

MAINE STATE LEGISLATURE

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STATE OF MAINE

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OFFICE OF THE SECRETARY OF STATE

MATTHEW DUNLAP SECRETARY OF STATE

February 1, 2018

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 2017.

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 2017, there were 209 rule adoption filings. Following is a list of the agencies with the number of adopted rule filings:

Table with 6 columns: Agency, Total Rules, Routine Technical, Major Substantive, Emergency, Non Emergency. Rows include Department of Agriculture, Conservation and Forestry; Department of Professional and Financial Regulation; Department of Corrections; Department of Education; Department of Environmental Protection; Department of Inland Fisheries and Wildlife; Department of Health and Human Services; Department of Labor; Department of Marine Resources.

| Agency | Total Rules | Routine Technical | Major Substantive | Emergency | Non Emergency |
|--|-------------|-------------------|-------------------|-----------|---------------|
| Department of Defense, Veterans and Emergency Management | 1 | 0 | 1 | 0 | 1 |
| Department of Public Safety | 1 | 1 | 0 | 0 | 1 |
| 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 | 3 | 3 | 0 | 0 | 3 |
| Public Utilities Commission | 4 | 3 | 1 | 0 | 4 |
| Clean-up and Response Fund Review Board | 3 | 3 | 0 | 0 | 3 |
| Maine Health Data Organization | 2 | 2 | 0 | 0 | 2 |
| Commission on Governmental Ethics and Election Practices | 1 | 0 | 1 | 0 | 1 |
| Baxter State Park Authority | 4 | 4 | 0 | 0 | 4 |
| Maine Public Employees Retirement System | 1 | 1 | 0 | 0 | 1 |
| Finance Authority of Maine | 5 | 5 | 0 | 0 | 5 |
| Maine State Housing Authority | 3 | 3 | 0 | 0 | 3 |
| Totals for 2017 | 209 | 193 | 16 | 42 | 167 |

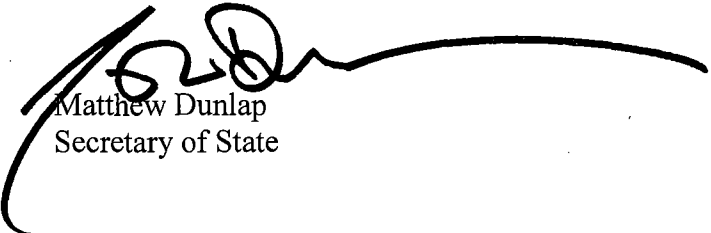
The report is presented in multiple files:

- 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 1/1/2017 to 12/31/2017
Prepared by the Secretary of State

| Log # | Umbrella/ unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-------------------|---|-------------------|---|--|----------------------|-----------|-------------------|
| 2017-003 | 01-001 | Department of Agriculture, Conservation and Forestry | Ch. 273 | Criteria for Listing Invasive Terrestrial Plants | 7 MRS c. 205-A §2217 | Routine Technical | No | 1/14/2017 |
| 2017-052 | 01-001 | Department of Agriculture, Conservation and Forestry (<i>with the Maine Milk Commission</i>) | Ch. 61 | Maine Milk Pool Cost of Administration | 7 MRS §3154 | Routine Technical | No | 4/9/2017 |
| 2017-108 | 01-001 | Department of Agriculture, Conservation and Forestry | Ch. 34 | Rules for Operation of Dairy Improvement Fund | 7 MRS §2910-B; 10 MRS §1023- P; 8 MRS §1036 sub-§2-A ¶M | Routine Technical | No | 7/16/2017 |
| 2017-134 | 01-001 | Department of Agriculture, Conservation and Forestry | Ch. 226 | Rules Governing the Administration of Certain Substances to Animals Entered in Pulling Competitions | 7 MRS §98(4) | Routine Technical | No | 9/2/2017 |
| 2017-138 | 01-001 | Department of Agriculture, Conservation and Forestry | Ch. 144 | Standards for the Use of the State of Maine Quality Trademark on Molluscan Shellfish | 7 MRS Part 2 ch. 101 sub-ch. 2 §§ 443, 443-B | Routine Technical | No | 9/18/2017 |
| 2017-202 | 01-001 | Department of Agriculture, Conservation and Forestry | Ch. 307 | Fees for Testing Weighing and Measuring Devices | 10 MRS part 6 ch. 501 sub-ch. 9 §2701 | Routine Technical | No | 12/18/2017 |
| 2017-007 | 01-015 | Department of Agriculture, Conservation and Forestry, Maine Milk Commission | Ch. 3 | Schedule of Minimum Prices, Order #02-17 | 5 MRS §8054; 7 MRS §2954 | Routine Technical | Yes | 1/29/2017 |
| 2017-032 | 01-015 | Department of Agriculture, Conservation and Forestry, Maine Milk Commission | Ch. 3 | Schedule of Minimum Prices, Order #03-17 | 5 MRS §8054; 7 MRS §2954 | Routine Technical | Yes | 2/27/2017 |

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|----------|-------------------|---|-------------------|--|-----------------------------|----------------------|-----------|-------------------|
| 2017-040 | 01-015 | Department of Agriculture, Conservation and Forestry, Maine Milk Commission | Ch. 27 | Retail Margins | 7 MRS §2954 | Routine Technical | No | 3/23/2017 |
| 2017-053 | 01-015 | Department of Agriculture, Conservation and Forestry, Maine Milk Commission | Ch. 3 | Schedule of Minimum Prices, Order #04-17 | 5 MRS §8054; 7 MRS §2954 | Routine Technical | Yes | 4/2/2017 |
| 2017-064 | 01-015 | Department of Agriculture, Conservation and Forestry, Maine Milk Commission | Ch. 3 | Schedule of Minimum Prices, Order #05-17 | 5 MRS §8054; 7 MRS §2954 | Routine Technical | Yes | 4/30/2017 |
| 2017-079 | 01-015 | Department of Agriculture, Conservation and Forestry, Maine Milk Commission | Ch. 3 | Schedule of Minimum Prices, Order #06-17 | 5 MRS §8054; 7 MRS §2954 | Routine Technical | Yes | 6/4/2017 |
| 2017-096 | 01-015 | Department of Agriculture, Conservation and Forestry, Maine Milk Commission | Ch. 3 | Schedule of Minimum Prices, Order #07-17 | 5 MRS §8054; 7 MRS §2954 | Routine Technical | Yes | 7/2/2017 |
| 2017-111 | 01-015 | Department of Agriculture, Conservation and Forestry, Maine Milk Commission | Ch. 3 | Schedule of Minimum Prices, Order #08-17 | 5 MRS §8054; 7 MRS §2954 | Routine Technical | Yes | 7/30/2017 |
| 2017-137 | 01-015 | Department of Agriculture, Conservation and Forestry, Maine Milk Commission | Ch. 3 | Schedule of Minimum Prices, Order #09-17 | 5 MRS §8054; 7 MRS §2954 | Routine Technical | Yes | 9/3/2017 |
| 2017-154 | 01-015 | Department of Agriculture, Conservation and Forestry, Maine Milk Commission | Ch. 3 | Schedule of Minimum Prices, Order #10-17 | 5 MRS §8054; 7 MRS §2954 | Routine Technical | Yes | 10/1/2017 |
| 2017-165 | 01-015 | Department of Agriculture, Conservation and Forestry, Maine Milk Commission | Ch. 3 | Schedule of Minimum Prices, Order #11-17 | 5 MRS §8054; 7 MRS §2954 | Routine Technical | Yes | 10/29/2017 |

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|----------|-------------------|--|-------------------|---|---|----------------------|-----------|-------------------|
| 2017-184 | 01-015 | Department of Agriculture, Conservation and Forestry, Maine Milk Commission | Ch. 3 | Schedule of Minimum Prices, Order #12-17 | 5 MRS §8054; 7 MRS §2954 | Routine Technical | Yes | 12/3/2017 |
| 2017-206 | 01-015 | Department of Agriculture, Conservation and Forestry, Maine Milk Commission | Ch. 3 | Schedule of Minimum Prices, Order #01-18 | 5 MRS §8054; 7 MRS §2954 | Routine Technical | Yes | 12/31/2017 |
| 2017-069 | 01-017 | Department of Agriculture, Conservation and Forestry, Maine State Harness Racing Commission | Ch. 11 | Medications, Prohibited Substances and Testing | 8 MRS §§ 263-A, 268, 279-A, 279- B, 281 | Routine Technical | No | 5/7/2017 |
| 2017-070 | 01-017 | Department of Agriculture, Conservation and Forestry, Maine State Harness Racing Commission | Ch. 17 | Rule Violations; Penalties | 8 MRS §§ 263-A, 268, 279-A, 279- B, 281 | Routine Technical | No | 5/7/2017 |
| 2017-135 | 01-303 | Department of Agriculture, Conservation and Forestry, Pull Events Commission | Ch. 15 | Rules for Superintendents and Assistant Superintendents of Pull Events | 7 MRS §98(4) | Routine Technical | No | 9/2/2017 |
| 2017-024 | 01-670 | Department of Agriculture, Conservation and Forestry, Bureau of Parks and Lands | Ch. 2 | Rules and Regulations for the Allagash Wilderness Waterway | 12 MRS §1803(6) | Routine Technical | No | 2/22/2017 |
| 2017-025 | 01-670 | Department of Agriculture, Conservation and Forestry, Bureau of Parks and Lands | Ch. 5 | Rules and Regulations for Lunch and Campsites in the Penobscot River Corridor, Lobster Lake and Chesuncook Lake | 12 MRS §1825(4) | Routine Technical | No | 2/22/2017 |

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|----------|---------------|--|----------------|---|---------------------------------------|-------------------|-----------|----------------|
| 2017-039 | 01-672 | Department of Agriculture, Conservation and Forestry, Land Use Planning Commission | Ch. 10 | Land Use Guidance Maps (Amended Zoning Maps): Zoning Petition ZP 764 (TA R10 & TB R10 WELS, Piscataquis County) (petitioner Maine LUPC staff) & Cassidy Timberlands LLC) | 12 MRS §§ 685-A(7-A), 689 | Routine Technical | No | 3/1/2017 |
| 2017-046 | 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 (Kingsbury Plt.) | 12 MRS §685-C(5)(A); 35-A MRS §3453-A | Routine Technical | No | 3/13/2017 |
| 2017-047 | 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 (Carroll Plt.) | 35-A MRS §3453-A sub-§§ (1), (3) | Routine Technical | No | 3/13/2017 |
| 2017-058 | 01-672 | Department of Agriculture, Conservation and Forestry, Land Use Planning Commission | Ch. 10 | Land Use Guidance Maps (Amended Zoning Maps): Zoning Petition ZP 763 (T17 R4 WELS, Aroostook County) (petitioners Kevin Beaulieu, Marco Godbout, Joseph & Neil Pelletier) | 12 MRS §§ 685-A(7-A), 689 | Routine Technical | No | 4/4/2017 |
| 2017-080 | 01-672 | Department of Agriculture, Conservation and Forestry, Land Use Planning Commission | Ch. 10 | Land Use Guidance Maps (Amended Zoning Maps): Zoning Petitions: ZP 765 (West Forks Plt. — Somerset County) (petitioners Maine Bureau of Parks and Lands, James Vogel; Maine Land Use Planning Commission, Jennifer Curtis); ZP 766 (Baring, Brookton Twp., Edmunds Twp., Grand Lake Stream Plt., Lambert Lake Twp., Trescott Twp. —Washington County) (petitioners Maine Land Use Planning Commission, Stacie Beyer) | 12 MRS §§ 685-A(7-A), 689 | Routine Technical | No | 5/22/2017 |

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|----------|-------------------|--|-------------------|---|---|----------------------|-----------|-------------------|
| 2017-081 | 01-672 | Department of Agriculture, Conservation and Forestry, Land Use Planning Commission | Ch. 10 | Land Use Districts and Standards: 10.02 , Definitions (“Public Drinking Water Source”, “Sole Source Aquifer”); 10.23 , Protection Subdistricts, B . Aquifer Protection Subdistrict (P-AR) (<i>accompanied by an Addendum regarding Appendix E</i>) | 12 MRS §§ 685- A(3), 685-A(7-A), 685-C(5) | Routine Technical | No | 5/29/2017 |
| 2017-095 | 01-672 | Department of Agriculture, Conservation and Forestry, Land Use Planning Commission | Ch. 10 | Land Use Guidance Maps (Amended Zoning Maps): Zoning Petition: ZP 759 (Carrying Place Town Twp. — Somerset County) (petitioner Maine Land Use Planning Commission, Stacey Beyer) | 12 MRS §§ 685- A(7-A), 689 | Routine Technical | No | 6/28/2017 |
| 2017-124 | 01-672 | Department of Agriculture, Conservation and Forestry, Land Use Planning Commission | Ch. 11 | Administrative Regulations for Hydropower Projects (<i>jointly with 06-096, Department of Environmental Protection, Ch. 450, filing 2017-125</i>) | 5 MRS §§ 8001- 10008; 12 MRS §§ 401-409, 681- 689; 38 MRS §§ 341-H, 630-638 | Routine Technical | No | 11/2/2017 |

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|----------|-------------------|--|-------------------|--|-------------------------------|----------------------|-----------|-------------------|
| 2017-129 | 01-672 | Department of Agriculture, Conservation and Forestry, Land Use Planning Commission | Ch. 10 | Land Use Guidance Maps (Amended Zoning Maps): Zoning Petition: ZP 767 (Baring Plt. And Grand Lake Stream Plt.. — Washington County) (petitioner Washington County Commissioners) | 12 MRS §§ 685- A(7-A), 689 | Routine Technical | No | 8/24/2017 |

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|-----------------|---------------------------|--|---------------------------|----------------------------------|---|----------------------|------------------|---------------------------|
| 2017-098 | 02-031 | Department of Professional and Financial Regulation, Bureau of Insurance | Ch. 191 | Health Maintenance Organizations | 24-A MRS §§ 212, 4202-A(1), 4218, 4222-A, 4309 | Major Substantive | No | 7/28/2017 |
| 2017-099 | 02-031 | Department of Professional and Financial Regulation, Bureau of Insurance | Ch. 750 | Standardized Health Plans | 24-A MRS §§ 212, 4202-A(1), 4218, 4222-A, 4309 | Major Substantive | No | 7/28/2017 |

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|-----------------|---------------------------|---|---------------------------|--|--------------------------------|---------------------|------------------|---------------------------|
| 2017-093 | 02-032 | Department of Professional and Financial Regulation, Office of Securities | Ch. 523 | Rule Regarding Short-Form Seed Capital Registrations | 32 MRS §§ 16304(6-A), 16605 | Routine Technical | No | 7/2/2017 |
| 2017-094 | 02-032 | Department of Professional and Financial Regulation, Office of Securities | Ch. 536 | Securities Manuals | 32 MRS §§ 16292(2)(D), 16605 | Routine Technical | No | 7/2/2017 |

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|----------|-------------------|---|-------------------|---------------------------|--|-------------------|-----------|-------------------|
| 2017-017 | 02-288 | Department of Professional and Financial Regulation, Maine State Board for Licensure of Architects, Landscape Architects and Interior Designers | Ch. 12 | Licensure of Architects | 32 MRS §§ 214(1), 220(1)(B), 220(2)(B), 220-B(2) & (3); PL 2015 c. 414 §1 (amending 32 MRS §220(1)(B)) | Routine Technical | No | 2/13/2017 |
| 2017-018 | 02-288 | Department of Professional and Financial Regulation, Maine State Board for Licensure of Architects, Landscape Architects and Interior Designers | Ch. 15 | Application for Licensure | 32 MRS §§ 214(1), 220(1)(B), 220(2)(B), 220-B(2) & (3); PL 2015 c. 414 §1 (amending 32 MRS §220(1)(B)) | Routine Technical | No | 2/13/2017 |

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|----------|-------------------|---|-------------------|----------------------------|--|----------------------|-----------|-------------------|
| 2017-019 | 02-288 | Department of Professional and Financial Regulation, Maine State Board for Licensure of Architects, Landscape Architects and Interior Designers | Ch. 19 | Incorporation by Reference | 32 MRS §§ 214(1), 220(1)(B), 220(2)(B), 220-B(2) & (3); PL 2015 c. 414 §1 (amending 32 MRS §220(1)(B)) | Routine Technical | No | 2/13/2017 |

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|-----------------|---------------------------|---|---------------------------|---|--------------------------------|----------------------|------------------|---------------------------|
| 2017-128 | 02-313 | Department of Professional and Financial Regulation, Maine Board of Dental Practice | Ch. 14 | Rules for Use of Sedation and General Anesthesia | 32 MRS §§ 18324, 18379 | Routine Technical | No | 8/27/2017 |

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|-----------------|---------------------------|--|---------------------------|-----------------------------------|--------------------------------|----------------------|------------------|---------------------------|
| 2017-170 | 02-318 | Department of Professional and Financial Regulation, Electricians' Examining Board | Ch. 120 | Electrical Installation Standards | 32 MRS §1102- B(2) | Routine Technical | No | 11/6/2017 |

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| Log # | Umbrella/ unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-------------------|---|-------------------|----------------------------|--|----------------------|-----------|-------------------|
| 2017-200 | 02-373 | Department of Professional and Financial Regulation, Board of Licensure in Medicine | Ch. 1 | Rules Regarding Physicians | 32 MRS §§ 3266, 3269, 3271, 3276- 3278, 3280-A, 3300-D; 10 MRS §§ 8003(5)(C), 8003-E, 8011(4) | Routine Technical | No | 12/23/2017 |

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|-----------------|---------------------------|---|---------------------------|---|---------------------------------------|----------------------|------------------|---------------------------|
| 2017-082 | 02-380 | Department of Professional and Financial Regulation, Maine State Board of Nursing | Ch. 8 | Regulations Relating to Advanced Practice Registered Nursing | 32 MRS §§ 2102(2-A), 2153- A(1) | Routine Technical | No | 5/29/2017 |

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|----------|-------------------|---------------------------|-------------------|---|------------------------|----------------------|-----------|-------------------|
| 2017-050 | 03-201 | Department of Corrections | Ch. 10 | Policy and Procedures Manual – Adult: Subsection 27.2, Supervised Community Confinement | 34-A MRS §3036- A | Routine Technical | Yes | 3/13/2017 |
| 2017-061 | 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 §3103 | Routine Technical | Yes | 4/14/2017 |
| 2017-086 | 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 §3103 | Routine Technical | No | 6/12/2017 |
| 2017-090 | 03-201 | Department of Corrections | Ch. 10 | Policy and Procedures Manual – Adult: Subsection 27.2, Supervised Community Confinement | 34-A MRS §3036- A | Routine Technical | No | 6/17/2017 |
| 2017-150 | 03-201 | Department of Corrections | Ch. 1 | Detention and Correctional Standards for Counties and Municipalities | 34-A MRS §1208 | Routine Technical | No | 9/24/2017 |
| 2017-172 | 03-201 | Department of Corrections | Ch. 15 | Batterer Intervention Program Certification | 19-A MRS §4014 | Routine Technical | No | 11/13/2017 |
| 2017-185 | 03-201 | Department of Corrections | Ch. 10 | Policy and Procedures Manual – Adult: Subsection 27.2, Supervised Community Confinement | 34-A MRS §3036- A | Routine Technical | No | 12/2/2017 |
| 2017-186 | 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 | 12/2/2017 |

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| Log # | Umbrella/ unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|-----------------|---------------------------|---------------------------|---------------------------|---|--------------------------------|----------------------|------------------|---------------------------|
| 2017-187 | 03-201 | Department of Corrections | Ch. 10 | Policy and Procedures Manual – Adult: Subsection 27.4, Furlough Pass / Furlough Leave Program | 34-A MRS §3035 | Routine Technical | No | 12/2/2017 |

