costs where the recipient lost TANF eligibility due to employment. While the increase from 12 to 18 months is statutorily compelled, the Department has elected to set the maximum daily reimbursement cap during months thirteen (13) through eighteen (18) to fifteen dollars (\$15.00) per day. The purpose in reducing the maximum daily cap in the last six months of the program is to gradually decrease the subsidy in an effort to transition the recipient from public benefits to self-sufficiency.

Some non-substantive changes were made to the rule after it was proposed, for clarification purposes and as part of reformatting. The Department made a change to the term "both parents" working instead of "both adults" working, in Ch. V, III(b). The reason for the change was that an adult may be part of the household and not a parent.

Fiscal impact of rule:

Estimated cost of the extension of the period of eligibility for Transitional Transportation - \$775,878.00. This will be funded by the TANF Block Grant.

Estimated cost of the elimination of the Gross Income Test for ongoing eligibility is unknown. This will be funded by the TANF Block grant.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office for Family Independence (OFI)**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173, 3174 *et seq.*; 42 USC §1396a, 9902(2)
Chapter number/title: **Ch. 332**, MaineCare Eligibility Manual, **Rule #283A: Chart 6**, Federal Poverty Levels
Filing number: **2016-128**
Effective date: 8/1/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The State of Maine administers the MaineCare program pursuant to a State Plan, which requires that the State rules reflect prevailing federal standards and arithmetical values. The federal poverty guidelines are updated periodically in the Federal Register by the U.S. Department of Health and Human Services.

Basis statement:

This rule updates the *MaineCare Eligibility Manual* with the Federal Poverty Level (FPL) amounts that were determined by the U.S. Department of Health and Human Services and published in the Federal Register on January 25, 2016. This change will be retroactive to January 1, 2016. The 2016 Federal Poverty Level must be applied to all eligibility decisions effective January 1, 2016, as required by federal law. Pursuant to 22 MRS §42(8), the Department is authorized to adopt rules that have a retroactive application to comply with federal requirements or to conform to the State Medicaid Plan as filed with the federal government as long as there is no adverse financial impact on recipients. These rules produce no adverse financial impact on recipients.

Fiscal impact of rule:

There will be a fiscal impact on the General Fund due to increased eligibility for some recipients. The amount cannot be determined, however.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office for Family Independence (OFI)**

Umbrella-Unit: **10-144**

Statutory Authority: 42 CFR §431231(c)(2); 42 CFR §431916(a)(3)(i)(B); 42 CFR §431916(a)(3)(iii); 42 CFR §457805; *American Taxpayer Relief Act of 2012*; PL 2005 ch. 12 DDD-12

Chapter number/title: **Ch. 332**, MaineCare Eligibility Manual, **Rule #278A**: MaineCare Eligibility Manual (*multiple revisions*)

Filing number: **2016-153**

Effective date: 10/1/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

This rule makes revisions to several Parts of Ch. 332, *MaineCare Eligibility Manual*. Most of the revisions provide more clarity, correct typographical errors, or delete outdated references to the current MaineCare eligibility rule. The remainder of the revisions comply with federal requirements (i.e., increasing the noticing requirement from 12 to 15 days, increasing to 90 days the time in which one can complete a review form, and excluding income tax refunds as a countable asset for 12 months from receipt). None of the changes and/or corrections that have been made are expected to be controversial.

There were several minor changes made after the comment period, most are additional clarification of program eligibility. A complete list of the changes made after the comment period are listed in the Summary of Public Comments and Department's Response and List of Changes Made to the Final Rule.

Fiscal impact of rule:

No fiscal impact is anticipated.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office for Family Independence (OFI)**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 42, 3173; 42 USC §1396a *et seq.*

Chapter number/title: **Ch. 332**, MaineCare Eligibility Manual, **Rule #281A: Chart 3.10**, Premium Increase for Benefit for Special Benefits Waiver

Filing number: **2016-154**

Effective date: 10/1/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The monthly premiums to enroll in the HIV/AIDS Waiver are updated to comply with the Waiver agreement between DHHS and CMS [Maine Section 1115 “Health Care Reform Demonstration for Individuals with HIV/AIDS”, Part V, Paragraph 21].

Basis statement:

This rule results in changes to Chart 3.10, “Premiums for Special Benefit Waiver of the *MaineCare Eligibility Manual*”, and increases the 2016 monthly premium for individuals enrolled in the Special Benefits Waiver, [10-144 CMR, ch. 101, *MaineCare Benefits Manual*, Ch. X Section 1, “Benefit for People Living with HIV/AIDS”]. For persons with income equal to or less than 150% of the Federal Poverty Level (FPL) the monthly premium remains at zero. The monthly premium is \$34.22 for people with income between 150.1% of the FPL up to and including 200% of the FPL, and \$68.43 for people with income between 200.01% and 250% of the FPL.

The changes are necessary to comply with federal law and the waiver agreement between the Maine Department of Health and Human Services and the Centers for Medicare and Medicaid Services, through which this initiative is operated (See Maine Section 1115 “Health Care Reform Demonstration for Individuals with HIV/AIDS”, Part V, Paragraph 21).

Fiscal impact of rule:

None known.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office for Family Independence (OFI)**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 42, 3173; 42 USC §1396a; 22 MRS §3173-G

Chapter number/title: **Ch. 332**, MaineCare Eligibility Manual, **Rule #282A** - Family Planning: **Part 9**, Special Groups – HIV/AIDS Waiver, Breast and Cervical, Family Planning: **Section 4**, Family Planning Coverage; **Part 18**, Presumptive Eligibility Determined by Hospitals: **Section 2**, Eligibility for Presumptive Eligibility Determination by Hospitals

Filing number: **2016-181**

Effective date: 10/1/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

This rule aligns the *MaineCare Eligibility Manual* with statutory changes to 22 MRS §3173-G, *Medicaid Coverage for Reproductive Health Care and Family Planning Services*, creating a limited benefit coverage group for adult and adolescent individuals in need of reproductive health care and family planning services who meet certain income guidelines.

Basis statement:

These rule changes align the *MaineCare Eligibility Manual* with recently enacted 22 MRS §3173-G, *Medicaid coverage for reproductive health care and family planning services*. This statute creates a limited Medicaid benefit coverage group for adult and adolescent individuals in need of reproductive health care and family planning services who have an income at or below 209% of the Federal Poverty Level (FPL).

The Legislature enacted 22 MRS §3173-G in accordance with the *Patient Protection and Affordable Care Act*, 42 USC §1396a(ii). Federal law provides states with the option to expand Medicaid coverage for family planning services.

To implement §3173-G, the Department adds a Section 4 (Family Planning Coverage) to Part 9 (Special Groups) of the *MaineCare Eligibility Manual*. Coverage is available only to individuals who are not otherwise eligible for any Categorically Needy or Medically Needy coverage group, and those who are not pregnant. Eligibility must be determined based on only the individual applicant's income, using the modified adjusted gross income (MAGI) methodology. Other basic eligibility requirements apply. There is no asset test for this coverage group. This limited benefit may be granted to all individuals regardless of age and gender.

The Office of MaineCare Services is adopting a rule for the *MaineCare Benefits Manual* (10-144 CMR ch. 101) setting forth the covered family planning services for this expanded eligibility group, as required by 22 MRS §3173-G.

In addition, the Department adopts changes to Part 18 ("Presumptive Eligibility Determined by Hospitals") of the *MaineCare Eligibility Manual*. Hospitals may make presumptive eligibility determinations for those who meet the requirements of Part 9, Section 4.

The Department obtained CMS approval for this expanded eligibility group on March 3, 2016. However, the Department's submission for approval included eligibility based on household income instead of individual income. Thus, the Department filed a request to obtain CMS approval to change income eligibility from household income to individual income, and that each applicant will be considered a household of one. The Department anticipates receiving CMS approval for these changes. Pending approval, the rule shall be effective retroactive to October 1, 2016.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Even though the rule includes no such restriction, the rule-making Fact Sheet and Notice of Agency Rule-making Proposal incorrectly indicated that individuals receiving benefits under the MaineRx Plus and Low Cost Drugs for the Elderly and Disabled (DEL) were ineligible for Family Planning under the rule.

There were changes made to the rule after its proposal. The most significant change made to the final rule is that the income of the individual, instead of the household, is used to determine eligibility. This change was made to comply with state law, which incorporates the federal option for states to count individual income, and it is consistent with the latest submissions made to CMS.

Fiscal impact of rule:

The Department anticipates that this rule-making will result in savings of approximately \$298,743 in State funds in SFY17. The anticipated Federal cost is \$1,122,776, for a State savings of \$1,421,519. The Department anticipates savings in SFY18 to be approximately the same as SFY17.

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

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Division of Support Enforcement and Recovery (DSER)**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §42(1); PL 2015 ch. 296; 19-A MRS §§ 1601-1616, 2304; Ch. 65 Article 3 sub-Article 3, and Ch. 67; 10 MRS §4013; 26 MRS §1191(7); 36 MRS §5276-A(2); 45 CFR §§ 302.51(a)(1), 303.7
Chapter number/title: **Ch. 351**, Maine Child Support Enforcement Manual (*internal chapters 2, 3, 8, 9, 15, 17, 18, 27*)
Filing number: **2016-028**
Effective date: 3/1/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule-making will update various provisions of the *Maine Child Support Enforcement Manual*, to update and clarify provisions and keep the Manual current with changes made in the last legislative session.

Basis statement:

This rule-making will update various provisions of the *Maine Child Support Enforcement Manual*, to update and clarify various provisions and keep the Manual current with changes made in the last legislative session. The adopted rules will ensure that the Manual is easily understandable, consistent with pertinent statutes and reflective of current practices.

Chapter 2: This rule updates the definitions used in the Manual to reflect Maine statute and federal regulation changes.

Chapter 3: This rule updates and clarifies the process for case closure, and clarifies some of the language of the previous rule to make it more easily understandable.

Chapter 8: This rule incorporates changes anticipated by the passage of the *Maine Parentage Act*, effective July 1, 2016. As such, it adds provisions pertaining to *de facto* parentage and the non-marital presumption of parentage, and clarifies the language of the previous rule.

Chapter 9: This rule clarifies and updates the administrative process of establishing paternity, and incorporates changes anticipated by the passage of the *Maine Parentage Act*, effective July 1, 2016. As such, it adds provisions pertaining to assisted reproduction and the non-marital presumption of parentage. It simplifies the process to establish the paternity of a non-custodial parent who is unmarried to the custodial parent, but held out the child as his own, and clarifies the rules for parents who use assisted reproduction to conceive their child(ren).

Chapter 15: This rule provides clarity, adds a provision made necessary by a change in statute, requiring that all liens be discharged within 60 days of satisfaction, and reflects a change in practice in that the Withhold and Deliver mechanism is now used for disposition of property, whereas the Immediate Income Withholding Order is used to garnish wages.

Chapter 17: This rule ensures that those who wish to appeal a state tax refund offset are afforded the statutory allotment of time in which to do so.

Chapter 18: This rule reflects changes in practice due to advances in technology since the rule was written.

Chapter 27: This rule clarifies the procedure for providing services in Intergovernmental cases by adding definitions under the *Uniform Interstate Family Support Act*, and by streamlining and simplifying the rule for easier reading.

Fiscal impact of rule: None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Division of Support Enforcement and Recovery (DSER)**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §42(1); 19-A MRS §2011
Chapter number/title: **Ch. 351**, Maine Child Support Enforcement Manual (*internal Chapter 6*)
Filing number: **2016-029**
Effective date: 7/1/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The studies on which the current Guidelines are based were done in the early 1980's. The newest studies report that the differences between raising younger and older children in a single parent household cannot be consistently shown. The latest two expert reviews of the Maine Guidelines suggested that the use of an age differential is no longer necessary, and contributes to a 14% error rate in the determination of Maine child support orders. This change will simplify the determination of child support and reduce errors, and thereby contribute to ensuring that child support obligations are fair and reasonable.

Basis statement:

Pursuant to 45 CFR §302.56, as a condition of approval of its State plan, each State shall establish one set of child support Guidelines by law or by judicial or administrative action for setting and modifying child support award amounts within the State. These guideline numbers become a rebuttable presumption in child support actions. Every four years, each State must review, and revise, if appropriate, the Guidelines to ensure that their system results in the determination of appropriate child support award amounts.

Although DSER has reviewed the Maine Child Support Guidelines quadrennially since they were established, and updated the numerical data contained therein as appropriate, the structure of the table has not changed since its inception. The age differential used currently (a multi-tiered approach using two different tables, one for children under the age of twelve and one for children from age 12-18) was recommended in the final report of the National Child Support Guidelines Project, published in 1990, based on a study done in 1984-87 - close to 30 years ago. Dr. David Betson, on whose studies the current Maine system is based (as updated in 2006) no longer recommends an adjustment for the child's age (latest study in 2010). Economist and Child Support expert Dr. Jane Venohr recommended in her 2007 review of the Maine Child Support Guidelines that Maine update the table at that time to eliminate the two-tier system and convert to a format that uses one amount per combined income category, without adjustments for the age of the child. The Cutler Institute, which performed the latest review, published in 2012, also recommended that the tiered system be revisited, due to its complexity and the high level of errors associated with misreading or misinterpreting the tables. All but two other states have abandoned multi-tier guideline tables.

The necessity of the multi-tier table to allow for differences in the cost of raising children of different ages is no longer consistently borne out in studies. Although at one time studies seemed to indicate that older children cost more to raise than younger children, recent studies show inconsistent results, mainly because of the inability to control for the myriad variables that are inherent in the new American family. Attempting to extrapolate the costs of raising children in two single-parent households from studies on intact two-parent households is an inexact science at best.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

A multi-tier table is cumbersome to use, and, according to the Cutler Institute's findings, a large contributor to the 14% error rate in child support orders, costing some families hundreds of dollars per year. The change to Guidelines based only on income and number of children will simplify the determination of child support and reduce errors, and thereby contribute to ensuring that child support obligations are fair and reasonable. This would promote judicial economy, aid all those who calculate child support obligations, especially pro-se litigants, and ultimately benefit Maine's children.

Fiscal impact of rule:

There will be some cost involved in changing computer computation systems to accommodate the new guideline numbers, and in changing forms used to calculate child support orders. The cost to change forms will be minimal. The cost for changes to the CSEME data tracking system is estimated to be \$79,665, of which will be paid using Other Special Revenue Funds.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Division of Support Enforcement and Recovery (DSER)**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §42(1); 19-A MRS §2011
Chapter number/title: **Ch. 351**, Maine Child Support Enforcement Manual (*internal Chapter 6*)
Filing number: **2016-102**
Effective date: 6/15/2016
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The recently adopted rule #2016-029 used incorrect dollar amounts per child to populate the new Child Support Guideline table. This emergency rule-making is to correct those numbers. There is a threat to public general welfare, as if the table is not corrected as of July 1, 2016, Maine children will receive less child support than that to which they are entitled. In addition, the header of the new table will be changed to reflect that the table will apply to all children, aged 0-18 (19 if the child is still in school), avoiding confusion due to any references to two age categories as mentioned in 19-A MRS ch. 63. The effective date of the new Guideline table will be July 29, 2016.

Basis statement:

The recently adopted rule #2016-029 used incorrect dollar amounts per child to populate the new Child Support Guideline table. This emergency rule-making is to correct those numbers. There is a threat to public general welfare, as the Department has made a finding that the current Guideline table is incorrect, and if it is not corrected immediately, children will receive less child support than that to which they are entitled.

Pursuant to 45 CFR §302.56, as a condition of approval of its State plan, each State shall establish one set of child support Guidelines by law or by judicial or administrative action for setting and modifying child support award amounts within the State. These guideline numbers become a rebuttable presumption in child support actions. Every four years, each State must review, and revise, if appropriate, the Guidelines to ensure that their system results in the determination of appropriate child support award amounts. As part of its most recent quadrennial review, the Department decided to simplify and update its Child Support Guideline Table by eliminating the longstanding "two-tier" table setting the presumed per-child amount according to the age of the children (0-11 for one tier, 12-18 for the other).

After the adoption of rule #2016-029, the Department discovered that the numbers used in the new one-tier table established by the rule were actually the former numbers for the 0-11 age group tier. These numbers are 15% lower across the board than those calculated by the quadrennial reviewers and intended to be used in the new one-tier table.

Unless this rule-making is put into place on an emergency basis to correct this error, child support orders made after July 1, 2016 will short-change Maine children by 15% less than what they should receive from their non-custodial parent.

Fiscal impact of rule:

All costs involved were addressed in previous rule-making. No additional costs will be incurred.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Division of Support Enforcement and Recovery (DSER)**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §42(1); 19-A MRS §§ 2001, 2006, 2007; 5 MRS §9053(2)

Chapter number/title: **Ch. 351**, Maine Child Support Enforcement Manual:
Ch. 7, Implementation of Child Support Guidelines;
Ch. 13, Disposition of Proceedings by Settlement, Stipulation or Consent Decision; Waivers

Filing number: **2016-114**

Effective date: 7/6/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

Chapter 7: This rule updates the *Maine Child Support Enforcement Manual* to clarify the decision-making process for imputing income to certain non-custodial parents, and the burden of persuasion when requesting a deviation in the child support amount; and updates the rule to reflect recent Manual changes.

Chapter 13: To allow for an expedited consent decision process for incarcerated obligors who have no means to pay a support order while in prison, to avoid unnecessary hearings.

Basis statement:

Chapter 7:

If States are unable to obtain data on the earnings and income of the noncustodial parent in a child support proceeding, many States impute the noncustodial parent's income. In some cases, imputation of income is based on an analysis of a parent's specific education, skills, and work experience, while in other cases, imputation of income is standardized based on full-time, full year work at minimum or median wage, particularly if a noncustodial parent is not working, or there is no available income information.

Research suggests that support orders based on imputed income often go unpaid because they are set beyond the ability of parents to pay them. The result is high uncollectible arrears balances that can provide a disincentive for obligors to maintain employment in the regular economy. Inaccurate support orders also can help fuel resentment toward the child support system and a sense of injustice that can decrease willingness to comply with the law. The research supports the conclusion that accurate support orders that reflect a noncustodial parent's actual income are more likely to result in compliance with the order, make child support a more reliable source of income for children, and reduce uncollectible child support arrearages. A current Federal Notice of Proposed Rule Making will require States to base all support orders on actual income when/if it becomes effective.

Before child support programs were computerized, imputation of income was used as the basis for establishing support obligations because limited information was available to decision-makers. Today, however, States have access to multiple interstate data systems, including the State and National Directories of New Hires as well as the Financial Institution Data Match (FIDM) and Multistate Financial Institution Data Match (MSFIDM), that can verify when a noncustodial parent has a new job, is claiming unemployment insurance benefits, or has quarterly wage information available. Data, not assumptions, are a more accurate method of determining the income and resources of noncustodial parents.

Accordingly, we modernize standard practices for setting child support awards in order to set more accurate orders based on actual income. This will have the effect of increasing

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

child support collections and prevent languishing cases that go uncollected because they are based on theories rather than reality.

This rule-making also removes references to a 2-tier system of support guidelines based on the age of the children, which will change as of July 29, 2016 to a one-tier system based only on the number of children in a household.

Chapter 13:

The Department understands that when non-custodial parents are incarcerated they are often unable to meet their child support obligation, because they are unable to work. Although some incarcerated obligors are able to make a nominal amount of money while in prison (which may be garnished by the Department), it does not come close to meeting most support obligations. Federal regulations upon which the *Maine Child Support Enforcement Manual* is based make allowances for incarcerated obligors to suspend their obligation while in prison, to avoid the accumulation of an uncollectible debt during the period of incarceration. States are allowed to suspend child support orders while the obligor is incarcerated, through a modification process in the tribunal in which the order was established, either through the Court system or through the Administrative Hearings process.

Since the Department, and the vast majority of custodial parents to whom child support is owed, do not object to the suspension of a child support obligation until the non-custodial parent has been released from incarceration, the hearings process in these cases is a formality which unnecessarily costs time and money. A simple method of incorporating the consent agreement of all parties into a decision is an easy and cost-effective means of ensuring this inevitable result. This rule-making allows for an expedited consent decision process for incarcerated obligors who have no means to pay a support order while in prison, to avoid unnecessary hearings. A simple method of allowing parents to modify their support order while the obligor is incarcerated will cut down on the number of unnecessary hearings, saving scarce Department funds and resources.

Fiscal impact of rule:

Ch. 7: No fiscal impact

Ch. 13: Changes will save the Department hearing costs. An Administrative Hearing costs the Department approximately \$200, DSER's cost-sharing portion of the DAH's expenses. Specific impact is unknown, as it is impossible to determine how many hearings will be prevented by this measure.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Division of Support Enforcement and Recovery (DSER)**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §42(1); 19-A MRS §2011
Chapter number/title: **Ch. 351**, Maine Child Support Enforcement Manual (*internal Chapter 6*)
Filing number: **2016-139**
Effective date: 8/22/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The recently adopted rule #2016-029 used incorrect dollar amounts per child to populate the new Child Support Guideline table. This adopted rule-making corrects those numbers, making permanent the changes made in emergency rule #2016-102. In addition, the header of the new table will be changed to reflect that the table will apply to all children, aged 0-18 (19 if the child is still in school), avoiding confusion due to any references to two age categories as mentioned in 19-A MRS Ch. 63. The effective date of the new Guideline table will be July 29, 2016.

Basis statement:

Pursuant to 45 CFR §302.56, as a condition of approval of its State plan, each State shall establish one set of child support Guidelines by law or by judicial or administrative action for setting and modifying child support award amounts within the State. These guideline numbers become a rebuttable presumption in child support actions. Every four years, each State must review, and revise, if appropriate, the Guidelines to ensure that their system results in the determination of appropriate child support award amounts. As part of its most recent quadrennial review, the Department decided to heed the advice of the reviewers and simplify and update its Child Support Guideline Table by eliminating the longstanding "two-tier" table setting the presumed per-child amount according to the age of the children (0-11 for one tier, 12-18 for the other). The table made permanent by this adopted rule simplifies the two-tier table so that the calculation of child support is based on the combined income of the parents and the number of children in the household, not the ages of the children.

Fiscal impact of rule:

There will be some cost involved in changing computer computation systems to accommodate the new guideline numbers, and in changing forms used to calculate child support orders. Specifically, \$79,665.00 will be needed in other special revenue for just over 1,000 hours of work on DSER's CSEME data tracking system. These changes have already been made, since the emergency rule became effective.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office for Family Independence (OFI)**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(1), 3762(3)(A), 3785, 3785-A, 3786
Chapter number/title: **Ch. 607**, ASPIRE-TANF Program Rule (Sections 3, 4)
Filing number: **2016-050**
Effective date: 3/26/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule revises the scheduling process in Section 3 to clarify that an unexcused failure to appear for an appointment with ASPIRE, or any of the service providers included in the Family Contract Amendment, or to provide prior notice to ASPIRE of good cause (as determined by ASPIRE/TANF), will result in a Notice of Sanction.

The ASPIRE/TANF program has determined that the current noticing process is duplicative, and delays participant compliance. In Section 4, the initial and duplicative notice of non-compliance and ten workday waiting period will be removed. The current sanctioning process includes a provision that allows the participant ten workdays to prove good cause and request a fair hearing if the participant disagrees with the Department's determination of good cause. A supervisor shall review the participant's file prior to the recommendation to start the sanction process, and again at the end of the process but prior to the imposition of the sanction of benefits.

Basis statement:

The U.S. Department of Health-and Human Services has imposed approximately \$29 million in fines against the State of Maine for failing to meet the Federal Work Participation Rates (WPR) for the period of 2007 to 2012. It is likely that additional federal fines will be assessed against the State after 2012 since the Department has historically not enforced or maintained federally required WPR rates for ASPIRE participants. In an effort to bring WPR to the required levels and avoid additional fines, the Department is carefully reviewing ASPIRE/TANF program processes and goals. As part of that review process, it has been determined that the current sanction procedure delays participant compliance by providing duplicative notice and response periods prolonging the enforcement of decision. Under the new rule, the sanction process will be streamlined while still protecting the rights of the Participant. The rule does not remove any of the State statutory sanction process requirements or due process.

This rule also revises the scheduling process in Section 3 to clarify that failure to appear for an appointment with ASPIRE, or with any of the service providers included in the Family Contract Amendment, without good cause (as determined by ASPIRE/TANF) will result in a Notice of Decision (NOD). The NOD will be sent to the Office for Family Independence Eligibility Unit to apply the Sanction.

The Department made changes after publication to Section 4, VI(A) and (B) after receiving comments to clarify compliance with statutory authority under 22 MRS §3785-A. Also, The Department discovered a reference to first class mail in Section 4(V)(l) that was the same as the language change in Section 3(VI)(A), but was not included in the rule-making. The language indicating that a scheduling letter would be sent by first class mail . . . by the postal service was removed, which is consistent with participants' right to choose electronic noticing.

Fiscal impact of rule:

Unable to determine, however, the rule is being changed to avoid further fines from the U.S. Health and Human Services for not meeting Federal Work participation Rates (WPR).

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of Substance Abuse and Mental Health Services (SAMHS)**
Umbrella-Unit: **14-118**
Statutory authority: 22 MRS §7252; PL 2015 ch. 488; 5 MRS §§ 8054, 8073
Chapter number/title: **Ch. 11**, Rules Governing the Controlled Substances Prescription Monitoring Program and Prescription of Opioid Medications
Filing number: **2016-232**
Effective date: 1/1/2017
Type of rule: Routine Technical *and* Major Substantive
Emergency rule: Yes

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

Pursuant to 5 MRS §§ 8054 and 8073, the Department has determined that immediate adoption of this rule is necessary to avoid an immediate threat to public health, safety or general welfare and the Department's findings of emergency are as follows: There is an opioid epidemic facing the State of Maine and the nation as a whole. In 2015, Maine experienced an unprecedented 272 overdose related fatalities. In an effort to combat the Maine opioid epidemic, the Maine Legislature enacted PL 2015 ch. 488 (*An Act to Prevent Opiate Abuse by Strengthening the Controlled Substances Prescription Monitoring Program*). Ch. 488 included prescriber limits on opioid medication prescribing, effective January 1, 2017; included veterinarians in the definition of prescribers; required electronic prescribing and required prescribers and dispensers to check the Prescription Monitoring Program (PMP) database. Ch. 488 required the Department to establish reasonable exceptions to prescriber limits, and ordered the Department to include prescribers in the process of drafting appropriate exceptions and in the drafting of draft rules. With the guidance of the Maine State Health Officer Dr. Christopher Pezullo, the Department convened a PMP Stakeholder Group that included the Maine Medical Association, the Maine Hospital Association, the Maine Physician Assistant Association, the Maine Nurse Practitioners Association, the Maine Veterinary Medical Association, the Maine Pharmacy Association, and the Maine Osteopathic Association. This Group met at least once monthly, starting in June, 2016. The Maine Legislature mandated a January 1, 2016, effective date for the limits on opiate prescribing, but also mandated that the Department confer with the PMP Stakeholder Group, which continued to meet and confer until early December. This, together with the opioid epidemic facing the State of Maine, constitutes an emergency that can only be remedied by the immediate adoption of this emergency rule. This emergency rule is effective January 1, 2017.

This emergency rule makes the following changes:

- (1) Adds definitions (including definitions for "acute pain", "Benzodiazepine", "chronic pain", "hospital", "inpatient status", "opioid medication", "serious illness" and also includes veterinarians in the definition of "prescribers");
- (2) Adds general requirements for prescribing and dispensing, including the requirement that all prescribers must acquire DEA numbers and include the DEA number on each prescription, and includes exemption codes to match the exemptions from the opioid limitations set forth in the rule;
- (3) Requires prescribers, dispensers and veterinarians to register as PMP data requesters;
- (4) Indicates the statutory requirement regarding electronic prescriptions and waivers of such;

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

- (5) Requires that dispensers report information to the PMP by electronic means and indicates the statutory waivers of such;
- (6) Requires prescribers, dispensers and veterinarians to check the PMP system;
- (7) Indicates the statutory limits on opioid medication prescribing;
- (8) Defines exemptions to limits on opioid medication prescribing;
- (9) Authorizes the Department to provide and receive PMP data from another state or Canadian province that has entered into an agreement with the Department for such sharing;
- (10) Establishes civil violations for prescribers and dispensers;
- (11) Establishes administrative sanctions for prescribers and dispensers;
- (12) Establishes standards for immunity from liability for disclosure of information;
- (13) Establishes standards for immunity from liability for a pharmacist which might result from dispensing medication in excess of the limit, if such dispensing was done in accordance with a prescription issued by a practitioner; and
- (14) Authorizes the Department to verify and audit prescriber and dispenser compliance with the rules.

The Maine Legislature has designated the PMP regulations as major substantive rules. 22 MRS §7252. However, Ch. 488 assigned some of its PMP rule changes as routine technical rules. Therefore, this emergency rule contains both major substantive provisions and routine technical provisions. The routine technical provisions are so labeled in the rule. Pursuant to 5 MRS §8054, the emergency routine technical rule provisions are effective for up to 90 days. Pursuant to 5 MRS §8073, emergency major substantive rule provisions may be effective for up to twelve months or until the Legislature has completed review of the rules. The Department intends to engage in a single rule-making which will make permanent the emergency routine technical rule provisions and which will also provisionally adopt the emergency major substantive rule provisions, which will then be submitted to the Maine Legislature for its review.

Fiscal impact of rule:

This fiscal impact of this rule-making could not be determined.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of Aging and Disability Services (OADS)**
Umbrella-Unit: **14-197**
Statutory authority: 34-B MRS §§ 5201, 5604, 5605, 5201(9), 5604(3)(D), 5605(17)
Chapter number/title: **Ch. 5**, Regulations Governing Behavioral Support, Modification and Management for People with Intellectual Disabilities or Autism in Maine
Filing number: **2016-070**
Effective date: 4/25/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department of Health and Human Services adopts changes to 14-197 C.M.R. Ch. 5, *Regulations Governing Behavioral Support, Modification and Management for People with Intellectual Disabilities or Autism in Maine*, to bring this regulation in closer compliance with the current best practice for behavior support, modification and management. This regulation provides enhanced guidance and direction on less restrictive alternatives which will decrease the number and severity of restraints used as behavioral support, modification and management. The regulation clarifies prohibitions and expands prohibited practices. It requires Positive Supports as the first line of treatment. These proposed changes more closely align this rule with the right to dignity, privacy and humane treatment guaranteed by Maine law.

Basis statement:

The adoption of this rule brings the behavior support, modification and management practices for persons with intellectual disabilities or autism in closer compliance with state law and current best practice for such behavior support, modification and management. These changes provide enhanced guidance and direction on less restrictive alternatives which will decrease the number and severity of restraints used as behavioral support, modification and management. The adopted rule better defines prohibitions and prohibited practices. It requires Positive Supports as the first line of treatment. These changes more closely align this rule with the right to dignity, privacy and humane treatment guaranteed persons with intellectual disabilities or autism under 34-B MRS ch. 5.

Fiscal impact of rule:

Municipalities: none anticipated
Department: none anticipated
Small Business: none anticipated

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12452
Chapter number/title: Ch. 1, Open Water and Ice Fishing Regulations (Kennebec River)
Filing number: 2016-014
Effective date: 2/1/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

At the request of the Department of Marine Resources (DMR), the Department adopts rules on a portion of the Kennebec River specifically for striped bass from the downstream side of the Lockwood Dam to the upstream side of the Donald Carter Bridge and from the upstream side of the Donald Carter Bridge in Waterville to the downstream side of the power lines located about 4,200 feet above the Calumet Bridge in Augusta (head of tidewater) for consistency with DMR's catch and release season with special gear restrictions for striped bass.

This is to ensure protection of a small spawning population of striped bass that crosses the jurisdictional limits of the DMR (tidal waters) and enters into the Kennebec River above Augusta (inland waters).

Basis statement:

This amendment to the current rule is being adopted at the request of the Department of Marine Resources (DMR), on a portion the Kennebec River specifically for striped bass from the downstream side of the Lockwood Dam to upstream side of the Donald Carter Bridge and from the upstream side of the Donald Carter Bridge in Waterville to the downstream side the power lines located about 4,200 feet above the Calumet Bridge in Augusta (head of tidewater) for consistency with DMR's catch and release season with special gear restrictions for striped bass. The rule will ensure protection of a small spawning population of striped bass that crosses the jurisdictional limits of the DMR (tidal waters) and enters into the Kennebec River above Augusta (inland waters).

From May 1 through June 30, inclusive, fishing for striped bass in this area will be restricted to single hooked (may be a single treble hook) artificial lures only and use or possession of marine bait, dead or alive, is prohibited. Any striped bass caught during this special season/area fishery shall be immediately released and returned alive, without further injury, to the waters from which they were taken, DMR will continue to sample for young of the year striped bass in an attempt to detect any spawning populations. The catch and release rule will prohibit the take of any striped bass that may be in the area preparing to spawn, Length and bag limits on striped bass are reflected in DMR rules, Ch. 42, and apply to all territorial waters.

Fiscal impact of rule:

No fiscal impact anticipated as a result of this rule.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12456
Chapter number/title: Ch. 1, Open Water and Ice Fishing Regulations (Early Open Water Fishing Season)
Filing number: 2016-044
Effective date: 7/17/2016
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The emergency rule will open bodies of water that are closed to open water fishing until April 1, 2016 so that anglers will be able to fish those bodies of water beginning March 17, 2016. Based on earlier-than-normal seasonal temperature changes the Commissioner feels an emergency early opening of the season will enhance fishing opportunities and increase angler ability to fish.

Basis statement:

During the 126th legislative session, PL 2013 ch. 3 was passed giving the Commissioner the authority to change the established opening date of an open season if, in the Commissioner's opinion, the change is necessary due to earlier-than-normal seasonal temperature changes or weather conditions. Due to warmer than normal temperatures and lack of ice in many areas, the Commissioner has determined an early opening of the open water fishing season will enhance fishing opportunities and increase angler ability to fish. This is being accomplished by emergency rule.

Due to the overall lack of ice during the 2015/2016 ice fishing season and reduced recreation, the early opening of open water season would not likely increase pressure on fish populations but would increase opportunity for anglers. The emergency rule will open bodies of water that were closed to open water fishing until April 1, 2016 to become open to open water fishing effective March 17, 2016. This rule does not close any body of water currently open to ice fishing or open any water to ice fishing that is currently closed to ice fishing. All waters with S-10 and "CO" designations will also be open to fishing. All other S-codes, tackle restrictions, daily bag, possession and length limits still apply as listed.

The Commissioner contacted the 10-member Advisory Council on March 14, 2016 by phone and e-mail and eight (8) members voted in favor of the early opening of open water fishing season, one (1) member, Larry Farrington - Piscataquis/Somerset County voted in opposition and one (1) member, Dick Fortier - Aroostook County, did not respond.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 11855
Chapter number/title: Ch. 4, Hunting and Trapping:
Filing number: 2016-062
Effective date: 4/16/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To implement the *Federal Migratory Bird Treaty Act* which establishes the general guidelines within which the States are permitted to regulate the hunting of migratory game birds. This rule will shorten the length of the hunting season for sea ducks within the sea duck hunting zone from 107 days to 60 days. This is in response to federal guidelines after observations of declines in some sea duck populations. It also modifies language as it applies to the youth waterfowl hunt to comply with current laws regarding junior hunters. Language was also updated as it applies to federal duck stamp and state migratory waterfowl permit requirements.

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.

Typically, the Flyway Council would hold their meeting in July, but instead, held their meeting in October, 2015 to start setting the 2016/2017 season. This moved up the Department's rulemaking schedule to meet the USFWS request to have states adopt their season by mid-April. When studying 2 year vs. 1 year trends, the USFWS determined there would be no real impact so they decided to advance the process to avoid publishing the season framework in the federal register so close to the season start date (September 1 for some species).

After receiving the framework from USFWS, the proposed season dates were similar to last year with the exception of the sea duck season. Based on some long term trends and decline in our sea birds the USFWS was looking to reduce the harvest by 25%. In order to accomplish that they reduced the number of allowable days from 107 down to 60 and the bag limit down from 7 to 5. One other small change, up until 2016 there was no daily limit for long-tail duck and now there was a 4 bird limit per day.

During the past legislative session, the Legislature removed the age limit for youth hunters. As we went through rule-making we were updating the language for youth days. In the past, where we had articulated the age, we had some struggles with youth that had turned 16 and felt they were not eligible to hunt on the youth day even though they had a youth hunting license. Language was clarified that if you bought a youth hunting license and then turned 16 during the year, you were eligible for any species that had a youth hunting day. USFWS requires anybody 16 years of age or older have a federal duck stamp; that requirement stayed in place and anybody 16 years of age or older would be required to have the federal duck stamp to participate on youth day.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 11855
Chapter number/title: Ch. 4, Hunting and Trapping: 4.06, Wild Turkey
Filing number: 2016-065
Effective date: 4/17/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

In the First Regular Session of the 127th Maine Legislature, PL 2015 ch. 127 directed the Department to expand the fall wild turkey hunting season to include a week of hunting in the month of November. In addition, PL 2015 ch. 136 removed the minimum age for hunting, which requires the Department to update the rules for the Youth Spring Wild Turkey Hunting Day. Finally, the Department revised the description of the spring wild turkey hunting season in WMDs 1-6 so that the dates do not have to be adjusted each year through rule-making.

Basis statement:

The rules for the spring turkey hunting season were amended to remove calendar references for the A, B seasons so the Department would not have to go through rule-making every year for updates. The change will only affect WMDs 1-6 (northern zones) which were recently opened to wild turkey hunting in 2015. The split season was implemented in those districts to reduce hunting pressure on private land in those areas.

Another update to the spring season is the result of PL 2015 ch. 136 which removed the minimum age for hunting. The Department has been updating the rules as they apply to youth hunts for consistent language in Ch. 4. The Youth Spring Wild Turkey Hunting Day has been amended to eliminate the age requirements for participation in the youth day hunt, and specify that hunters must hold a valid Junior Hunting License in order to hunt wild turkeys on this day.

During the last legislative session the Legislature directed us to have an additional turkey season in November that lasted at least a week. The Department opted to have the season run from October 1 to November 7th so there would always be a full week of opportunity in November in those WMDs open to a fall turkey hunt. The bag limit will remain unchanged at 2 birds in the fall.

Fiscal impact of rule:

No fiscal impact anticipated as a result of this rule.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §11111
Chapter number/title: Ch. 25, Leashed Dog Tracking Permit Rules
Filing number: 2016-066
Effective date: 4/17/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

In the First Regular Session of the 127th Maine Legislature, PL 2015 ch. 90 authorized the Department to go through rule-making to adopt changes to the leashed dog tracking license. The Department updated references to “license” in the rule and changed to “permit” to be consistent with law; licensed hunting guides will be exempt from the permit process, and the number of dogs that could be used when tracking bear, deer or moose will be limited to one (1).

Basis statement:

The purpose for updating the rule was a law change (PL 2015 ch. 90) which was supported by the Maine Professional Guides Association. The section of law that listed the “leashed dog tracking license” as a license was repealed and was now in a new section of law which appropriately listed it as a “permit” instead. The reference to license has been changed throughout rule Ch, 25 to a permit to be consistent with law.

The rule was also amended to allow a person licensed to guide hunters under 12 MRS §12853 and whose client during a guided hunt wounds or kills a bear, deer or moose to track and dispatch the animal outside of legal hunting hours without obtaining a leashed dog tracking license. The rule was further amended to restrict the number of dogs that are able to be used when tracking a wounded or dead deer, bear or moose to one (1).

Fiscal impact of rule:

No fiscal impact anticipated as a result of this rule.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 12952, 12953
Chapter number/title: Ch. 20, Taxidermy License
Filing number: 2016-067
Effective date: 4/18/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

During the 1st session of the 127th Legislature, PL 2015 ch. 281 amended permit fees and structure of the taxidermy license (12 MRS §12953). The Department took this opportunity to meet with the taxidermy licensing board and reevaluate the taxidermy license rules and incorporate changes to set specific criteria for applicants and current license holders and update record keeping and completion requirements.

Basis statement:

During the 1st session of the 127th Legislature, PL 2015 ch. 281 amended permit fees and structure of the taxidermy license (12 MRS §12953). The Department took this opportunity to meet with the taxidermy licensing board and reevaluate the taxidermy license rules and incorporate changes to set specific criteria for applicants and current license holders and update record keeping and completion requirements.

The changes add language to the rule under judging criteria that current taxidermy license holders will also adhere to competency standards or can be found incompetent or negligent. This had not been addressed previously. There will also be an added requirement that a taxidermist complete work in a timely manner and a time period agreed upon between the taxidermist and customer. Department log books will also need to be completed and returned as part of the license requirement. The rule was also reformatted to comply with Secretary of State formatting guidelines.

Fiscal impact of rule:

No fiscal impact anticipated as a result of this rule.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §11251
Chapter number/title: Ch. 4, Hunting and Trapping: 4.04, Bear Hunting Season (Youth Day)
Filing number: 2016-088
Effective date: 5/14/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule will add a youth hunting day to the bear hunting season as directed by the Legislature in PL 2015 ch. 79. Placing the season in rule will provide consistent language for the Department's youth hunts.

Basis statement:

This rule is in response to a change that occurred during the 1st Session of the 127th Legislature which added a youth bear hunting day to the bear hunting season. To be consistent with other youth hunts which were in rule, the Department spoke with the sponsor of the bill and he was agreeable to the language being placed in rule. During the next legislative session the Department will work to have the language removed from statute and let the rule stand.

The youth bear hunt will occur the Saturday prior to the opening day of the bear hunting season as is the case with other established youth hunting days. The youth bear hunting day will allow holders of a junior hunting license to hunt bear with either a firearm, bow and arrow or crossbow and they must be in the presence of and under the effective control of an adult supervisor as defined by Title 12 §11108-C. An adult supervisor, parent or guardian accompanying a youth on youth bear hunting day may not possess a firearm, bow and arrow or crossbow while the youth is participating in the bear hunt. The use of dogs is prohibited.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 11551, 11552
Chapter number/title: Ch. 4, Hunting and Trapping: 4.05, Moose Hunting Season
Filing number: 2016-089
Effective date: 5/14/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Moose permit areas are adjusted on an annual basis in response to moose population estimates and population goals in each Wildlife Management District (WMD). Department biologists use moose harvest levels, aerial surveys, and biological data to evaluate the status of moose within each WMD. This information is compared to publicly derived goals outlined in the moose management system to determine whether the population in an individual WMD should be stabilized, increased, or decreased. Moose permit recommendations are based on removal rates of bull and cow moose that will achieve the population goal for a particular WMD, while also maintaining desired numbers of mature bulls for viewing by the general public.

In addition to adjusting moose permit numbers, the Department is adjusting the timing of the November (sometimes referred to as the “3rd week”) moose hunting season that occurs in northern Maine so that it occurs during the week preceding the opening of the firearms season on deer. The timing of the season had resulted in conflicts with deer hunters that were using the same areas. Moving the moose season to the week prior to the firearms deer season will alleviate these conflicts.

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 2016 season. The Department advertised a proposal on March 9, 2016 with a recommended total of 2,140 permits be issued in order to meet moose harvest objectives. This was a decrease in overall permits of 22% from 2015 with the reductions occurring in WMDs 1-4 and 19. Bull permits were also reduced in WMDs 3 and 4 where helicopter surveys and harvest data indicated the number of mature bulls in the population was below target. Permit numbers in remaining WMDs with moose hunting seasons remain unchanged from 2015.

The Department also amended the “3rd week” of moose hunting and moved the season from the first full week of November to occur during the week prior to the opening day of the firearms season on deer. The Department had received negative feedback in the past about the timing of this week and conflicts with moose and deer hunters. Changing the timing of the season to occur prior to the deer hunt would help to alleviate those conflicts. However, moose hunting districts 15, 16, 23, 25 and 26 would still allow moose hunting during November. These were referred to as the “southern” Maine moose hunting districts and were not highly sought after. Moose/deer hunter conflicts were basically a non-issue in these areas and the purpose of the hunt was to reduce moose/vehicle collisions.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 11552, 11401
Chapter number/title: Ch. 4, Hunting and Trapping: 4.03, Deer Hunting Seasons
Filing number: 2016-141
Effective date: 8/28/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To establish antlerless deer permit allocations for each of the 29 Wildlife Management Districts (WMDs) for the 2016 deer hunting season. Any-deer permits are adjusted by MDIFW on an annual basis in response to deer population estimates and population goals in each WMD. The winter of 2015-16 was of below-average severity in most of the state, which resulted in higher survival rates for our over-wintering deer. For 2016, the Department proposed a total of 45,755 permits be issued in order to meet our doe harvest objective of 5,297 animals. Permit numbers were amended in WMD 7 for a total number 45,625 permits.

Basis statement:

The Department allocates any-deer permits by Wildlife Management Districts (WMDs) to limit the number of antlerless deer taken by hunters in each WMD. Allocations vary across the state, reflecting the different quality of deer habitat and potential to support and grow deer populations in each WMD.

Any-deer permit recommendations are based on removal rates of adult does that will stabilize, increase, or decrease deer densities according to the publicly derived goals in the deer management system. The winter of 2015-2016 was of below-average severity in most of the state, which resulted in higher survival rates for our over-wintering deer. A recommended total of 45,755 was proposed to achieve a harvest of approximately 24,400 deer; an increase of 59% in permits that were issued in 2015 (28,770).

No public hearing was held or requested on the proposal. The Department received 3 written comments which were acknowledged and forwarded to the Advisory Council members and Department staff. One comment questioned the rationale behind the large increase in permit numbers after only one mild winter but did not indicate any specific WMD of concern; one comment opposed the increase in permit numbers specifically in WMD 7 and the third comment was from a Department employee (game warden) mentioning “pockets” of deer found along the coast in Washington County and concern with removal of antlerless deer in Lubec (WMD 27) specifically.

The Department held a regularly scheduled Advisory Council meeting in Kittery on June 11, 2016 and concern was expressed by Council members about the permit increase from zero to 505 in WMD 7 after only one mild winter. Permit numbers in the other remaining WMDs were not discussed, but there was concern with the overall increase in permit numbers of 59% from 2015.

Another portion of the proposal was the result of Public Law 2015 c. 136 which removed the minimum age for hunting. The Department has been updating the rules as they apply to youth hunts for consistent language in Ch. 4. The Youth Deer Hunting Day has been amended to eliminate the age requirements for participation in the youth day hunt and that hunters must hold a valid junior hunting license in order to hunt deer on this day. No comments were received pertaining to this portion of the proposal.