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| Log # | Umbrella/ unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-------------------|-------------------------|-------------------|---|--|----------------------|-----------|-------------------|
| 2017-056 | 05-071 | Department of Education | Ch. 230 | Adult Education Program Requirements | 20 MRS ch. 230 §2384 subpart 1; 20-A MRS §§ 8601-8609 | Routine Technical | No | 4/5/2017 |
| 2017-109 | 05-071 | Department of Education | Ch. 115 | Certification, Authorization and Approval of Education Personnel | 20-A MRS §130011(1) | Major Substantive | No | 8/12/2017 |
| 2017-113 | 05-071 | Department of Education | Ch. 101 | Maine Unified Special Education Regulation Birth to Age 20 | 20-A MRS §7005(1) | Major Substantive | No | 8/25/2017 |
| 2017-139 | 05-071 | Department of Education | Ch. 81 | School Transportation Safety | 29-A MRS §2311; 20-A MRS §5401(17) | Routine Technical | No | 9/16/2017 |
| 2017-140 | 05-071 | Department of Education | Ch. 82 | School Bus Driver Fitness Determination | 29-A MRS §2311; 20-A MRS §5401(17) | Routine Technical | No | 9/16/2017 |
| 2017-141 | 05-071 | Department of Education | Ch. 83 | School Transportation Operations Program | 29-A MRS §2311; 20-A MRS §5401(17) | Routine Technical | No | 9/16/2017 |
| 2017-142 | 05-071 | Department of Education | Ch. 84 | School Bus Refurbishment Program | 29-A MRS §2311; 20-A MRS §5401(17) | Routine Technical | No | 9/16/2017 |

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|-----------------|---------------------------|-------------------------|---------------------------|--|--|----------------------|------------------|---------------------------|
| 2017-143 | 05-071 | Department of Education | Ch. 85 | School Bus Purchase Program | 29-A MRS §2311; 20-A MRS §5401(17) | Routine Technical | No | 9/16/2017 |
| 2017-144 | 05-071 | Department of Education | Ch. 86 | Maine Uniform School Bus Specifications | 29-A MRS §2311; 20-A MRS §5401(17) | Routine Technical | No | 9/16/2017 |
| 2017-175 | 05-071 | Department of Education | Ch. 115 | Certification, Authorization, and Approval of Educational Personnel | 20-A MRS §13001(1) | Major Substantive | Yes | 11/20/2017 |

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|----------|-------------------|--|-------------------|--|---|----------------------|-----------|-------------------|
| 2017-029 | 06-096 | Department of Environmental Protection | Ch. 889 | Designation of Two Flame Retardants as Priority Chemicals | 5 MRS §8055(3); 38 MRS §§ 341-H, 1694 | Routine Technical | No | 3/4/2017 |
| 2017-063 | 06-096 | Department of Environmental Protection | Ch. 850 | Identification of Hazardous Wastes (Solvent-contaminated Wipes Exemption) | 38 MRS §1301 <i>et seq.</i> | Routine Technical | No | 4/26/2017 |
| 2017-071 | 06-096 | Department of Environmental Protection | Ch. 426 | Responsibilities under the Returnable Beverage Container Law | 38 MRS §§ 3101-3117 | Routine Technical | No | 5/8/2017 |
| 2017-125 | 06-096 | Department of Environmental Protection | Ch. 450 | Administrative Regulations for Hydropower Projects (<i>jointly with 01-672, Maine Land Use Planning Commission, Ch. 11, filing 2017-124</i>) | 5 MRS §§ 8001-10008; 12 MRS §§ 401-409, 681-689; 38 MRS §§ 341-H, 630-638 | Routine Technical | No | 11/2/2017 |
| 2017-188 | 06-096 | Department of Environmental Protection | Ch. 200 | Metallic Mineral Exploration, Advanced Exploration and Mining | PL 2011 ch. 653; 38 MRS §490-NN(1)(B); PL 2017 ch. 142 | Major Substantive | No | 12/28/2017 |

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|----------|-------------------|---|-------------------|---|-------------------------------------|----------------------|-----------|-------------------|
| 2017-055 | 09-137 | Department of Inland Fisheries and Wildlife | Ch. 1 | Open Water and Ice Fishing Regulations (Ice fishing season extension) | 12 MRS §10104 | Routine Technical | Yes | 4/1/2017 |
| 2017-057 | 09-137 | Department of Inland Fisheries and Wildlife | Ch. 8 | Endangered Species: 8.06, Protection Guidelines and Broad Activity Exemptions for Bats | 12 MRS §§ 12808-A, 12804 | Routine Technical | No | 4/8/2017 |
| 2017-065 | 09-137 | Department of Inland Fisheries and Wildlife | Ch. 4 | Hunting and Trapping: 4.02, Migratory Bird Hunting | 12 MRS §§ 10104, 11855 | Routine Technical | No | 5/1/2017 |
| 2017-066 | 09-137 | Department of Inland Fisheries and Wildlife | Ch. 4 | Hunting and Trapping: 4.05, Moose Hunting Season | 12 MRS §11552 | Routine Technical | No | 5/2/2017 |
| 2017-067 | 09-137 | Department of Inland Fisheries and Wildlife | Ch. 13 | Watercraft Rules: 13.07, Rules of Operation for Watercraft on Internal Waters | 12 MRS §13051 | Routine Technical | No | 5/2/2017 |
| 2017-092 | 09-137 | Department of Inland Fisheries and Wildlife | Ch. 4 | Hunting and Trapping: 4.06(2), Wild Turkey (Fall Season) | 12 MRS §11701 | Routine Technical | No | 7/1/2017 |
| 2017-127 | 09-137 | Department of Inland Fisheries and Wildlife | Ch. 4 | Hunting and Trapping: 4.03(C), Deer Hunting Seasons | 12 MRS §§ 11152, 11401 | Routine Technical | No | 8/23/2017 |
| 2017-153 | 09-137 | Department of Inland Fisheries and Wildlife | Ch. 4 | Hunting and Trapping: 4.03, Deer Hunting Seasons (Open and Closed Seasons - City of Eastport) | 12 MRS §11402 | Routine Technical | No | 9/27/2017 |
| 2017-155 | 09-137 | Department of Inland Fisheries and Wildlife | Ch. 4 | Hunting and Trapping: 4.01, Upland Game and Furbearing Animals (Beaver Trapping) | 12 MRS §10104 | Routine Technical | No | 10/2/2017 |
| 2017-160 | 09-137 | Department of Inland Fisheries and Wildlife | Ch. 1 | Open Water and Ice Fishing Regulations | 12 MRS §§ 10104, 12452, 12461 | Routine Technical | No | 1/1/2018 |

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| 2017-161 | 09-137 | Department of Inland Fisheries and Wildlife | Ch. 1-A | State Heritage Fish Waters | 12 MRS §§ 10104, 12452, 12461 | Routine Technical | No | 1/1/2018 |
| 2017-195 | 09-137 | Department of Inland Fisheries and Wildlife | Ch. 6 | Educational and Scientific Collection Permit Rules: 6.01, Scope of Rules; 6.02, Permit Required | 12 MRS §§ 10104, 12152 | Routine Technical | No | 12/16/2017 |

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| 2017-147 | 10-144 | Department of Health and Human Services, Maine Center for Disease Control and Prevention | Ch. 33 | Child Care Provider Licensing Rule (formerly 10-148 ch. 33, Rules for the Certification of Family Childcare Providers) | 22 MRS §§ 7702-B(11), 7703(6), 7704, 7707(3), 7802(7), 8301(8), 8302-A(2), 8303-A(1) | Routine Technical | No | 9/20/2017 |
| 2017-148 | 10-144 | Department of Health and Human Services, Maine Center for Disease Control and Prevention | Ch. 33 | Child Care Provider Licensing Rule (formerly 10-148 ch. 33, Rules for the Certification of Family Childcare Providers) | 22 MRS §§ 7702-B(11), 7703(6), 7704, 7707(3), 7802(7), 8301(8), 8302-A(2), 8303-A(1) | Major Substantive | Yes | 9/20/2017 |
| 2017-004 | 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 Facility Services | 22 MRS §§ 42(8), 3173 | Routine Technical | No | 1/18/2017 |
| 2017-022 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | MaineCare Benefits Manual: Ch. II & III Section 12, Consumer Directed Attendant Services and Allowances for Consumer Directed Attendant Services | 22 MRS §§ 42(8), 3173; PL 2016 ch. 83, (127th Legis. 2016) | Routine Technical | No | 2/22/2017 |
| 2017-023 | 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 2016 ch. 83, (127th Legis. 2016) | Routine Technical | No | 2/22/2017 |

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| 2017-027 | 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, 3173; PL 2016 ch. 477 (eff. April 15, 2016); Resolves 2016 ch. 82 (eff. April 26, 2016) | Routine Technical | No | 2/26/2017 |
| 2017-028 | 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, 42(8), 3173; 5 MRS §8054; PL 2016 ch. 477 (eff. April 15, 2016) | Routine Technical | No | 2/27/2017 |
| 2017-030 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | MaineCare Benefits Manual: Ch. II & III Section 20, Home and Community Based Services for Adults with Other Related Conditions | 22 MRS §§ 42, 3173 | Routine Technical | No | 3/1/2017 |
| 2017-031 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | MaineCare Benefits Manual: Ch. II Section 29, Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder | 22 MRS §§ 42, 3173 | Routine Technical | No | 3/4/2017 |
| 2017-038 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | MaineCare Benefits Manual: Ch. II Section 21, Home and Community Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder | 22 MRS §§ 42, 3173; LD 1638 | Routine Technical | No | 3/5/2017 |

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| 2017-060 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | MaineCare Benefits Manual: Ch. II & III Section 93, Opioid Health Home Services | 22 MRS §§ 42, 3173; PL 2017 ch. 2 | Routine Technical | Yes | 4/11/2017 |
| 2017-078 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | Ch. II & III Section 19, Home and Community Benefits for the Elderly and Adults with Disabilities | 22 MRS §§ 42, 3173 | Routine Technical | No | 6/1/2017 |
| 2017-091 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | Ch. III Section 97, Private Non-Medical Institution Services | 22 MRS §§ 42(8), 3173; PL 2016 ch. 477; Resolves 2015 ch. 45, 2017 ch. 6 | Major Substantive | No | 7/16/2017 |
| 2017-103 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | MaineCare Benefits Manual: Ch. II & III Section 93, Opioid Health Home Services | 22 MRS §§ 42, 3173; 5 MRS §8054; PL 2017 ch. 2 | Routine Technical | No | 7/10/2017 |
| 2017-104 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | MaineCare Benefits Manual: Ch. X Section 1, Benefit for People Living with HIV/AIDS | 22 MRS §§ 42, 3173 | Routine Technical | No | 7/10/2017 |

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| 2017-105 | 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; 5 MRS §4551 et seq.; 22 MRS 42(8); 42 CFR 1007; PL 2014 ch. 444 (to be codified at 22 MRS §3174-WW); 42 USC 1320a-7; 42 CFR 431.55(h)(2); 42 CFR 455.416(c); Public Law 111-148; Public Law 111-256; LD 1596; 22 MRS §3173-C sub-§2, as amended by PL 2011 ch. 458 | Routine Technical | No | 7/5/2017 |
| 2017-114 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | Ch. III Section 29, Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder | 22 MRS §§ 42, 3173 | Major Substantive | No | 8/26/2017 |

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| 2017-121 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | Ch. III Section 21, Allowances for Home and Community Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder | 22 MRS §§ 42, 3173; LD 1638 | Major Substantive | No | 9/6/2017 |
| 2017-132 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | Ch. II Section 80, Pharmacy Services | 22 MRS §§ 42, 3173 | Routine Technical | No | 9/1/2017 |
| 2017-156 | 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 Autism Spectrum Disorder | 22 MRS §42(1) & (8), §3173; 5 MRS §§ 8054, 8073; PL 2017 ch. 284 §§ MMMMMMM-2, TTTT-1 | Major Substantive | Yes | 9/29/2017 |
| 2017-157 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | MaineCare Benefits Manual: Ch. II Section 29, Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder | 22 MRS §42, §3173; 5 MRS §8054; PL 2017 ch. 284 | Routine Technical | Yes | 10/1/2017 |
| 2017-158 | 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 Autism Spectrum Disorder | 22 MRS §42, §3173; 5 MRS §8054, 8073; PL 2017 ch. 284 §§ MMMMMMM-2, TTTT-1 | Major Substantive | Yes | 10/1/2017 |

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| 2017-169 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | MaineCare Benefits Manual: Ch. III Section 19, Home and Community Benefits for the Elderly and Adults with Disabilities | 22 MRS §§ 42(1), 42(8), 3173; 5 MRS §8054; PL 2017 ch. 284 §§ MMMMMMM-1, TTTT-1 | Routine Technical | Yes | 11/1/2017 |
| 2017-173 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | MaineCare Benefits Manual: Ch. II & III Section 45, Hospital Services | 22 MRS §§ 42, 3173; PL 2017 ch. 284 §ZZZZZ-9 | Routine Technical | No | 11/14/2017 |
| 2017-174 | 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; 5 MRS §8054; PL 2017 ch. 284 part MMMMMMM-1 | Routine Technical | Yes | 11/14/2017 |
| 2017-176 | 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; 5 MRS §8054; PL 2017 ch. 284 parts MMMMMMM-1, TTTT-1 | Routine Technical | Yes | 11/14/2017 |

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| 2017-201 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | Ch. III Section 2, Adult Family Care Services | 22 MRS §§ 42(8), 3173; PL 2015 ch. 481 part C | Routine Technical | No | 12/23/2017 |
| 2017-203 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | Ch. II Section 21, Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder | 22 MRS §§ 42, 3173 | Routine Technical | No | 12/24/2017 |
| 2017-209 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | Ch. II Section 29, Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder | 22 MRS §§ 42, 3173 | Routine Technical | No | 12/28/2017 |
| 2017-168 | 10-144 | Department of Health and Human Services, Maine Center for Disease Control and Prevention | Ch. 122 | Maine Medical Use of Marijuana Program Rule | 22 MRS ch. 558-C; 22 MRS §42; 22-A MRS §205 | Routine Technical | No | 2/1/2018 |
| 2017-204 | 10-144 | Department of Health and Human Services, Maine Center of Disease Control and Prevention | Ch. 249 | Smoking in Public Places Rule | 22 MRS §§ 42, 1541-1550; PL 2015 ch. 318 | Routine Technical | No | 12/27/2017 |
| 2017-194 | 10-144 | Department of Health and Human Services, Maine Center for Disease Control and Prevention | Ch. 280 | Maine Birth Defects Program Rule | 22 MRS §§ 8944, 8943 | Routine Technical | No | 12/13/2017 |

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| 2017-100 | 10-144 | Department of Health and Human Services, Office for Family Independence | Ch. 301 | Food Supplement Program Certification Manual, FS Rule #195A: Disqualified Members, Work Registration, and Child Support Orders | 22 MRS §§ 42(1), 3104; 7 CFR §§ 272.1, 272.6, 272.8(a), 273.4, 273.7, 273.11, 273.18, 273.24 | Routine Technical | No | 7/3/2017 |
| 2017-145 | 10-144 | Department of Health and Human Services, Office for Family Independence | Ch. 301 | Food Supplement Program Manual, FS Rule 292E (COLA SUA FFY 2018): FS-000-1, Basis of Issuance: FS 333-1, Asset Eligibility Standards; FS-444-8, Households with Special Circumstances: FS-555-5 and FS-555-6, Income and Deductions | 22 MRS §§ 42, 3104; 5 MRS §8054 | Routine Technical | Yes | 10/1/2017 |

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| 2017-197 | 10-144 | Department of Health and Human Services, Office for Family Independence | Ch. 301 | Food Supplement Program (Maine Food Supplement Program Certification Manual), FS Rule #202A (COLA SUA FFY 2018 and Food Act 2008) – multiple sections | 22 MRS §§ 42, 3104; PL ch. 284 sec, NNNNNNN-8; 7 CFR §§ 273.9(d), 273.8(B)(1), 273.10; “Supplemental Nutrition Assistance Program: Eligibility, Certification, and Employment and Training Provisions of the Food, Conservation and Energy Act of 2008” | Routine Technical | No | 12/19/2017 |
| 2017-006 | 10-144 | Department of Health and Human Services, Office for Family Independence | Ch. 331 | Maine Public Assistance Manual (TANF), TANF Rule #106A (EBT): Ch. VI, Administrative Procedures, Electronic Benefit Transfer System | 22 MRS §§ 3762(3)A, 3763(11)-(12), 3769-A | Routine Technical | No | 2/1/2017 |

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| 2017-146 | 10-144 | Department of Health and Human Services, Office for Family Independence | Ch. 331 | Maine Public Assistance Manual, TANF Rule #108P (Repeal of RCA): Table of Contents, Introduction; Ch. VI, Types and Methods of Payments; Overpayments; Electronic Benefits Transfer (EBT) System; Ch. VII, Refugee Cash Assistance Program (RCA) | 22 MRS §§ 42(1), 3762(3)(A); 45 CFR 400.301 | Routine Technical | No | 9/20/2017 |
| 2017-151 | 10-144 | Department of Health and Human Services, Office for Family Independence | Ch. 331 | Maine Public Assistance Manual (TANF), TANF Rule #109E – 128th Legislative Changes: Introduction; Ch. I, Eligibility Process; Ch. II, Eligibility Requirements (Non-Financial); Ch. IV, Budgeting Process; Ch. V, Post TANF Benefits; Ch. VI, Administrative Procedures; Ch. VIII, Emergency Assistance; Ch. XI, TANF Economic Support for Working Families; Appendices, Charts, Budget Sheets | 5 MRS §8054; 22 MRS §§ 42(1), 3762, sub-§3, B, 3769-C, sub-§1, 3782-A(6), 3785 sub-§8, g 3790(7); PL 2017 ch. 256 (22 MRS §§ 3762 sub-§3, 3785); PL 2017 ch. 290 (22 MRS §§ 3762 sub-§3); PL 2017 ch. 284 pt. NNNNNNN §§ 9, 11, 14; pt. TTTT §1 | Routine Technical | Yes | 9/19/2017 |

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| 2017-198 | 10-144 | Department of Health and Human Services, Office for Family Independence | Ch. 331 | Ch. 331, Maine Public Assistance Manual (TANF), TANF Rule #109A (128th Legislative Changes): Introduction; Ch. I, Eligibility Process; Ch. II, Eligibility Requirements (Non-Financial); Ch. III, Eligibility Requirements (Financial); Ch. IV, Budgeting Process; Ch. V, Post TANF Benefits; Ch. VI, Administrative Procedures; Ch. VIII, Emergency Assistance; Ch. XI, TANF Economic Support for Working Families; Appendices, Charts, Budget Sheets | 5 MRS §8054; 22 MRS §§ 42(1), 3762, sub-§3, B, 3769-C, sub-§1, 3782-A(6), 3785 sub-§8, g 3790(7); PL 2017 ch. 256 (22 MRS §§ 3762 sub-§3, 3785); PL 2017 ch. 290 (22 MRS §§ 3762 sub-§3); PL 2017 ch. 284 pt. NNNNNNN §§ 9, 11, 14 | Routine Technical | No | 12/19/2017 |
| 2017-097 | 10-144 | Department of Health and Human Services, Office for Family Independence | Ch. 332 | MaineCare Eligibility Manual, Rule #285A: Part 11, State Supplement; Section 10, EBT Method of Payment; Permissible Use | 22 MRS §§ 42(1), 3173, 3274, 3763(11); 42 USCS §1382g | Routine Technical | No | 7/1/2017 |