After reviewing public comments, comments received from the Advisory Council and discussion with staff the Commissioner amended the proposed number of permits in WMD 7

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

from 505 to 375, a reduction of 130 permits. The proposed number of permits remained unchanged in the remaining districts. The Advisory Council gave their consent on August 17, 2016 and voted unanimously to adopt the proposal as amended.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12704
Chapter number/title: Ch. 6, Educational and Scientific Collection Permit Rules
Filing number: 2016-142
Effective date: 8/28/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

In accordance with PL 2015 ch. 374, the Department of Inland Fisheries and Wildlife has amended language in Ch. 6 rules as it applies to scientific collection permits to include “educational permits.”

These rules will apply to the use of native wild animals and native wild birds, including their parts, for educational or scientific purposes within the State of Maine. The Department also removed language from the rule as it pertains to rehabilitation permits. This language has been relocated and updated in Ch. 7, *Rules for Importation, Possession, Propagation, Rehabilitation and Exhibition of Wildlife*.

Basis statement:

During the 127th Legislature, PL 2015 ch. 374 was passed directing the Department to restructure the permitting process for wildlife and exotic species in captivity. As part of the process of repealing and replacing Ch. 7 rules to comply with the directive, the Department simultaneously advertised the Ch. 6 amendments and Ch. 7 repeal and replace.

The Ch. 6 title and rule was amended to include “educational permits” as was required by the legislature, and these rules will apply to the use of native wild animals and native wild birds, including their parts, for educational or scientific purposes within the State of Maine; scientific and educational projects going on in Maine focused on taking native wildlife either into captivity or collecting research specimens for analysis.

The Department also removed language from the rule as it pertained to rehabilitation permits. The language was relocated and updated in Ch. 7, *Rules for Importation, Possession, Propagation, Rehabilitation and Exhibition of Wildlife*.

Fiscal impact of rule:

None anticipated.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12152
Chapter number/title: Ch. 7, Rules for Importation, Possession, Propagation, Rehabilitation and Exhibition of Wildlife
Filing number: 2016-144
Effective date: 8/30/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This will provide consistency for the captive wildlife permitting process for both statute and rule and modify the rules as directed by the Legislature in PL 2015 ch. 374.

Basis statement:

During the 127th Legislature, PL 2015 ch. 374 was passed directing the Department to restructure the permitting process for wildlife and exotic species in captivity. As part of the process of repealing and replacing Ch. 7 rules to comply with the directive, the Department simultaneously advertised amendments to Ch. 6 (*Educational and Scientific Collection Permit Rules*) as language as it applies to rehabilitators was removed from Ch. 6 and placed in Ch. 7 for consistency.

The new rule will provide for a strong emphasis on helping to protect the integrity of the native species in Maine and will allow for Wildlife in Captivity Inspectors designated by the Commissioner to review applicant's facilities during the application process removing the burden from Department staff. It also makes it clear which permit is necessary for the type of activity and whether a permit is necessary if a person wishes to keep wildlife in captivity. It provides categories within which a species can be placed and each category has criteria based on risk.

A public hearing was held on the proposal on June 7, 2016 at the Augusta Civic Center. There were approximately 54 citizens in attendance and 28 of them presented testimony. The comments covered many portions of the proposal ranging from concern with "backyard zoos" and exhibition of large cats and other animals; concern with how the rule would affect animal damage control officers; traveling reptile educational shows and concerns they would no longer be allowed to operate in Maine; availability of lizards/reptiles for hobbyists, or sale in pet shops; concern from wildlife rehabilitators specific to the "Health and Comfort" portion of the rule, having to pay for inspections, release site requirements and training and credentials; concern that grant funding may be lost due to permit requirements and slow Department turnaround time; enforcement issues surrounding Game Wardens and biologists not being able to identify species; concern with section 7.12 and reference to "therapy animals." Several comments were also made supporting the Department's efforts in creating stricter regulations for possession and exhibition of wildlife.

Comments made at the hearing and also written comments received showed concern/confusion with Category and prohibited species lists and CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) listings. The Department, at the hearing and at prior Advisory Council meetings announced, and it was our intention, that we would take the actual populating of the species list, the prohibited, Category 1 and 2 restricted species lists through rule-making as a separate process. A provision in the proposal existed to establish a technical advisory committee to the Commissioner. The Department will create that committee and populate it, review the species and make suggestions through rule-making to actually finalize the three lists. The unrestricted species would not be listed as part of the rule because it was a list of species that did not require a permit. The Attorney General's

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

office advice was to keep the unrestricted list outside of rule-making, but the three lists that were creating restrictions on what people could have should go through rule-making to give people a chance to comment.

The Department also received numerous written comments. Comments were acknowledged and forwarded to the Commissioner's Advisory Council as well as appropriate Department staff. 200 form letter e-mails were received; 93 comments related to DEW Animal Kingdom that were not relevant to the proposal (comment file available upon request to the Department) and 57 additional written comments were received including comments from the Humane Society of the United States, a staff member from the University of Maine, Department of Agriculture, Conservation and Forestry, private business owners, members of herpetological societies, exhibitors, rehabilitators, Pet Industry Joint Advisory Council, United States Association of Reptile Keepers, the Zoological Association of America (ZAA) and the general public.

Based on comments received and discussion with staff the Commissioner made amendments to the original proposal. The amendments included clean-up of language/formatting; clarification of training and what would be accepted by the Department for qualifications, additional language under the Unclassified Species category to allow for a request for review of species; additional language exempting rehabilitators from the cost of site inspections; additional language under keeping of records to clarify that species being transferred out of state did not require written approval from the Department only those within the state; age restrictions when working with restricted species on the Category 1 list; rehabilitators can now contact the Department upon the death of an animal in the family Cervidae for retrieval and would no longer be required to submit the head, and clarification within 7.16 "Grandfathering Provisions" for those currently possessing species to be able to comply with new requirements by January 1, 2018.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §10104
Chapter number/title: Ch. 4, Hunting and Trapping:
4.01(G), Open Seasons for Hunting and Trapping of
Furbearing Animals:
 (1), Beaver Trapping; (1.a) (no title); (1.b), Open and Closed
 Areas for Beaver Trapping
 (4) Statewide Hunting Seasons for Furbearing Animals
4.01(O), Mandatory Submission of Teeth
Filing number: 2016-168
Effective date: 10/12/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department regularly adjusts furbearer hunting and trapping regulations in response to emerging scientific information, changes in trapper participation, and biological data collection. In 2015 the trapping regulations for several species were altered in order to reduce the chance of accidentally capturing lynx, which are listed as a threatened species by the federal government. Unfortunately, these changes resulted in reduced trapper participation, and have made it more difficult for the Department to collect quality biological data on some species. Several adjustments to current furbearer trapping and hunting seasons were made in an effort to allow more opportunity for hunters and trappers to pursue some species. A tooth submission for bobcat, fisher, marten and otter will also be required when presenting the animal for registration which will enable the Department to collect improved biological data from these species to support science-based management decisions in the future. Certain areas will also be closed to beaver trapping in response to requests from private landowners.

Basis statement:

The Department regularly adjusts furbearer hunting and trapping regulations in response to emerging scientific information, changes in trapper participation, and biological data collection. The Department advertised a rule-making proposal on August 3, 2016 to adjust the trapping season dates for beaver in WMDs 15, 16, 20-26 and 29 for an opening date of October 30 to align the start of the season with other furbearer seasons and provide an additional 2 weeks of opportunity. The proposal also included areas that would be open and closed to beaver trapping to reflect landowner requests, an additional week of bobcat hunting for a season of December 1 - February 21 each year, and a request for a tooth submission for bobcat, fisher, marten and otter when presenting the animal for registration in an effort to collect additional biological data.

After the proposal was advertised a request was made to the Department by 9 members of the public to hold a public hearing on the proposal. The notice was re-advertised on September 7, 2016. The public hearing was held in Portland on September 26, 2016 with over 60 members of the public in attendance. There were also 164 written comments received on the proposal during the initial and extended comment periods. Some individuals sent multiple written comments and spoke at the public hearing; multiple written comments were counted as one submission. Comments were acknowledged and forwarded to the Commissioner's Advisory Council as well as appropriate Department staff for consideration.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

After reviewing all comments and discussion with staff the Commissioner presented the originally proposed rule to the Advisory Council at their meeting held on October 7, 2016 for adoption. There were 9 members present at the Advisory Council meeting and they voted unanimously to adopt the proposal as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 11401
Chapter number/title: Ch. 4, Hunting and Trapping:
4.03, Deer Hunting Season
Filing number: 2016-173
Effective date: 10/19/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

PL 2015 ch. 401 was passed allowing a nonresident who owns 25 or more acres of land in the State of Maine and leaves that property open to hunting, holds a valid hunting license and is not otherwise prohibited by law may hunt deer on the Saturday preceding the first day of open season on deer (Resident only day). It is set to be repealed on September 15, 2018. The Legislative intent was to have the Department develop rules clarifying the details of how nonresident hunters will provide verification of land ownership and what kind of land access they provide for other hunters to show they qualify to hunt on this day.

Basis statement:

In 2015 PL ch. 401 was passed allowing a nonresident who owns 25 or more acres of land in the State of Maine, leaves that property open to hunting, holds a valid hunting license and is not otherwise prohibited by law to hunt deer on the Saturday preceding the first day of open season on deer, also known as “Maine resident only” day. The legislative intent when the law was passed was to have the Department of Inland Fisheries and Wildlife develop rules clarifying the details of how the hunter would provide verification of land ownership.

The Department received one comment from the public during the open comment period stating the Norway Paris Fish and Game Club, along with the Sebago Anglers Club, were not in favor of the proposal. They felt it would be burdensome to the Department and that nonresident hunters should be allowed to hunt on “resident’s day” without any special requirements. Their comment was acknowledged and forwarded to the Commissioner’s Advisory Council as well as appropriate staff for consideration during the rule-making process. No public hearing was held on the proposal.

The Department, to comply with the intent of the law, has created a form which will be made available to nonresident landowners via the web or by request, to be used for verification. The document includes the landowner’s information and land information such as the town, number of acres, map and lot number, etc. and shall be used for verification purposes if requested by the Commissioner or an agent of the Commissioner. The form will also be presented when tagging a deer on that day. By requiring the landowner to complete and carry the form this will alleviate any extra burden on the Department.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12452, 12461
Chapter number/title: Ch. 1, Open Water and Ice Fishing Regulations
Ch. 1-A, State Heritage Fish Waters
Filing number: 2016-174, 175
Effective date: 1/1/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

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

Basis statement:

The Department of Inland Fisheries and Wildlife has adopted rules pertaining to the 2017 ice fishing and open water seasons and made additions to the State Heritage Fish Waters list. 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, including economic, are retained.

These rules were initiated through Department field personnel and as a result of a simplification process for the annual open water and ice fishing regulation booklet. The regulation changes were advertised with 5 public hearings held in Presque Isle, Millinocket, Ellsworth, Farmington and Brunswick. The Department also received 10 comments in writing both for and against various proposals.

The focus of the proposals was a restructure of the law book to create an easy to use book by the general public. Most of the changes proposed reflected that effort. Comments received were overall in support of the restructuring effort. One area of concern was in relation to northern Oxford County and Franklin County where bag limits were changing from 2 to 5 trout. There were some concerns with how staff determined when it was appropriate to retain 2 trout bag limits in those areas, and there had been some suggestions made for specific waters where they felt we should entertain 2 trout bag limits. When the package was presented at the public hearing in Millinocket there was very strong support for the Department moving in the direction of more liberalized trout bag limits in small lakes and ponds. They had been finding an overall decrease in angler use and those populations of brook trout were becoming more abundant and size quality was declining. Some comments received were also centered around the component to establish maximum length limits for salmon and trout on rivers and streams, a 25" maximum (S-33). This was an effort to provide protections to state listed adult Atlantic salmon. Those recommendations were generally well received. There were also some concerns that maybe we had not identified all the lakes and ponds that might have adult sea run Atlantic salmon that might also warrant the same kinds of protection. Overall there was strong support for the Department proposing to list 3 new waters on the heritage waters list. There were comments received from Trout Unlimited and Maine Audubon indicating they thought there would be more waters nominated for that listing. The Department indicated at the public hearings we were planning to review waters that had potential for nomination to the heritage waters list, and though they would not be advanced during this rule-making effort, we may undertake a separate process if warranted. There was

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

one written comment in opposition to making a portion of the Kennebec River (Shawmut Impoundment) artificial lures only (ALO) (S-6), and although the Department agreed that it did take away some opportunity, the consensus was that those few people that took advantage of that during the winter had a lot of opportunities elsewhere to use non ALO tackle. The simplification overall was going to make the Kennebec River much more user friendly and net use overall would likely increase.

The Department did put forth amendments to the original proposal due to public comment and review for the following bodies of water: Round Mountain Pond, Boundary Pond, Long Pond and Rump Pond were removed from the proposed list of waters as they would retain the 2 trout bag limit. Crowell Pond and Haley Pond, the intent was to retain the 2 trout bag limit and they were not listed in the proposal but were reviewed during the comment period. The final water modified was Beddington Pond in Beddington where the Department would apply an S-33 regulation in the law book.

Fiscal impact of rule:

No fiscal impact anticipated as a result of these rules.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §11402
Chapter number/title: Ch. 4, Hunting and Trapping: 4.03, Deer Hunting Season: I. Open and Closed Seasons: 8. City of Eastport...
Filing number: 2016-205
Effective date: 12/3/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The City of Eastport requested that the Maine Department of Inland Fisheries and Wildlife (MDIFW) authorize a Special Hunt for antlerless deer. Deer-human conflicts, including residential property damage and vehicle accidents, have been steadily increasing in Eastport for the past decade. A no-discharge of firearms ordinance within the city, coupled with restrictions on archery hunting and posted private property have likely contributed to an increase in deer numbers over time. Eastport has also been subject to bucks-only hunting for the past 11 years due to Wildlife Management District boundary changes in 2005 when Eastport became part of WMD 27. In response to a vote of residents that indicated strong support for reducing the deer population, the Eastport City Council established a Deer Committee in March 2016 to recommend deer population reduction measures. These recommendations included submitting a request to MDIFW to authorize a special hunt to control deer numbers. A town meeting was held on the Committee's recommendations in August 2016, which resulted in the City Council voting to approve the request to MDIFW.

Basis statement:

This rule is in response to a request from the City of Eastport for assistance in reducing the deer population there. The island formed a deer reduction committee and the committee worked with regional wildlife biologist Tom Schaeffer in developing the proposal. The City of Eastport was concerned about certain factors such as residential property damage, vehicle collisions, deer behavior (becoming tame) and Lyme disease. Lyme disease has been increasing in all parts of the state but has not really surfaced in Eastport at this time. Eastport has had a no discharge of firearms ordinance in place for many years due to safety considerations in the area. As a result, archery hunting was the only means available. Due to the reconfiguration of wildlife management district (WMD) boundary lines in 2005, Eastport became part of WMD 27 and due to the management goals for the district had been bucks only for the last 11 years which contributed to the increase in the population.

The deer reduction committee examined different types of control mechanisms and discussed sharp shooters, trap and transfer, contraception, etc. Eastport did not have the funds available to be able to utilize other methods so came to the Department for consideration and the proposal was created in response to the voters of the Eastport area. Land available for hunting was less than 50% of the total acreage due to the concentration of residents and municipal lands (airport) that were closed to hunting. The special hunt was being proposed for 2 consecutive weeks during December over a 3-year period of time. Hunting would be archery only from a fixed ground blind or elevated stand. The locations had to be preapproved and the committee was working with landowners to secure hunting locations. They requested 30 permits with 22 permits for residents/property owners and 8 permits to non-island residents. A small number of permits were recommended for the initial hunt to gain landowner trust to ensure future hunts and potential opening of more hunting areas. The permits would allow the harvest of one antlerless deer and would be in addition to the regular

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

season bag limits. A tagging station would be established in Eastport and staff would be trained on tooth extraction for Department research. The overall objective was to reduce the deer related damage in Eastport, track the number and age, vehicle accidents, complaints of damage, assess landowner satisfaction and general public perception.

No public hearing was held on the proposal and 14 public comments were received. The comments were acknowledged and forwarded to the Commissioner's Advisory Council and Department staff for their consideration during the rule-making process. The comments were overall in favor of a special hunt and recognized that there was an overabundance of deer on the island. Two of the comments expressed concern with hunting there in general and hoped the Department would control any "egregious" behavior. Three comments were opposed to the hunt stating they were not aware that the town vote would mean the deer would be killed. They stated many of the deer had become socialized by the residents and were thought of as pets. Both the Senator and Representative for the City of Eastport wrote in favor of the special hunt. Four members of the Commissioner's Advisory Council sent comments asking that the hunt be reduced to one year with the expectation that other efforts be pursued to manage the deer population there; that a report be submitted by Eastport after they conducted the special hunt to show how many deer were tagged, how many hunters, overall conditions during the hunt and suggestions on how the hunt could be improved; that an estimate of the deer population there be provided to help measure success; and a request that the Department develop some criteria for future special hunts.

After reviewing the comments the Commissioner made one modification to the original proposal and reduced the length of the special hunt from three years to a one year hunt. An assessment of the hunt and the deer population there would take place and Department staff would continue to work with Eastport to develop a long term solution to prevent the necessity of a future special hunt there. The Advisory Council voted on the proposal on November 21, 2016 with 8 members participating. The Council voted unanimously to adopt the proposal as amended.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12701
Chapter number/title: Ch. 5, State Owned Wildlife Management Areas and Shooting Ranges
Filing number: 2016-206
Effective date: 12/3/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

IFW currently operates 2 shooting areas located on Department-owned land at the Major Gregory Sanborn WMA and Summerhaven shooting area in Augusta. These areas have been used for recreational shooting by the general public for many years, and see significant use. The sites were unsupervised, and over time behavior at the ranges has deteriorated. After-hours shooting, discharge of firearms in unsafe directions, vandalism of range infrastructure, and littering have become regular problems. Nearby residents also expressed concern over noise levels from the increased use of exploding targets.

Basis statement:

The rules for Department-owned shooting ranges will set clear expectations of behavior for the public, and provide a mechanism for law enforcement to respond to users that display disrespectful or potentially dangerous behavior at the ranges. The rule will impact all current and potential public users of Department owned ranges who will be required to follow clear expectations for behavior while using a range. These changes will improve the safety of the ranges for all users and nearby residents and recreational users of adjacent property and protect significant improvements being made to the ranges with available Pittman-Robertson grant monies.

Two public hearings were held on the proposal, one in Brownfield to discuss the Department range operated by the Fryeburg Fish and Game Association at the Major Gregory Sanborn WMA and the second hearing was held in Hallowell to discuss the Summerhaven shooting range located in Augusta. The Brownfield hearing was well attended with over 50 citizens and the Hallowell hearing had 6 citizens attending. Testimony overall was in favor of improvements being made to the ranges with emphasis on anything the Department could do to reduce noise. Use of automatic firearms was also brought up and the majority of citizens that testified did not want them to be prohibited. Testimony opposing the prohibition on steel core ammunition was also given. Other factors that were included in testimony were they were not in favor of prohibition on airborne targets such as clay pigeons and a set distance for handgun shooting from the target. These items were not part of the proposal, and there was some confusion between what the Department was proposing and range rules that were currently posted at the Brownfield range.

The Department also received 10 written comments that were acknowledged and forwarded to the Commissioner's Advisory Council as well as Department staff for consideration. The comments were overall in support of the proposal and the Department making improvements to the ranges. Five of the comments specifically mentioned concerns with noise and encouraged the Department to do all it could to mitigate the noise. Two comments relating to the Brownfield range suggested the range be moved altogether. A range safety officer also provided comment and discussed steel core ammunition and steel targets. He felt the steel core ammunition prohibition should be changed, and also that steel targets should be prohibited because of the chance of ricochet with certain calibers at close range.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Concern with automatic firearms and rapid fire were included in three of the comments and felt they should be prohibited.

After reviewing the comments and discussion with staff, the Commissioner moved forward with the original proposal. Further examination of steel core ammunition and the potential for damage to the ranges needed to be conducted before the Department could comfortably allow its use. The rule could be amended in the future if automatic firearms, rapid fire or use of steel targets became an issue.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Labor, Bureau of Labor Standards, **Board of Occupational Safety and Health**
Umbrella-Unit: **12-179**
Statutory authority: 26 MRS §565
Chapter number/title: **Ch. 2**, Occupational Safety and Health Standards for General Industry Employment in the Public Sector
Filing number: **2016-156**
Effective date: 9/28/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To assure the rule covering public employees conform with the federal standards as required in Title 26 MRS ch. 6 §565.

Basis statement / summary:

The board shall formulate and adopt reasonable rules, pursuant to Title 5 ch. 375 subchapter II, for safe and healthful working conditions, including rules requiring the use of personal protective equipment, monitoring and record keeping. The rules so formulated shall at a minimum conform to federal standards of occupational safety and health, so that the state program can be federally approved as a public employee only occupational safety and health program. These rules shall not become effective sooner than 90 days after the date of adoption and promulgation.

Maine became a federally approved state plan for public sector only on August 5, 2015. To maintain grant funding the state needs to periodically adopt the most current standards to reflect changes at the federal level.

Recent federal changes include but not limited to hazard communication/global harmonization and personal protective equipment (PPE).

Fiscal impact of rule:

(not addressed)

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Labor, Bureau of Labor Standards, **Board of Occupational Safety and Health**
Umbrella-Unit: **12-179**
Statutory authority: 26 MRS §565
Chapter number/title: **Ch. 3**, Occupational Safety and Health Standards for Construction Industry Employment in the Public Sector
Filing number: **2016-157**
Effective date: 9/28/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To assure the rules covering public employers conform with the federal standards as required in Title 26 MRS ch. 6 §565.

Basis statement / summary:

The board shall formulate and adopt reasonable rules, pursuant to Title 5 ch. 375 subchapter II, for safe and healthful working conditions, including rules requiring the use of personal protective equipment, monitoring and record keeping. The rules so formulated shall at a minimum conform to federal standards of occupational safety and health, so that the state program can be federally approved as a public employee only occupational safety and health program. These rules shall not become effective sooner than 90 days after the date of adoption and promulgation.

Maine became a federally approved state plan for public sector only on August 5, 2015. To maintain grant funding the state needs to periodically adopt the most current standards to reflect changes at the federal level.

Recent federal changes include but not limited to permit required confined spaces and cranes and derricks.

Fiscal impact of rule:

(not addressed)

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: **Maine Health Data Organization**
Umbrella-Unit: **94-270**
Statutory authority: 22 MRS §§ 8704 sub-§4, §8708; 24-A MRS §6951(2),(3);
Resolve 2015 ch. 71
Chapter number/title: **Ch. 270**, Uniform Reporting System for Quality Data Sets
Filing number: **2016-072**
Effective date: 6/1/2016
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

These changes eliminate duplicative reporting by Maine hospitals to both a state and national source; improve access to Healthcare Associated Infection (HAI) outcome measures and all other Centers for Medicare & Medicaid Services (CMS) mandated reporting requirements to National Healthcare Safety Network (NHSN); and update/clarify provisions in the rule as needed.

Basis statement / summary:

The Maine Health Data Organization is authorized by statute to collect quality data from hospitals and ambulatory surgery facilities to support the set of quality measures adopted by the Maine Quality Forum with the goal to improving the quality of healthcare in Maine.

This major substantive rule was provisionally adopted by the Maine Health Data Organization on January 7, 2016. As a major substantive rule, it was sent to the Legislature for approval. On March 29, 2016, the Legislature authorized adoption of the amended rule, as an emergency. Resolves 2015 ch. 71.