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| 2017-136 | 10-144 | Department of Health and Human Services, Office for Family Independence | Ch. 332 | MaineCare Eligibility Manual, Rule #286A: Part 3, Eligibility Groups Requirements; Section 3.1, Refugees / Asylees | 22 MRS §§ 42(1); 45 CFR 400.301 | Routine Technical | No | 9/3/2017 |
| 2017-048 | 10-144 | Department of Health and Human Services, Division of Support Enforcement and Recovery | Ch. 351 | Maine Child Support Enforcement Manual: Ch. 2, Definitions; Ch. 16, Federal Income Tax Refund Offset; Ch. 17, State Income Tax Refund Offset; Ch. 19, Periodic Review and Modification of Support Orders | 22 MRS §42(1); 42 USC §§ 664, 666; 36 MRS §5276-A | Routine Technical | No | 3/14/2017 |
| 2017-119 | 10-144 | Department of Health and Human Services, Division of Support Enforcement and Recovery | Ch. 351 | Maine Child Support Enforcement Manual: Ch. 2, Definitions | 22 MRS §42(1) | Routine Technical | No | 8/9/2017 |
| 2017-120 | 10-144 | Department of Health and Human Services, Division of Support Enforcement and Recovery | Ch. 351 | Maine Child Support Enforcement Manual: Ch. 5, 12, 13, 25 | 22 MRS §42(1); 81 Fed. Ref. 93492 | Routine Technical | No | 8/9/2017 |
| 2017-009 | 10-144 | Department of Health and Human Services, Office for Family Independence | Ch. 607 | ASPIRE-TANF Program Rules, ASPIRE Policy #23A (Clarify and Correct) | 22 MRS §§ 42(1), 3762 <i>et seq.</i> , 3781-A <i>et seq.</i> , 3782-A(6), 42 USC §§ 601, 602, 607, 609 (<i>as amended</i>) | Routine Technical | No | 2/6/2017 |

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| 2017-152 | 10-144 | Department of Health and Human Services, Office for Family Independence | Ch. 607 | ASPIRE-TANF Program Rules, Rule #24E – Budget-related Changes for Good Cause and Parents as Scholars Program | 5 MRS §8054; 22 MRS §§ 42(1), 3762 et seq., 3782-A(6), 3785, 3790(7); PL 2017 ch. 284 part NNNNNNN §§ 13 thru 16; part TTTT §1 | Routine Technical | Yes | 9/19/2017 |
| 2017-199 | 10-144 | Department of Health and Human Services, Office for Family Independence | Ch. 607 | ASPIRE-TANF Program Rules, Rule #24A – Budget-related Changes for Good Cause and Parents as Scholars Program | 5 MRS §8054; 22 MRS §§ 42(1), 3762 et seq., 3782-A(6), 3785, 3790(7); PL 2017 ch. 284 part NNNNNNN §§ 13 thru 16 | Routine Technical | No | 12/19/2017 |
| 2017-196 | 10-146 | Department of Health and Human Services, Maine Center for Disease Control and Prevention | Ch. 14 | Late-filed Certificate for Application of Marriage Rule | 22 MRS §42; 19-A MRS §660 | Routine Technical | No | 12/20/2017 |

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| 2017-072 | 10-148 | Department of Health and Human Services, Office of Child and Family Services | Ch. 201 | Procedures for the Abuse or Neglect Substantiation Process, for Appeals for Persons Substantiated as Perpetrators of Abuse or Neglect of Children, and Appeals for Denial of Access to Confidential Records | 22 MRS §§ 42, 5601-5610, 4008(7); PL 2015 c. 501 | Routine Technical | No | 5/15/2017 |
| 2017-126 | 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 | Routine Technical and Major Substantive | No | 9/16/2017 |

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| 2017-087 | 12-170 | Department of Labor, Bureau of Labor Standards | Ch. 10 | Rules Governing Employment Leave for Victims of Violence | 26 MRS §850 | Routine Technical | No | 6/12/2017 |
| 2017-189 | 12-172 | Department of Labor, Maine Unemployment Insurance Commission | Ch. 9 | Able and Available Requirements | 26 MRS §1082(2) | Routine Technical | No | 12/9/2017 |
| 2017-190 | 12-172 | Department of Labor, Maine Unemployment Insurance Commission | Ch. 16 | Benefit Payments to Aliens | 26 MRS §1082(2) | Routine Technical | No | 12/9/2017 |
| 2017-191 | 12-172 | Department of Labor, Maine Unemployment Insurance Commission | Ch. 19 | Other Remuneration | 26 MRS §1082(2) | Routine Technical | No | 12/9/2017 |
| 2017-192 | 12-172 | Department of Labor, Maine Unemployment Insurance Commission | Ch. 20 | Unemployment Fraud or Misrepresentation by Claimants | 26 MRS §1082(2) | Routine Technical | No | 12/9/2017 |
| 2017-207 | 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 | 12/26/2017 |
| 2017-208 | 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 | 12/26/2017 |

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| 2017-001 | 13-188 | Department of Marine Resources | Ch. 11 | Scallops: 11.05, Scallop Harvesting Gear Restrictions; 11.08, Targeted Scallop Conservation Closures; 11.09, Limited Access Areas | 12 MRS §6171(3) | Routine Technical | Yes | 1/1/2017 |
| 2017-008 | 13-188 | Department of Marine Resources | Ch. 11 | Scallops: 11.08, Targeted Scallop Conservation Closures: (1) Muscle Ridge, (13) Chandler Bay / Head Harbor, (14) Inner Cranberry Isle Area | 12 MRS §6171(3) | Routine Technical | Yes | 1/22/2017 |
| 2017-012 | 13-188 | Department of Marine Resources | Ch. 11 | Scallops: 11.08, Targeted Scallop Conservation Closures: (2nd paragraph, and) (11) Casco Bay, (13) Chandler Bay / Head Harbor, (15) Upper Damariscotta River, (16), North Haven, (17), Mid Penobscot Bay, (18), Lower Blue Hill Bay/ Jericho Bay; 11.09, Limited Access Areas: (2), Damariscotta/ Sheepscot Area; 11.12, Ten (10) Year Rotational Management Plan: 1. Zone Two (2) Eastern Maine; B. Second Rotation | 12 MRS §6171(3) | Routine Technical | Yes | 2/5/2017 |

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| Log # | Umbrella/ unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-------------------|--------------------------------|-------------------|--|------------------------------|----------------------|-----------|-------------------|
| 2017-033 | 13-188 | Department of Marine Resources | Ch. 11 | Scallops: 11.08, Targeted Scallop Conservation Closures: (2nd paragraph, and) (13) Chandler Bay / Head Harbor Island; (15) Damariscotta River; (16) North Haven; (17) Mid Penobscot Bay; (18) Lower Blue Hill Bay / Jericho Bay; 11.12, Ten (10) Year Rotational Management Plan: (5) Lower Blue Hill Bay / Jericho Bay; (7) Mid Penobscot Bay | 12 MRS §6171(3) | Routine Technical | Yes | 2/26/2017 |
| 2017-041 | 13-188 | Department of Marine Resources | Ch. 25 | Lobster and Crab: 25.04, Lobster Trawl Limits; 25.93, Management Framework for Limiting Lobster Fishing Effort on a Local or Regional Basis – Operational Rules; 25.96, Lobster Apprentice Program | 12 MRS §§ 6447, 6448 | Routine Technical | No | 3/12/2017 |
| 2017-042 | 13-188 | Department of Marine Resources | Ch. 25 | Lobster and Crab: 25.94, Lobster Management Zones | 12 MRS §6446 | Routine Technical | No | 3/12/2017 |
| 2017-043 | 13-188 | Department of Marine Resources | Ch. 32 | Eel Regulations: 32.35, Elver Quota System for 2017 Elver Season; 32.40, Elver Transaction Cards; 32.50, Mandatory Elver Dealer Meeting to Prepare for the 2017 Elver Season | 12 MRS §§ 6302- B, 6505-A | Routine Technical | No | 3/12/2017 |
| 2017-044 | 13-188 | Department of Marine Resources | Ch. 40 | Smelt Regulations: 40.12(C), Smelt Management Zone Restrictions | 12 MRS §6171 | Routine Technical | No | 3/12/2017 |

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|----------|-------------------|--------------------------------|-------------------|--|------------------------|-------------------|-----------|-------------------|
| 2017-049 | 13-188 | Department of Marine Resources | Ch. 11 | Scallops: 11.08, Targeted Scallop Conservation Closures: <i>(2nd paragraph, and)</i> (19) Cobscook Bay | 12 MRS §6171(3) | Routine Technical | Yes | 3/12/2017 |
| 2017-068 | 13-188 | Department of Marine Resources | Ch. 34 | Groundfish Regulations: 34.07, Atlantic Halibut (<i>Hippoglossus hippoglossus</i>) | 12 MRS §6171(3) | Routine Technical | Yes | 4/30/2017 |
| 2017-083 | 13-188 | Department of Marine Resources | Ch. 36 | Herring Regulations: 36.01, Herring Management Plan | 12 MRS §6171(3) | Routine Technical | Yes | 6/4/2017 |
| 2017-084 | 13-188 | Department of Marine Resources | Ch. 41 | Menhaden: 41.30, Menhaden Program (Menhaden Fishery Closure) | 12 MRS §6171(3)(A) | Routine Technical | Yes | 6/3/2017 |
| 2017-088 | 13-188 | Department of Marine Resources | Ch. 41 | Menhaden: 41.05, Territorial Waters Trawl Prohibition; 41.30, Menhaden Program (Episodic Event Fishery) | 12 MRS §6171(3)(C) | Routine Technical | Yes | 6/8/2017 |
| 2017-101 | 13-188 | Department of Marine Resources | Ch. 36 | Herring Regulations: 36.01, Herring Management Plan | 12 MRS §6171(3) | Routine Technical | Yes | 7/1/2017 |
| 2017-102 | 13-188 | Department of Marine Resources | Ch. 41 | Menhaden: 41.30, Menhaden Program (Menhaden Episodic Event Fishery Closure) | 12 MRS §6171(3)(C) | Routine Technical | Yes | 7/3/2017 |
| 2017-115 | 13-188 | Department of Marine Resources | Ch. 36 | Herring Regulations: 36.01, Herring Management Plan | 12 MRS §6171(3) | Routine Technical | Yes | 7/29/2017 |
| 2017-116 | 13-188 | Department of Marine Resources | Ch. 26 | Sea Urchin Regulations | 12 MRS §§ 6749, 6173 | Routine Technical | No | 8/7/2017 |
| 2017-117 | 13-188 | Department of Marine Resources | Ch. 34 | Groundfish Regulations: 34.06, Recreational Groundfish Restrictions (Recreational Cod, Haddock and Pollock Federal Compliance and Technical Changes) | 12 MRS §6171 | Routine Technical | No | 8/7/2017 |

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|----------|-------------------|--------------------------------|-------------------|--|---------------------------------|----------------------|-----------|-------------------|
| 2017-118 | 13-188 | Department of Marine Resources | Ch. 36 | Herring Regulations: 36.01, Herring Management Plan | 12 MRS §6171(3) | Routine Technical | No | 8/7/2017 |
| 2017-123 | 13-188 | Department of Marine Resources | Ch. 115 | <i>Vibrio parahaemolyticus</i> Control Plan | 12 MRS §6171-A | Routine Technical | Yes | 8/9/2017 |
| 2017-149 | 13-188 | Department of Marine Resources | Ch. 36 | Herring Regulations: 36.01, Herring Management Plan, D.: Catch Restrictions | 12 MRS §6171(3) | Routine Technical | Yes | 9/17/2017 |
| 2017-159 | 13-188 | Department of Marine Resources | Ch. 41 | Menhaden: 41.30, Menhaden Program, 2., State Allocation Fishery | 12 MRS §6171(3)(A) | Routine Technical | Yes | 9/30/2017 |
| 2017-177 | 13-188 | Department of Marine Resources | Ch. 10 | Clams and Quahogs: 10.05, Taking of Quahogs in the Sub-Tidal Waters of New Meadows Lake, Brunswick and West Bath | 12 MRS §6171 | Routine Technical | No | 11/19/2017 |
| 2017-178 | 13-188 | Department of Marine Resources | Ch. 11 | Scallops: 2017-18 Season | 12 MRS §§ 6171, 6722, 6728-C | Routine Technical | No | 11/19/2017 |
| 2017-179 | 13-188 | Department of Marine Resources | Ch. 25 | Lobster and Crab: Technical Corrections and Jonah Crab Claw Exception | 12 MRS §6171 | Routine Technical | No | 11/19/2017 |
| 2017-180 | 13-188 | Department of Marine Resources | Ch. 44 | American Shad: American Shad Limits | 12 MRS §6171 | Routine Technical | No | 11/19/2017 |
| 2017-181 | 13-188 | Department of Marine Resources | Ch. 55 | Gear Restrictions: Technical Corrections | 12 MRS §6171 | Routine Technical | No | 11/19/2017 |
| 2017-182 | 13-188 | Department of Marine Resources | Ch. 115 | <i>Vibrio parahaemolyticus</i> Control Plan | 12 MRS §6171-A | Routine Technical | No | 11/19/2017 |
| 2017-205 | 13-188 | Department of Marine Resources | Ch. 36 | Herring Regulations: 36.01, Herring Management Plan | 12 MRS §6171(3) | Routine Technical | Yes | 12/18/2017 |

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|-----------------|---------------------------|---|---------------------------|------------------------------|--------------------------------|---------------------|------------------|---------------------------|
| 2017-073 | 15-214 | Department of Defense, Veterans and Emergency Management, Maine Emergency Management Agency | Ch. 5 | Maine Disaster Recovery Fund | 37-B MRS §745 | Major Substantive | No | 6/10/2017 |

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|-----------------|---------------------------|--|---------------------------|---------------------------------------|--------------------------------|----------------------|------------------|---------------------------|
| 2017-026 | 16-219 | Department of Public Safety, Office of the Commissioner | Ch. 51 | Polygraph Examiner License Regulation | 32 MRS §7353(2) | Routine Technical | No | 2/22/2017 |

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|----------|-------------------|--|-------------------|---|------------------------|-------------------|-----------|-------------------|
| 2017-005 | 18-125 | Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services) | Ch. 323 | Commercial Agricultural Production, Commercial Aquacultural Production, Commercial Fishing and Commercial Wood Harvesting | 36 MRS §§ 112, 2013 | Routine Technical | No | 1/22/2017 |
| 2017-010 | 18-125 | Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services) | Ch. 807 | Residency | 36 MRS §112 | Routine Technical | No | 2/8/2017 |
| 2017-011 | 18-125 | Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services) | Ch. 806 | Nonresident Individual Income Tax | 36 MRS §112 | Routine Technical | No | 2/11/2017 |
| 2017-013 | 18-125 | Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services) | Ch. 805 | Composite Filing | 36 MRS §§ 112, 5192(5) | Routine Technical | No | 2/12/2017 |
| 2017-077 | 18-125 | Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services) | Ch. 202 | Tree Growth Tax Law Valuations - 2017 | 36 MRS §576 | Routine Technical | No | 5/22/2017 |
| 2017-130 | 18-125 | Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services) | Ch. 104 | Filing of Maine Tax Returns | 36 MRS §193 | Routine Technical | No | 8/28/2017 |

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|-----------------|---------------------------|--|---------------------------|---|---------------------------------------|----------------------|------------------|---------------------------|
| 2017-054 | 18-185 | Department of Administrative and Financial Services, State Claims Commission | Ch. 110 | Rules of Practice Governing the Conduct of Adjudicatory Proceedings for Real Property Acquisition Cases | 23 MRS §154 <i>(4th paragraph)</i> | Routine Technical | No | 4/3/2017 |

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|----------|-------------------|---|-------------------|--|--------------------------------|-------------------|-----------|-------------------|
| 2017-020 | 18-553 | Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations / Maine State Liquor and Lottery Commission | Ch. 3 | On Premise Data Collection Cost Mitigation Stipend | 28-A MRS §§ 83-A, 606 sub-§4-A | Routine Technical | No | 2/15/2017 |
| 2017-021 | 18-553 | Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations / Maine State Liquor and Lottery Commission | Ch. 70 | World Poker Tour Game Rules | 8 MRS §§ 374, 372 sub-§2 | Routine Technical | No | 2/15/2017 |
| 2017-131 | 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 §§ 374, 372 sub-§2 ¶¶ | Routine Technical | No | 9/30/2017 |
| 2017-162 | 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 §§ 374, 372 sub-§2 ¶¶ | Routine Technical | No | 10/28/2017 |
| 2017-163 | 18-553 | Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations / Maine State Liquor and Lottery Commission | Ch. 60 | Monopoly Millionaires' Club Rules | 8 MRS §§ 374, 372 sub-§2 ¶¶ | Routine Technical | No | 10/28/2017 |

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|----------|-------------------|---|-------------------|--------------------------|-----------------------------|-------------------|-----------|-------------------|
| 2017-164 | 18-553 | Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations / Maine State Liquor and Lottery Commission | Ch. 80 | Lotto America Game Rules | 8 MRS §§ 374, 372 sub-§2 ¶I | Routine Technical | No | 11/15/2017 |
| 2017-167 | 18-553 | Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations / Maine State Liquor and Lottery Commission | Ch. 30 | Hot Lotto Rules | 8 MRS §§ 374, 372 sub-§2 ¶I | Routine Technical | No | 11/6/2017 |

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|-----------------|---------------------------|---|---------------------------|--|--------------------------------|----------------------|------------------|---------------------------|
| 2017-193 | 19-498 | Department of Economic and Community Development, Office of Community Development | Ch. 46 | Community Development Block Grant Program: 2018 Final Program Statement | 5 MRS §13058 sub-§3 | Routine Technical | No | 12/10/2017 |

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|-----------------|---------------------------|--|---------------------------|---|--------------------------------|----------------------|------------------|---------------------------|
| 2017-002 | 29-250 | Secretary of State, Bureau of Motor Vehicles | Ch. 157 | The Administration of Over Dimension and Overweight Permits | 29-A MRS §2382 | Routine Technical | No | 1/8/2017 |
| 2017-062 | 29-250 | Secretary of State, Bureau of Motor Vehicles | Ch. 7 | Rules for the Suspension of Licensure for Failure to Comply with Child Support Orders | 29-A MRS §153 | Routine Technical | No | 4/19/2017 |
| 2017-089 | 29-250 | Secretary of State, Bureau of Motor Vehicles | Ch. 11 | Rules Governing Motorcycle Rider Education | 29-A MRS §153 | Routine Technical | No | 6/13/2017 |

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|-----------------|---------------------------|-----------------------------|---------------------------|--|--|----------------------|------------------|---------------------------|
| 2017-051 | 65-407 | Public Utilities Commission | Ch. 313 | Customer Net Energy Billing | 35-A MRS §§ 104, 111, 1301, 3203(9), 3209-A, 3210 | Routine Technical | No | 3/29/2017 |
| 2017-085 | 65-407 | Public Utilities Commission | Ch. 220 | Removal of Provider of Last Resort Service Obligation | 35-A MRS §§ 101, 111, 7221; Resolves 2017 ch. 4 | Major Substantive | No | 7/6/2017 |
| 2017-110 | 65-407 | Public Utilities Commission | Ch. 314 | Statewide Low-Income Assistance Plan | 35-A MRS §§ 104, 111, 704, 1308, 3214 | Routine Technical | No | 7/25/2017 |

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|----------|-------------------|---|-------------------|---|---|----------------------|-----------|-------------------|
| 2017-122 | 65-625 | Maine Public Utilities Commission, Emergency Services Communications Bureau | Ch. 2 | Requirements for the Enhanced 9-1-1 System Service Provider and Local Exchange Carriers | 25 MRS §§ 2926, 2927, 2933; 35-A MRS §§ 103(2)(D), 111 | Routine Technical | No | 8/13/2017 |

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| Log # | Umbrella/ unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-------------------|--|-------------------|--|---|----------------------|-----------|-------------------|
| 2017-074 | 90-564 | Clean-up and Response Fund Review Board (<i>formerly</i> Fund Insurance Review Board) | Ch. 3 | Appeals Procedure | 38 MRS §§ 568-A(3-A), 568-B(1), 568-A(1)(H), 551(4) | Routine Technical | No | 5/20/2017 |
| 2017-075 | 90-564 | Clean-up and Response Fund Review Board (<i>formerly</i> Fund Insurance Review Board) | Ch. 4 | Oil Import Fees | 38 MRS §§ 568-A(3-A), 568-B(1), 568-A(1)(H), 551(4) | Routine Technical | No | 5/20/2017 |
| 2017-076 | 90-564 | Clean-up and Response Fund Review Board (<i>formerly</i> Fund Insurance Review Board) | Ch. 5 | Documentation Requirements for Application to the State Fire Marshal for Coverage by the Maine Ground and Surface Waters Clean-up and Response Fund at Above Ground Oil Storage Facilities | 38 MRS §§ 568-A(3-A), 568-B(1), 568-A(1)(H), 551(4) | Routine Technical | No | 5/20/2017 |

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|-----------------|---------------------------|--------------------------------|---------------------------|---|---|----------------------|------------------|---------------------------|
| 2017-045 | 90-590 | Maine Health Data Organization | Ch. 243 | Uniform Reporting System for Health Care Claims Data Sets | 22 MRS §§ 8703(1), 8704(4), 8708(6-A), 8712(2) | Routine Technical | No | 3/13/2017 |
| 2017-166 | 90-590 | Maine Health Data Organization | Ch. 241 | Uniform Reporting System for Hospital Inpatient Data Sets and Hospital Outpatient Data Sets | 22 MRS ch. 1683 §8704 sub-§4, §8708 | Routine Technical | No | 10/31/2017 |

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|--------------|---------------------------|---|---------------------------|--|-----------------------------------|----------------------|------------------|---------------------------|
| 2017-112 | 94-270 | Commission on Governmental Ethics and Election Practices | Ch. 3 | Maine Clean Election Act and Related Provisions | 1 MRS §1003(1); 21-A MRS §1126 | Major Substantive | No | 8/20/2017 |

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|-----------------|---------------------------|-----------------------------|---------------------------|---|--------------------------------|----------------------|------------------|---------------------------|
| 2017-034 | 94-293 | Baxter State Park Authority | Ch. 1 | Baxter State Park Rules and Regulations: Rule 1.2, Camping is permitted by reservation | 12 MRS §903 | Routine Technical | No | 3/4/2017 |
| 2017-035 | 94-293 | Baxter State Park Authority | Ch. 1 | Baxter State Park Rules and Regulations: Rule 1.3, All persons entering the Park by road or trail | 12 MRS §903 | Routine Technical | No | 3/4/2017 |
| 2017-036 | 94-293 | Baxter State Park Authority | Ch. 1 | Baxter State Park Rules and Regulations: Rule 5.1, The operation of motorized trail bikes, and ATVs | 12 MRS §903 | Routine Technical | No | 3/4/2017 |
| 2017-037 | 94-293 | Baxter State Park Authority | Ch. 1 | Baxter State Park Rules and Regulations: Rule 5.6, Take off and landing of aircraft in the Park | 12 MRS §903 | Routine Technical | No | 3/4/2017 |

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|--------------|---------------------------|--|---------------------------|--|--------------------------------|----------------------|------------------|---------------------------|
| 2017-133 | 94-411 | Maine Public Employees Retirement System | Ch. 803 | Participating Local District Consolidated Plan | 5 MRS §§ 17103(4), 18801 | Routine Technical | No | 8/30/2017 |

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|----------|-------------------|----------------------------|-------------------|---|-----------------------------|----------------------|-----------|-------------------|
| 2017-014 | 94-457 | Finance Authority of Maine | Ch. 607 | Access to Medical Education and Health Professions Loan Programs, <i>Amendment 10</i> | 20-A MRS §§ 11810, 12107 | Routine Technical | No | 2/12/2017 |
| 2017-015 | 94-457 | Finance Authority of Maine | Ch. 617 | Health Professions Loan Program, <i>Amendment 1</i> | 20-A MRS §12107 | Routine Technical | No | 2/12/2017 |
| 2017-016 | 94-457 | Finance Authority of Maine | Ch. 618 | Maine Veterinary Medicine Loan Program, <i>Amendment 1</i> | 20-A MRS §12124 | Routine Technical | No | 2/12/2017 |
| 2017-059 | 94-457 | Finance Authority of Maine | Ch. 101 | Loan Insurance Program, <i>Amendment 6</i> | 10 MRS §§ 969-A(14), 1026-A | Routine Technical | No | 4/9/2017 |
| 2017-171 | 94-457 | Finance Authority of Maine | Ch. 326 | Compliance Assistance Loan Program | 10 MRS §969-A(14) | Routine Technical | No | 11/8/2017 |

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| Log # | Umbrella/ unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-------------------|-------------------------------|-------------------|-------------------------------------|---|----------------------|-----------|-------------------|
| 2017-106 | 99-346 | Maine State Housing Authority | Ch. 19 | Homeless Solutions Rule | 30-A MRS §§ 4741.1, 4741.18, 4852 <i>et seq.</i> | Routine Technical | No | 7/11/2017 |
| 2017-107 | 99-346 | Maine State Housing Authority | Ch. 24 | Home Energy Assistance Program Rule | 30-A MRS §§ 4722(I)(W), 4741(15), 4991 <i>et seq.</i> ; 42 USCA §§ 8621 <i>et seq.</i> | Routine Technical | No | 7/11/2017 |
| 2017-183 | 99-346 | Maine State Housing Authority | Ch. 16 | Low Income Housing Tax Credit Rule | 30-A MRS §§ 4741(1), 4741(14), and Section 42 of the <i>Internal Revenue Code of 1986</i> , as amended | Routine Technical | No | 11/26/2017 |

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

Umbrella-Unit: **18-125**

Statutory authority: 36 MRS §§ 112, 2013

Chapter number/title: **Ch. 323**, Commercial Agricultural Production, Commercial Aquacultural Production, Commercial Fishing and Commercial Wood Harvesting

Filing number: **2017-005**

Effective date: 1/22/2017

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

Maine Revenue Services is adopting minor amendments to Rule 323 in order to update it to reflect recent statutory changes that apply to sales occurring on or after January 1, 2017. The amendments will not result in any substantive change for taxpayers. This is routine annual.

Basis statement:

The statutory authority for amending Rule 323 is found in Title 36 MRS §§ 112 and 2013. This is not major substantive rulemaking. No comments were received from the public.

Fiscal impact of rule:

N/A

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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. 807**, Residency
Filing number: **2017-010**
Effective date: 2/8/2017
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

MRS has amended Rule 807 ("Residency"). Rule 807, last amended in 2012, explains standards for determining Maine residency for income tax purposes. The following changes are being made to the proposed rule. Section .08 is reformatted, clarifies that military pay earned by a Maine resident servicemember for active duty service performed outside Maine under written military orders is not taxed in Maine and makes a technical change to correct an erroneous reference. A copy of the rule can be found on the MRS website at www.maine.gov/revenue/ (select Laws & Rules).

Fiscal impact of rule:
Minimal

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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. 806**, Nonresidential Individual Income Tax
Filing number: **2017-011**
Effective date: 2/11/2017
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

Maine Revenue Services has amended Rule 806 ("Nonresident Individual Income Tax"). Rule 806, last amended in 2012, provides comprehensive definitions and explanations of statutory terms and procedures for nonresident individual income tax filers. The rule is edited to include minor formatting changes to be consistent with other Bureau of Revenue Services Rules and to update references to M.R.S.A. and MRSA to M.R.S. New section .03(G) is added to reflect that compensation or income earned by nonresident taxpayers that is directly related to a declared state disaster or emergency is exempt from Maine tax if the taxpayer's only presence in Maine is for the sole purpose of providing disaster relief. The remaining provisions are renumbered accordingly. The application date of the amended rule is changed to accommodate the effective date of the exemption of disaster relief income. A copy of the rule can be found on the MRS website at www.maine.gov/revenue/ (select Laws & Rules).

Fiscal impact of rule:
Minimal

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Agency name: Department of Administrative and Financial Services, **Bureau of Revenue Services (Maine Revenue Services)**
Umbrella-Unit: **18-125**
Statutory authority: 36 MRS §§ 112, 5192(5)
Chapter number/title: **Ch. 805**, Composite Filing
Filing number: **2017-013**
Effective date: 2/12/2017
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

Maine Revenue Services has amended Rule 805 ("Composite Filing"). Rule 805 establishes procedures for filing of composite returns of income by partnerships, estates, trusts, and S corporations on behalf of partners, beneficiaries, or shareholders. In addition to technical, nonsubstantive changes, the rule was revised to reflect the decrease in the individual income tax rate as established in 36 MRS §5111(1-E) for tax years beginning in 2016. A copy of the rule can be found on the MRS website at www.maine.gov/revenue/ (select Laws & Rules).

Fiscal impact of rule:
Minimal

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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 - 2017
Filing number: **2017-077**
Effective date: 5/22/2017
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 2017-18 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.

Property tax burden based on current use value helps reduce the incidence of forestland conversion and is intended to foster improved forest management and harvesting practices designed to better utilize and conserve this important natural resource.

Owners of land classified as forestland as of April 1, 2017, must be assessed according to the values finally adopted for 2017 property tax purposes.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 §193
Chapter number/title: **Ch. 104**, Filing of Maine Tax Returns
Filing number: **2017-130**
Effective date: 8/28/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

MRS is amending Rule 104 (“Filing of Maine Tax Returns”). The rule is being amended to include electronic filing requirements for preparers of real estate transfer tax declarations.

Basis statement:

The rule is being amended to include electronic filing requirements for preparers of real estate transfer tax declarations. The rule currently includes electronic filing requirements for return preparers of many other tax types administered by the Bureau. The electronic filing system for transfer tax declarations has been operating for several years and the Bureau is confident that the system functions - and will function - properly. Electronic filing of transfer tax declarations will reduce costs to both the Bureau and preparers, will allow faster processing of returns, and will provide sales data to municipalities much sooner than with paper filing.

Fiscal impact of rule:

There is no anticipated fiscal impact as a result of these changes. There will be some administrative savings due to the streamlining of processing returns electronically.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Administrative and Financial Services, **State Claims Commission**
Umbrella-Unit: **18-185**
Statutory authority: 23 MRS §154 (*4th paragraph*)
Chapter number/title: **Ch. 110**, Rules of Practice Governing the Conduct of Adjudicatory Proceedings for Real Property Acquisition Cases
Filing number: **2017-054**
Effective date: 4/3/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The amendment clarifies certain sections of the existing rule in regard to requesting and paying for the record of a hearing before the State Claims Commission, and certain standards regarding discovery and pre-hearing practice. The rule specifies a method for calculating interest on awards to landowners made by the State Claims Commission. The rule removes certain antiquated language in the current rule, such as the reference to "land damage" cases, and changes that language to terms that are more modern in usage. It also makes changes to improve grammar and eliminates what might be certain sexist presumptions in the current rule.

Basis statement:

This rule is being promulgated in order to update and amend the existing rule, which is entitled "Rules of Practice Governing the Conduct of Adjudicatory Proceedings for Land Damage Cases". This rule is a routine technical rule that establishes the procedures for the conduct of cases before the State Claims Commission. The State Claims Commission provides a forum for property owners to challenge the amount of compensation awarded to them by the Maine Department of Transportation when a property interest, usually in the form of real estate, is subjected to the eminent domain powers of the State of Maine. Pursuant to the United States and Maine Constitutions, property owners are entitled to just compensation for the interest that was taken by the governmental entity. These rules establish the procedure by which the State Claims Commission hears cases and decides whether the compensation offered by the Maine Department of Transportation (or other governmental entity, such as the Maine Turnpike Authority) was "just".

The existing rule was originally promulgated in 1978 and was last amended in 1990. The majority of the changes made to the existing regulation are relatively minor, such as the removal of the archaic terminology "land damage" from the title of the rule and replacing it with "real property acquisition." Similarly, certain language in the existing rule which to some sensibilities now seems sexist is being amended to eliminate any potential sexual bias. The new rule recognizes that certain new modes of communication, such e-mail, may be utilized by the parties in official communications with the Commission. A few changes in the existing text were made simply to make the flow of the language within a rule more concise or understandable, or to make the regulation as a whole more readable by reordering and renumbering some of the paragraphs.

The new rule does make certain substantive changes. For instance, state law requires that interest be paid on awards made by the State Claims Commission in eminent domain cases. The current version of the rule does not assign any particular percentage that must be paid, nor does it establish a method for the identification of an interest rate that is "just" to both the governmental entity and to the property owner. The new rule establishes a process of calculating interest which permits the percentage to fluctuate with changing economic conditions over a course of years.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

The new rule gives somewhat more discretion to the Clerk of the State Claims Commission to choose an appropriate site for hearings, for instance to accommodate a litigant's disability; or to enable a party to utilize certain technologies, such as an overhead projector, in the presentation of a case; or to choose a site so that a highway project that crosses a county line can be heard in its entirety on one day, as opposed to having two separate hearings on separate days, one in each respective county. The new rule requires a written report to be prepared for any pre-hearing conference. The new rule clarifies and makes more specific the sec practice in regard to giving property owners notice, and then declaring a default if the property owner does not appear at the hearing, taking into account guidance suggested by a relevant 2006 United States Supreme Court case, Jones v. Flowers, 126 S.Ct. 1708. The new rule also clarifies the procedures for parties to pay for transcripts of hearings before the State Claims Commission, should any party desire such a transcript.

Fiscal impact of rule:

No fiscal impact is anticipated because of this amendment to the existing rule.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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: 28-A MRS §§ 83-A, 606 sub-§4-A

Chapter number/title: **Ch. 3**, On Premise Data Collection Cost Mitigation Stipend

Filing number: **2017-020**

Effective date: 2/15/2017

Type of rule: Routine Technical

Emergency rule: No

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

Basis statement:

This new rule establishes the process for a one-time stipend to be paid by the Bureau to agency liquor stores licensed as reselling agents as of July, 1, 2016, for mitigating the cost of providing on-premise sales data to the Bureau from agency liquor stores which were licensed as reselling agents as of July 1, 2016.

Fiscal impact of rule:

Approximately \$68,000 expended by the Bureau to pay the one-time stipend.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 §§ 374, 372 sub-§2

Chapter number/title: **Ch. 70**, World Poker Tour Game Rules

Filing number: **2017-021**

Effective date: 2/15/2017

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To establish the rules for the operation of the new lotto draw game World Poker Tour.

Basis statement:

This new rule governs the draw lotto game World Poker Tour. The game is only being offered by the Maine State Lottery. This is a draw game with an instant win and add on game components. The cost of a game play is \$2.00 (two dollars). The draw game is based on drawing five (5) cards from a standard deck of playing cards. The instant win component is based on the five (5) cards matching a winning poker hand of Jack or better that have printed on the ticket at the time of purchase. The game offers a \$1.00 (one dollar) add on feature called "All In". The "All In" feature allows players to enter the progressive jackpot that starts at \$10,000 and grows based on sales.

The average odds of winning a prize in the draw game is 1:235.3 and the average odds of winning a prize in the instant win component is 1:4.8. The top prize of the draw game component is \$100,000; \$5,000 for the instant win component and \$5,000 plus 100 percent (one hundred) of the progressive jackpot amount.

Fiscal impact of rule:

There is no known fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 §§ 374, 372 sub-§2 ¶I

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

Filing number: **2017-131**

Effective date: 9/30/2017

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 necessary changes to allow for electronically created play slips, technical changes to clarify language, and fix typographical errors.

Fiscal impact of rule:

There is no known fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 §§ 374, 372 sub-§2 ¶¶

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

Filing number: **2017-162**

Effective date: 10/28/2017

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 draw 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 the following changes:

1. Price for each Play goes from \$1.00 to \$2.00 for the base game;
2. Players will now pick 5 numbers out of a field of 70 numbers vs. 75 and 1 number out of a field of 25 vs. 15;
3. The starting jackpot goes from \$15 million to \$40 million
4. The 9 tier of prizes in the game will changes as follows:

| | Current Prize Level | New |
|----|----------------------------|------------|
| 1. | Grand Prize | same |
| 2. | \$1,000,000 | same |
| 3. | \$5,000 | \$10,000 |
| 4. | \$500 | same |
| 5. | \$50 | \$200 |
| 6. | \$5 | \$10 |
| 7. | \$5 | \$10 |
| 8. | \$2 | \$4 |
| 9. | \$2 | \$4 |

5. Overall odds to win a prize in the game go from 1:14 to 1:24 and the odds of winning the Grand Prize go from 1:258,890,850 to 1:302,575,350; and
6. Game will still offer for an additional \$1.00 a multiplier option that will multiply non-jackpot prizes by 2, 3, 4 or 5 times

Fiscal impact of rule:

There is no known fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 §§ 374, 372 sub-§2 ¶I

Chapter number/title: **Ch. 60**, Monopoly Millionaires' Club Rules

Filing number: **2017-163**

Effective date: 10/28/2017

Type of rule: Routine Technical

Emergency rule: No

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

Basis statement:
The Monopoly Millionaires' Club draw game ended with the final draw of December 28, 2014.

Fiscal impact of rule:
There is no known fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 §§ 374, 372 sub-§2 ¶I

Chapter number/title: **Ch. 80**, Lotto America Game Rules

Filing number: **2017-164**

Effective date: 11/15/2017

Type of rule: Routine Technical

Emergency rule: No

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

Basis statement:

This new rule governs the draw lotto game Lotto America. This is a new multi-jurisdictional draw game offered by the Multi-State Lottery Association of which the Maine State Lottery is a member. The Lotto America Game consists of the following:

1. Price for each Play is \$1.00 for the base game;
2. Players will pick 5 numbers from a field of 52 numbers plus 1 number from a field of 10 numbers;
3. The starting jackpot will be \$1,000,000;
4. Overall odds to win a prize in the game are 1:9.6315 and the odds of winning the Grand Prize (jackpot) will be 1:25,989,600;
5. Game will offer for an additional \$1.00 a multiplier option called All Star Bonus that will multiply non-jackpot prizes by 2, 3, 4 or 5 times; and
6. The draw nights for this game will be Wednesday and Saturday.

Fiscal impact of rule:

There is no known fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 §§ 374, 372 sub-§2 ¶I

Chapter number/title: **Ch. 30**, Hot Lotto Rules

Filing number: **2017-167**

Effective date: 11/6/2017

Type of rule: Routine Technical

Emergency rule: No

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

Basis statement:
The Hot Lotto draw game is ending on the last drawing on October 28, 2017.

Fiscal impact of rule:
There is no known fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 c. 205-A §2217
Chapter number/title: Ch. 273, Criteria for Listing Invasive Terrestrial Plants
Filing number: 2017-003
Effective date: 1/14/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Invasive plants are a direct threat to what we value about Maine's natural and working landscapes. The aggressive growth of invasive plants increases costs for agriculture, can affect forest regeneration, threatens our recreational experiences, and reduces the value of habitats for mammals, birds and pollinators. Species like Japanese barberry and multiflora rose can form thorny, impenetrable thickets in forests and agricultural fields.

Invasive species are the second-greatest threat to global biodiversity after loss of habitat. Invading plants out compete native species by hogging sunlight, water, nutrients, and space. They change animal habitat by eliminating native foods, altering cover, and destroying nesting opportunities. Some invaders are so aggressive they leave no room for our natives.

Basis statement:

In 2007 the Department of Agriculture was directed by the legislature to study invasive terrestrial plants with stakeholder input. In February 2008 a report was presented to the joint standing committee on Agriculture, Conservation and Forestry which presented a list of criteria for evaluating invasive terrestrial plants. Subsequently the Department was directed to establish criteria for evaluating invasive terrestrial plants in rule.

In 2011-2012 the Department adopted rules which established the criteria for listing invasive, likely invasive and potentially invasive plants. Those criteria were used to develop a draft plant list by the Invasive Plant Workgroup which was appointed by the Commissioner of the Department of Agriculture, Conservation and Forestry.

The Secretary of State published a notice on November 16, 2016 and by this date well over 500 companies and individuals representing the horticulture and environmental interests in the state had been notified electronically. A public hearing was held in Augusta on December 8, 2016 with two people representing horticulture businesses, three others environmental/land trust organizations and one representing herself. Four spoke in favor of the proposed rule and two spoke neither for nor against. There were a few suggestions to exempt certain cultivars of plants and to adjust the plant list to differing plant hardiness zones in the state.

The comment period ended on December 16, 2016. There were 125 e-mail messages that were all in support of the rule as proposed. There were 41 commenters that had more substantive comments and only 7 suggested specific language changes. Four commenters suggested adding new plants to the list and four others suggested removing plants or cultivars of certain species. Two commenters suggested that observations from land management professionals or nursery professionals could be used to help support the exemption of plant species or cultivars while four others did not support that change and wanted the rule to be very restrictive regarding potential plant exemptions. Other comments included adding an educational component or an eradication component to the rules and there were three commenters that wanted to extend the phase-in period while six others wanted to keep the phase-in period one year and/or implement the rule ASAP. There was one request to amend a common plant name on the list as well. Finally there

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

was one commenter who asked to adjust the plant listing to hardiness zones while four others disagreed with that comment.