Fiscal impact of rule:

There is no fiscal impact on state municipalities, counties or businesses.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: **Maine Health Data Organization**
Umbrella-Unit: **94-270**
Statutory authority: PL 2013 ch. 528; 22 MRS §8704(4); Resolves 2015 ch. 79;
22 MRS ch. 1683
Chapter number/title: **Ch. 120**, Release of Data to the Public
Filing number: **2016-108**
Effective date: 7/28/2016
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

This change repeals and replaces MHDO's current data release rule Ch. 120 in order to implement the provisions of PL 2013 ch. 528, "An Act to Amend Laws Relating to Health Care Data".

This rule specifies the permissible uses of the MHDO data; defines the different levels of data file types Level I, II, and Level III; the process for which data requests will be reviewed by MHDO; the data release process; public notice of data requests and opportunity for public comments; the appeal rights for data providers; the MHDO Data use Agreement (MHDO DUA); MHDO internal use of the data; and the security and protection of the MHDO Data. Many of these changes align with the concepts of the *Health Insurance Portability and Accountability Act* (HIPAA). Specifically, these changes allow for the following:

- data user's to request and receive direct patient identifier's when that is necessary for the data user's study and they meet numerous requirements protecting that information;
- provides a method for subjects of data to "opt-out" of Level III (Health data with Direct Patient Identifiers) data releases which simplifies the review and appeal process for data provider's claims of proprietary information;
- all data sets released by the MHDO, including the "de-identified" or Level I data set require a data use agreement (DUA), and approval by the Executive Director;
- provides for one Data Release Subcommittee of the MHDO Board of Directors; and,
- specifies data protections and practices such as "minimum necessary", MHDO's DUA and breach notification, and promulgates the MHDO's ability to levy large fines for misuse of MHDO data for financial or personal gain.

Copies of these proposed rules can be reviewed and printed from the MHDO website at <https://mhdo.maine.gov/rules.htm> or, to receive a paper copy call (207) 287-6722.

Basis statement / summary:

The Maine Health Data Organization is authorized by statute to collect health care data. This chapter governs the release of data submitted to the MHDO. The purpose of this rule is to specify the permissible uses of the data (Level I, II, and III); the process for which data requests will be reviewed and released; public notice of data requests; the MHDO Data Use Agreement, MHDO internal use of the data, and the security and protection of the MHDO Data.

This major substantive rule was provisionally adopted by the Maine Health Data Organization on March 3, 2016. As a major substantive rule, it was sent to the Legislature for approval. On April 16, 2016 the Legislature authorized adoption of the amended rule, as an emergency. Resolves 2015 ch.79.

This rule change repeals and replaces the current language found in the MHDO's data release rule in order to implement the provisions of PL 2013 ch. 528, "An Act to Amend Laws Relating to Health Care Data". This overhaul includes several major themes:

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

- breaks down data sets into three different levels based on whether any elements of identifying information are involved; Level I data is De-Identified data; Level II is the MHDO's Limited Data Set and Level III data is our Direct Patient Identifiers;
- includes appendices listing the actual data elements in each data set, which improves public transparency about what the MHDO does;
- clarifies data users ability to request and receive direct patient identifier's when that is necessary for the data user's study and they meet the numerous requirements protecting that information;
- clarifies that all data sets released by MHDO, including the "de-identified" or Level I data set require a data use agreement, and approval by the Executive Director, as additional protections;
- provides a method for subjects of data to "opt-out" of a Level III data releases;
- clarifies that charge data at the individual level is confidential and is not released by MHDO except at an aggregate/average level;
- streamlines the review and appeal process for data provider's claims of proprietary information;
- specifies data protections and practices such as "minimum necessary," MHDO DUA's and breach notification, and Promulgates the MHDO's ability to levy large fines for misuse of MHDO benefit for financial or personal gain;
- aligns many existing MHDO practices with the concepts of the *Health Insurance Portability and Accountability Act (HIPAA)*; and
- establishes a Data Release Subcommittee of the MHDO Board of Directors for the review and decision of all Level III data requests.

Fiscal impact of rule:

There is no fiscal impact on state municipalities, counties or businesses.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: **Maine Public Employee Retirement System**
Umbrella-Unit: **94-411**
Statutory authority: 5 MRS §17103(4)
Chapter number/title: **Ch. 204** (*New*), Waiver of Member Payment Requirement Where Caused by Employer Error or Omission
Filing number: **2016-081**
Effective date: 5/8/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule establishes standards for determining whether to grant a waiver under 5 MRS §17103(6) to a member or retiree who, without the waiver, would be required to make payments to the Maine Public Employees Retirement System (“MainePERS”) because of an employer error or omission.

Basis statement / summary:

The MainePERS Board of Trustees has authority under 5 MRS §17103(6) to waive payments that a member or retiree would be required to make if the payment obligation was caused by an employer error or omission. In *Merrill v. Maine Public Employees Retirement System*, 2014 ME 100, the Law Court held that due process requires the Board to make waiver determinations based on standards that are published in advance, either by rule or by legislation. This rule establishes those standards and sets forth a process for determining waiver requests.

The standards in the rule are based on the principle that waivers should be granted only in extraordinary situations. This is because in most situations, if not all, the waiver would result in the member or retiree receiving benefits without having paid the employee contributions or premiums for those benefits. The rule requires the person seeking the waiver to demonstrate that the obligation was not reasonably avoidable, a waiver would not cause material harm, and a denial of the waiver would cause serious financial hardship.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Maine Public Employee Retirement System
Umbrella-Unit: 94-411
Statutory authority: 5 MRS §§ 17103(4), 18801
Chapter number/title: Ch. 803, Participating Local District Consolidated Plan
Filing number: 2016-099
Effective date: 6/5/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule governs the Consolidated Plan for Participating Local Districts. The amendments to the rule incorporate statutory changes enacted by PL 2013 c. 602.

Basis statement / summary:

This chapter establishes a consolidated retirement plan, as required by 5 MRS §18801 *et seq.* for local districts that are participating local districts under 5 MRS ch. 425 before the date the plan is put into operation and for local districts that enter into agreements for the participation of their employees in the Maine Public Employees Retirement System after The Plan is put into operation. **NOTE:** 5 MRS ch. 421, *General Provisions*, is applicable to all activities relating to the Maine Public Employees Retirement System, including the subject matter of this chapter of the rules of the Board of Trustees (“Board”). 5 MRS ch. 427, *Participating Local Districts Consolidated Plan*, is the statute from which this chapter of the rules of the Board derives its authority and is applicable to all activity based upon this chapter.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: **Maine Public Employee Retirement System**
Umbrella-Unit: **94-411**
Statutory authority: 5 MRS §§ 1031(5), 17103(4)
Chapter number/title: **Ch. 501**, Eligibility of M.S.R.S. Members to Apply for Disability Retirement Benefits
Filing number: **2016-112** (*Repeal*)
Effective date: 7/4/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

MainePERS repeals this rule because of its limited applicability and because it causes confusion for members as to their eligibility for disability benefits. The statute provides the necessary guidance for the few active members still covered by Chapter 1122 disability benefits.

Basis statement / summary:

This rule was enacted to address eligibility for disability retirement benefits under disability statutes that were repealed more than three decades ago. The continued existence of this rule has created confusion for those trying to understand and follow eligibility standards and processes under current law.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: **Maine Public Employee Retirement System**
Umbrella-Unit: **94-411**
Statutory authority: 5 MRS §§ 1031(5), 17103(4)
Chapter number/title: **Ch. 508**, Disability Retirement under 5 MRSA §1122 as in Effect
Prior to July 1, 1977
Filing number: **2016-113** (*Repeal*)
Effective date: 7/4/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

MainePERS repeals this rule because of its limited applicability and because it causes confusion for members as to their eligibility for disability benefits. The statute provides the necessary guidance for the few active members still covered by Chapter 1122 disability benefits.

Basis statement / summary:

This rule was enacted to address eligibility for disability retirement benefits under disability statutes that were repealed more than three decades ago. The continued existence of this rule has created confusion for those trying to understand and follow eligibility standards and processes under current law.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: **Maine Rural Development Authority** *(administered by the Finance Authority of Maine)*
Umbrella-Unit: **99-626**
Statutory authority: 5 MRS §§ 13120-L, 13120-N(1)(D)
Chapter number/title: **Ch. 2**, Commercial Facilities Development Program
Filing number: **2016-147**
Effective date: 9/3/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Extend maximum loan term.

Basis statement / summary:

The amendment extends the maximum loan term from 5 years to 20 years, and provides for the ability to change the interest rate for loans longer than 5 years.

Fiscal impact of rule:

None expected. The amendment will not impose any costs on municipalities or counties.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Maine State Housing Authority
Umbrella-Unit: 99-346
Statutory authority: 30-A MRS §§ 4722(1)(W), 4741(15)
Chapter number/title: Ch. 25, Weatherization Assistance Program Rule
Filing number: 2016-057
Effective date: 4/3/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The replacement rule: i) Delinks the Home Energy Assistance Program (HEAP) weatherization program from the U.S. Department of Energy Weatherization Assistance Program (DOE WAP) requirements. The existing rule applies to both programs. The replacement rule will apply only to DOE WAP; (ii) Refers to revised federal regulations on administrative requirements, cost principles, and auditing requirements and incorporates federal guidance on household income calculations; (iii) Revises procedures for suspending or terminating a subgrantee: a formal hearing process is replaced with an informal review; (iv) Clarifies the fair hearing process for applicants and for debarment of contractors; and (v) Makes other minor technical revisions and updates.

Basis statement / summary:

This rule replaces in its entirety the current *Weatherization Program Rule* for the following purposes: to remove the LIHEAP weatherization program from the rule; to refer to revised federal regulations on administrative requirements, cost principles, and auditing requirements and to comport with federal guidance on household income calculations; to revise the procedures for suspending or terminating a subgrantee; to make clarifications to the fair hearing process for applicants and for debarment of contractors; and to make other minor technical revisions and updates.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: **Maine State Housing Authority**
Umbrella-Unit: **99-346**
Statutory authority: 30-A MRS §§ 4741(1),(14); Section 42 of the *Internal Revenue Code of 1986*, as amended
Chapter number/title: **Ch. 16**, Low Income Housing Tax Credit Rule
Filing number: **2016-131**
Effective date: 8/7/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Maine State Housing Authority, as the housing credit agency for the State of Maine, is required to adopt a qualified allocation plan for allocating and administering federal low-income housing tax credits (sometimes referred to as housing credits), including without limitation the state's housing credit ceiling established pursuant to Section 42 of the *Internal Revenue Code of 1986*, as amended. Ch. 16 of Maine State Housing Authority's rules is the State's qualified allocation plan. The proposed rule will repeal and replace the current Ch. 16 and will be the State's qualified allocation plan for allocating and administering federal low-income housing tax credits, including the State's housing credit ceiling for calendar year 2017.

Basis statement / summary:

The *Internal Revenue Code of 1986*, as amended, (the "Code") and the *Maine Housing Authorities Act* require Maine State Housing Authority ("MaineHousing"), as the designated housing credit agency for the State of Maine, to adopt a qualified allocation plan for allocating and administering federal low income housing tax credits ("Credit"), including without limitation the state ceiling of federal low-income housing tax credits allocated to the State of Maine annually (the "State Ceiling").

Ch. 16 of MaineHousing's rules, the *Low Income Housing Tax Credit Rule*, is the State's qualified allocation plan for allocating and administering the Credit. This rule, sometimes referred to herein as the plan, repeals and replaces in its entirety the prior Ch. 16, referred to herein as the prior plan. This rule provides for a one-year qualified allocation plan and includes the scoring criteria for the 2017 State Ceiling.

Cost containment continues to be a priority under this plan. The cost containment selection criteria, including the total development cost (TDC) caps, benchmarks and scoring criteria, in this plan are the same as the prior plan with the some modifications.

Fiscal impact of rule:

The State's housing credit ceiling for calendar year 2017 is expected to generate approximately \$29,500,000 of private investor capital. The capital generated by the syndication of the federal low-income housing tax credits will be used to develop affordable housing for low- and very low-income persons in the State of Maine. The rule will not impose any costs on municipalities or counties for implementation or compliance.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: **Maine State Housing Authority**
Umbrella-Unit: **99-346**
Statutory authority: 30-A MRS §§ 4722(1)(W), 4741(15), 4991 *et seq.*; 42 USCA §§ 8621 *et seq.*
Chapter number/title: **Ch. 24**, Home Energy Assistance Program Rule
Filing number: **2016-132**
Effective date: 8/7/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The replacement rule: (i) expands the timeframe in which applicants with household members who are the age of two, elderly, or subject to hypothermia are prioritized; (ii) allows all applicants to apply by phone; (iii) expands the “permission to share” release; (iv) eliminates language prohibiting program benefits for survivors of a recently deceased primary recipient when all remaining household members are under 18; (v) enhances the program component designed to provide education and help clients reduce their energy burden; (vi) amends the \$.07 discount program to apply only to program-assisted deliveries; (vii) revises policies concerning the timing of returned funds from vendors to conform with new federal guidance; (viii) allows community action agencies to use program dollars for intake and certification staff salaries; (ix) eases requirements around unemployment verification, employee benefit disclosures, changes to applications after initial submission, verifying households with minimum income, and processing applications for children with divorced parents; (x) amends cost limits in the Central Heating Improvement Program (CHIP) from a “per-occurrence” limit to a “program average” limit allowing higher cost solutions such as a system replacement to be fully funded by CHIP; (xi) allows CHIP to pay for replacements of systems previously installed under CHIP when the systems have reached the end of their useful life; (xii) implements an “asset test” for CHIP services; (xiii) inserts language clarifying possible denial of service for CHIP misuse and abuse; and (xiv) amends procurement requirements to be consistent with MaineHousing’s procurement policy.

Basis statement / summary:

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, weatherization, and heating system repair and replacement funds to low income households in the State of Maine. The replacement rule: (i) expands the timeframe in which applicants with household members who are the age of two, elderly, or subject to hypothermia are prioritized; (ii) allows all applicants to apply by phone; (iii) expands the “permission to share” release; (iv) eliminates language prohibiting program benefits for survivors of a recently deceased primary recipient when all remaining household members are under 18; (v) enhances the program component designed to provide education and help clients reduce their energy burden; (vi) amends the \$.07 discount program to apply only to program-assisted deliveries; (vii) revises policies concerning the timing of returned funds from vendors to conform with new federal guidance; (viii) allows community action agencies to use program dollars for intake and certification staff salaries; (ix) eases requirements around unemployment verification, employee benefit disclosures, changes to applications after initial submission, verifying households with minimum income, and processing applications for children with divorced parents; (x) amends cost limits in the Central Heating Improvement Program (CHIP) from a “per-occurrence” limit to a “program average” limit allowing higher cost solutions such as a system replacement to be fully funded by CHIP; (xi) allows CHIP to pay for

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

replacements of systems previously installed under CHIP when the systems have reached the end of their useful life; (xii) implements an “asset test” for CHIP services; (xiii) inserts language clarifying possible denial of service for CHIP misuse and abuse; and (xiv) amends procurement requirements to be consistent with MaineHousing’s procurement policy.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: **Maine State Housing Authority**
Umbrella-Unit: **99-346**
Statutory authority: 30-A MRS §4741(1); 36 MRS §5219-NN
Chapter number/title: **Ch. 33** *(New)*, Home Modification Tax Credit Rule
Filing number: **2016-213**
Effective date: 12/11/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement / summary:

Under a new law individual taxpayers whose income does not exceed \$55,000 may receive an income tax credit up to \$9,000 for expenses incurred for modifications to make their home accessible to an individual with a disability who lives or will live in the home. This rule sets forth the types of home modification expenditures that qualify for the credit, the building standards applicable to the modifications, and the process MaineHousing will use to determine that a taxpayer's expenditures qualify for the credit.

Fiscal impact of rule:
None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: **Maine Turnpike Authority**
Umbrella-Unit: **99-420**
Statutory authority: 23 MRS §1965(U)
Chapter number/title: **Ch. 2**, Regulations for the Installation of Logo Signs on the
Maine Turnpike
Filing number: **2016-121**
Effective date: 7/18/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Presently the MTA's logo rule only allows signs for destinations that can be accessed through a "Maine Turnpike Interchange". This rule amendment would allow locations that can only be accessed through interchanges on the interstate highway beyond the southern or northern limits of the Maine Turnpike to qualify for a logo sign on the Maine Turnpike if those locations would otherwise meet the requirements of the MTA logo rule.

This rule would also allow logos for off-Turnpike locations selling food and gas on the northbound side of the Turnpike north of mile marker 106 and the southbound side of the Turnpike south of mile marker six.

Basis statement / summary:

The amendment to the MTA 's existing logo sign rule was noticed for public comment by the Maine Secretary of State's office on March 30th, 2016, with a comment deadline of April 29th. No comments were received and the rule amendment was adopted by the Authority as proposed on May 26th.

The rule amendment allows locations that can only be accessed through interchanges on the interstate highway beyond the southern or northern limits of the Maine Turnpike to qualify for a logo sign on the Maine Turnpike if those locations would otherwise meet the requirements of the MTA logo rule. The amended rule also allows logos for off-turnpike locations selling food and gas on the northbound side of the turnpike north of mile marker 106 and the southbound side of the turnpike south of mile marker six.

Fiscal impact of rule:

The MTA does not anticipate any fiscal impact from adoption of this rule.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)
Chapter number/title: Ch. 11, Scallops: 11.22, Targeted Closures - (6), (15), (16)
Filing number: 2016-004
Effective date: 1/16/2016
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rule-making for the implementation of conservation closures located in Vinalhaven & Fox Island Thorofare and Whiting & Dennys Bays order to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion. Scallop populations throughout the state are at extremely low levels. The Department is concerned that unrestricted harvesting during the remainder of the 2015-16 fishing season in these areas may deplete a severely diminished resource beyond its ability to recover. Continued harvesting may damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reducing the broodstock essential to a recovery. These immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in Vinalhaven & Fox Island Thorofare and Whiting & Dennys Bays as authorized by 12 MRS §6171(3). In addition, a correction is needed for the South Portland Harbor Closure to ensure enforceability of this area.

Basis statement:

The Maine scallop fishery was formerly a valuable winter/spring fishery providing a substantial source of income to fishing businesses at a time of year without many other fishing opportunities. The fishery experienced an all-time low in 2005, landing 33,141 meat pounds of scallop meats from Maine waters valued at \$272,703. The Department has been working closely with the Scallop Advisory Council and members of the industry for several years to rebuild a sustainable resource and provide economic opportunity in a limited fishery. Beginning in 2009, the DMR adopted a spatial management approach that has included targeted area closures and Limited Access Areas (LAA), and implemented a Rotational Management Plan accompanied by a 30% harvest target that when met would trigger in-season emergency management actions to ensure areas are not overfished and rebuilding continues. The combination of conservation measures appears to be effective as demonstrated by 605,224 meat pounds being landed in 2014 valued at \$7.7 million, a fifteen-fold increase in landings and an almost twenty one-fold increase in value from 2005, while the fishery has experienced a significant increase in active participation in recent years.

This season was undertaken with the understanding that the length of the season likely far exceeds what the resource can sustain, and that the Department may need to use emergency rule-making authority during the season to prevent overfishing. The industry, through the Scallop Advisory Council, requested that the Department provide the fishing opportunity up front, and make adjustments in-season as necessary. The Department was willing to take this approach in part because this fishery is prosecuted in the winter months, and proposing a very limited season could create an incentive to fish in unsafe conditions. The Department emphasized that it will take action to continue to rebuild the scallop resource, as well as provide stability and predictability for the industry into the future. Therefore, the DMR expanded the trigger mechanism to the entire fishery last season in order to move towards a more sustainable harvest of the resource statewide so that when data indicate that 30% of the

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

harvestable biomass has been removed from an area, it will be closed early via emergency action in order to ensure that the resource has the ability to replace what has been removed and continue to rebuild. Such action will ensure continued progress towards the goal of a sustainable, rebuilt fishery.

The Department seeks to take rule-making action to close the following targeted area: Vinalhaven & Fox Island Thorofare and Whiting & Dennys Bays. Based on direct input from Marine Patrol and independent industry participants as well as observations made through the Department's monitoring programs, the level of fishing effort in these discrete areas during the fishing season has likely exceeded the 30% removal target that ensures the fishery continues to rebuild. Continued fishing threatens future recruitment of sublegal "seed" scallops in these areas and remaining broodstock scallops that are needed for successful spawning. Finally, a correction is needed for the South Portland Harbor Closure to ensure enforceability of this area.

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRSA §6171(3)
Chapter number/title: Ch. 11, Scallops: 11.22, Targeted Closures (2nd paragraph, and (1), Muscle Ridge; (17), Western Penobscot Area)
Filing number: 2016-012
Effective date: 1/23/2016
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rule-making for the implementation of conservation closures located in Muscle Ridge and Western Penobscot Bay in order to protect Maine's scallop resource due to the risk of imminent depletion and unusual damage. While scallop populations are indicating signs of recovery in some areas of the state, the Department is concerned that unrestricted harvest during the remainder of the 2015-16 fishing season in these specific areas may reduce the broodstock essential for continuing recovery of the resource. These immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in Muscle Ridge and Western Penobscot Bay as authorized by 12 MRS §6171(3).

Basis statement:

The Department is taking emergency rule-making action to close the following targeted areas: Muscle Ridge and Western Penobscot Bay. Based on direct input from Marine Patrol and independent industry participants as well as observations made through the Department's monitoring programs, the level of fishing effort in these discrete areas during the fishing season has likely exceeded the 30% removal target that ensures the fishery continues to rebuild. Continued fishing threatens remaining broodstock scallops that are needed for successful spawning that is needed to rebuild the resource in these areas.

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)
Chapter number/title: Ch. 11, Scallops: 11.22, Targeted Closures: (18) Cobscook Bay; (19) St. Croix River; (20) Owls Head
Filing number: 2016-019
Effective date: 2/6/2016
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking for the implementation of conservation closures located in Cobscook Bay and Owls Head in order to protect Maine's scallop resource due to the risk of imminent depletion and unusual damage. In addition, harvesting in the St. Croix River will be limited to one day per week for draggers, and one day per week for divers. While scallop populations are indicating signs of recovery in some areas of the state, the Department is concerned that unrestricted harvest during the remainder of the 2015-16 fishing season in these specific areas may damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reducing the broodstock essential to a recovery. These immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in Cobscook Bay and Owls Head as well as restricts harvest in the St. Croix River, as authorized by 12 MRS §6171(3).

Basis statement:

The Department is taking emergency rule-making action to close the following targeted area: Cobscook Bay. In addition, harvesting in the St. Croix River will be limited to one day per week for draggers on Wednesdays and one day per week for divers on Fridays during the months of February, March and April 2016. Based on direct input from Marine Patrol and independent industry participants as well as observations made through the Department's monitoring programs, the level of fishing effort in these areas during the fishing season has likely exceeded the 30% removal target that ensures the fishery continues to rebuild. Continued fishing threatens remaining broodstock scallops that are needed for successful spawning to rebuild the resource in these areas as well as sublegal product that will recruit up to the fishery for harvest in future years.

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRSA §6171(3)
Chapter number/title: Ch. 25, Lobster and Crab: 25.45, Crab Fishing Limitations
Filing number: 2016-031
Effective date: 3/7/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

In August of 2015, the Atlantic States Marine Fisheries Commission (ASMFC) American Lobster Management Board approved a Jonah crab (*Cancer borealis*) Interstate Fisheries Management Plan (FMP). This action was initiated as the result of an observed rapid increase in landings and value of Jonah Crab in the Northwest Atlantic Ocean. The plan lays out management measures for commercial and recreational Jonah crab fishery. Maine is required to comply with certain elements of the FMP, including *Sections 3.4.1, 4.1, and 4.2* (See ASMFC Jonah Crab FMP at http://www.asmfmc.org/uploads/file/55e9daffJonahCrabInterstateFMP_Aug2015.pdf). In accordance with those sections, the Department's proposed rule sets a minimum size for Jonah crab of 4.75 inches; makes it unlawful to possess egg-bearing, female Jonah crab; makes it unlawful to possess mutilated Jonah crabs on board a vessel; and makes it unlawful for recreational possession of more than 50 Jonah crabs per person per 24-hour day.

Basis statement:

In August of 2015, the Atlantic States Marine Fisheries Commission (ASMFC) American Lobster Management Board approved a Jonah crab (*Cancer borealis*) Interstate Fisheries Management Plan (FMP). This action was initiated as the result of an observed rapid increase in landings and value of Jonah Crab in the Northwest Atlantic Ocean. The plan lays out management measures for commercial and recreational Jonah crab fishery. Maine is required to comply with certain elements of the FMP, including *Sections 3.4.1, 4.1, and 4.2* (See ASMFC Jonah Crab FMP at http://www.asmfmc.org/uploads/file/55e9daffJonahCrabInterstateFMP_Aug2015.pdf). In accordance with those sections, the Department's proposed rule sets a minimum size for Jonah crab of 4.75 inches; makes it unlawful to possess egg-bearing, female Jonah crab; makes it unlawful to possess mutilated Jonah crabs on board a vessel; and makes it unlawful for recreational possession of more than 50 Jonah crabs per person per 24-hour day.

This rule complies with ASMFC management measures, thereby helping to ensure a sustainable Jonah crab fishery in the future. Marine Patrol will enforce the requirements as part of their existing enforcement activities.

Fiscal impact of rule:

No additional effort will be needed in terms of personnel or time, as enforcement personnel will monitor compliance during routine patrols and already conduct overlapping monitoring activities for the lobster and crab fishery.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRSA §6449
Chapter number/title: Ch. 25, Lobster and Crab: 26.97, Management Framework for Island Limited Entry Programs
Filing number: 2016-032
Effective date: 3/7/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The proposed rule provided a seasonal exemption to the existing 3 trap per trawl limit for a specified area within and around the Piscataqua River, allowing up to 10 traps per trawl from January 1 - April 10. This change was requested by Zone G fishermen fishing in this area, to improve gear handling and minimize gear loss during the winter months. DMR received comments in opposition to making this change, and has removed the proposed exemption from the rule-making.

Basis statement:

The proposed rule provided a seasonal exemption to the existing 3 trap per trawl limit for a specified area within and around the Piscataqua River, allowing up to 10 traps per trawl from January 1 - April 10. This change was requested by Zone G fishermen fishing in this area, to improve gear handling and minimize gear loss during the winter months. DMR received comments in opposition to making this change, and has removed the proposed exemption from the rule-making.

The regulation strikes Chebeague Island from the list of islands participating in the Island Limited Entry Program. The Chebeague Island Limited Entry Committee requested a referendum be conducted to assess whether license holders on Chebeague supported the continuation of the Program. Of those voting, 83% supported eliminating the Program. After reviewing the referendum results, the Chebeague Island Limited Entry Committee requested the Commissioner undertake rule-making to terminate the Chebeague Island Limited Entry Program. The Department received no comments opposing the elimination of this Program.

The rule will terminate the Chebeague Island Limited Entry Program.

Fiscal impact of rule:

There is no anticipated fiscal impact.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRSA §§ 6171, 6505-A
Chapter number/title: Ch. 32, Eels: 32.03, Commercial Harvesting Regulations; 32.06, Recreational Eel Harvesting Regulations; 32.30, Elver Gear and Fishing License Lottery 32.35, Elver Quota System for 2016 Elver Season
Filing number: 2016-033
Effective date: 3/7/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

The principal reason for proposing this rule was to establish the elver quota allocations for the 2016 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 rule-making also creates an area closure to the taking of eels and elvers within a portion of the Kennebec River and Cobbosseecontee Stream in Gardiner, so that Maine DMR can undertake the eel life cycle study required for compliance with the ASMFC fisheries management plan. The elver gear and fishing license lottery has been suspended by the Legislature, so the language regarding the lottery is struck, until such time as the lottery is reinstated in law. Finally, there is some reorganization of the chapter to combine the regulations regarding commercial and recreational eel harvesting.

The rule will establish overall and individual quota allocations, and create a closure to the taking of eels and elvers within a portion of the Kennebec River and the Cobbosseecontee Stream in Gardiner. Other changes to the rule are reorganization for clarity. The proposed rule was amended to clarify that quota from licenses that were not renewed in 2015 will be allocated across current license holders. It was also amended to strike the prohibition on fishing fyke nets in the St. Croix River, for consistency with pending legislation that will also eliminate that prohibition.

Fiscal impact of rule:

There is not expected to be any fiscal impact.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRSA §6171
Chapter number/title: Ch. 45, Shrimp: 45.05, Shrimp Season Closure
Filing number: 2016-034
Effective date: 3/7/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

In November 2014, the Atlantic States Marine Fisheries Commission (ASMFC)'s Northern Shrimp Section approved a moratorium for the 2015 commercial fishery in response to the 2014 Stock Status Report, indicating record low fishable biomass.

On December 7, 2015, the Section met to review the 2015 stock status update, receive Advisory Panel input, and set fishery specifications for the 2016 fishing season. In developing the 2015 stock status update, the Northern Shrimp Technical Committee (NSTC) evaluated a suite of indicators including fishery performance, survey indices of abundance and biomass, and environmental conditions. Abundance and biomass indices for 2012–2015 were the lowest on record of the thirty-two year time series. Recruitment indices for the 2010–2014 year classes were also well below average, and included the three smallest year classes on record. As a result, the indices of fishable biomass from 2013–2015 are the lowest on record. The recruitment index increased slightly in the 2014 survey (2013 year class), however, in 2015 the index dropped to the lowest in the time series. Recruits of the 2013 and 2014 year classes are not expected to reach exploitable size until 2017 and 2018, respectively. Despite the marginal increase in the recruitment index in 2014, the population continues to meet the criteria defining a collapsed stock.

At the December 7th meeting, a motion was passed to approve a moratorium for the 2016 shrimp fishery.

This rule-making is necessary for the timely implementation of a closure in order to conserve the shrimp fishery from unusual damage that would be caused by any fishing effort. As authorized by 12 MRS §6171(3), the Commissioner of Marine Resources adopts this regulation due to the risk of unusual damage and imminent depletion of the shrimp resource that would occur if any fishing were to occur during a necessary closed season.

Fiscal impact of rule:

Enforcement of the proposed regulation would not require measurable additional activity in this Agency. Existing enforcement personnel would monitor compliance during their routine patrols.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRSA §6171(3)
Chapter number/title: Ch. 11, Scallops:
11.22, Targeted Closures:
(21) Inner Machias Area;
(22) Wohoa / Western Bay;
(23) Gouldsboro / Dyer Bay;
(24) Upper Blue Hill Bay / Union River;
(25) Eggemoggin Reach / Southeast Harbor;
(26) Lower Jericho Bay;
(27) Casco Bay.
Filing number: 2016-049
Effective date: 3/20/2016
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rule-making for the implementation of conservation closures located in the Inner Machias Area, Wohoa/Western Bay Rotational Area, Gouldsboro/Dyers Bay Rotational Area, Upper Blue Hill Bay/Union River Rotational Area, Jericho Bay Area, Eggemoggin Reach/Southeast Harbor Rotational Area and Casco Bay (hand harvest by scuba diving allowed) in order to protect Maine's scallop resource due to the risk of imminent depletion and unusual damage. While scallop populations are indicating signs of recovery in some areas of the state, the Department is concerned that unrestricted harvest during the remainder of the 2015-16 fishing season in these specific areas may damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reducing the broodstock essential to a recovery. These immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in the Inner Machias Area, Wohoa/Western Bay Rotational Area, Gouldsboro/Dyers Bay Rotational Area, Upper Blue Hill Bay/Union River Rotational Area, Jericho Bay Area, Eggemoggin Reach/Southeast Harbor Rotational Area and Casco Bay (hand harvest by scuba diving allowed), as authorized by 12 MRS §6171(3).

Basis statement:

The Department is taking emergency rule-making action to close the following targeted areas: the Inner Machias Area, Wohoa/Western Bay Rotational Area, Gouldsboro/Dyers Bay Rotational Area, Upper Blue Hill Bay/Union River Rotational Area, Jericho Bay Area, Eggemoggin Reach/Southeast Harbor Rotational Area and Casco Bay Area (hand harvest by scuba diving allowed). Based on direct input from Marine Patrol and independent industry participants as well as observations made through the Department's monitoring programs, the level of fishing effort in these areas during the fishing season has likely exceeded the 30% removal target that ensures the fishery continues to rebuild. Continued fishing threatens remaining broodstock scallops that are needed for successful spawning to rebuild the resource in these areas as well as sublegal product that will recruit up to the fishery for harvest in future years.

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRSA §6171(3)
Chapter number/title: Ch. 34, Groundfish Regulations: Recreational Cod
Federal Compliance
Filing number: 2016-087
Effective date: 5/6/2016
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

In accordance with the New England Fisheries Management Council and for consistency with the National Marine Fisheries Service (NMFS) federal regulations effective May 1, 2016, the Department is enacting emergency rule-making for charter, party and recreational fishing vessels operating in state waters regarding cod and haddock. For the recreational fishery, the cod fishery has been taken off the prohibited list and it is now lawful to take or possess one cod per day in state waters. Cod may not be possessed on board a charter, party or recreational fishing vessel from October 1 to July 31 inclusive. For cod fish, the size limit of 24" (60.1 cm) will apply. In addition to complying with federal law, this emergency regulation will also increase fishing opportunity in Maine State waters. The rule implements NMFS's increase of recreational possession limits for Haddock from 3 to 15 fish. Finally, restrictions on recreational haddock possession are being shifted, so that haddock may not be possessed on board a recreational fishing from March 1 through April 14, whereas the rule had restricted recreational haddock possession in both the fall and spring months.

Fiscal impact of rule:

Enforcement of this rule will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §§ 6171-A(4-A), 6192
Chapter number/title: Ch. 25, Lobster and Crab: 25.65, Lobster and Crab Closure in Penobscot River
Filing number: 2016-106
Effective date: 6/21/2016
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rule-making in order to protect public health due to the risk of mercury contamination in lobsters and crabs found in the proposed expansion of the existing closed area. Recent confirmation data collected by the Department and analyzed by the Maine Department of Health and Human Services, Center for Disease Control (Maine CDC) indicates that lobsters in this area may have mercury levels above the Maine CDC action level and would warrant a consumption advisory for the most sensitive populations. The Department believes the expansion of the existing closure is warranted. For these reasons, the Commissioner hereby adopts an emergency closure to the taking of lobster and crab in the expanded area as authorized by 12 MRS §6171-A(4-A).

As authorized by 12 MRS §6171-A(4-A) and 12 MRS §6192 the Commissioner of Marine Resources adopts this emergency regulation because "immediate action is necessary to protect the public health or public safety or to prevent property damage or serious economic harm to the area in which marine resources are harvested."

Basis statement:

The Commissioner adopts this emergency rule-making in order to protect public health due to the risk of mercury contamination in lobsters and crabs found in the mouth of the Penobscot River north of a line starting at the westernmost point of Perkins Point in the Town of Castine continuing in a northwesterly direction to the southernmost point on Squaw Point on Cape Jellison in the Town of Stockton Springs.

The justification for the expanded boundary of the closed area is based on recent data collected by the Department that shows lobsters in this area may have mercury levels above the Maine Center for Disease Control and Prevention (MECDC) action level. State health agencies use action levels as a guide to determine whether they should issue a consumption advisory warning consumers to limit meals of fish from certain waters. Action levels are defined as concentrations of a contaminant in fish or shellfish tissue below which there should be negligible risk of deleterious health effects, at a consumption rate of one meal per week. An action level takes into account exposure level for a human population, including sensitive subpopulations such as pregnant women and children, body weight, and fish consumption rate.

In 2013, DMR received data warranting the current closure in the mouth of the river, and undertook confirmation work to provide the basis for future management or public health decisions. Based on analysis of data collected in 2014 through the confirmation work, DMR determined that a consumption advisory is warranted for lobster taken from an expanded area. Because this remains a very discrete area and in order to be health protective, DMR is instead taking immediate action to expand the existing closed area. DMR will continue to analyze lobster data collected in 2015 and anticipates that additional information would be collected prior to any future regulatory and public health actions. While the confirmation work did not show levels of concern for crabs, the area will remain closed to the harvest of crabs due to enforcement constraints.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

This emergency rule-making is necessary to protect the public health. As authorized by 12 MRS §6171-A(4-A) and 12 MRS §6192, the Commissioner of Marine Resources adopts this emergency regulation. Separate regular rule-making will be forthcoming to expand this closed area.

Fiscal impact of rule:

Enforcement of the regulation would not require measurable additional activity in this agency. Existing enforcement personnel would monitor compliance during their routine patrols.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §§ 6171, 6192
Chapter number/title: Ch. 36, Herring Regulations: 36.01, Herring Management Plan
Filing number: 2016-107
Effective date: 6/22/2016
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

Based on observations made during the 2015 herring fishing season, the Commissioner determined that fishing efforts were not distributed across the open fishing season, which resulted in depletion of herring supply. Early landing reports indicate that the concentration of fishing effort in Management Area 1A may deplete the herring supply as early as July. In order to effectively slow the rate of harvest, the Commissioner is restricting harvesting days to the same days that are designated as landing days by the Atlantic States Marine Fisheries Commission.

Fiscal impact of rule:
See §8057-A(1)(C)

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §§ 6171, 6192
Chapter number/title: Ch. 36, Herring Regulations: 36.01, Herring Management Plan
Filing number: 2016-115
Effective date: 7/2/2016
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

During the 2015 herring season, concentrated fishing effort early in the season resulted in depletion of available herring quota before the end of the second trimester. To avoid the same outcome in 2016, the Department has been monitoring effort in the herring fishery and the catch to determine if it is necessary to take emergency action to slow the fishery. At this time, the Department has received reports from industry members and Department staff who are port sampling that landings remain exceptionally heavy, and there is considerable additional fishing and carrying capacity in the fleet. This additional capacity could cause the landings to far exceed the projections that were anticipated to ensure the distribution of the resource throughout Trimester 2. The Department initially limited fishing and landing days to four days, but that was not sufficient to prevent the depletion of the supply of herring. The emergency rule adopted on June 22 limiting the fishing and landing days to four days is repealed and replaced by this emergency rule. A further restriction on the fishing and landing days to one day (6 p.m. Sunday to 6 p.m. Monday) is necessary. The rule also puts into effect certain measures required under the Atlantic States Marine Fisheries Commission (ASMFC) approved Amendment 3 to the Interstate Fishery Management Plan (FMP) for Atlantic Herring in February 2016. For these reasons, the Commissioner has determined that it is necessary to take emergency action under 12 MRS 6171(3)(8) and (C) to prevent the depletion of the supply of herring and to achieve compliance with changes to the interstate fisheries management plan.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §§ 6171, 6192
Chapter number/title: Ch. 36, Herring Regulations: 36.01, Herring Management Plan; D. Catch Restrictions, (3) Effort Restrictions
Filing number: 2016-116
Effective date: 7/9/2016
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

During the 2015 herring season, concentrated fishing effort early in the season resulted in depletion of available herring quota before the end of the second trimester. To avoid the same outcome in 2016, the Department has been monitoring effort in the herring fishery and the catch, and has taken multiple emergency actions previously to slow the fishery. Due to increased fishing and carrying capacity in the herring fleet, the Department initially limited fishing and landing days to four days, then further restricted fishing and landing days to just one day. However, those actions have resulted in a very constrained bait supply to the lobster fishery. At this time, the Department intends to modify its emergency regulatory strategy but maintain the same objective of maintaining a steady bait supply throughout July and August and into September if possible. To achieve this objective, the Department is imposing weekly landing limits on the harvest of herring, as well as providing additional fishing and landing opportunities (three days of fishing, and two landing days) to increase the likelihood that the weekly landing limits will be met, providing a steady bait supply to the lobster fishery. These actions are intended to prevent an unusual concentration of fishermen from depleting the supply of herring. For these reasons, the Commissioner has determined that it is necessary to take emergency action under 12 MRS §6171(3)(B).

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §§ 6171, 6171-A
Chapter number/title: Ch. 10, Clams and Quahogs
Filing number: 2016-117
Effective date: 7/17/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Commissioner has become aware of fishermen using electricity based harvesting practices to target razor clams along the Maine Coast, but the impacts of this gear type have not been tested and are not well understood. Existing research indicates that these harvesting methods cause harm to razor clam populations, and may pose real danger to the divers and fishermen who need to be in close proximity to the electrical equipment during the harvesting process. Therefore, the Commissioner finds it prudent to adopt this rule while simultaneously exploring the harvest technique on an experimental basis using Department resources in order to determine if the Department can safely regulate these techniques.

Basis statement:

Razor clams have great potential as a commercially harvested species in Maine. In order to conserve the species in a way that will make harvest sustainable given increased fishing pressures, the Department has determined that size and gear restrictions are needed. Size restrictions were determined based on a survey of current literature on razor clam populations in Maine and also in other countries where razor clams are harvested for commercial purposes. Gear restrictions were based on current analysis of known and reported detrimental effects via a literature review demonstrating that there are detrimental impacts associated with electrical field based fishing techniques. This includes the impacts of electrical fields on the razor clam resource. In addition, there may be impacts to non-target species (such as fish), and also a danger posed to divers and draggers who work in close proximity to the electrical harvesting equipment. While more research on the impacts are needed, the threats posed to the benthic habitat represents a substantial threat to the trophic structure that supports not just razor clam but all commercial fisheries in Maine, indicating that the risk this gear type poses is unjustified until further research can be conducted. Therefore, the Department will simultaneously pursue a study to test and assess the impacts of electrically based harvesting techniques. Tolerance levels for Quahogs were determined based on the Department's understanding of current practices in Maine, a survey of the literature on sustainable harvest sizes, and after receiving feedback from Marine Resource Officers.

Fiscal impact of rule:

Enforcement of this rule will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 11, Scallops
Filing number: 2016-118
Effective date: 7/17/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this rule-making is to improve the structure and transparency of Ch. 11.

Basis statement:

This rule-making restructures the scallop regulations, for greater clarity and ease of use by the public and industry members.

Fiscal impact of rule:

Enforcement of this rule will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §§ 6171, 6173, 6749
Chapter number/title: Ch. 26, Sea Urchin Regulations
Filing number: 2016-119
Effective date: 7/17/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This regulation establishes season limits for the taking of sea urchins by divers, rakers, trappers, and draggers in Zones 1 and 2 during the 2016-2017 season.

For Zone 1, a 15-day season is for divers, trappers, rakers and draggers in 2016-2017, which is the same number of days as in the 2015-2016 season. The Sea Urchin Zone Council recommended the selection of these particular days. Divers, rakers and trappers may fish 15 days in September ("early season"), or 15 days in December ("late season"); and draggers in December ("early season"), or February and March ("late season").

For Zone 2, a 38-day season is for divers, trappers, rakers and draggers in 2016-2017, which is the same number of days as in the 2015-2016 season. The Sea Urchin Zone Council recommended the selection of these particular days. Divers, rakers and trappers may fish 38 days in September through December ("early season"), or 38 days in December through March ("late season"); and draggers would have 38 days in October through March ("early season") or November through March ("late season").

For the Whiting & Dennys Bays Limited Access Area in Zone 2, a 9-day season is for Zone 2 divers, trappers, rakers and draggers in 2016-2017, which is the same number of days as the season in 2015-2016. Zone 2 divers, rakers and trappers may fish 9 days in November and December ("early season"), or 9 days in January, February and March ("late season"); both early and late season Zone 2 draggers would have 9 days in December, February and March. The Sea Urchin Zone Council recommended the selection of these particular days.

Basis statement:

This regulation establishes season limits for the taking of sea urchins by divers, rakers, trappers, and draggers in Zones 1 and 2 during the 2016-2017 season. This regulation will also change the date by which a Zone 2 harvester must designate the early or late season, from September 15 to August 15, if the harvester wishes to change his/her designation. These updates in the management approach were developed over the course of three meetings with industry members and fishermen to determine the methods that would both satisfy the resource management needs and industry needs in terms of industry participation in the fishery. Based on comments received, the Zone 2 late season diver, trapper and raker calendar for Whiting/Denny's Bay was corrected to have 9 fishing days instead of 10.

Fiscal impact of rule:

Enforcement of this rule will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 34, Groundfish Regulations
Filing number: 2016-120
Effective date: 7/17/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

In accordance with the New England Fisheries Management Council and for consistency with the National Marine Fisheries Service (NMFS) federal regulations effective May 1, 2016, the Department enacted emergency rule-making on May 7, 2016 for charter, party and recreational fishing vessels operating in state waters regarding cod and haddock. This rule will permanently instate those changes made via emergency rulemaking on May 7, 2016, and will also make additional changes. For the recreational fishery, the cod fishery has been taken off the prohibited list and it is now lawful to take or possess one cod per day in state waters. Cod may not be possessed on board a charter, party or recreational fishing vessel from October 1 to July 31 inclusive. For cod fish, a minimum size limit of 24" (60.1 cm) will apply. Recreational possession limits for haddock increase from 3 to 15 fish. Finally, seasonal restrictions on haddock are being shifted, so that haddock may not be possessed on board a recreational fishing from March 1 through April 14, whereas recreational haddock possession had previously been restricted in both the fall and spring months. Additional changes are largely structural in nature.

The rule-making strikes the rule and replaces it with a restructured version which clarifies the overall outline structure of the rule and to make it easier for the industry and public to locate applicable sections. In addition, certain minor changes clarify the contents of Ch. 34. Bait gillnet is added to the definitions section of the rule, which includes clear measurements for the mesh and length. Goosefish are renamed monkfish under Groundfish definitions, and size limits for monkfish are added to the section on recreational minimum fish sizes. Clarification of methods of mesh measurements for gillnets are added. Common names are added to lists of species in order to align the rule with current naming practices for fish. Pounds of fillets measuring less than minimum size, except for Atlantic Halibut, are added to the section on minimum size limit exceptions. Language is added to the section on commercial fishing possession limits to clarify the pounds of each species that can be taken from state waters by state commercial fishing license holders who do not hold federal groundfish permits. Windowpane flounder and Ocean Pout are added to prohibited species under the Recreational Groundfish Restrictions to reflect the same prohibition for commercial fishing and to bring the state recreational restrictions into line with federal recreational prohibitions.