The Department's staff reviewed the hearing record on December 28, 2016. Minor word changes suggested in the comments were made to the proposed rule. Substantive suggestions made by some commenters were countered by others, and the Department made no changes with regard to those suggested amendments.

The rule was adopted with increased specificity on the word propagation making it intentional propagation for sale or distribution. The common name of False Indigo was amended to False Indigo Bush. Finally a few typographical errors were corrected.

Fiscal impact of rule:

Because the majority of nurseries have already suspended the sale of these plants the fiscal impact on the regulated community should be minimal. Because the regulatory duties prescribed by the rule can be managed with the existing staff resources, the fiscal impact on the Department should also be negligible.

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Rules Adopted January 1, 2017 to December 31, 2017
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: 2017-052
Effective date: 4/9/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

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

Basis statement:

Costs incurred for the Maine Milk Pool for personnel services and for operation was approximately \$60,000 in 2016. Based on the last twelve months expenses, it is estimated that the Pool costs for similar expenses for 2017 will be about \$60,000.

The total pounds in the Pool for the last twelve months (December 2015 - November 2016) were 622,132,348. It is estimated that the total pounds in the Pool for 2017 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 2017 at \$0.01/cwt.

Fiscal impact of rule:

None.

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Rules Adopted January 1, 2017 to December 31, 2017
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 §2910-B; 10 MRS §1023-P; 8 MRS §1036 sub-§2-A ¶M
Chapter number/title: Ch. 34, Rules for Operation of Dairy Improvement Fund
Filing number: 2017-108
Effective date: 7/16/2017
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This chapter establishes rules governing the expenditure of funds available in accordance with 7 MRS §2910-B; 10 MRS §1023-P; 8 MRS §1036 sub-§2-A ¶M.

The Dairy Improvement Fund (DIF) is a revolving loan program intended to assist dairy farmers in making capital improvements to maintain and enhance the viability of their farms and to pay the administrative costs of processing loan applications and servicing and administering the fund and loans made from the fund.

Fiscal impact of rule:

New benefit to dairy producers and minor impact on DACF for Administrative and outreach role.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 §98(4)
Chapter number/title: Ch. 226, Rules Governing the Administration of Certain Substances to Animals Entered in Pulling Competitions
Filing number: 2017-134
Effective date: 9/2/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of these amendments is as follows for Ch. 226: 1) Clarify who is responsible for the animals that are in violation of the no tolerance rule in regards to drug testing during a licensed pulling event; 2) add definition of “Driver”; 3) clarify who should be witnessing the blood draw and who is to sign as the witness; 4) clarify who is an “Agent” under the definition; 5) remove the word “Trainer” and replace with “Driver”; and 6) remove the word “Agent” and replace with “Department” in Section 3.

Basis statement:

The Commission adopted a few changes to Ch. 226 to clean up the language to mirror the statutes.

The amendments contained the following substantive changes:

- Add Licensed to the definition of Event.
- Replace Competition with Event.

Fiscal impact of rule:

The amendments should not have a fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 Part 2 ch. 101 sub-ch. 2 §§ 443, 443-B
Chapter number/title: Ch. 144, Standards for the Use of the State of Maine Quality Trademark on Molluscan Shellfish
Filing number: 2017-138
Effective date: 9/18/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rulemaking promulgates Ch. 144 rules to establish standards and minimum requirements for licensing of permit holders for use of the State of Maine Quality Trademark on molluscan shellfish containers. Use of the trademark is restricted to whole or shucked molluscan shellfish harvested from within the boundaries of the State of Maine that meet the standard requirements for designated use of the Molluscan Shellfish Quality Trademark.

Basis statement:

Ch. 144 of the Maine Department of Agriculture, Conservation & Forestry, Division of Quality Assurance and Regulations' rules establishes standards and minimum requirements for licensing of permit holders for use of the State of Maine Quality Trademark on molluscan shellfish containers. Use of the trademark is restricted to whole or shucked molluscan shellfish harvested from within the boundaries of the State of Maine that meet the standard requirements for designated use of the Quality Trademark.

On September 12, 1988, the Department was directed by 7 MRS §§ 441 and 443, the authority to promulgate Ch. 135: Official Use of the State of Maine Quality Trademark. These rules describe the State of Maine Quality Trademark and establish procedures for licensing and for use for individual commodities. Ch. 144 extends these rules to molluscan shellfish.

The revised rule proposed for adoption may be obtained on the Department's internet web page located at: www.maine.gov/dacf/.

Fiscal impact of rule:

If the rule is adopted as presented, the Department estimates the increase in licensing fees would not exceed one million dollars. The outcome would be an increase for the general fund.

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Rules Adopted January 1, 2017 to December 31, 2017
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: 10 MRS Part 6 ch. 501 sub-ch. 9 §2701
Chapter number/title: Ch. 307, Fees for Testing Weighing and Measuring Devices
Filing number: 2017-202
Effective date: 12/18/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rulemaking amends Ch. 307 to bring weights and measures fees in line with the actual costs to calibrate the equipment. An analysis of current labor and benefit rates for an inspector highlights that fees collected for calibration services are often less than one half of the labor cost associated with the actual procedure. A comparison with 11 other states also found that Maine fees were among the lowest in the group; not surprising given that Maine has not made any changes to this rulemaking chapter since 1991. Included in the rulemaking is the elimination of language referencing fees for adjustment services given that the Department outsourced this activity to the private sector many years ago. A reference to liquefied and compressed natural gas is added as Maine can see the future implementation of this technology within the State.

Basis statement:

Ch. 307 of the Maine Department of Agriculture, Conservation & Forestry, Division of Quality Assurance and Regulations rules, establishes a fee structure for the testing of weights and measures devices. The purpose of testing requirements is to eliminate from use, weights and measures and weighing and measuring devices that give readings that are false, that are of such construction that they are faulty (that is, that are not reasonably permanent in their adjustment or will not repeat their indications correctly), or that facilitate the perpetration of fraud, without prejudice to apparatus that conforms as closely as practicable to the official standards.

On July 1, 1977, Ch. 307 was promulgated to direct the Department to establish fees for the testing of weights and measures devices with amendments to the rule that occurred November 28, 1981 and February 16, 1991. The current amendment to Ch. 307 brings weights and measures fees in line with the actual costs to calibrate the equipment. An analysis of current labor and benefit rates for an inspector highlights that fees collected for calibration services are often less than one half of the labor cost associated with the actual procedure. A comparison with 11 other states also found that Maine's fees were among the lowest in the group; not surprising given that Maine has not made any changes to this rulemaking chapter since 1991. Included in the rulemaking is the elimination of language referencing fees for adjustment services given that the Department outsourced this activity to the private sector many years ago. A reference to liquefied and compressed natural gas is added as Maine can see the future implementation of this technology within the State.

Fiscal impact of rule:

The Department estimates the increase of weights and measures device testing fees would not exceed one million dollars. The outcome would be an increase for the general fund.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 #02-17**
Filing number: **2017-007**
Effective date: 1/29/2017
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 2017** minimum Class I price is **\$19.98/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 **\$24.64/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 rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$17.40/cwt.** and a Class IV price of **\$14.97/cwt.** for **December 2016.**

The Class II price for **December 2016** is **\$15.26/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 **\$19.98/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 January 20, 2017 and therefore should be passed on in minimum prices effective January 29, 2017. These prices also include a handling fee of \$1.40/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 #03-17**

Filing number: **2017-032**

Effective date: 2/27/2017

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 2017** minimum Class I price is **\$20.15/cwt. plus \$1.53/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.93/cwt.** handling fee for a total of **\$23.85/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$3.71.**

Basis statement:

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

Federal Order One Northeast Market Administrator announced a Class III price of **\$17.77/cwt.** and a Class IV price of **\$16.19/cwt.** for **January 2017.**

The Class II price for **January 2017** is **\$16.36/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 **\$20.15/cwt. plus \$1.53/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on February 23, 2017 and therefore should be passed on in minimum prices effective February 26, 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 Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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: 7 MRS §2954

Chapter number/title: **Ch. 27**, Retail Margins

Filing number: **2017-040**

Effective date: 3/23/2017

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The principal reason for this rule is the need to establish retail margins for milk sold within the State of Maine in accordance with 7 MRS §2954.

Basis statement / summary:

This rule establishes minimum retail margins for milk sold in Maine.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 #04-17**

Filing number: **2017-053**

Effective date: 4/2/2017

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 2017** minimum Class I price is **\$19.30/cwt. plus \$1.53/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$1.86/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 **\$3.73.**

Basis statement:

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

Federal Order One Northeast Market Administrator announced a Class III price of **\$16.88/cwt.** and a Class IV price of **\$15.59/cwt.** for **February 2017.**

The Class II price for **February 2017** is **\$16.52/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 **\$19.30/cwt. plus \$1.53/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on March 23, 2017 and therefore should be passed on in minimum prices effective April 2, 2017. These prices also include a handling fee of \$1.86/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 #05-17**

Filing number: **2017-064**

Effective date: 4/30/2017

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 2017** minimum Class I price is **\$18.45/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$2.79/cwt.** handling fee for a total of **\$24.06/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$3.74**.

Basis statement:

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

Federal Order One Northeast Market Administrator announced a Class III price of **\$14.32/cwt.** and a Class IV price of **\$15.59/cwt.** for **March 2017**.

The Class II price for **March 2017** is **\$16.21/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 **\$18.45/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on April 20, 2017 and therefore should be passed on in minimum prices effective April 30, 2017. 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 Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 #06-17**

Filing number: **2017-079**

Effective date: 6/4/2017

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 2017** minimum Class I price is **\$18.56/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$2.33/cwt.** handling fee for a total of **\$23.71/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$3.71**.

Basis statement:

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

Federal Order One Northeast Market Administrator announced a Class III price of **\$15.22/cwt.** and a Class IV price of **\$14.01/cwt.** for **April 2017**.

The Class II price for **April 2017** is **\$14.81/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 **\$18.56/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on May 18, 2017 and therefore should be passed on in minimum prices effective June 4, 2017. These prices also include a handling fee of \$2.33/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 #07-17**

Filing number: **2017-096**

Effective date: 7/2/2017

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 2017** minimum Class I price is **\$19.84/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$1.40/cwt.** handling fee for a total of **\$24.06/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$3.74.**

Basis statement:

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

Federal Order One Northeast Market Administrator announced a Class III price of **\$15.57/cwt.** and a Class IV price of **\$14.49/cwt.** for **May 2017.**

The Class II price for **May 2017** is **\$14.84/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 **\$19.84/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on June 22, 2017 and therefore should be passed on in minimum prices effective July 2, 2017. These prices also include a handling fee of \$1.40/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 #08-17**

Filing number: **2017-111**

Effective date: 7/30/2017

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 2017** minimum Class I price is **\$19.97/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.40/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$1.40/cwt.** handling fee for a total of **\$24.19/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 rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$16.44/cwt.** and a Class IV price of **\$15.89/cwt.** for **June 2017.**

The Class II price for **June 2017** is **\$16.15/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 **\$19.97/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on July 20, 2017 and therefore should be passed on in minimum prices effective July 30, 2017. These prices also include a handling fee of \$1.40/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 #09-17**

Filing number: **2017-137**

Effective date: 9/3/2017

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 2017** minimum Class I price is **\$19.96/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$1.40/cwt.** handling fee for a total of **\$24.18/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 rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$15.45/cwt.** and a Class IV price of **\$16.60/cwt.** for **July 2017.**

The Class II price for **July 2017** is **\$17.48/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 **\$19.96/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on August 24, 2017 and therefore should be passed on in minimum prices effective September 3, 2017. These prices also include a handling fee of \$1.40/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 #10-17**

Filing number: **2017-154**

Effective date: 10/1/2017

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 2017** minimum Class I price is **\$19.69/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$1.40/cwt.** handling fee for a total of **\$23.91/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$3.75**.

Basis statement:

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

Federal Order One Northeast Market Administrator announced a Class III price of **\$16.57/cwt.** and a Class IV price of **\$16.61/cwt.** for **August 2017**.

The Class II price for **August 2017** is **\$17.56/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 **\$19.69/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on September 21, 2017 and therefore should be passed on in minimum prices effective October 1, 2017. These prices also include a handling fee of \$1.40/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 #11-17**

Filing number: **2017-165**

Effective date: 10/29/2017

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 2017** minimum Class I price is **\$19.66/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$1.40/cwt.** handling fee for a total of **\$23.88/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 rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$16.36/cwt.** and a Class IV price of **\$15.86/cwt.** for **September 2017.**

The Class II price for **September 2017** is **\$16.80/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 **\$19.66/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on October 19, 2017 and therefore should be passed on in minimum prices effective October 29, 2017. These prices also include a handling fee of \$1.40/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 #12-17**
Filing number: **2017-184**
Effective date: 12/3/2017
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 2017** minimum Class I price is **\$20.13/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.93/cwt.** handling fee for a total of **\$23.88/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 rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$16.69/cwt.** and a Class IV price of **\$14.85/cwt.** for **October 2017.**

The Class II price for **October 2017** is **\$15.95/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 \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on November 22, 2017 and therefore should be passed on in minimum prices effective December 3, 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 Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 #01-18**

Filing number: **2017-206**

Effective date: 12/31/2017

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 2018** minimum Class I price is **\$18.69/cwt. plus \$1.63/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$2.33/cwt.** handling fee for a total of **\$23.89/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$3.73**.

Basis statement:

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

Federal Order One Northeast Market Administrator announced a Class III price of **\$16.88/cwt.** and a Class IV price of **\$13.99/cwt.** for **November 2017**.

The Class II price for **November 2017** is **\$15.32/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 **\$18.69/cwt. plus \$1.63/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on December 21, 2017 and therefore should be passed on in minimum prices effective December 31, 2017. These prices also include a handling fee of \$2.33/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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**, Medications, Prohibited Substances and Testing

Filing number: **2017-069**

Effective date: 5/7/2017

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The changes clarify the standards and expectations covering the administration of therapeutic substances to race horses and synchronize the classification of substances between Ch. 11 and Ch. 17.

Basis statement:

The Commission undertakes a major rewrite of Ch. 11 because the prevailing sentiment was that strong and enforceable standards covering the use of prohibited substances are important for the integrity of the sport. Due to the broad scope of the proposed amendments, the Commission utilized the "repeal and replace" approach to the rulemaking initiative. The amendments contained the following substantive changes:

- A complete reorganization of the chapter into a more logical sequence;
- Incorporation by reference of the December 9, 2016 Association of Racing Commissioners International schedules for both prohibited substances and permitted medications;
- A new set of "standards of conduct" that establish Commission expectations around the proper use of medications and supplements;
- Updated standards covering the use of non-steroidal anti-inflammatory drugs;
- Incorporation by reference of the ARCI drug classification guidelines;
- A codification of the Commission's "strict liability" standard;
- A modification of the language covering the presence and use of injection paraphernalia to clarify it cannot be present in the paddock area.

The only comments received on the Ch. 11 proposal were submitted by the Commission staff and related primarily to drafting errors.

The Commission reviewed the proposed changes and the comments at its March 30, 2017 meeting. It agreed that a small set of standards contained within Section 6 of Ch. 17 actually fit better in Ch. 11 and elected to move a modified version of those standards to Ch. 11, after accounting for potential redundancy.

The Commission found that the proposed amendments - after being revised to correct drafting errors - are in the best interest of the industry and elected to adopt the changes at its April 21, 2017 meeting.

Fiscal impact of rule:

The amendment should not have a fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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. 17**, Rule Violations; Penalties

Filing number: **2017-070**

Effective date: 5/7/2017

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The amendments eliminate the requirement to consider mitigating circumstances for violations of prohibited substances requirements, clarify how repeated offenses are calculated, and allow for the suspension of horses for certain violations.

Basis statement:

The Commission adopted a series of amendments to Ch. 17 in order to strengthen its ability to deter the use of prohibited substances and otherwise update certain sections that appeared vague or impractical.

The amendments included the following substantive changes:

- Section 6 was updated to reflect that Ch. 11 refers to drug classes instead of categories which will also align Ch. 17 with the Association of Racing Commissioners International (ARCI) drug classification schedule;
- A paragraph was added to Section 6 to cover "Class D" drugs to be consistent with the ARCI classification schedule;
- Reference to "mitigating circumstances" was deleted from the chart in Section 6 because the penalty range already allows for consideration of mitigating circumstances;
- A new section-derived from the ARCI model rule-was added to address habitual medication offenders.

A public hearing was held on February 24, 2017 and the Commission reviewed the comments at the March 30, 2017 meeting. Only one comment was received from the regulated community. Wendy Ireland-from the Maine Standardbred Breeders and Owners Association-voiced concern about the removal of the mitigating circumstances language. The Commission considered this comment and determined that it had still had the latitude to consider mitigating circumstances by virtue of the penalty ranges.

The Commission supported including language in the penalty chart in Section 6 that would require suspension of the horse until the purse was repaid. However, this change was deemed to constitute a substantive change, so the Commission elected to postpone consideration of such language pending future rulemaking.

The Commission agreed with the staff that new language contained in Section 6 that speaks to the conduct of participants other than the trainer was better suited to include in Ch. 11, and elected to move that language after accounting for redundancy within Ch. 11.

After reviewing the comments and the proposed amendments, the Commission determined that the amendments as revised are in the best interest of the harness racing industry and elected to adopt the amendments at its April 21, 2017 meeting.

Fiscal impact of rule:

The amendment should not have a fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Agriculture, Conservation and Forestry, **Pull Events Commission**
Umbrella-Unit: **01-303**
Statutory authority: 7 MRS §98(4)
Chapter number/title: **Ch. 15**, Rules for Superintendents and Assistant Superintendents of Pull Events
Filing number: **2017-135**
Effective date: 9/2/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of these amendments is as follows for Ch. 15: 1) Add definitions for “Driver” and “Teamster”; 2) clarify what applications superintendents need to submit to become certified superintendents; 3) clarify the authority superintendents have when giving warnings to teamsters; 4) add a Body Condition Scoring System for the equine animals entered into a Pull Event; and 5) improve and strengthen the requirements for becoming a certified Pull Superintendent.

Basis statement:

The Commission adopted a few changes to Ch. 15 to clean up the language to mirror the statutes.

The amendments contained the following substantive changes:

- Add the definition of Driver and Teamster.
- Add a procedure to become a certified Pull Superintendent.
- Add a body condition chart for the equine animals for superintendents to follow.

Fiscal impact of rule:

The amendment should not have a fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Agriculture, Conservation and Forestry, **Bureau of Parks and Lands**
Umbrella-Unit: **01-670**
Statutory authority: 12 MRS §1803(6)
Chapter number/title: **Ch. 2**, Rules and Regulations for the Allagash Wilderness Waterway
Filing number: **2017-024**
Effective date: 2/22/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To amend existing rules to allow for an additional foot trail, change in snowmobile trails and float plane access sites to the Allagash Wilderness Waterway rules without adding to the total number of sites.

Basis statement:

Rules for the Allagash Wilderness Waterway are amended to allow for an additional foot trail, change in snowmobile trails and float plane access sites to the Allagash Wilderness Waterway rules without adding to the total number of sites. The additional authorized foot trail will allow safer access to the locomotives in T8-R13. The change in snowmobile access points will allow trails in locations where there is more demand for that use without increasing the total number of access points. The change in float plane access sites will allow for the use where there is more demand for that use without increasing the total number of sites.

Fiscal impact of rule:

N/A

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Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Agriculture, Conservation and Forestry, **Bureau of Parks and Lands**
Umbrella-Unit: **01-670**
Statutory authority: 12 MRS §1825(4)
Chapter number/title: **Ch. 5**, Rules and Regulations for Lunch and Campsites in the Penobscot River Corridor, Lobster Lake and Chesuncook Lake.
Filing number: **2017-025**
Effective date: 2/22/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To allow for the increase of camping fees to offset the cost of maintaining campsites in the Penobscot River Corridor, Lobster Lake, and Chesuncook Lake. The last fee increase was in 2008.

Basis statement:

Rules for Lunch and Campsites in the Penobscot River Corridor, Lobster Lake and Chesuncook Lake are amended to allow for the increase of camping fees section to offset the cost of maintaining campsites in the Penobscot River Corridor, Lobster Lake, and Chesuncook Lake. The last fee increase was in 2008. Fees will be adjusted to keep pace with additional costs of maintaining campsites and address an approved fee increase for camping. This will allow for financial order changes of fees without having to update the rules through rulemaking process each time.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 764** (TA R10, TB R10 - Piscataquis County) (petitioner Maine LUPC staff and Cassidy Timberlands LLC)
Filing number: **2017-039**
Effective date: 3/1/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

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

Basis statement:

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

ZONING PETITION

ZP 764

**PETITIONER OR
COPETITIONER**

Maine Land Use
Planning Commission
Staff & Cassidy
Timberlands LLC

LOCATION

TA R10 & TB R10 WELS,
Piscataquis County

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 (*re: Kingsbury Plt.*)
Filing number: **2017-046**
Effective date: 3/13/2017
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 rulemaking 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 listed below comply 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; or
 - any specified place added by rule to the expedited permitting area in accordance with section 3453 prior to January 1, 2016.

A Portion of the Bingham Wind Project, permitted by the Maine Department of Environmental Protection in Order L-25973-24-A-N and L-25973-TG-B-N on September 8, 2014, is located within Kingsbury Plantation. Because the Bingham Wind Project has been permitted as an Expedited Wind Energy Development, the project area does not qualify for removal. Therefore, in

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Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

accordance with 35-A MRS §3453-A(5), the Commission has identified the project boundary for the portion of the Bingham Wind Project within Kingsbury, as including the areas generally referred to as Ridgetop Area V, Ridgetop Area VI, and the generator lead line corridor, as well as the areas containing new access roads that have or may be constructed to provide access to the ridgetop areas and generator lead line corridor.

The project boundary is the geographic limit of an existing or proposed wind energy development. Sound, shadow flicker, or other similar impacts associated with operation of a wind energy development may extend beyond the project boundary. These impacts themselves, however, are not development and, therefore, are not wind energy development. As a result, areas adjacent to the project that are burdened by sound and shadow flicker easements are not included within the project boundary.

Similarly, land management roads - road used primarily for agriculture or forestry - are not part of the project. Easement rights have been granted to the wind power company allowing use of certain land management roads to access the project; maintenance and road improvement rights also have been granted as part of these easements. These land management roads, however, are not part of the project development; their primary purpose is for forestry. As a result, land management roads are not within the project boundary. Access easement areas where roads have or will be constructed for the primary purpose of accessing the Bingham Wind Project are not land management roads and are part of the wind energy development. As noted above, areas where new access road have or may be constructed are within the project boundary.

Within the expedited permitting area, wind energy development is an allowed use regardless of the underlying zoning subdistrict. 12 MRS §685-8(2-C)(A). By exempting the area within an existing project boundary from removal from the expedited permitting area, the law prevents existing projects from becoming legally existing, nonconforming uses. As a result of this rulemaking, much of Kingsbury has been removed from the expedited permitting area the area within the project boundary of the Bingham Wind Project has not. This project remains as allowed use.

Fiscal impact of rule:

(No Fact Sheet included)

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Rules Adopted January 1, 2017 to December 31, 2017
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-A MRS §3453-A sub-§§ (1), (3)
Chapter number/title: **Ch. 10**, Land Use Districts and Standards: **Appendix F**, Expedited Wind Energy Development Area (*re: Carroll Plt.*)
Filing number: **2017-047**
Effective date: 3/13/2017
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

In accordance with 35-A MRS §3453-A(3), the Maine Land Use Planning Commission (LUPC) shall, by rule, remove a specified place in the unorganized and deorganized areas from the expedited permitting area for wind energy development upon receipt of a complete and timely petition for removal of the specified place, and, in the case of a timely filed request for substantive review, if the Commission finds the requirements of subsection I, paragraphs A and Band subsection 3, paragraphs A and Bare satisfied. The description and map of the expedited area are included in the Commission's rules as Appendix F to Ch. 10, *Land Use Districts and Standards*.

On January 4, 2016, the Commission received a complete and timely petition to remove Carroll Plantation (Carroll) from the expedited permitting area for wind energy development (expedited area). Subsequently, the Commission received a timely request for substantive review of that petition. At its February 8, 2017 regular business meeting, the Commission found Section 3453-A(1)(A)&(B) were satisfied. The Commission also reviewed the testimony and evidence in the record and found the substantive review requirements of Section 3453-A(3)(A)&(B) (Criteria A and B) were satisfied.

Valid Petition:

Carroll is a plantation that is part of the expedited permitting area. See 35-A MRS §3453-A(1)(A). The Commission received a petition to remove Carroll from the expedited permitting area before the June 30, 2016 submission deadline. That petition clearly states the individuals signing the petition form are requesting removal of Carroll; is signed by ten registered voters residing in Carroll, a number that is greater than 10 percent of the number of registered voters residing in Carroll that voted in the most recent gubernatorial election; and is on a form provided by the LUPC. As a result, at its February 8, 2017 meeting, the Commission found Section 3453-A(1)(A)&(B) were satisfied. The Carroll removal petition is valid.

Substantive Review Decision Criteria:

Title 35-A §3453-A(3) contains two statutory criteria; both must be met during the substantive review process to remove a place from the expedited area.

Criterion A. *The proposed removal will not have an unreasonable adverse effect on the State's ability to meet the state goals for wind energy development in §3404 sub-§2 ¶C.*

Criterion B. *The proposed removal is consistent with the principal values and the goals in the comprehensive land use plan adopted by the Maine Land Use Planning Commission pursuant to Title 12 §685-C.*

Findings Regarding the Decision Criteria:

Criterion A. Ability to meet State goal. No unreasonable adverse effect on the State's ability to meet its 2030 wind energy development goal, 35-A MRS §3404(2)(C).

Findings: The Commission concludes that the proposed removal of Carroll Plantation from the expedited area will not have an unreasonable adverse effect on the State's ability to meet the 2030 wind energy goal, leading to a finding that Criteria A has been met in that:

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Rules Adopted January 1, 2017 to December 31, 2017
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- Considerable progress is needed for the State to meet its 2030 wind energy development goal;
- However, there is a relatively limited area in Carroll that has elevations suitable for wind energy generation;
- The wind resource in Carroll is not exceptional;
- The regulatory history of wind energy development in Carroll, that includes permit denials by both the Land Use Regulatory Commission and the Department of Environmental Protection for wind projects proposed in Carroll, discourages future proposals for wind energy development in the Plantation;
- Existing transmission system constraints limit transmission capacity to the south; and
- There are disproportionate impacts to public resource values, particularly the recreational, cultural, and scenic resources of the Downeast lakes, when compared to the limited potential benefits of wind energy generation in the Plantation.

Criterion B. Consistency with values and goals. Removal is consistent with the principal values and goals of the Commission's Comprehensive Land Use Plan adopted pursuant to 12 MRS §685-C.

Findings: The Comprehensive Land Use Plan (CLUP) addresses many different, and sometimes conflicting, values and goals. In its review of the removal petition, the Commission has determined that removal of Carroll from the expedited area would be consistent with three principal values and twelve specific goals: the principal values for recreational opportunities, high-value natural resources, and natural character; and the specific goals for location of development, economic development, site review, historic resources, habitat resources, recreational resources, scenic resources, water resources and wetland resources. The Commission has also determined that removal would not be consistent with one principal value, and three specific goals: the principal value relating to economic value derived from working forests; and the specific goals for air and climate resources, energy resources, and forest resources. Therefore, reaching a final decision on the consistency of Carroll's removal from the expedited area with the principal values and goals of the CLUP involves a balancing. How the Commission has weighed the factors for each principal value and goal is central to the Commission's decision on whether or not the proposed removal of Carroll from the expedited area satisfies Criterion B.

Values: The values cited in the CLUP that were given the most weight during the Commission's rulemaking proceeding in this matter were two of the values with which removal would be consistent: (1) diverse and abundant recreational opportunities and (2) high-value natural resources and features.

On the whole, the Commission finds that the proposed removal would be consistent with the principal values in the CLUP based on the following factors relevant to recreational opportunities and high value natural resources:

- A variety of recreational opportunities exist in and to the south of Carroll, including unique opportunities for extended loop-paddling and access to primitive campsites;
- The recreational opportunities are enhanced by the vast amount of conserved land in the Downeast Lakes Region;
- The unique recreational opportunities are associated with a number of high value lakes with outstanding or significant scenic values that could be adversely impacted by wind energy development; and
- There is evidence that recreation and tourism appear to be important economic drivers in the broader region around Carroll.

Goals: The goals generally given more weight in this proceeding were: (1) air and climate resources, (2) recreational resources, and (3) scenic resources, with the first weighing in favor of Carroll remaining in the expedited permitting area and the second and third weighing in favor of removal.

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Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Balancing all of the goals, the Commission finds that the proposed removal would be consistent with the specific goals of the CLUP based on:

- There are air quality benefits associated with wind energy generation and removal would not be consistent with the specific goal for air and climate resources; however, this is outweighed by evidence on the removal's consistency with the recreational and scenic resources goals;
- Regarding the recreational goal, the record shows there are diverse and abundant recreational opportunities in and near Carroll, particularly in the Downeast Lakes Region;
- Natural resources important to maintaining the recreational environment that supports those opportunities include the significant number of Downeast lakes, especially the nine lakes with scenic values rated as outstanding or of statewide significance;
- There is evidence that wind energy development is incompatible with and could adversely impact those natural resources on which many of the recreational opportunities rely, including adverse impacts to the high scenic value of the Downeast lakes that are used regularly by the public for fishing, boating, and camping; and
- The scope and scale of the potential impacts from wind energy development in Carroll on the public's continued use and enjoyment of the lakes could be significant as reflected in the findings made by the Land Use Regulation Commission's decision on the Bowers Wind Project (DP 4889 at 19, 22, and 24).
- Protection of high-value scenic resources is important at the landscape/ planning level in this matter due to the suitable area for wind energy development extending into the Downeast Lakes Region, a region identified in the CLUP as being unique; the number of high-value resources that would potentially be impacted; and the connectivity of those resources in the regional landscape.

Supported by testimony and evidence in the record and considering the balancing required to reach a consistency determination, the Commission finds that removal of Carroll from the expedited area, overall, is consistent with the principal values and the goals of the CLUP. Given that, Criterion B has been met.

Key Changes to the Rules Include:

- **Ch. 10 Appendix F Section L:** The revisions strike "Carroll Plantation, 19080" from the list of minor civil divisions in the expedited permitting area for wind energy development.

Fiscal impact of rule:

(No Fact Sheet included)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 763** (T17 R4 WELS, Aroostook County)
(petitioners Kevin Beaulieu, Marco Godbout, Joseph & Neil Pelletier)
Filing number: **2017-058**
Effective date: 4/4/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

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

Basis statement:

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

ZONING PETITION

ZP 763

**PETITIONER OR
COPETITIONER**

Kevin Beaulieu,
Marco Godbout,
Joseph & Neil Pelletier

LOCATION

T17 R4 WELS,
Aroostook County

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 765** (West Forks Plt. — Somerset County) (petitioners Maine Bureau of Parks and Lands, James Vogel; Maine Land Use Planning Commission, Jennifer Curtis); **ZP 766** (Baring, Brookton Twp., Edmunds Twp., Grand Lake Stream Plt., Lambert Lake Twp., Trescott Twp. —Washington County) (petitioners Maine Land Use Planning Commission, Stacie Beyer)

Filing number: **2017-080**

Effective date: 5/22/2017

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

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

Basis statement:

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

| ZONING PETITION | PETITIONER OR COPETITIONER | LOCATION |
|------------------------|---|---|
| ZP 765 | Maine Bureau of Parks and Lands, James Vogel; Maine Land Use Planning Commission, Jennifer Curtis | West Forks Plt. — Somerset County |
| ZP 766 | Maine Land Use Planning Commission, Stacie Beyer | Baring, Brookton Twp., Edmunds Twp., Grand Lake Stream Plt., Lambert Lake Twp., Trescott Twp. — Washington County |

Fiscal impact of rule:
 N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 (“Public Drinking Water Source”, “Sole Source Aquifer”); **10.23**, Protection Subdistricts, **B.** Aquifer Protection Subdistrict (P-AR) *(accompanied by an Addendum regarding Appendix E)*

Filing number: **2017-081**

Effective date: 5/29/2017

Type of rule: Routine Technical

Emergency rule: No

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

Basis statement:

The Land Use Planning Commission received a citizen petition to amend Chapter 10 *Land Use Districts and Standards*, in order to allow portable rock crushing equipment by special exception in the Aquifer Protection (P-AR) Subdistrict. The rule revisions include a set of criteria intended to protect the water resource that would have to be met for portable rock crushing to be allowed in the Aquifer Protection Subdistrict. These criteria include provisions to reduce the risk of groundwater contamination from fuel or other hazardous liquids and to reduce the risk of surface water contamination from fine sediments.

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 759 (Carrying Place Town Twp. — Somerset County)
(petitioner Maine Land Use Planning Commission, Stacey Beyer)
Filing number: **2017-095**
Effective date: 6/28/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

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

Basis statement:

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

ZONING PETITION

ZP 759

**PETITIONER OR
COPETITIONER**

Maine Land Use
Planning Commission,
Stacey Beyer

LOCATION

Carrying Place Town Twp.,
Somerset County

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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: 5 MRS §§ 8001-10008; 12 MRS §§ 401-409, 681-689; 38 MRS §§ 341-H, 630-638

Chapter number/title: **Ch. 11**, Administrative Regulations for Hydropower Projects (*jointly with 06-096, Department of Environmental Protection, Ch. 450, filing 2017-125*)

Filing number: **2017-124**

Effective date: 11/2/2017

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The purpose of the rule amendment is to revise Ch. 450 and Ch. 11 so they are:

1. consistent with the authorizing statutes and the Department's Rules Concerning the Processing of Applications and Other Administrative Matters, 06-096 CMR ch. 2;
2. re-organized to reference the jurisdiction of the Department, including removing any reference to the Board of Environmental Protection;
3. updated to replace references to the Land Use Regulation Commission with the Land Use Planning Commission of the Maine Department of Agriculture, Conservation, and Forestry,
4. updated to include language associated with tidal or wave action; and
5. clarify the jurisdiction between the Department and Commission.

The rule amendment is also intended to correct outdated and obsolete references, remove ambiguities and redundancies, and generally make the rule more understandable for the lay reader.

Basis statement:

(See Principal reason or purpose for rule"

Fiscal impact of rule:

None.

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Rules Adopted January 1, 2017 to December 31, 2017
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 767 (Baring Plt. & Grand Lake Stream Plt. —
Washington County) (petitioner Washington County
Commissioners)
Filing number: **2017-129**
Effective date: 8/24/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

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

Basis statement:

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

ZONING PETITION

ZP 767

**PETITIONER OR
COPETITIONER**

Washington County
Commissioners

LOCATION

Baring Plt. & Grand
Lake Stream Plt.
Washington County

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: **Baxter State Park Authority**
Umbrella-Unit: **94-293**
Statutory authority: 12 MRS §903
Chapter number/title: **Ch. 1, Baxter State Park Rules and Regulations: Rule 1.2,**
Camping is permitted by reservation
Filing number: **2017-034**
Effective date: 3/4/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This is an amendment to an existing rule. The current rule specifies the dates of May 15 through October 15 as the permitted dates for summer season camping in Baxter State Park. The Park has extended the camping season at three (3) campgrounds to October 22. The addition of North Branch Camps as a group site facilitates the growing need for sites that accommodate more than 12 people.

Basis statement / summary:

The Park has extended the camping season at three (3) campgrounds to October 22. The addition of North Branch Camps as a group site facilitates the growing need for sites that accommodate more than 12 people. This additional week of camping at three (3) campsites in Baxter State Park will be reserved and administered in accordance with BSP policy and the addition of North Branch Camps as a group site will be reserved and administered in the same way as other group sites and in accordance with BSP policy.

In recognition of warmer seasons and later date of first winter snowfall, the Park is providing more opportunity for the public to camp in Baxter State Park. The North Branch Camps addition as a group site was decided upon based on its remote location (not currently utilized) and due to the structures at this site being well suited for group accommodations.

Fiscal impact of rule:

One additional week of Baxter State Park revenue at three campsites.

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Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: **Baxter State Park Authority**
Umbrella-Unit: **94-293**
Statutory authority: 12 MRS §903
Chapter number/title: **Ch. 1, Baxter State Park Rules and Regulations: Rule 1.3,**
All persons entering the Park by road or trail
Filing number: **2017-035**
Effective date: 3/4/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This is an amendment to an existing rule and its purpose is to integrate the AT-Katahdin Hiker Permit Card system into the Jong-distance hiker registration process at Baxter State Park.

Basis statement / summary:

The purpose of this rule revision is to integrate the AT-Katahdin Hiker Permit Card system into the registration of long-distance hikers in Baxter State Park.

Baxter State Park Gate Attendants and Park Rangers will ensure that AT Hikers have permit cards and that they have registered with Baxter State Park

Long Distance Hiker Entrance Permit Statistical Data over a period of several years was considered in integrating the AT-Katahdin Hiker Permit Card System.

Fiscal impact of rule:

N/A

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Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: **Baxter State Park Authority**
Umbrella-Unit: **94-293**
Statutory authority: 12 MRS §903
Chapter number/title: **Ch. 1, Baxter State Park Rules and Regulations: Rule 5.1,**
The operation of motorized trail bikes, and ATVs
Filing number: **2017-036**
Effective date: 3/4/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To accommodate the growing interest of the sport of winter bicycling within Baxter State Park.

Basis statement / summary:

Following a multi-year trial allowing winter bike use on the Abol Stream Trail, this rule revision is being adopted to allow bicycle use on that trail for the winter months and will accommodate the growing interest of the sport of winter bicycling within Baxter State Park.

Winter bicycle use on the Abol Stream Trail will be monitored and enforced by Park Rangers.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: **Baxter State Park Authority**
Umbrella-Unit: **94-293**
Statutory authority: 12 MRS §903
Chapter number/title: **Ch. 1**, Baxter State Park Rules and Regulations: **Rule 5.6**, Take off and landing of aircraft in the Park
Filing number: **2017-037**
Effective date: 3/4/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To further enforce UAV use and accommodate and protect the Wilderness Experience of the Park for its visitors and wildlife.

Basis statement / summary:

This rule revision considers the protection of the Wilderness experience that is Baxter State Park with regard to the growing interest in UAVs and increased reports of the use of UAVs in Baxter State Park.

Baxter State Park Rangers will enforce this rule and monitor adherence in their regular course of duties.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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. 3, Maine Clean Election Act and Related Provisions
Filing number: 2017-112
Effective date: 8/20/2017
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

The amendments are necessary to conform the Commission Rules to the citizen initiative approved by Maine voters on November 3, 2015 and to reflect current administrative procedures of the Commission.

Basis statement / summary:

Chapter 3, Section 2(3) – Seed Money Restrictions

Factual and Policy Basis: The Commission adopted changes to its Rule relating to seed money contributions in order to conform the rules to the amendments to the MCEA that were enacted by citizen initiative on November 3, 2015. Seed money contributions are contributions of up to \$100 from individuals that candidates may solicit and spend to start their campaigns while they are qualifying for MCEA funds. The citizen initiative doubled the total amount of seed money that legislative candidates may collect. The initiative made no changes to the amount of seed money that gubernatorial candidates may accept (\$200,000), but it eliminated the requirement for gubernatorial candidates to collect \$40,000 in seed money. The adopted changes also fix the headings for paragraphs 2(3)(G) & (H) to clarify the subject matter of those paragraphs.

The Commission adopted a new paragraph 2(3)(I) to formalize a longstanding policy of the Commission that MCEA candidates have relied upon for the past several elections. To facilitate opening a campaign bank account and to avoid minimum balance fees, the Commission staff has permitted candidates to deposit a limited amount of personal funds in their campaign account, provided that they do not spend these funds for campaign purposes.