Basis statement:

In accordance with the New England Fisheries Management Council and for consistency with the National Marine Fisheries Service (NMFS) federal regulations effective May 1, 2016, the Department enacted emergency rule-making on May 7, 2016 for charter, party and recreational fishing vessels operating in state waters regarding cod and haddock. This rule will permanently instate those changes made via emergency rule-making on May 7, 2016, and will also make additional changes. For the recreational fishery, the cod fishery has been taken off the prohibited list and it is now lawful to take or possess one cod per day in state waters. Cod may not be possessed on board a charter, party or recreational fishing vessel from October 1 to July 31 inclusive. For cod fish, a minimum size limit of 24" (60.1 cm) will apply.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Recreational possession limits for haddock increase from 3 to 15 fish. Finally, seasonal restrictions on haddock are being shifted, so that haddock may not be possessed on board a recreational fishing from March 1 through April 14, whereas recreational haddock possession had previously been restricted in both the fall and spring months. In addition, the rule makes certain structural changes that will clarify the contents and enforcement of the chapter. The rule will also add certain common names for species, as well as greater detail on gear measurements and sizes.

Fiscal impact of rule:

Enforcement of this rule will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §§ 6171(3)(C)
Chapter number/title: Ch. 41, Menhaden
Filing number: 2016-130
Effective date: 7/31/2016
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Department has received reports from industry members and Department staff that the state allocation for Atlantic menhaden has been met or exceeded, and that there is significant fishable biomass that warrants the implementation of an episodic event fishery. Technical Addendum 1 to Amendment 2 of the Interstate Fisheries Management Plan for Atlantic Menhaden specifies the regulatory provisions that must be implemented in order to allow such an episodic event fishery to occur. Access to the additional menhaden biomass will provide an important source of bait for Maine's lobster fishery and minimize the risk for fish kills. For these reasons, the Commissioner has determined that it is necessary to take emergency action under 12 MRS §6171(3)(C) to allow for the occurrence of an episodic event fishery.

Basis statement:

Amendment 2 to the Interstate Fishery Management Plan for Atlantic Menhaden was approved in December 2012. Amendment 2 enables the Atlantic Menhaden Management Board to set aside 1% of the overall total allowable catch (TAC) for episodic events. Episodic events are times and areas where Atlantic menhaden are available in more abundance than they normally occur. The set aside is designed to enable increased harvest of Atlantic menhaden during episodic events. As part of the episodic events set aside provision, the Board developed the mechanism for state(s) to use the set aside. The Technical Addendum detailing the episodic events set aside program was subsequently approved by the Board at its May 22, 2013 meeting. To participate in the episodic events program, a state must implement daily trip level harvest reporting. Each state must track landings and submit weekly reports to ASMFC staff. Episodic event harvests and landings must be restricted to state waters of the state that declares participation in an episodic event. States must implement a maximum daily trip limit no greater than 120,000 pounds/vessel.

Maine DMR is aware that the allocated state quota for menhaden has been met, and the biomass still available is such that an episodic event fishery is necessary. For compliance with the requirements established in Technical Addendum 1 to Amendment 2 of the Interstate Fisheries Management Plan for Atlantic Menhaden, the Commissioner adopts this emergency rule. The requirements for daily trip level harvester reporting, requiring menhaden harvested in state waters to be landed in Maine, and limiting daily harvests and landings to 120,000 pounds/vessel are necessary to prevent unusual damage or imminent depletion of the Atlantic menhaden resource. The Commissioner adopts this emergency rule-making under the authority provided by §6171-3(A) and (C).

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §§ 6171(3)(A)
Chapter number/title: Ch. 41, Menhaden
Filing number: 2016-137
Effective date: 8/5/2016
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Department has received reports from industry members and Department staff that the 2016 state allocation for Atlantic menhaden has been met or exceeded. For this reason, the Commissioner has determined that it is necessary to take emergency action under 12 MRS §6171(3)(A) to prevent unusual damage or imminent depletion of the menhaden resource.

Basis statement:

The Atlantic States Marine Fisheries Commission Atlantic Menhaden Management Board approved a total allowable catch (TAC) for the 2015 and 2016 fishing seasons of 187,880 mt per year. The TAC is made available to the states based on the allocation established by Amendment 2 to the Interstate Fisheries Management Plan for Atlantic menhaden. The percentage allocated to Maine for 2016 is 0.04%, or 161,466 lbs. States have the responsibility to close their directed commercial fisheries in their state once their quota has been reached. Based on landings reports received, Maine DMR is aware that the 2016 menhaden quota has been exceeded, and is closing the menhaden fishery for 2016 in order to avoid unusual damage and imminent depletion of the menhaden resource. An exception to the closure is provided in order to allow a small amount of menhaden to be taken by hook and line for personal use only. A second exception to the closure is provided to allow for the incidental take of menhaden as bycatch, up to 6,000 lbs. per day. The Commissioner adopts this emergency rule-making under the authority provided by §6171-3 (A).

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(A)
Chapter number/title: Ch. 41, Menhaden
Filing number: 2016-138
Effective date: 8/15/2016
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

Maine is reopening the episodic event fishery as there is biomass still available such that an episodic event fishery is necessary. DMR is implementing a requirement that all participating license holders must declare into the fishery in order to ensure reporting compliance, as well as limiting landings to two days per week with a 20,000 lb. daily landing limit, all of which are necessary to prevent unusual damage or imminent depletion of the Atlantic menhaden resource. For this reason, the Commissioner has determined that it is necessary to take emergency action under 12 MRS §6171(3)(A) to prevent unusual damage or imminent depletion of the menhaden resource.

Basis statement:

The Atlantic States Marine Fisheries Commission Atlantic Menhaden Management Board approved Maine's participation in the 2016 episodic event fishery on July 31, 2016, at which time the remaining 2016 episodic event quota available was 3,548,111 lbs. The episodic event quota is made available to the states based on the program established by Technical Addendum I to Amendment 2 to the Interstate Fisheries Management Plan for Atlantic menhaden. States have the responsibility to close the episodic event fishery in their state once the episodic event quota has been reached. Based on landings reports received, Maine DMR believed that the 2016 menhaden episodic event quota was being utilized more quickly than daily landings report indicated, and took steps to ensure it was not exceeded by closing the Maine episodic event fishery on August 5, 2016. However, actual landings were not as high as anticipated, and now Maine is reopening the episodic event fishery as there is biomass still available such that an episodic event fishery is necessary. DMR is implementing a requirement that all participating license holders must declare into the fishery no later than noon on August 18, 2016 in order to ensure reporting compliance, and declare a single carrier vessel for the duration of the fishery, as well as limiting fishing and landing days to three days per week (Tuesday 00:01 am through Thursday 11:59 pm) with a 120,000 lb. weekly landing limit, all of which are necessary to prevent unusual damage or imminent depletion of the Atlantic menhaden resource. The Commissioner adopts this emergency rule-making under the authority provided by §6171-3 (A). This notice of agency emergency rule-making serves as the notice that the episodic event fishery is open.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 36, Herring Regulations: 36.01, Herring Management Plan
Filing number: 2016-152
Effective date: 9/25/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

Based on observations made during the 2015 herring fishing season, the Commissioner determined that fishing efforts were not distributed across the open fishing season, which resulted in depletion of herring supply. To mitigate the likelihood of that happening again, fishing and landing days have been combined to better control fishing effort. Additional measures are being put into place based on changes to the Interstate Fishery Management Plan for Atlantic Herring developed by the ASMFC in 2016 to integrate recent data into management decisions and respond to changes in the stock structure and fishery. This rule will bring Maine fishing practices into compliance with ASMFC management measures.

Fiscal impact of rule:

Enforcement of this rule will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6671
Chapter number/title: Ch. 4, Municipal Shellfish Conservation Warden Certification
Filing number: 2016-190
Effective date: 11/15/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this adoption is to clarify the Municipal Shellfish Conservation Warden Certification rule chapter.

Basis statement:

This rule-making is a repeal and replace of Ch. 4. The primary purpose of the rule-making is to restructure the chapter, clarify the requirements for Shellfish Conservation Warden positions, and put in place certain requirements for Warden applications that will ensure that Marine Patrol can better utilize Warden testimony in the context of shellfish violations. Specifically, changes include requiring candidates for Municipal Shellfish Conservation Warden positions to complete the MDMR Municipal Shellfish Conservation Warden Training Course, specifying that the background check will be specifically in regards to employment, and that candidates must specifically complete the MDMR Municipal Shellfish Conservation Warden Training Course. In addition, the rule requires that applicants to Warden positions qualify as candidates able to provide courtroom testimony in both civil and criminal courts. A clarifying change was made from the original proposed language to specify that the Commissioner may also suspend certification, in addition to revoking or denying certification, if certain circumstances exist.

Fiscal impact of rule:

Enforcement of this rule will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 11, Scallops
Filing number: 2016-191
Effective date: 11/15/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Scallop Regulations must be updated for each new season in order to adjust the schedules and closure lines based on lessons learned from the previous season.

Basis statement:

This rule establishes the 2016-2017 scallop fishing season. As in the 2015-2016 season, there is a daily possession limit of 15 gallons for Zone 1 and Zone 2, and a daily possession limit of 10 gallons for Zone 3. For Zone 1, a 60-day season is set for draggers to start on December 5, 2016 and the last day of the season is April 11, 2017. For Zone 1, a 60-day season is set for divers to start on December 1, 2016 and the last day of the season is April 15, 2017. For Zone 2, a 70-day season is set for draggers to start on December 5, 2016 and the last day of the season is March 28, 2017. For Zone 2, a 70-day season is set for divers to start on December 1, 2016 and the last day of the season is April 15, 2017. For Zone 3, a 50-day season is set for draggers to start on December 5, 2016, and the last day of the season is March 29, 2017. For Zone 3, a 50-day season is set for divers to start on December 1, 2016 and the last day of the season is March 24, 2017.

In addition, DMR is either maintaining or implementing the following targeted closures based on depletion, high concentrations of seed/sublegal scallops and/or the presence of spat-producing scallops which include: Muscle Ridge (limited); Lower Muscle Ridge; Eastern Casco Bay; Ocean Point; Sheepscot River; Muscongus Bay; New Meadows River; Card Cove; and East Moosabec Reach.

Finally, DMR is implementing a Limited Access Area in the MDI region of Zone 2.

Based upon comments received during the proposed rule-making process, the Department changed the following items in the adoption documents:

- The proposed East Moosabec Reach Targeted Closure size is reduced by moving the eastern boundary west and renaming the closure as Beal-Jonesport Bridge Targeted Closure and establishing a Limited Access Area in the remaining portion of the original closure, which shall be named the East Moosabec Reach Limited Access Area.
- A minor change to the boundaries of the Lower Jericho Bay, Lower Blue Hill Bay/Jericho Bay and East Isle Au Haut Rotational Areas, which were originally made in the 2015-16 season rulemaking, but reversed in error during the restructuring of the regulation in the spring of 2016.
- A minor change to the Lower Penobscot Bay & Outer Island Rotational Area eastern boundary as it included an error referencing North Haven which was corrected to Vinalhaven.
- A minor change to the eastern boundary of the Chandler Bay/Head Harbor Island rotational area and the western boundary of the Little Kennebec/Englishman Bay rotational management to include an intercept on East Black Rock to assist in the enforcement of the boundary by Marine Patrol.
- Zone 1 Dive Calendar: Two days were moved from the middle of January to the first week of that month to provide for five consecutive days of fishing before the split in the season. Two

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

days in the middle of January were also moved to the end of March when weather is better. Finally, three Thursday Limited Access Area days in the month of January were moved from January 7, March 18 & 25, 2017 to enable an early split season to facilitate diving in better conditions as well as to enable tenders and helpers to find alternative work.

- Zone 2 Dive Calendar: Five days were moved from April to January (2) and February (3) to allow for three day fishing weeks in lieu of two day fishing weeks during those months to provide divers with better access to the resource before closures are implemented mid-season.

Fiscal impact of rule:

Enforcement of this rule will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171-A
Chapter number/title: Ch. 25, Lobster and Crab: 25.65, Lobster and Crab Closure in Penobscot River
Filing number: 2016-192
Effective date: 11/15/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Commissioner adopts this rule-making in order to protect public health due to the risk of mercury contamination in lobsters and crabs found in the proposed expansion of the existing closed area. Recent confirmation data collected by the Department and analyzed by the Maine Department of Health and Human Services, Center for Disease Control (Maine CDC) indicates that lobsters in this area may have mercury levels above the Maine CDC action level and would warrant a consumption advisory for the most sensitive populations. The Department believes the expansion of the existing closure is warranted.

Basis statement:

This rule-making is necessary to protect public health due to the risk of mercury contamination in lobsters and crabs found in the mouth of the Penobscot River north of a line starting at the westernmost point of Perkins Point in the Town of Castine continuing in a northwesterly direction to the southernmost point on Squaw Point on Cape Jellison in the Town of Stockton Springs.

The justification for the expanded boundary of the closed area is based on recent data collected by the Department that shows lobsters in this area may have mercury levels above the Maine Center for Disease Control and Prevention (MECDC) action level. State health agencies use action levels as a guide to determine whether they should issue a consumption advisory warning consumers to limit meals of fish from certain waters. Action levels are defined as concentrations of a contaminant in fish or shellfish tissue below which there should be negligible risk of deleterious health effects, at a consumption rate of one meal per week. An action level takes into account exposure level for a human population, including sensitive subpopulations such as pregnant women and children, body weight, and fish consumption rate.

In 2013, DMR received data warranting the current closure in the mouth of the river, and undertook confirmation work to provide the basis for future management or public health decisions. Based on analysis of data collected in 2014 through the confirmation work, DMR determined that public health risks exist relating to the consumption of lobster taken from the area. Because this remains a very discrete area and in order to be health protective, DMR is taking action to expand the existing closed area. In making this determination, DMR considered issuing a consumption advisory in lieu of a closure but determined that a closure would be the most effective means to achieve public health protection due to the difficulty of effectively communicating the risk to the public, including non-commercial harvesters who may be fishing in this area, the seasonal nature of the commercial fishery in this area, and the inability to track lobsters taken from the area once they enter into the market. DMR will continue to analyze lobster data collected in 2015 and anticipates that additional information would be collected prior to any future regulatory and public health actions. While the confirmation work did not show levels of concern for crabs, the area will remain closed to the harvest of crabs due to enforcement constraints.

Fiscal impact of rule:

Enforcement of the proposed regulation would not require measurable additional activity in this Agency. Existing enforcement personnel would monitor compliance during their routine patrols.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §§ 6171, 6431-B, 6446, 6449, 6482
Chapter number/title: **Ch. 25**, Lobster and Crab: **25.08**, Lobster Trap Tag System; **25.90**, Swans Island Area Lobster Trap Regulation; **25.97**, Management Framework for Island Limited Entry Program
Filing number: 2016-193
Effective date: 11/15/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

This rule-making addresses 1) a new requirement for the use of second zone lobster trap tags statewide, 2) the removal of the registration period for the Swans Island Lobster Conservation area, 3) a change in the maximum allowable number of lobster trap tags for the Swans Island Lobster Conservation Area from 475 to 600 traps, for consistency with a previous statutory change, and 4) the creation of an island limited entry program for the island for Swans Island.

This rule-making creates a requirement to use a second zone tag in all traps when fishing those traps in a zone other than their declared lobster zone. The second zone tag is in addition to their declared lobster zone tag, and is needed to increase Marine Patrol's ability to enforce the current 49/51% trap component of the Lobster Zone Limited Entry rules. The adopted language is amended from what was originally proposed to clarify that a license holder may not fish more than 49% of their traps in a limited entry zone unless that zone is identified as their declared zone.

This rule-making also removes the deadline for registration for the Swans Island Lobster Conservation Area, allowing individuals to register at any time of the year. In addition, this rule-making changes the maximum allowable number of lobster trap tags for the Swans Island Lobster Conservation Area from 475 to 600, for consistency with existing Maine law.

Finally, this rule-making addresses a recent island limited entry referendum vote for Swans Island. It creates the Swans Island limited entry program, allowing up to 72 commercial island resident lobster licenses to be issued annually, as authorized by 12 MRS §6449.

Fiscal impact of rule:

Enforcement of these amendments would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Motor Carrier Review Board
Umbrella-Unit: 94-591
Statutory authority: 29-A MRS §562(4)
Chapter number/title: Ch. 2, The Process for the Selection and Review of Motor Carriers
Filing number: 2016-039
Effective date: 3/14/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The primary purpose of this rule amendment is to institute a more efficient and expedient process by which to review deficient motor carriers and provide for a more focused effort by the board. Changes include reviewing 10 carriers initially instead of 20 including up to 5 initiated from the State Police regardless of severity rating, requiring a supplemental questionnaire to be filled out by the carrier for the initial review, and changing the postmark notification date for the carrier from 15 days to 60 days. The Motor Carrier Review Board endorsed these changes at its last meeting on October 27, 2015.

Basis statement / summary:

The primary purpose of this rule amendment is to institute a more efficient and expedient process by which to review deficient motor carriers and provide for a more focused effort by the board. Changes include;

1. Reviewing 10 carriers initially instead of 20 including;
2. Up to 5 carriers initiated from the State Police regardless of severity rating;
3. Requiring a supplemental questionnaire to be filled out by the carrier for the initial review, and changing the postmark notification date for the carrier from 15 days to 60 days.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation,
Bureau of Financial Institutions

Umbrella-Unit: **02-029**

Statutory authority: 9-A MRS §§ 1-102(2), 1-110, 6-104(l)(E), 8-504, 8-507(1), 8-508, 9-302(1); 9-B MRS §§ 111, 215, 241(3)

Chapter number/title: **Ch. 119** (Regulation 19), Alternative Mortgage Transactions (*a joint rule with 02-030 - Bureau of Consumer Credit Protection, Ch. 250*)

Filing number: **2016-125, 126**

Effective date: 7/25/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The purpose of this rule-making is to substantially align the Bureau of Financial Institutions and the Bureau of Consumer Credit Protection's *Alternative Mortgage Transactions* joint rule 19/250 with the federal Consumer Financial Protection Bureau's *Alternative Mortgage Transaction Parity* regulation known as Regulation D. By substantially aligning Maine's regulation of alternative mortgages secured by a first-lien on real estate with federal alternative mortgage regulations, while retaining state specific language relating to borrowers' right prepay at any time, the rule will provide protections for consumers, ease compliance burdens for lenders and even the playing field between state and national financial institutions making alternative mortgage transactions in Maine.

Basis statement:

The purpose of this rule-making is to substantially align the Bureau of Financial Institutions and the Bureau of Consumer Credit Protection's *Alternative Mortgage Transactions* joint rule 19/250 with the federal Consumer Financial Protection Bureau's *Alternative Mortgage Transaction Parity* regulation known as Regulation D. The regulation is applicable to first-lien mortgage loans with adjustable rates and finance charges made by Maine financial institutions and creditors.

Fiscal impact of rule:

None expected.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation,
Bureau of Consumer Credit Protection

Umbrella-Unit: **02-030**

Statutory authority: 9-A MRS §§ 1-102(2), 1-110, 6-104(l)(E), 8-504, 8-507(1), 8-508, 9-302(1); 9-B MRS §§ 111, 215, 241(3)

Chapter number/title: **Ch. 250** (Rule 250), Alternative Mortgage Transactions (*a joint rule with 02-029 - Bureau of Financial Institutions, Ch. 119*)

Filing number: **2016-125, 126**

Effective date: 7/25/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The purpose of this rule-making is to substantially align the Bureau of Financial Institutions and the Bureau of Consumer Credit Protection's *Alternative Mortgage Transactions* joint rule 19/250 with the federal Consumer Financial Protection Bureau's *Alternative Mortgage Transaction Parity* regulation known as Regulation D. By substantially aligning Maine's regulation of alternative mortgages secured by a first-lien on real estate with federal alternative mortgage regulations, while retaining state specific language relating to borrowers' right prepay at any time, the rule will provide protections for consumers, ease compliance burdens for lenders and even the playing field between state and national financial institutions making alternative mortgage transactions in Maine.

Basis statement:

The purpose of this rule-making is to substantially align the Bureau of Financial Institutions and the Bureau of Consumer Credit Protection's *Alternative Mortgage Transactions* joint rule 19/250 with the federal Consumer Financial Protection Bureau's *Alternative Mortgage Transaction Parity* regulation known as Regulation D. The regulation is applicable to first-lien mortgage loans with adjustable rates and finance charges made by Maine financial institutions and creditors.

Fiscal impact of rule:

None expected.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation,
Bureau of Insurance
Umbrella-Unit: **02-031**
Statutory authority: 24-A MRS §§ 212, 731-B
Chapter number/title: **Ch. 740**, Credit for Reinsurance
Filing number: **2016-005**
Effective date: 1/24/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To update the current rule and implement 2013 Public Law ch. 238, Part B, which enacts the current version of the *NAIC Credit for Reinsurance Model Act* and to update the rule in light of other statutory changes that have occurred since the rule's 1993 adoption. Adoption allows Maine to remain in compliance with current and pending NAIC accreditation standards.

Basis statement:

The Superintendent of Insurance hereby amends Bureau of Insurance Rule 740, *Credit for Reinsurance*, pursuant to 24-A MRSA §§ 212 and 731-B, in order to implement the newly adopted provision of the *Maine Credit-for-Reinsurance Act* that allows reduced collateral for reinsurance ceded to "certified" reinsurers, and to make other necessary revisions that have been identified since the Rule's 1993 adoption in order to address various technical issues and to reflect changes to the controlling Maine law and National Association of Insurance Commissioners (NAIC) accreditation standards.

A few revisions have been made to the provisions governing certified reinsurers. The amendments have otherwise been adopted as proposed, with some non-substantive editorial revisions.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation,
Bureau of Insurance

Umbrella-Unit: **02-031**

Statutory authority: 24-A MRS §§ 212, 545

Chapter number/title: **Ch. 545**, Producer and Business Entity License and
Appointment Fees

Filing number: **2016-021**

Effective date: 2/13/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The purpose of this rule is to reduce license fees paid by or with respect to resident and nonresident insurance producers as well as appointment fees paid with respect to nonresident producers.

Basis statement:

The purpose of the 2015 amended rule is to lower the resident individual producer license fee from \$30 to \$10, the nonresident individual producer license fee from \$70 to \$40, and the nonresident individual producer appointment fee from \$70 to \$45.

Fiscal impact of rule:

The Bureau of Insurance estimates a revenue loss of approximately \$3.94 million per biennium as a result of this proposal.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation,
Bureau of Insurance

Umbrella-Unit: **02-031**

Statutory authority: 24-A MRS §§ 212, 4303-A

Chapter number/title: **Ch. 380**, Provider Profiling Disclosures (*New*)

Filing number: **2016-036**

Effective date: 3/12/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

Title 24-A MRS §4303-A(6) requires the Bureau to adopt rule to implement that statutory section. Section 4303-A requires health carriers to disclose to health care provider the data utilized by the carriers in making determinations regarding provider profiling programs utilized by the carriers. The carriers are further required by the statute to provide an appeals process for aggrieved providers.

Basis statement:

Ch. 380 has been adopted pursuant to the Notice of Rule-making published on August 28, 2015. A public hearing was convened on September 29, 2015 and the public comment period was held open until October 13, 2015. The initial development of this rule was also informed by an interested parties meeting at the Bureau of Insurance on April 4, 2014.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation,
Bureau of Insurance
Umbrella-Unit: **02-031**
Statutory authority: 24-A MRS §§ 212, 222
Chapter number/title: **Ch. 180**, Insurance Holding Company System Model Rule
Filing number: **2016-037**
Effective date: 3/11/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The changes reflect statutory changes enacted by 2013 PL ch. 238 and track the current *National Association of Insurance Commissioners (NAIC) Model Act and Regulation*. These changes are necessary to allow the Bureau to maintain its national accreditation.

Basis statement:

The Superintendent of Insurance hereby amends Bureau of Insurance Rule 180, *Insurance Holding Company System Model Rule*, pursuant to 24 A MRSA §§ 212 and 222(18), in order to incorporate changes to the *Maine Holding Company Act*, 24-A MRSA §222, and the “Model Holding Company Regulation” promulgated by the National Association of Insurance Commissioners (NAIC), and to maintain the Bureau’s compliance with NAIC accreditation standards. The amendments have been adopted substantially as proposed, with a few technical changes in response to comments and to correct internal inconsistencies and drafting errors in the proposed amendments. A redlined comparison of the existing rule, the proposed amendments, and the adopted amendments appears at the end of this Basis Statement, following a section-by-section summary of comments with the Bureau’s responses.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation,
Bureau of Insurance
Umbrella-Unit: **02-031**
Statutory authority: 24-A MRS §§ 212, 1449
Chapter number/title: **Ch. 540** (*New*), Premium Trust Account Fiduciary Duties
Filing number: **2016-052**
Effective date: 4/3/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Current Maine law requires insurance producers to handle insurance premiums and return premiums in a fiduciary capacity, but provides no specific guidance as what this requirement entails. This rule is intended to provide that guidance.

Basis statement:

The purpose of the rule is to set forth specific minimum standards and requirements regarding the fiduciary obligations of insurance producers. Current State statute requires insurance producers to handle insurance premiums in a fiduciary manner but provides no specific guidance as to what this entails. The rule requires that funds be held in trust accounts in qualifying financial institutions, segregated from personal and business operating accounts of the producer. The rule limits access to these accounts and sets standards relating to trust account deposits and withdrawals. Last, the rule establishes recordkeeping requirements relating to premium trust funds held by producers.

Fiscal impact of rule:

This rule has no fiscal impact on state government. The Bureau of Insurance anticipates that the rule will have little impact on most insurance producers who already operate in accord with its provisions. Some producers may need to an additional bank account and keep better records regarding other people's monies that are in their possession.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation,
Bureau of Insurance

Umbrella-Unit: **02-031**

Statutory authority: Title 24 MRS §2321, Title 24-A MRS §§ 212, 405-A(2)(E), 2413, 2736, 2736-C, 2808-B, 2839, 4207, 4309-A

Chapter number/title: **Ch. 940**, Requirements for Health Insurance Rate Filings and Data Reporting

Filing number: **2016-069**

Effective date: 4/19/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The amendments update the current rule for consistency with *Affordable Care Act* requirements and procedures.

Basis statement:

The Superintendent of Insurance held a public hearing on November 3, 2015 to consider proposed amendments to Maine Insurance Rule Ch. 940, *Requirements for Health Insurance Rate Filings and Data Reporting*. Notice of this hearing was provided to interested persons on October 6, 2015, and notice of the hearing appeared in the State of Maine's consolidated rule-making notice in newspapers of general circulation on October 14, 2015. A written comment period remained open following the hearing until November 16, 2015. The stated purpose of the proposed amendments is to update the current rule for consistency with *Affordable Care Act* requirements and procedures.

No members of the public provided comments at the public hearing. Written comments were received during the comment period from Kristine Ossenfort, Director of Government Relations for Anthem Blue Cross/Blue Shield.

Anthem commented on Sections 4, 8, 9, 12 and 13 of the proposed amendments.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation,
Bureau of Insurance
Umbrella-Unit: **02-031**
Statutory authority: 24-A MRS §§ 212, 953-A, 957
Chapter number/title: **Ch. 830**, Valuation of Life Insurance Policies
Filing number: **2016-133**
Effective date: 8/8/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of these amendments is to adopt the 2009 amendments to the *National Association of Insurance Commissioners (NAIC) Model Regulation* which removes former restrictions on the experience factors life insurers use to determine reserves for certain types of policies. In connection with this change, an annual actuarial statement as to the impact of any insufficiency of assets to support the payment of benefits and expenses and the establishment of reserves is required.

Basis statement:

Per notice of rule-making without hearing dated February 17, 2016 and issued on February 18, 2016, the Superintendent of Insurance proposed amendments to Maine Insurance Rule Ch. 830, *Valuation of Life Insurance Policies*. Notice of this rule-making was also published in the Secretary of State's consolidated rule-making ad in newspapers of general circulation on February 24, 2016. A written comment period remained open following the hearing until March 31, 2016. The stated purpose of the amendments is to adopt the 2009 amendments to the *National Association of Insurance Commissioners (NAIC) Model Regulation* which removes former restrictions on the experience factors life insurers use to determine reserves for certain types of life insurance policies. In connection with this change, an annual actuarial statement as to the impact of any insufficiency of assets to support the payment of benefits and expenses is required.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation,
Office of Securities
Umbrella-Unit: **02-032**
Statutory authority: 32 MRS §§ 16302, 16605
Chapter number/title: **Ch. 528**, Federal "Regulation A" Tier 2 Notice Filings and Fees
Filing number: **2016-022**
Effective date: 2/15/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this rule is to provide transparency in the securities offerings made in Maine under Tier 2 of federal "Regulation A" (17 CFR §§ 230.251 - 230.263). The rule would enhance investor protection in Maine by providing potential investors with easier access to information about the securities offerings through the Office of Securities. In addition, increased transparency would allow the Office of Securities to more effectively fulfill its investigative and enforcement authorities under Regulation A. The rule will accomplish this purpose by requiring notice filings and fees when Tier 2 securities are offered in Maine.

Basis statement:

Ch. 528 establishes notice filing requirements and filing fees for securities offerings made under the newly implemented Tier 2 of federal Regulation A (17 CFR §§ 230.251 - 230.263). Under the *Securities Act of 1933* and federal regulations, each state has jurisdiction to investigate violations, bring enforcement actions, and to require notice filings and fees for Tier 2 offerings made in the state.

The adopted rule provides transparency in securities offerings made in Maine under Tier 2 of federal Regulation A and enhances investor protection by providing investors in Maine with easier access to information about these securities offerings. In addition, increased transparency allows the Office of Securities to more effectively fulfill its investigative and enforcement authorities under Regulation A.

Fiscal impact of rule:

The initial and renewal fees associated with filings under this rule are \$1,000.00. These are the same fees issuers previously paid to register securities under Regulation A in Maine. Because recent changes to Regulation A are designed to increase its use, a minor revenue increase to the General Fund is expected. The staff time associated with processing the additional notice filings and pursuing the Office's oversight duties is expected to result in a minor cost increase against the Office's Other Special Revenue Funds. Any additional revenue collected and costs incurred by the Office of Securities in the Department of Professional and Financial Regulation are expected to be minor, and the costs can be absorbed within existing budgeted resources.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

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

Umbrella-Unit: **02-041**

Statutory authority: 10 MRS §8003(2-A)(D). Also, many agencies and their particular statutes are represented.

Chapter number/title: **Ch. 10**, Establishment of License Fees

Filing number: **2016-003**

Effective date: 1/16/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

Financial projections showed that reductions in certain license fees and elimination of some application fees were feasible and advisable for the following programs:

- Board of Accountancy
- American Sign Language, English Interpreters and Translitterators
- Charitable Solicitations
- Board of Chiropractic Licensure
- Board of Complementary Health Care Providers
- Board of Licensure for Professional Land Surveyors
- Manufactured Housing Board
- Board of Pharmacy
- Board of Respiratory Care Practitioners
- State Board of Veterinary Medicine

Additionally, in order to update the rule, other necessary changes were made to the fees for Charitable Solicitations, the Board of Licensure of Foresters, the Board of Funeral Service, and the Board of Social Worker Licensure.

Basis statement:

Title 10 MRS §8003(2-A)(D) authorizes the Director of the Office of Professional and Occupational Regulation ("OPOR") to establish by rule all fees necessary and appropriate for regulatory programs within the office. Fees must be adequate to sustain the operations of regulatory programs on an ongoing basis. Fee reductions are appropriate when ongoing and projected revenues exceed current and anticipated regulatory expenses.

Financial projections showed that overall reductions in license fees were feasible for the following programs:

- Board of Accountancy
- American Sign Language, English Interpreters and Translitterators
- Charitable Solicitations
- Board of Chiropractic Licensure
- Board of Complementary Health Care Providers
- Board of Licensure for Professional Land Surveyors
- Manufactured Housing Board
- Board of Pharmacy
- Board of Respiratory Care Practitioners
- State Board of Veterinary Medicine

Accordingly, the Director reduced various license fees and eliminated some application fees applicable to these programs, as shown in the rule. The overall impact of these changes is that fees will be lower for many applicants and licensees of these programs.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Additionally, in order to update the rule overall, the Director made the following amendments: (1) for Charitable Solicitations, eliminated references to Exempt Organization and Fund raising Counsel due to statutory changes implemented by PL 2013, c. 313; (2) for the Board of Licensure of Foresters, replaced the \$75 examination fee with a reference to third party because exams are administered and scored by a third party, the Society of American Foresters ("SAF"), and the applicant pays the fee directly to SAF at the time of registration; (3) for the Board of Funeral Service, added a new fee category for temporary practitioner of funeral service, which is a new license implemented by PL 2015, c. 246 that requires a fee; and (4) for the Board of Social Worker Licensure, added a new fee category for Inactive Status License because the board's statute provides that an inactive status license has a 1-year term, whereas an active license has a 2-year term.

Fiscal impact of rule:

Minimal.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

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

Umbrella-Unit: **02-041**

Statutory authority: 5 MRS §9001(4); 10 MRS §§ 8003(5-A)(A), 8003-E; 32 MRS §§ 14202(13), 14212-A(2), 14228(3), 14231, 14232(3), 14233, 14234, 14236-A, 14246

Chapter numbers/titles: **Ch. 20**, Definitions and References
Ch. 21, Licensure of Aestheticians, Barbers, Cosmetologists, Limited Barbers and Nail Technologists
Ch. 22, Licensure of Demonstrators
Ch. 23, Trainee Aesthetician, Barber, Cosmetologist, Limited Barber and Nail Technologist
Ch. 24, Licensure of Instructors
Ch. 25, Licensure of Establishments And Independent Booths
Ch. 26, Establishment, Independent Booth and School Operation, Sanitation and Infection Control Standards, and Safe Practice Procedures
Ch. 27, Rules for Licensure and Operation of Schools Offering One or More Courses of Study in Aesthetics, Barbering, Cosmetology, Limited Barbering, Nail Technology, and Instructing: sub-ch. 1, Definitions; sub-ch. 2, Application and Licensing; sub-ch. 3, School Operation, Course of Study, Health, Sanitation and Safety
Ch. 28, Special Event Services Permit
Ch. 29, Grounds For Discipline
Ch. 30, Citations

Filing numbers: **2016-214 thru 224**

Effective date: 12/11/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To reflect statutory changes implemented by PL 2009 c. 369, which notably eliminated the Board of Barbering and Cosmetology and created the Barbering and Cosmetology Licensing Program administered by the Director of the Office of Professional and Occupational Regulation, as well as PL 2011 c. 286.

Basis statement:

The rules reflect statutory changes by PL 2009 c. 369, which eliminated the Board of Barbering and Cosmetology and established the Barbering and Cosmetology Licensing Program administered by the Director of the Office of Professional and Occupational Regulation. The rules also reflect statutory changes enacted as PL 2011 c. 286 which established a limited barber license category. Because of the breadth of the statutory changes, the Director repeals and replaces existing rules.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation,
Board of Licensure in Medicine

Umbrella-Unit: **02-373**

Statutory authority: 32 MRS §§ 13720, 13846 (Board of Pharmacy), 32 MRS §3269(3),
(7) (Board of Licensure in Medicine)

Chapter number/title: **Ch. 5** (*New*), Collaborative Drug Therapy Management (*a joint rule with 02-392 – Board of Pharmacy (Ch. 39)*)

Filing number: **2016-040**

Effective date: 3/14/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To set forth rules authorized by PL 2013, c. 308, *An Act to Allow Collaborative Practice Agreements between Authorized Practitioners and Pharmacists*.

Basis statement:

In accordance with PL 2013 ch. 308, *An Act to Allow Collaborative Practice Agreements between Authorized Practitioners and Pharmacists*, the Board of Pharmacy and the Board of Licensure in Medicine ("Boards"), after consultation with the Department of Health and Human Services, adopted this joint rule. The rule is comprised of the following sections:

Section 1 defines various significant terms used in the rule. Notably, this section defines the term "qualifying condition" using the language of the statute "conditions or diseases with generally accepted standards of care." The definition of "qualifying condition" also provides a list of recognized examples. The list is intended only to provide examples and is not exclusive. See 32 MRS §§ 13702-A, 13844(1), and 13845.

Section 2 provides that a pharmacist must submit an application to the Board of Pharmacy and must meet the qualifications set forth in statute in order to enter into a collaborative practice agreement with a practitioner. The qualifications include completing certain continuing education hours prior to application and in each year of a collaborative practice agreement thereafter. These continuing education requirements are set forth in statute. This section also provides that the pharmacist must submit to both the Board of Pharmacy and the board that licenses the practitioner a copy of the collaborative practice agreement, which includes a copy of the required treatment protocol. See 32 MRS §§ 13735, 13842, and 13843(1).

Section 3 provides that a collaborative practice agreement may authorize collaborative drug therapy management only for qualifying conditions, as set forth in statute, and also provides the specific content that a collaborative practice agreement must include. The content criteria in subsections 1 - 9 reiterate the minimum requirements set forth in statute. Subsections 10 - 13 set forth additional requirements. See 32 MRS §§ 13843(5), (6) and 13844(1).

Section 4 provides the minimum content requirements for a treatment protocol. A treatment protocol must specify and describe informed consent procedures, the pharmacist's scope of activities, documentation requirements, and reporting procedures. In addition, a treatment protocol must set forth a provision that allows the practitioner to override a decision made by the pharmacist when appropriate, as well as a provision that provides for periodic review and revision of the drug therapy management. See 32 MRS §§ 13843(2), 13845, and 13846.

Section 5 requires the pharmacist to notify the Board of Pharmacy and the board that licenses the practitioner no later than 10 days after any modification to a collaborative practice

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

agreement or treatment protocol, or any change in liability insurance.

Section 6 requires the pharmacist to comply with the record retention and production requirements set forth in Ch. 24 of the Board of Pharmacy rules for any records received or created by the pharmacist pursuant to this rule.

Section 7 provides that the Board of Pharmacy or the licensing board that licenses the practitioner may share complaint and investigative information related to a collaborative practice agreement as permitted by 10 MRS §8003-8(2).

Section 8 sets forth that any party to a collaborative practice agreement has a duty to report disciplinary action. This section also provides that the Board of Pharmacy and the Board of Licensure in Medicine must notify each other of any disciplinary action taken against a party to a collaborative practice agreement.

With this rule, the Boards seek to ensure safe and effective collaborative practice agreements between a pharmacist and practitioner.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation,
Board of Licensure in Medicine

Umbrella-Unit: **02-373**

Statutory authority: 32 MRS §§ 3269(7), 3270-E (Board of Licensure in Medicine);
32 MRS §§ 2562, 2594-E (Board of Osteopathic Licensure)

Chapter number/title: **Ch. 2** (*Repeal and replace*), Joint Rule Regarding Physician Assistants (*a joint rule with 02-383 – Board of Osteopathic Licensure*)

Filing number: **2016-122**

Effective date: 7/18/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To establish a uniform rule for licensing and regulating physician assistants as authorized and required by PL 2015 c. 242, as amended, *An Act to Eliminate the Dual Licensing of Physician Assistants*.

Basis statement:

In accordance with PL 2015 c. 242, *An Act to Eliminate the Dual Licensing of Physician Assistants*, the Board of Licensure in Medicine (BOLIM) and the Board of Osteopathic Licensure (BOL), after consultation with stakeholders and interested parties, proposed this joint rule on December 23, 2015. The rule establishes: uniform qualifications to practice, including licensure, re-licensure, and registration; uniform fees; uniform scope of practice, including Schedule II prescribing privileges; uniform standards for physician supervision of physician assistants; uniform elements for written plans of supervision; uniform notification requirements; uniform citations in lieu of discipline; uniform continuing education requirements; uniform identification requirements; and a joint physician assistant advisory committee.

Fiscal impact of rule:

Minimal.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation,
Board of Licensure in Medicine

Umbrella-Unit: **02-373**

Statutory authority: 32 MRS §§ 3269(7), 3269(7)

Chapter number/title: **Ch. 6** (*New*), Telemedicine Standards of Practice (*a joint rule with 02-383 – Board of Osteopathic Licensure*)

Filing number: **2016-209**

Effective date: 12/10/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To establish standards for the practice of medicine using telemedicine in providing health care.

Basis statement:

This is a new joint rule regarding telemedicine in Maine, which consists of three sections:

Section 1 sets out a statement of the boards' regarding telemedicine.

Section 2 defines terms used throughout the rule.

Section 3 establishes telemedicine guidelines, including:

- Requirement for a Maine medical license or registration
- Standards of Care and Professional Ethics
- Identification (Physician and Patient) Requirements
- Physician-Patient Relationship
- Medical History and Physical Examination
- Informed Consent
- Coordination of Care
- Follow up Services
- Emergency Services
- Medical Records
- Technology and Equipment
- Disclosure Requirements
- Patient Access and Feedback
- Prescribing

Fiscal impact of rule:

Minimal.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation,
Board of Osteopathic Licensure

Umbrella-Unit: **02-383**

Statutory authority: 32 MRS §§ 3269(7), 3270-E (Board of Licensure in Medicine);
32 MRS §§ 2562, 2594-E (Board of Osteopathic Licensure)

Chapter number/title: **Ch. 2** (*Repeal and replace*), Joint Rule Regarding Physician Assistants (*a joint rule with 02-373 – Board of Licensure in Medicine*)

Filing number: **2016-123**

Effective date: 7/18/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To establish a uniform rule for licensing and regulating physician assistants as authorized and required by PL 2015 c. 242, as amended, *An Act to Eliminate the Dual Licensing of Physician Assistants*.

Basis statement:

In accordance with PL 2015 c. 242, *An Act to Eliminate the Dual Licensing of Physician Assistants*, the Board of Licensure in Medicine (BOLIM) and the Board of Osteopathic Licensure (BOL), after consultation with stakeholders and interested parties, proposed this joint rule on December 23, 2015. The rule establishes: uniform qualifications to practice, including licensure, re-licensure, and registration; uniform fees; uniform scope of practice, including Schedule II prescribing privileges; uniform standards for physician supervision of physician assistants; uniform elements for written plans of supervision; uniform notification requirements; uniform citations in lieu of discipline; uniform continuing education requirements; uniform identification requirements; and a joint physician assistant advisory committee.

Fiscal impact of rule:

Minimal.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation,
Board of Osteopathic Licensure
Umbrella-Unit: **02-383**
Statutory authority: 32 MRS §2562
Chapter number/title: **Ch. 6** (New), Telemedicine Standards of Practice (a joint rule with
02-373 – Board of Licensure in Medicine)
Filing number: **2016-210**
Effective date: 12/10/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To establish standards for the practice of medicine using telemedicine in providing health care.

Basis statement:

This is a new joint rule regarding telemedicine in Maine, which consists of three sections:

Section 1 sets out a statement of the boards' regarding telemedicine.

Section 2 defines terms used throughout the rule.

Section 3 establishes telemedicine guidelines, including:

- Requirement for a Maine medical license or registration
- Standards of Care and Professional Ethics
- Identification (Physician and Patient) Requirements
- Physician-Patient Relationship
- Medical History and Physical Examination
- Informed Consent
- Coordination of Care
- Follow up Services
- Emergency Services
- Medical Records
- Technology and Equipment
- Disclosure Requirements
- Patient Access and Feedback
- Prescribing

Fiscal impact of rule:

Minimal.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

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

Umbrella-Unit: **02-392**

Statutory authority: 32 MRS §§ 13720, 13846 (Board of Pharmacy), 32 MRS §3269(3),
(7) (Board of Licensure in Medicine)

Chapter number/title: **Ch. 5** (*New*), Collaborative Drug Therapy Management (*a joint rule with 02-373 – Board of Licensure in Medicine (Ch. 5)*)

Filing number: **2016-041**

Effective date: 3/14/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To set forth rules authorized by PL 2013, c. 308, *An Act to Allow Collaborative Practice Agreements between Authorized Practitioners and Pharmacists*.

Basis statement:

In accordance with PL 2013 ch. 308, *An Act to Allow Collaborative Practice Agreements between Authorized Practitioners and Pharmacists*, the Board of Pharmacy and the Board of Licensure in Medicine ("Boards"), after consultation with the Department of Health and Human Services, adopted this joint rule. The rule is comprised of the following sections:

Section 1 defines various significant terms used in the rule. Notably, this section defines the term "qualifying condition" using the language of the statute "conditions or diseases with generally accepted standards of care." The definition of "qualifying condition" also provides a list of recognized examples. The list is intended only to provide examples and is not exclusive. See 32 MRS §§ 13702-A, 13844(1), and 13845.

Section 2 provides that a pharmacist must submit an application to the Board of Pharmacy and must meet the qualifications set forth in statute in order to enter into a collaborative practice agreement with a practitioner. The qualifications include completing certain continuing education hours prior to application and in each year of a collaborative practice agreement thereafter. These continuing education requirements are set forth in statute. This section also provides that the pharmacist must submit to both the Board of Pharmacy and the board that licenses the practitioner a copy of the collaborative practice agreement, which includes a copy of the required treatment protocol. See 32 MRS §§ 13735, 13842, and 13843(1).

Section 3 provides that a collaborative practice agreement may authorize collaborative drug therapy management only for qualifying conditions, as set forth in statute, and also provides the specific content that a collaborative practice agreement must include. The content criteria in subsections 1 - 9 reiterate the minimum requirements set forth in statute. Subsections 10 - 13 set forth additional requirements. See 32 MRS §§ 13843(5), (6) and 13844(1).

Section 4 provides the minimum content requirements for a treatment protocol. A treatment protocol must specify and describe informed consent procedures, the pharmacist's scope of activities, documentation requirements, and reporting procedures. In addition, a treatment protocol must set forth a provision that allows the practitioner to override a decision made by the pharmacist when appropriate, as well as a provision that provides for periodic review and revision of the drug therapy management. See 32 MRS §§ 13843(2), 13845, and 13846.

Section 5 requires the pharmacist to notify the Board of Pharmacy and the board that licenses the practitioner no later than 10 days after any modification to a collaborative practice

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

agreement or treatment protocol, or any change in liability insurance.

Section 6 requires the pharmacist to comply with the record retention and production requirements set forth in Ch. 24 of the Board of Pharmacy rules for any records received or created by the pharmacist pursuant to this rule.

Section 7 provides that the Board of Pharmacy or the licensing board that licenses the practitioner may share complaint and investigative information related to a collaborative practice agreement as permitted by 10 MRS §8003-8(2).

Section 8 sets forth that any party to a collaborative practice agreement has a duty to report disciplinary action. This section also provides that the Board of Pharmacy and the Board of Licensure in Medicine must notify each other of any disciplinary action taken against a party to a collaborative practice agreement.

With this rule, the Boards seek to ensure safe and effective collaborative practice agreements between a pharmacist and practitioner.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation,
Plumbers' Examining Board
Umbrella-Unit: **02-395**
Statutory authority: 32 MRS §3403-B(1)
Chapter number/title: **Ch. 4**, Installation Standards
Filing number: **2016-145**
Effective date: 10/1/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To update the edition of the plumbing code that has been incorporated by reference into the rule.