Chapter 3, Sections 2(4)(A) - (C), (F) & (G) – Extending the Period of Time for Collecting Qualifying Contributions

Factual and Policy Basis: Under the citizen initiative, after qualifying for MCEA funding ("certification"), candidates may continue to collect additional qualifying contributions in order to receive up to eight supplemental payments of MCEA funds for the general election, and gubernatorial candidates may receive supplemental payments for the primary election. Candidates may collect these additional contributions until three weeks before the general election. The Commission adopted a Rule amendment in Section 2(4) to reflect that candidates may collect qualifying contributions *after certification*. These amendments include changing the phrase "participating candidate" to "candidate," because the term "participating candidate" refers to a candidate who is seeking to qualify for MCEA funding (*i.e.*, prior to certification).

Chapter 3, Section 2(4)(E) - Signatures by Family Members on Commission Forms

Factual and Policy Basis: This section of the Commission's Rules sets out conditions under which family members and others living in a single household may make qualifying contributions in the form of a single check or money order. The Commission adopted an amendment clarifying that each individual must affirm on the Commission's Receipt & Acknowledgment form that they have made a qualifying contribution from their personal funds in support of the candidate. The Commission seeks to formalize existing policy that a qualifying contribution is not valid if the person purportedly making the contribution has not made this written acknowledgement.

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Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Chapter 3, Section 2(4)(H) - Online Qualifying Contribution Service

Factual and Policy Basis: The Commission has established an online qualifying contribution service for members of the public to use a credit or debit card to make qualifying contributions (www.maine.gov/cleanelections). This service reduces the paperwork burden for candidates. (The service attempts to verify through data from the Central Voter Registry that the donor is registered to vote in the legislative district of the candidate.) The Commission adopted section 2(4)(H) to acknowledge this service, which has been in operation since 2008.

The website requires the donor to enter information and make selections through a series of online steps:

1. select the donor's municipality and enter the donor's street address and name,
2. select the candidate(s) to be supported by clicking on checkboxes,
3. type the amount(s) of the qualifying contribution(s) (\$5 is the default),
4. affirm by typing the donor's name that the donor made a contribution from their personal funds in support of the candidate and did not receive anything in exchange for the contribution,
5. enter the donor's credit card number, name of account holder, and billing address, and
6. submit the payment.

If the website cannot verify the donor's registration status on the first try, the website offers the donor a second opportunity to type his or her name.

The website is designed for *use by the donor* who is making the contribution. The Commission adopted a Rule amendment which specifies that the donor may receive assistance in entering information in the online forms, but the donor must personally make the affirmation and submit the payment (steps 4 and 6 above). This Rule is intended to strengthen confidence that the donor personally supports the candidate and is using personal funds to make a qualifying contribution. The Rule prohibits collecting the information by phone and entering the contribution on behalf of the donor.

Chapter 3, Section 2(4)(I) & (J)- Preventing Fraudulent Qualifying Contributions

Factual and Policy Basis: The overwhelming majority of candidates follow the correct procedures in collecting qualifying contributions. In the experience of the Commission, it is very rare that candidates submit forms falsely claiming the collection of qualifying contributions. Most contributions are made by check or by credit card, which confirms that the donor has made the contribution from his or her personal funds.

On occasions when the Commission staff has detected that a candidate or volunteer has falsely claimed to have collected qualifying contributions *by cash* from donors, the Commission staff has invalidated the contributions attributed to that candidate or volunteer. This has generally resulted in the denial of MCEA funds to the candidate by the Commission staff. In the past several elections, the Commission staff has denied MCEA funding to five legislative candidates who falsely claimed the collection of qualifying contributions. Also, the Commission staff has denied MCEA funding to two candidates for Governor because some of their volunteers falsely claimed qualifying contributions.

As a result of the 2015 citizen initiative, there could be an increased risk of fraud because of the greater amount of campaign funds available to candidates and because candidates can receive supplemental campaign funds in proportion to the number of qualifying contributions collected.

The MCEA provides that in order to be certified to receive public funding, the Commission must find that the candidate has "not submitted any fraudulent qualifying contributions or any falsified acknowledgment forms for qualifying contributions." 21-A M.R.S.A. §1125(5)(D-5).

The Commission adopted a provision (Section 2(4)(I)) setting out procedures to be used in the future when fraudulent qualifying contributions are detected. Section 2(4)(I) defines

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“fraudulent qualifying contributions” and directs the Commission staff to investigate further when the staff reasonably believes fraud may be present. The Rule authorizes the staff to call upon the Attorney General’s office for investigative assistance or to refer matters to that office for possible criminal investigation.

Due to the very large amount of funds potentially available to gubernatorial candidates under the MCEA, as amended by the citizen initiative, in Section 2(4)(J) the Commission staff adopted additional procedures for candidates for governor seeking MCEA funding. Within three weeks of declaring an intention to qualify, a candidate for Governor would need to appoint a compliance officer and submit a compliance plan addressing topics set out in the Rule. These procedures would not apply to legislative candidates.

Chapter 3, Sections 2(4)(K) - Prohibition against Receiving Services Paid by Others

Factual and Policy Basis: The Commission adopted a new section 2(4)(K) to clarify that under the current definition of “contribution” in Election Law, organizations may not compensate people to collect qualifying contributions for MCEA candidates – except that the state political parties may pay their employees to provide up to 40 hours of paid assistance to a candidate in any election.

Chapter 3, Sections 2(4)(L) – Candidates Compensating People to Collect Qualifying Contributions

Factual and Policy Basis: The Commission adopted a new section 2(4)(L), which permits MCEA candidates to use their campaign funds to compensate individuals to collect qualifying contributions, but with two restrictions:

- 1) Candidates must make the payments from currently available campaign funds, and may not promise to compensate individuals from future MCEA funding yet to be received.
- 2) Candidates may not compensate individuals for collecting qualifying contributions based on the number of qualifying contributions collected by that individual.

Chapter 3, Section 3(1)(C) - Requirement for Gubernatorial Candidates to Obtain Special Documentation of Required Seed Money Contributions

Factual and Policy Basis: As a result of the citizen initiated amendments to the MCEA, candidates for Governor are no longer required to collect \$40,000 in seed money to qualify for public campaign funds. The Commission adopted an amendment deleting this section of the Rule to make it conform to the statute.

Chapter 3, Section 4(2) & (3) - Financial Projections, Adjusting Payment Amounts for Inflation

Factual and Policy Basis: The Commission adopted a Rule change reflecting the new statutory requirements adopted by citizen initiative to provide four-year financial projections to the Legislature and Governor and to adjust the payment amounts to candidates every two years based on inflation.

Chapter 3, Section 4(4)(B) & (F) - Authorizing Contributions Due to Shortfall in the Fund

Factual and Policy Basis: This subsection authorizes candidates to collect traditional campaign contributions if there is insufficient money in the Maine Clean Election Fund to make payments of public funds to candidates. These contributions would be capped by the same maximum that applies to traditionally financed candidates. Since these maximums are re-adjusted every two years for inflation, the Commission adopted an amendment deleting the specific dollar amounts in the Rule. The amendment also deletes a clause from paragraph F which refers to the deposit of matching funds in a separate bank account, since matching funds are no longer a component of the program.

Chapter 3, Section 6 – Distribution of Supplemental Funds

Factual and Policy Basis: The Commission adopted a Rule amendment setting out the procedures for candidates submitting additional qualifying contributions to receive

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supplemental payments of MCEA funds. These procedures are generally similar to the existing procedures for legislative candidates to submit qualifying contributions by April 20 of the election year to qualify for MCEA funding. Because the amount of public campaign funding available to candidates is directly proportional to the number of valid qualifying contributions, the Rule requires candidates to submit a list of qualifying contributions in an electronic format such as Microsoft Excel or online software developed by the Commission. This will greatly facilitate the staff's timely evaluation of the qualifying contributions and ensure payment of public funds in the correct amount.

In order to position this new provision in the most appropriate location within Chapter 3, it has been inserted as a new Section 6, and the existing Sections 6, 7, and 8 have been renumbered to 7, 8, and 9.

Chapter 3, Section 7 - Prohibiting Large Payments of Maine Clean Election Act funds in Cash [renumbered from Section 6]

Factual and Policy Basis: The Commission adopted a Rule amendment prohibiting candidates from spending more than \$50 of Maine Clean Election Act funds in cash. Under this proposal, expenditures of more than \$50 would be paid by check, debit or credit card, or wire transfer only. This would create a more reliable audit trail, in order to ensure the accountability of MCEA funds.

Fiscal impact of rule:

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

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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 §3036-A
Chapter number/title: Ch. 10, Policy and Procedures Manual – Adult:
Subsection 27.2, Supervised Community Confinement
Filing number: 2017-050
Effective date: 3/13/2017
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

A prisoner to be transferred to supervised community confinement requires a life-saving organ transplant that is only available out-of-state and is currently high on the transplant list.

Basis statement:

(See Principal reason)

Fiscal impact of rule:

None.

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Rules Adopted January 1, 2017 to December 31, 2017
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 §3103
Chapter number/title: Ch. 11, Policy and Procedure Manual – Adult and Juvenile:
Subsection 18.19.1, Use of Mechanical Restraints on a Pregnant Prisoner or Pregnant Resident
Filing number: 2017-061
Effective date: 4/14/2017
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rule needs to be adopted on an emergency basis as it has proven impossible to have a security supervisor present on every transport of every pregnant prisoner due to the lack of enough supervisory security staff for both these transports and to maintain security at the facility.

Basis statement:

(See Principal reason)

Fiscal impact of rule:

None.

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Rules Adopted January 1, 2017 to December 31, 2017
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 §3103
Chapter number/title: Ch. 11, Policy and Procedure Manual – Adult and Juvenile:
Subsection 18.19.1, Use of Mechanical Restraints on a Pregnant Prisoner or Pregnant Resident
Filing number: 2017-086
Effective date: 6/12/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The replacement rule permanently adopts the emergency rule that the Maine Department of Corrections adopted on 4/13/2017. The rule allows the Chief Administrative Officer, or designee, to determine whether a security supervisor needs to be present during the transport of a pregnant prisoner or resident or if other security staff is appropriate. Regardless of whether a security supervisor is present or not, the use of mechanical restraints will still require a decision by a security supervisor.

Basis statement:

(See Principal reason)

Fiscal impact of rule:

None.

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Rules Adopted January 1, 2017 to December 31, 2017
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 §3036-A
Chapter number/title: Ch. 10, Policy and Procedures Manual – Adult:
Subsection 27.2, Supervised Community Confinement
Filing number: 2017-090
Effective date: 6/17/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To formally adopt the emergency rule that was implemented on March 13, 2017 allowing a prisoner on supervised community confinement to go out of state for medical treatment not available in Maine and to make other changes to clarify the supervised community confinement process.

Basis statement:

(See Principal reason)

Fiscal impact of rule:

None.

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Rules Adopted January 1, 2017 to December 31, 2017
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 §1208
Chapter number/title: Ch. 1, Detention and Correctional Standards for Counties and Municipalities
Filing number: 2017-150
Effective date: 9/24/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Repeal and replacement of this rule to update the Maine standards for county and municipal detention facilities to conform to more recent federal and state law changes (ex. *Prison Rape Elimination Act*, Maine 30-A §1582. *Restraint of Pregnant Prisoners and Pregnant Juveniles*, etc.) and to adopt national prevailing industry standards (American Correctional Association).

Basis statement / Significant Changes:

- Following each standard, “*Evidence of Compliance*” has been added. “*Evidence of Compliance*” represents the supporting information that the jail inspector will likely be looking for to prove compliance. It is intended to assist the jails in proving compliance.
- Standards referencing “Sheriff” now reference “Sheriff or Multi-County Jail Authority” to ensure that Two Bridges Regional Jail is included.
- **A.8. MANDATORY (Added)**
The Administrator shall employ or designate a supervisory level Prison Rape Elimination Act (PREA) Coordinator with sufficient time and authority to develop, implement, and oversee facility efforts to comply with the PREA standards.
- **C.14. MANDATORY (Added)**
Leg or waist restraints may not be used at any time on a pregnant inmate. No restraints may be used on an inmate while in labor or during childbirth. If wrist restraints are used on a pregnant inmate at another time, the corrections officer must apply the least restrictive type of restraints in the least restrictive manner necessary. The Administrator or designee shall produce written findings within 10 days as to the extraordinary circumstance (substantial flight risk or other extraordinary medical or security circumstance that requires restraints to be used to ensure the safety and security of the pregnant inmate) that required the use of the restraints.
- **E.17 MANDATORY (Added)**
If it is known that an inmate being released has an existing warrant or other hold, the facility shall provide notification prior to release to the agency responsible for the warrant or other hold.
- **E.18. MANDATORY (Added)**
If it is known that the inmate being released to probation or supervised release for sex offenders has an existing warrant or other hold, the facility shall provide notification prior to release to a Department of Corrections Regional Correctional Administrator and/or Regional Correctional Manager in the region in which the inmate intends to reside.
(Contact information can be found at <http://www.maine.gov/corrections/adult/index.htm> .)
- **E.19. MANDATORY (Added)**
Written policy, procedure and practice provide that inmates who have a court order or probation, supervised release for sex offenders, or conditional release condition of no

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Rules Adopted January 1, 2017 to December 31, 2017
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contact with a victim shall be notified of such conditions prior to release. Notification shall be documented.

- **G.2. MANDATORY (Added)**

Decisions on whether to house a transgender inmate with male or female inmates shall be made on a case by case basis, with consideration being given to the inmate's preference and security concerns.

- **Note:** Throughout the standards update many redundant standards were not changed, however were merged to minimize paper and time during inspection. For example in the 2005 manual there were separate standards for toilet, shower, and wash basin ratios. Now it reads:

The inmate population should not exceed the facility's rated capacity, which should be established by the Sheriff or Multi-County Jail Authority or Administrator and approved by the Department of Corrections using the following criteria:

- a.) The ratio of showers to inmates should not exceed 1 to 12.
 - b.) The ratio of wash basins to inmates should not exceed 1 to 12.
 - c.) In medium and minimum security cells, rooms, or dorms, there should be no less than one toilet for every 12 male inmates. Urinals may be substituted for up to one-half of the toilets for males in common bathroom areas.
 - d.) In medium and minimum security cells, rooms, or dorms, there should be no less than one toilet for every 8 female inmates.
 - e.) Each housing area should have its own day space which provides each inmate with a minimum of 35 square feet of space. Day space should not be less than 100 square feet.
 - f.) In multiple-occupancy cells, rooms, or dormitories, a minimum of 35 square feet per inmate should be provided.
- **Section IV. b. COMMUNITY CORRECTIONS: ALTERNATIVE SENTENCING PROGRAMS** is a new section. Alternative Sentencing Programs have always been inspected, however they were inspected under the Minimum Security Residential Facility standards. It seemed to make more sense to provide Alternative Sentencing with an independent section because they are in fact different from minimum security correctional facilities.

Fiscal impact of rule:

None.

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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: 19-A MRS §4014
Chapter number/title: Ch. 15, Batterer Intervention Program Certification
Filing number: 2017-172
Effective date: 11/13/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Ch. 15, Batterer Intervention Program Certification, is repealed and replaced to include recommendations based upon a review of the Batterer Intervention Program Certification standards that the Maine Department of Corrections conducted in consultation with the Maine Commission on Domestic and Sexual Abuse per statutory requirements.

Basis statement:

The Maine Department of Corrections staff, in consultation with the Maine Commission on Domestic and Sexual Abuse, reviewed rule Ch. 15, *Batterer Intervention Program Certification*, and has adopted a repealed and replacement of the Batterer Intervention Program Certification. The revisions are listed below.

1. Includes the Wabanaki Women's Coalition (WWC) as a domestic violence coalition that includes the five tribal domestic violence centers in Maine, in addition to the Maine Coalition to End Domestic Violence (MCEDV).
2. Changes the term domestic violence to domestic abuse to align terminology with statute.
3. Changes the terms family violence project and domestic violence project to domestic violence centers (DVC).
4. Changes the term facilitator to educator.
5. Allows an offender to accept federal, state, or charitable funding, if available.
6. Allows the program director to approve exceptions to accommodate special circumstances, including but not limited to, illness, vacation, weather, etc.
7. Eliminates references between excused and unexcused absences and raises the absences from three (3) to five (5) in a 48 week BIP program.
8. Allows an offender to request a medical or other leave of absence for good cause.
9. Sets the limit of being discharged from a BIP program for failing to pay for up to four (4) sessions of missed payments.
10. Changes in the notification requirements when an offender is discharged or leaves the BIP program in that the victim does not have to be notified if doing so would jeopardize the safety of the offender or violate federal or state confidentiality laws.
11. Provides additional options for re-admission to the program after discharge.
12. Provides clarification on transfer of credits from one certified program to another certified program.
13. Record keeping is expanded.
14. Monitoring is amended to be provided at least quarterly.
15. Provides a procedure for a victim to file a complaint against a BIP program.
16. Adds a requirement that the Maine Association of Batterer Intervention Programs, MCEDV and WWC develop criteria for third party monitors.
17. Eliminates a program in a jail and/or correctional facility for eligibility as a certified BIP program because programs in institutional settings lack a coordinated community response.

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18. Includes a section on waivers that aligns the waiver application process with the statute that all waivers for working agreements between the Batterer's Intervention Program and the local Domestic Violence Center must be directed to the DOC's Victims Services Coordinator and contain specific reasons for the waiver request. The rule also clarifies the waiver process when a waiver is allowed in the standards.
19. Adds duty to warn, mandatory reporting, and ethics requirements.

Fiscal impact of rule:

(No response.)

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Agency name: Department of Corrections
Umbrella-Unit: 03-201
Statutory authority: 34-A MRS §3036-A
Chapter number/title: Ch. 10, Policy and Procedures Manual – Adult:
Subsection 27.2, Supervised Community Confinement
Filing number: 2017-185
Effective date: 12/2/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To increase public safety when considering a prisoner who has been convicted as an adult with any sex offense for community programs and to allow a possible exception any prisoner who has been formally charged but not convicted as an adult with any sex offense for consideration of community programs.

Basis statement:

The adopted rulemaking requires an additional eligibility requirement to the Supervised Community Confinement rule for a prisoner convicted or charged as an adult with any sex offense so that the prisoner is not be eligible to transfer to supervised community confinement unless the prisoner is within six (6) months of his or her current custody release date. This is in addition to the prior requirement that such a prisoner may not be transferred to supervised community confinement unless the prisoner has undergone sex offender treatment.

Also, the sex offender treatment requirement for female prisoners was changed to reduce the time required for a prisoner to successfully participate in a Department sex offender treatment program from two (2) years to one (1) year. This is consistent with the requirement that a male prisoner complete the intensive phase of a Department residential sex offender treatment program.

Also, in the case of a prisoner charged but not convicted of a sex offense as an adult, the Department's Director of Classification may now make an exception to either or both requirements.

Another revision is to include a provision that if a prisoner becomes ill or injured or another unforeseen emergency prevents the prisoner from abiding by a curfew, residence, time or travel condition, or returning to the facility when directed to do so, the prisoner shall notify the probation officer as soon as possible for instructions.

Other revisions clarify reporting requirements, notifications, documentation, and appeals.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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: 2017-186
Effective date: 12/2/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To increase public safety when considering a prisoner who has been convicted as an adult with any sex offense for community programs and to allow a possible exception for any prisoner who has been formally charged but not convicted as an adult with any sex offense for consideration of community programs.

Basis statement:

The adopted rulemaking requires an additional eligibility requirement to the Community Transition Program rule for a prisoner convicted or charged as an adult with any sex offense so that the prisoner is not be eligible to participate in a community transition program unless the prisoner is within six (6) months of his or her current custody release date. This is in addition to the prior requirement that such a prisoner may not participate in a community transition program unless the prisoner has undergone sex offender treatment.

Also, the sex offender treatment requirement for female prisoners was changed to reduce the time required for a prisoner to successfully participate in a Department sex offender treatment program from two (2) years to one (1) year. This is consistent with the requirement that a male prisoner complete the intensive phase of a Department residential sex offender treatment program.