Basis statement:

Through PL 1997, c. 727, sections C-4 and C-9, the Maine Legislature transferred the responsibility for adopting a statewide plumbing code from the Department of Health and Human Services to the Plumbers' Examining Board ("Board"). Subsequently, through PL 2001, c. 215, section 1, the Legislature revised this rule-making authority to state that "the adoption of a national or international plumbing code as a new plumbing code for the State constitutes a major substantive rule and must receive affirmative action by the Legislature before adoption." 32 MRS §3403-8(1).

After these legislative changes, the Board was faced with the decision of whether to revise the existing code or to consider adopting one of the two competing national codes: the *International Plumbing Code* ("IPC"), developed by the Building Officials and Code Administrators International ("BOCA"); or the *Uniform Plumbing Code* ("UPC"), developed by the International Association of Plumbing and Mechanical Officials ("IAPMO"). The Board made the initial determination that it did not have the resources to develop a Maine-specific code. Thus, the Board decided to adopt one of the two national codes. In order to obtain input from all interested parties on the codes, the Board conducted a series of regional public meetings, heard from the public during regularly-scheduled board meetings, convened a working group, and accepted testimony and comment from the public through a rule-making proceeding.

After thorough consideration of both codes, the Board made the decision to provisionally adopt a specially-prepared Maine version of the 2000 edition of the UPC. As this was a new plumbing code for the State, legislative approval was required under the Board's revised rulemaking authority. The Legislature approved the Board's adoption of the UPC in 2005.

In 2010, the Board adopted the 2009 edition of the UPC with specific modifications to account for Maine conditions, rather than a specially prepared, Maine-specific version of the UPC. Adoption of the 2009 edition did not require legislative approval, as the Board was not adopting a new plumbing code for the State that would constitute a major substantive rule.

The 2009 edition has remained in effect since then without change. In the meantime, IAPMO revised the UPC in 2012 and 2015. In early 2015, the Board determined that the 2015 edition of the UPC represented best plumbing practice and merited implementation in Maine. In 2016, the Board proposed to adopt the 2015 edition, again with specific modifications to account for Maine conditions. As was the case previously, the proposed adoption did not require legislative approval, as the UPC is not a new plumbing code for the State.

Notably, the 2015 edition lists new products and materials, expands horizontal wet venting, requires fewer fixtures in public buildings, revises lead-content provisions to address the minimum acceptable percentage lead content for pipes and fittings, and allows engineers

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

to design systems that meet accepted engineering practice. New plumbing products and materials in particular are critical to keeping the cost of labor and materials at current levels.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

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

Umbrella-Unit: **02-416**

Statutory authority: 32 MRS §§ 7030(2), 7060

Chapter number/title: **Ch. 13**, Licensure

Filing number: **2016-007**

Effective date: 1/25/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To update the inactive status license rule in accordance with statutory changes set forth by PL 2007, c. 402.

Basis statement:

In 2007, legislation amended the Board's statute regarding inactive status licensure (see PL 2007, c. 402 amending 32 MRS §7060). At that time, however, the Board did not amend its rules on inactive status licensure (adopted in 2004) to correspond with this statutory change.

In this rule-making, the Board amended its rules on inactive status licensure in order to align the rules with the current statute. The rules previously stated that a licensee did not need to apply for any license renewal while on inactive status. However, the statute requires that the holder of an inactive status license renew the license annually and pay a renewal fee. The Board therefore amended the rules by setting forth requirements for annual renewal of an inactive status license.

In addition, the rules previously stated that a licensee on inactive status must continue to meet the requirements for continuing education contained in Ch. 14 of the Board's rules. However, the statute provides that the holder of an inactive status license does not need to obtain these continuing education hours. The Board amended the rules accordingly. The Board did, however, add the requirement that a licensee on inactive status who wishes to return to active status obtain some continuing education before returning to active status. This requirement is intended to ensure that licensees who have been on inactive status are up-to-date on their knowledge of the profession before returning to practice. The amended rules also contain an exception to this continuing education requirement for certain licensees who wish to return to active status after less than a year on inactive status.

Fiscal impact of rule:

Minimal.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

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

Umbrella-Unit: **02-416**

Statutory authority: 32 MRS §7030(2)

Chapter number/title: **Ch. 17**, Record Retention Requirements (*New*)

Filing number: **2016-008**

Effective date: 1/25/2016

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To define licensee obligations for retaining client records.

Basis statement:

In this rule-making, the Board adopted a new rule chapter that sets forth a licensee's obligations for retaining client records. The Board determined that it only needed to provide record retention requirements for licensees that are engaged in private practice, which is defined in Board statute as "practicing social work on a self-employed basis." 32 MRS §7001-A(9). This is because licensees that are employed or affiliated with agencies or other institutions must already abide by the record retention requirements of those agencies or institutions, and additional requirements imposed by the Board would be redundant, and in all likelihood, would unnecessarily complicate and confuse the record retentions systems already in place for these licensees.

In developing the record retention requirements for licensees that are engaged in private practice, the Board considered many sources of information, as detailed in the Rule-making Fact Sheet. The Board set a general record retention period of 7 years after a client's last date of service or date of death, as well as two exceptions to the general rule, one for minor clients and another for clients involved in litigation in which the client's records may be relevant. The Board concluded that these record retention periods are common among many states and agencies and are also consistent with the rules set forth by Maine's Department of Health and Human Services for hospitals and long term care facilities.

The rule also sets forth that client records may be destroyed after the applicable record retention period has expired and provides the manner in which the records must be destroyed. Rules pertaining to record destruction are necessary to ensure that records are being disposed of in a secure manner. Finally, the rule sets forth a continuing obligation after licensure ends to retain client records generated in the course of private practice in accordance with the rules in order to make it clear that former licensees are still responsible for records created while licensed.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Public Safety (DPS), **Office of State Fire Marshal**
Umbrella-Unit: **16-219**
Statutory authority: 25 MRS §2452; 32 MRS §§ 1373, 1374, 1382
Chapter number/title: **Ch. 4**, Water-based Fire Protection Systems
Filing number: **2016-084**
Effective date: 6/4/2016
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

This rule intends to remove redundant or obsolescent content from the rule, define the roles and responsibilities of responsible managing supervisors in the State of Maine, and adopt current standards relating to water based fire protection systems. The rule is intended to reduce overall fire suppression costs, fatalities, injuries and property loss due to fire.

Basis statement / summary:

This rule establishes the design, installation, operation, maintenance, inspection, testing and all other aspects of water-based fire protection systems and life safety sprinkler systems for occupancies and structures with water-based fire protection system measures. This standard is intended to provide uniform requirements for the entire state to ensure the safety of occupants of structures using such measures.

Fiscal impact of rule:

No fiscal impact.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Public Safety (DPS), **Office of State Fire Marshal**
Umbrella-Unit: **16-219**
Statutory authority: 25 MRS §2915(4)
Chapter number/title: **Ch. 71** (*New*), Uniform Standardized Forensic Examination Kit for Gross Sexual Assault Evidence Collection (*replaces* 16-222 Ch. 20)
Filing number: **2016-109**
Effective date: 7/3/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement / summary:

The chapter defines the uniform forensic examination kit to be used by licensed medical facilities and health care practitioners for evidence collection in cases of alleged gross sexual assault. Through this rule-making, wording changes are being made to the chapter to make it more accurate. In addition, a provision in the chapter is being stricken that allows standardized, statewide forensic examination documentation forms that include information of patients' assaults, to be substituted for patients' assault information forms included in the kit, if such documentation forms are available. Finally, the four appendices to the chapter that each provide instructions are being replaced in their entirety with four revised appendices.

Fiscal impact of rule:

No additional fiscal impact is anticipated as a result of the amendments that would be made to the existing chapter.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: **Public Utilities Commission**
Umbrella-Unit: **65-407**
Statutory authority: 35-A MRS §§ 104, 111, 10110(4-A)
Chapter number/title: **Ch. 396**, Efficiency Maine Trust Procurement Funding Cap (*New*)
Filing number: **2016-015**
Effective date: 2/1/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopts Ch. 396, *Efficiency Maine Trust Procurement Funding Cap*, which establishes the process and requirements by which the Commission will determine the statutory cap of 4% of the total retail electricity and transmission and distribution sales for the procurement of electric energy efficiency resources pursuant to Title 35-A §10110(4-A).

Basis statement / summary:

This chapter establishes the process and requirements for determining and applying the statutory cap on transmission and distribution utility rates for procurement of energy efficiency resources.

Fiscal impact of rule:

Minimal.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Public Utilities Commission
Umbrella-Unit: 65-407
Statutory authority: 23 MRS §3360-A; 35-A MRS §§ 104, 111; PL 2015 ch. 213
Chapter number/title: Ch. 895, Underground Facility Damage Prevention Requirements
Filing number: 2016-042
Effective date: 3/14/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopts amendments to the Commission's *Underground Facilities Damage Prevention Requirements* rule (Ch. 895) pursuant to recently enacted legislation (PL 2015 ch. 213).

Basis statement / summary:

This rule describes the responsibilities of excavators, underground facility operators, the damage prevention system (Dig Safe System, Inc.), and the Public Utilities Commission in implementing Maine's underground facility damage prevention statute. The rule establishes notification, marking, and reporting procedures, defines violations and penalties, and describes the process by which the Public Utilities Commission will enforce the program and monitor its success.

Fiscal impact of rule:

Minimal.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Public Utilities Commission
Umbrella-Unit: 65-407
Statutory authority: 35-A MRS §§ 101, 111, 7225, 7225-A
Chapter number/title: Ch. 201, Provider of Last Resort Service Quality
Filing number: 2016-200
Effective date: 11/26/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopts amendments to Ch. 201 which incorporate changes mandated by the enactment of PL 2015 ch. 462, *An Act to Increase Competition and Ensure a Robust Information and Telecommunications Market* (“the Act”). The amendments to Ch. 201 reflect the provisions contained in Section 5 of the Act.

Basis statement / summary:

The factual and policy basis for this rule is set forth in the Commission's Order Amending Rule, Docket No. 2016-00095, issued on November 14, 2016 and Order Adopting Final Rule, Docket No. 2012-00401, issued on June 26, 2014. Copies of the Statement and Order have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 18 State House Station, Augusta, Maine 04333-0018.

Fiscal impact of rule:

No fiscal impact.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: **Public Utilities Commission**
Umbrella-Unit: **65-625**
Statutory authority: 25-A MRS §2927(3-C)
Chapter number/title: **Ch. 5** (*New*), Standards for the Implementation and Administration of Emergency Fire Dispatch Protocols
Filing number: **2016-146**
Effective date: 9/3/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Pursuant to PL 2015 ch. 230, the Public Utilities Commission adopts a new rule of the Emergency Services Communications Bureau's Rules (65-625 CMR ch 5). Chapter 5 adopts and implements standardized protocols for 9-1-1 fire dispatch.

Basis statement / summary:

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. 2016-00063, issued on August 8, 2016. Copies of the Order and Statement have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 18 State House Station, Augusta, Maine 04333-0018.

Fiscal impact of rule:

No fiscal impact

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A, sub-§5

Agency name: Secretary of State, **Bureau of Motor Vehicles**
Umbrella-Unit: **29-250**
Statutory authority: 29-A MRS §§ 153, 1258
Chapter number/title: **Ch. 3**, Physical, Emotional and Mental Competence to Operate a Motor Vehicle
Filing number: **2016-080**
Effective date: 12/31/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement / summary:

These rules are being repealed and replaced to reflect changes and/or updates in health care, as well as to more closely align them with some recent research on medical conditions and their impact on safe operation of a motor vehicle. They describe the standards to be used by the Secretary of State in determining physical, emotional and mental competence of persons to operate motor vehicles. The rules establish a reporting system that requires persons to submit medical information to the Secretary of State. Persons found incompetent to operate a motor vehicle in accordance with procedures outlined in these rules may have their driving privileges suspended, revoked or restricted.

Fiscal impact of rule:
N/A

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A, sub-§5

Agency name: Secretary of State, **Bureau of Motor Vehicles**
Umbrella-Unit: **29-250**
Statutory authority: 29-A MRS §153
Chapter number/title: **Ch. 8**, Rules for Ignition Interlock Devices
Filing number: **2016-136**
Effective date: 8/9/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The primary purposes of these rules are to:

- (1) update rules due to legislative changes;
- (2) bring Maine rules in line with federal model specifications for Breath Alcohol Ignition Interlock Devices.

Basis statement / summary:

Ignition interlock devices are used as a means of allowing a person convicted of operating under the influence of alcohol to obtain driving privileges by agreeing to install a device. In order for the car to start, a person is required to provide a breath sample to determine if alcohol has been consumed. It also requires random rolling retests in which a person must provide a breath sample within a certain timeframe of being alerted. If a sample is not provided in a timely manner, the horn will sound repeatedly until the vehicle is turned off. The vehicle will not start again until an acceptable breath sample is provided.

The Secretary of State is tasked with certifying and monitoring manufacturers, installation technicians, and users of the devices. These rules identify requirements to obtain certification as well as steps a person must follow to gain early reinstatement.

Fiscal impact of rule:

This rule is not expected to cause adverse economic impacts for municipalities, counties or small businesses.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A, sub-§5

Agency name: Secretary of State, **Bureau of Motor Vehicles**
Umbrella-Unit: **29-250**
Statutory authority: 29-A MRS §555-A
Chapter number/title: **Ch. 168**, The Administration of USDOT Numbers for Certain Intrastate Motor Carriers
Filing number: **2016-150**
Effective date: 9/14/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is being updated to reflect recent changes in federal and state requirements and procedures. The update includes amending the rule title.

Basis statement / summary:

This rule outlines the procedures and standards for the administration of United States Department of Transportation (USDOT) numbers to those intrastate motor carriers qualifying under 29-A MRS §555-A. Motor carriers operating trucks in intrastate commerce registered in excess of 26,000 pounds, buses and hazardous materials transporters must obtain and display a USDOT number.

The rule is being updated to reflect recent changes in federal and state requirements and procedures. The update includes changing the rule title. The principal changes are the manner in which a carrier may obtain a USDOT number, and the requirement to display the number.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A, sub-§5

Agency name: Secretary of State, **Bureau of Motor Vehicles**
Umbrella-Unit: **29-250**
Statutory authority: 29-A MRS §204
Chapter number/title: **Ch. 110**, Non-Governmental Registration Agent Requirements
Filing number: **2016-158**
Effective date: 9/28/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule is being amended to make minor technical corrections to contract information, to correct minor typographical mistakes, and to make minor clarifications.

Basis statement / summary:

This rule establishes the requirements for non-governmental registration agents pursuant to 29-A MRS §204. The rule sets forth requirements for training, equipment and software, reporting, inventory control, audit, and suspension and hearings for registration agents. A registration agent may be authorized to collect registration, title and related taxes and fees, and to issue registration credentials and indicia. A registration agent is authorized and required to transmit registration data to the Bureau of Motor Vehicles. A registration agent may be authorized to process motor vehicle registrations, and annual and long term trailer registrations. A registration agent may be authorized to have plate and validation inventory, and to issue motor vehicle credentials.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A, sub-§5

Agency name: Secretary of State, **Maine State Archives**
Umbrella-Unit: **29-255**
Statutory authority: 22 MRS §2706
Chapter number/title: **Ch. 10**, Rules for Disposition of Local Government Records
Filing number: **2016-020**
Effective date: 2/9/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement / summary:

PL 2011 ch. 58 amended Maine's vital records law, 22 MRS §2706, placing restrictions on who can obtain vital records, specifically records of births, deaths and marriages.

Before a vital record can be released, an applicant must provide proof that they are either related to the registrant or they have a direct and legitimate interest in the matter recorded. This rule is being amended to bring it into compliance with law.

Fiscal impact of rule:
None known.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Transportation
Umbrella-Unit: 17-229
Statutory authority: 23 MRS §1912-C; 23 MRS §§ 52, 4206
Chapter number/title: **Ch. 208** (*New*), Rules for the Selection of Interchange and Supplemental Guide Signs
Filing number: **2016-045**
Effective date: 3/21/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This new rule chapter will implement Title 23 §1912-C (PL 2013 ch. 549 §3), which granted MaineDOT the authority to place interchange guide signs on the interstate system to guide travelers to destinations of local, regional and statewide interest. The purpose of these rules is to regulate the installation and selection of Interchange and Supplemental Guide Signs on portions of the interstate highway system.

Basis statement / summary:

This new rule chapter implements Title 23 §1912-C (PL 2013 ch. 549 §3), which granted MaineDOT the authority to place interchange guide signs on the interstate system to guide travelers to destinations of local, regional and statewide interest. The purpose of these rules is to regulate the installation and selection of Interchange and Supplemental Guide Signs on portions of the interstate highway system.

These rules establish the size, shape, manner and location of Interchange and Supplemental Guide signs and describe the eligibility for any entity to formally request the Department to erect an Interchange or Supplemental Guide Sign. Under the new rules the following entities will be eligible for signs:

- Major colleges and universities.
- Major military installations.
- Federal and state Parks.
- Major recreational areas.
- Airports & other transportation facilities.
- Veterans' memorials and cemeteries.

The new rules:

- Incorporate national standards that address each of the following: sign spacing, sign content, and criteria for types of destinations warranting signs.
- Give greater flexibility to stay current with signage. Many of the signs currently mandated by the Legislature were created in 1957. The state's most frequently visited areas may have changed a bit since then and some of the specific destinations on currently mandated signs no longer exist.
- Minimize the number of signs and the lines of text on signs to increase their effectiveness for motorists and increase highway safety.
- Define standard, for categories of destinations which could qualify for signs and distance from interchange/attendance requirements for those destinations.
- Make clear that any specific service or attraction that qualifies for a logo sign will not be eligible for a supplemental guide sign.
- Include a category for Major Recreational Areas designed to allow signage for those destinations most often sought by visitors to Maine, allowing these areas to be signed. This category will be flexible; allowing transportation agencies to develop

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

criteria that will make sure this signage is kept current. Maine DOT and MTA are working with the Bureau of Tourism in developing this criteria.

Fiscal impact of rule:

MaineDOT anticipates that this rule will have no negative fiscal impact on the regulated community.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Transportation
Umbrella-Unit: 17-229
Statutory authority: 23 MRS §§ 52, 4206
Chapter number/title: Ch. 110 (New), Urban Compact Area Definition Rule
Filing number: 2016-047
Effective date: 3/21/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Division of Community Services is proposing that the Department adopt a new Administrative Rule entitled "Urban Compact Area Definition Rule". This new rule will establish the procedures by which the Department will set urban compact boundaries around urban compact areas as defined by 23 MRS §754 and §2. The adoption of these rules is authorized by 23 MRS §52 and 23 MRS §4206(5). It was also requested by the Transportation Committee in a letter to MaineDOT dated 6/2/15. It was a direct request as a result of the "ought not to pass" vote on LD 437 that was specifically about recent compact line changes in York, Maine on US Route I. LD 437 was created by our recent compact review in York, ME whereby the Town challenged our longstanding analysis of determining structure spacing. With the ONTP vote, the Committee asked us to develop a more objective process of setting compact boundaries. The technical criteria in this rule will allow us to produce a more thorough and justifiable determination. While this is the first time that our analysis has been questioned in decades, it is appropriate to update our process with these improved tools.

Basis statement / summary:

This new rule establishes the procedures by which the Maine Department of Transportation (MaineDOT) will set urban compact boundaries around urban compact areas as defined by 23 MRS §754 and §2.

The Division of Community Services proposed adoption of this rule by MaineDOT in response to a request by the Maine Legislature's Transportation Committee in a letter to MaineDOT dated 6/2/15. It was a direct request as a result of the "ought not to pass" vote on LD 437 that was specifically about recent compact line changes in York, Maine on US Route 1. LD 437 was created by our recent compact review in York, ME whereby the Town challenged our longstanding analysis of determining structure spacing. With the ONTP vote, the Committee asked us to develop a more objective process of setting compact boundaries

The technical criteria in this rule will allow us to produce a more thorough and justifiable determination. While this is the first time that our analysis has been questioned in decades, it is appropriate to update our process with these improved tools.

The adoption of these Rules is authorized by 23 MRS §52 and 23 MRS §4206 (5). These are routine technical rules.

Fiscal impact:

- A. **Administrative cost to the State:** we anticipate a minimal cost increase to the Department due to additional time for staff to better analyze the area by using the additional tools to provide a more technical but improved review process. Rather than the longstanding subjective process of setting boundaries, this will be more objective with justifiable results.
- B. **Cost to and impact on the regulated community:** We anticipate no direct fiscal impact on municipalities as this rule provides the Department with better technical tools to set compact lines.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016

Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name: Department of Transportation
Umbrella-Unit: 17-229
Statutory authority: 29-A MRS §2395; 23 MRS §§ 52, 4206
Chapter number/title: Ch. 308 (New), Rules to Establish Seasonal Load Restrictions on Certain State and State Aid Highways
Filing number: 2016-225
Effective date: 12/18/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

MaineDOT has long had rules restricting heavy loads on closed ways pursuant to authority granted to it in 29-A MRS §2395, but the statute specifically exempted such rules from the provisions of the *Maine Administrative Procedure Act* (the "APA"). In 2013, 29-A MRS §2395 was amended by PL 2013 c. 55 to provide that "Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A", thus eliminating their exemption from the APA. It is now necessary that the Department readopt these rules in accordance with the APA process.

Basis Statement:

For decades MaineDOT had rules restricting heavy loads on closed ways that were adopted pursuant to authority granted to the Department in 29-A MRS §2395 and its predecessor statutes. The enabling statutes specifically exempted those rules from the provisions of the *Maine Administrative Procedure Act* (the "APA"). In 2013 the enabling statute, 29-A MRS §2395, was amended by PL 2013, c. 55 as follows:

Sec. 1. 29-A MRSA §2395, sub-§2, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

2. Rules. The Department of Transportation, ~~county commissioners and municipal officers~~ may adopt rules to ensure proper use and prevent abuse of the public ways under ~~their respective jurisdictions~~ the department's jurisdiction whenever those ways require special protection. Rules ~~issued~~ adopted pursuant to this section are ~~exempted from the provisions of the Maine Administrative Procedure Act,~~ routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. Department of Transportation to adopt rules relating to the definition of home heating fuel. The Department of Transportation shall adopt rules as authorized by the Maine Revised Statutes, Title 29-A, section 2395, subsection 2 involving restrictions on the weight or passage of any vehicle over a public way and shall include in the definition of "home heating fuel" oil, gas, coal, stove-length wood, propane and wood pellets.

Therefore it has become necessary for the Department to readopt these rules in accordance with APA procedures.

The new rules will establish the procedures by which the Department will restrict heavy loads on posted State and State Aid Highways from November 15 to June 1, inclusive. They will also streamline current permitting procedures and eliminate permitting requirements for vehicles under 34,000 GVW carrying certain approved commodities.

Fiscal impact:

A. Administrative cost to the State: There will be a small increase in administrative costs incurred to comply with the APA requirements, to be offset somewhat by decreased administrative costs for reviewing and issuing certificates.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

B. Cost to and impact on the regulated community: The new rules will lessen the regulatory burden on truck drivers and carriers. Many vehicles operating on posted roads will no longer need to keep a certificate in their glove box to avoid a citation. Also, in some circumstances the rules will reduce or eliminate the need for weighing and/or re-weighing of vehicles to document compliance, which will result in some cost savings to the regulated community.