Also, in the case of a prisoner charged but not convicted of a sex offense as an adult, the Department's Director of Classification may now make an exception to either or both requirements.

Another revision is to include a provision that if a prisoner becomes ill or injured or another unforeseen emergency prevents the prisoner from going to the location specified, remaining at the specified location during the specified period, or returning from a release by the specified time, the prisoner shall notify the facility as soon as possible for instructions.

An American Correction Association (ACA) standard that addresses that a job on work release provide compensation to prisoners at the prevailing wage rate for that position in the community is included in the rule.

Other revisions clarify reporting requirements, notifications, documentation, and appeals.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 27.4, Furlough Pass / Furlough Leave Program
Filing number: 2017-187
Effective date: 12/2/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To increase public safety when considering a prisoner who has been convicted as an adult with any sex offense for community programs and to allow a possible exception for any prisoner who has been formally charged but not convicted as an adult with any sex offense for consideration of community programs.

Basis statement:

The adopted rulemaking requires an additional eligibility requirement to the Furlough Pass/Furlough Leave rule for a prisoner convicted or charged as an adult with any sex offense so that the prisoner is not be eligible to participate in a furlough unless the prisoner is within six (6) months of his or her current custody release date. This is in addition to the prior requirement that such a prisoner may not participate in a furlough unless the prisoner has undergone sex offender treatment.

Also, the sex offender treatment requirement for female prisoners was changed to reduce the time required for a prisoner to successfully participate in a Department sex offender treatment program from two (2) years to one (1) year. This is consistent with the requirement that a male prisoner complete the intensive phase of a Department residential sex offender treatment program.

Also, in the case of a prisoner charged but not convicted of a sex offense as an adult, the Department's Director of Classification may now make an exception to either or both requirements.

Another revision is to include a provision that if a prisoner becomes ill or injured or another unforeseen emergency prevents the prisoner from going to the location specified, remaining at the specified location during the specified period, or returning from a furlough by the specified time, the prisoner shall notify the facility as soon as possible for instructions.

Other revisions clarify reporting requirements, notifications, documentation, and appeals.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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
Umbrella-Unit: **19-498**
Statutory authority: 5 MRS §13058 sub-§3
Chapter number/title: **Ch. 46**, Final Program Statement for Administering the 2018
Maine Community Development Block Grant Program
Filing number: **2017-193**
Effective date: 12/10/2017
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:

The *Program Statement for the 2018 State of Maine Community Development Block Grant Program* includes rules and regulations for administering the State of Maine Community Development Block Grant Program's 2018 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 Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 2018 is \$287,846

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 MRS ch. 230 §2384 subpart 1; 20-A MRS §§ 8601-8609
Chapter number/title: Ch. 230, Adult Education Program Requirements
Filing number: 2017-056
Effective date: 4/5/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

1. Requirements and Waivers for Students under Age 17
Delete the reference in the title and the text the Phrase “enrolled in Day school or” and add the phrase “who have withdrawn from school”.

Basis statement:

This amendment changes the rule to align with the statute by adding the requirement that a student under age 17 has withdrawn from school in order to access adult education.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 §130011(1)
Chapter number/title: Ch. 115, Certification, Authorization and Approval of Education Personnel
Filing number: 2017-109
Effective date: 8/12/2017
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

Refinements were made in the following manner:

Overarching concepts:

- Align with state statute;
- Streamline the certifications to be easier for the field and easier to process on the state level;
- Delete unnecessary or duplicative sections of the regulation.

Specific refinements:

- Conditionals will be for three years without yearly check-ins to the Certification Office;
- Have renewals occur at five years from date of initial approval, so the renewals will flow throughout the year, rather than summers;
- Administrative certificates - refine renewal and allow interstate reciprocity;
- Delete the section on Substitute Personnel, allow the school administrative units to address the substitute needs of their SAUs;
- In Part II fine tune the certifications and endorsements to reflect current course needs;
- Added new Mathematical Instructional Leader and Educator Effectiveness Coordinator certificates;
- The refined certifications and endorsements will go into effect July 1, 2019.

Basis statement:

These proposed amendments make several minor changes to the regulation in order to streamline the certification process, respond to concerns from the field and remove duplicative or unused portions of the regulation. Specific changes to Part I include: making conditional certificates valid for up to three years, moving to the date of expiration of the credential for renewals for teachers and administrative positions and deleting the eight options for professional certificate application due to the detailed requirements already contained in Part II. Changes were made in Part II to fine tune the certifications and endorsements and reflect current course offerings. Two new certificates were added.

The State Board initially proposed more significant changes that would revise and consolidate the types of certificates available in order to respond to concerns raised by the federal government pertaining to special educators and would expand the scope of the rule to include volunteers and charter schools. After consideration of the comments provided and discussions with the Department and its counsel, the State Board has decided not to go forward with those proposed changes at this time. Some of the proposed changes will be addressed by statute.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 §7005(1)
Chapter number/title: Ch. 101, Maine Unified Special Education Regulation
Birth to Age 20
Filing number: 2017-113
Effective date: 8/25/2017
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

1. Inserts the requirement that the general education interventions under Section III of the rule must be included in the data collected by the IEP Team when the team uses a process based on the child's response to scientific, research-based intervention; and

2. Removes the limitation that the psychological processing data from standardized measures to identify contributing factors must be considered only as available and as determined to be relevant by the child's IEP team.

Basis statement:

This adoption amends Section VII.2.L(2)(a)(ii), which concerns the determination by the Individualized Educational Program Team, referred to as "the IEP Team" of the existence of a specific learning disability using a pattern of appropriate assessments by (1) inserting the requirement that the general education interventions under Section III of the rule must be included in the data collected by the IEP team when the team uses a process based on the child's response to scientific, research-based intervention; and (2) omitting the limitation that the psychological processing data from standardized measures to identify contributing factors must be considered only as available and as determined to be relevant by the child's IBP team. This filing also corrects an error in the current rule regarding consultation services to clarify that it can be a special education service and not only a related service.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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: 29-A MRS §2311; 20-A MRS §5401(17)
Chapter number/title: Ch. 81, School Transportation Safety
Filing number: 2017-139
Effective date: 9/16/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The existing Ch. 81 is repealed and replaced with separate, shorter, and cleaner regulations. The new regulations are written to align with MRS Title 29-A and federal regulations, and modernize the transportation rule. Technical, language, and process updates will provide a more durable rule.

Basis statement:

In order to provide increased clarity and durability to its regulations relating to student transportation, the Department has decided to break the existing Ch. 81 into six shorter regulations, Ch. 81-86. The new regulations provide a better framework, cleaner language, and documents that will be more workable to make technical updates as they occur.

This rule repeals and replaces the transportation safety portion of the former Ch. 81. It establishes uniform safety requirements that include: student riding safety practices training, transportation employee in-service safety training, entry-level school bus driver training, prohibitions, school bus daily inspections, contracts, year-end transportations reports, and records retention. Most of the language of the former Ch. 81 remains; however, minor changes to the existing regulatory language were made in order to modernize the regulations with technical, language, and process updates to make it easier for all to understand and use.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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: 29-A MRS §2311; 20-A MRS §5401(17)
Chapter number/title: Ch. 82, School Bus Driver Fitness Determination
Filing number: 2017-140
Effective date: 9/16/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The existing Ch. 81 is repealed and replaced with separate, shorter, and cleaner regulations. The new regulations are written to align with MRS Title 29-A and federal regulations, and modernize the transportation rule. Technical, language, and process updates will provide a more durable rule.

Basis statement:

In order to provide increased clarity and durability to its regulations relating to student transportation, the Department has decided to break Ch. 81 into six shorter regulations, Ch. 81-86. The six new regulations provide a better framework, cleaner language, and documents that will be more workable to make technical updates as they occur.

This regulation contains the school bus driver fitness determination portion of the former Ch. 81. Most of the language of the former Ch. 81 remains; however, minor changes to the existing regulatory language were made in order to modernize the regulation with technical, language, and process updates to make it easier for all to understand and use. While the form for the required bus driver physical was removed to better adapt to federal changes, the requirement of an annual physical remains.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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: 29-A MRS §2311; 20-A MRS §5401(17)
Chapter number/title: Ch. 83, School Transportation Operations Program
Filing number: 2017-141
Effective date: 9/16/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The existing Ch. 81 is repealed and replaced with separate, shorter, and cleaner regulations. The new regulations are written to align with MRS Title 29-A and federal regulations, and modernize the transportation rule. Technical, language, and process updates will provide a more durable rule.

Basis statement:

In order to provide increased clarity and durability to its regulations relating to student transportation, the Department has decided to break Ch. 81 into six shorter regulations, Ch. 81-86. The six new regulations provide a better framework, cleaner language, and documents that will be more workable to make technical updates as they occur.

This regulation contains the requirements for access to and use of the School Transportation Operations Program. While the former Ch. 81 made references to school bus maintenance, this regulation is new language around a software program that tracks maintenance and is made available by the Department at no cost to public schools, including public charter schools, and private school approved for the receipt of public funds.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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: 29-A MRS §2311; 20-A MRS §5401(17)
Chapter number/title: Ch. 84, School Bus Refurbishment Program
Filing number: 2017-142
Effective date: 9/16/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The existing Ch. 81 is repealed and replaced with separate, shorter, and cleaner regulations. The new regulations are written to align with MRS Title 29-A and federal regulations, and modernize the transportation rule. Technical, language, and process updates will provide a more durable rule.

Basis statement:

In order to provide increased clarity and durability to its regulations relating to student transportation, the Department has decided to break Ch. 81 into six shorter regulations, Ch. 81-86. The six new regulations provide a better framework, cleaner language, and documents that will be more workable to make technical updates as they occur.

This regulation contains the requirements for participation in the School Bus Refurbishment Program. The regulation contains new language derived from the existing Memorandum of Understanding between the Department and the Maine Military Authority.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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: 29-A MRS §2311; 20-A MRS §5401(17)
Chapter number/title: Ch. 85, School Bus Purchase Program
Filing number: 2017-143
Effective date: 9/16/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The existing Ch. 81 is repealed and replaced with separate, shorter, and cleaner regulations. The new regulations are written to align with MRS Title 29-A and federal regulations, and modernize the transportation rule. Technical, language, and process updates will provide a more durable rule.

Basis statement:

In order to provide increased clarity and durability to its regulations relating to student transportation, the Department has decided to break Ch. 81 into six shorter regulations, Ch. 81-86. The six new regulations provide a better framework, cleaner language, and documents that will be more workable to make technical updates as they occur.

This regulation contains the School Bus Purchase Program portion of the former Ch. 81. Most of the language of the former Ch. 81 remains; however, minor changes to the existing regulatory language were made in order to modernize the regulation with technical, language, and process updates to make it easier for all to understand and use.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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: 29-A MRS §2311; 20-A MRS §5401(17)
Chapter number/title: Ch. 86, Maine Uniform School Bus Specifications
Filing number: 2017-144
Effective date: 9/16/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The existing Ch. 81 is repealed and replaced with separate, shorter, and cleaner regulations. The new regulations are written to align with MRS Title 29-A and federal regulations, and modernize the transportation rule. Technical, language, and process updates will provide a more durable rule.

Basis statement:

In order to provide increased clarity and durability to its regulations relating to student transportation, the Department has decided to break Ch. 81 into six shorter regulations, Ch. 81-86. The six new regulations provide a better framework, cleaner language, and documents that will be more workable to make technical updates as they occur.

This regulation contains the uniform school bus specifications portion of the former Ch. 81. The school bus specifications have been updated to align with both state and federal standards. Groups that articulate school bus specifications are the National Highway Traffic Safety Administration (NHTSA), that issue Federal Motor Vehicle Safety Standards (FMVSS) and regulations to which manufacturers of motor vehicle and equipment items must conform and certify compliance, and the National Congress on School Transportation (NCST) that publishes the *National School Transportation Specifications and Procedures*; school transportation industry best practices.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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: 29-A MRS §13001(1)
Chapter number/title: Ch. 115, Certification, Authorization, and Approval of Educational Personnel
Filing number: 2017-175
Effective date: 11/20/2017
Type of rule: Major Substantive
Emergency rule: Yes

Principal reason or purpose for rule:

This rule creates a category within Section 14 of Ch. 115, Part I for Administrative Hold. The emergency rule would require all credential holders to provide the Department with an address at which the Department may contact them with respect to their credential. An administrative hold will be used in cases where information about certified individuals comes to the attention of the Department and the Department contacts the credential holder at the address on file and receives no response. In those situations, the Department will place the credential on administrative hold until such time as the holder responds. These provisions are needed at this time due to numerous instances whereby the Certification staff have been unable to contact individuals with credentials involved in questionable circumstances.

Basis statement:

This rule creates a category within Section 14 of Ch. 115, Part I for Administrative Hold. The emergency rule would require all credential holders to provide the Department with an address at which the Department may contact them with respect to their credential. An administrative hold will be used in cases where information about certified individuals comes to the attention of the Department and the Department contacts the credential holder at the address on file and receives no response. In those situations, the Department will place the credential on administrative hold until such time as the holder responds. These provisions are needed at this time due to numerous instances whereby the Certification staff have been unable to contact individuals with credentials involved in questionable circumstances.

Findings of the Emergency:

Over the past few months, the Department has encountered several situations where it has received information about credential holders engaging in dangerous or criminal activity, including convictions related to drugs, domestic violence, and theft. The Department has attempted to contact those individuals to either propose a voluntary surrender or initiate an investigation that could lead to revocation or suspension of their credential, and either the correspondence has been returned as undeliverable at the holder's address, or the holder has not responded to the Department. The Department is concerned that these individuals may be working in schools and thus students are potentially in danger. The Department needs to have a regulatory means to put the individuals' credentials on hold until such time as the voluntary surrender letter is signed by the individual or the holder has responded to the Department so that the Department has the information necessary to proceed with an investigation if needed. The Department is not doing a hearing in order to promulgate this regulation more quickly. There are currently nine credentials pending in the investigation file that the Department is unable to act on and there will at least five each ensuing month. The Department cannot risk having these individuals in the school facilities.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 §8055(3); 38 MRS §§ 341-H, 1694
Chapter number/title: Ch. 889, Designation of Two Flame Retardants as Priority Chemicals
Filing number: 2017-029
Effective date: 3/4/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule designates two chemicals of high concern as priority chemicals and requires reporting for certain product categories that contain one or both of these regulated chemicals. The rule applies to manufacturers of specified product categories that contain intentionally added amounts of decabromodiphenyl ether (deca BDE) or hexabromocyclododecane (HBCD), which are used in the non-polymeric, additive form as a flame retardant. The rule seeks to gather information which would clarify the prevalence of such uses of the listed flame retardants.

Basis statement:

The Department proposed this new rule chapter to establish the Department's authority to compel manufacturers to report the use of two flame retardant chemicals in specified categories of children's products. The rule applies to manufacturers or distributors of specified product categories that contain intentionally added amounts of decabromodiphenyl ether (deca BDE) or hexabromocyclododecane (HBCD), which are used in the non-polymeric, additive form as flame retardants.

As provided by Maine law at 38 MRS §1694, the Department has the authority to promote chemicals on Maine's chemicals of high concern list to priority status through routine technical rulemaking. If a chemical meets certain statutory criteria it may be designated as a priority chemical by the Commissioner, with concurrence by the Department of Health and Human Service, Maine Center for Disease Control ("Maine CDC"). Once classified as a priority chemical, the Department has the authority to require manufactures of specified product categories to report their use of a priority chemical above *de minimis* levels.

Fiscal impact of rule:

Because the rule applies to manufacturers or distributors of certain products, the fiscal impacts will fall mainly on manufacturers of consumer products which contain intentionally added amounts of the two priority chemicals. Filing the required report information with the Department is expected to cost a complying entity nominal time and effort. Regulated entities are also expected to pay a one-time reporting fee to the Department to cover the costs associated with information management; at this time that amount is yet to be determined. The impact of this reporting fee will be dependent on the regulated entity's ability to absorb such a cost, which had not been planned for in annual preparation for the budgetary impacts of government compliance.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 §1301 *et seq.*
Chapter number/title: Ch. 850, Identification of Hazardous Wastes (Solvent-contaminated Wipes Exemption)
Filing number: 2017-063
Effective date: 4/26/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department amends Ch. 850, *Identification of Hazardous Wastes*, to include an exemption for solvent contaminated wipes which is found in federal regulations of hazardous waste.

Basis statement:

The Department is amending Ch. 850 to include an exemption for “solvent-contaminated wipes” consistent with federal regulations. 40 CFR Part 261.4(b)(18) conditionally exempts solvent-contaminated wipes that are being sent for cleaning or disposal from regulation as a hazardous waste, provided they are handled and managed in accordance with applicable regulatory provisions. Ch. 850 defines “solvent-contaminated wipes” as: “woven or non-woven shop towels, rags, pads, or swabs made of wood pulp, fabric, cotton, polyester blends, or other material, that after use or after cleaning up a spill . . .” are contaminated with certain solvents, that would otherwise render the wipes a hazardous waste.

Fiscal impact of rule:

The amendments will allow certain solvent contaminated wipes to no longer be treated as hazardous waste; this should result in reduced costs associated with the disposal of hazardous waste.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 §§ 3101 - 3117
Chapter number/title: Ch. 426, Responsibilities under the Returnable Beverage Container Law
Filing number: 2017-071
Effective date: 5/8/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this rule is to transition the rule regarding the *Returnable Beverage Container Law* from the Department of Agriculture, Conservation, and Forestry to the Department of Environmental Protection as per 2015 PL 166.

Basis statement:

The Department of Environmental Protection's 06-096 CMR ch. 426 rule was proposed to replace the Department of Agriculture, Conservation and Forestry's (DACF) Ch. 360: *Responsibilities of Manufacturers, Distributors, Dealers, Initiators of Deposit, Contracted Agents, and Redemption Centers under the Returnable Beverage Container Law*, per 2015 PL 166.

The Department utilized DACF's Ch. 360 as the basis for developing this rule. In accordance with 2015 PL 166, citations have been updated consistent with the transfer of the program from DACF. Additional changes to Ch. 360 include:

- clarification of responsibilities related to initiation of deposit and label registrations;
- addition of provisions that currently exist only in statute but that are integral to understanding and comprehensively implementing responsibilities under the *Returnable Beverage Container Law*; and
- general "clean-up" of the rule, e.g., removal of duplicative provisions, consistent use of terminology, integration of standards incorporated in Ch. 360 by reference, and reorganization to place closely-related provisions adjacent to each other.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 §§ 8001-10008; 12 MRS §§ 401-409, 681-689; 38 MRS §§ 341-H, 630-638
Chapter number/title: **Ch. 450**, Administrative Regulations for Hydropower Projects
(jointly with 01-672, Maine Use Planning Commission, Ch. 11, filing 2017-124)
Filing number: **2017-125**
Effective date: 11/2/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of the rule amendment is to revise Ch. 450 and Ch. 11 so they are:

1. consistent with the authorizing statutes and the Department's Rules Concerning the Processing of Applications and Other Administrative Matters, 06-096 CMR ch. 2;
2. re-organized to reference the jurisdiction of the Department, including removing any reference to the Board of Environmental Protection;
3. updated to replace references to the Land Use Regulation Commission with the Land Use Planning Commission of the Maine Department of Agriculture, Conservation, and Forestry,
4. updated to include language associated with tidal or wave action; and
5. clarify the jurisdiction between the Department and Commission.

The rule amendment is also intended to correct outdated and obsolete references, remove ambiguities and redundancies, and generally make the rule more understandable for the lay reader.

Basis statement:

(See Principal reason or purpose for rule"

Fiscal impact of rule:

None.

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Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: PL 2011 ch. 653; 38 MRS §490-NN(1)(B); PL 2017 ch. 142
Chapter number/title: Ch. 200, Metallic Mineral Exploration, Advanced Exploration and Mining
Filing number: 2017-188
Effective date: 12/28/2017
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

This new rule is being adopted to implement the *Maine Metallic Mineral Mining Act*, 38 MRS §490-LL *et seq.*, and will repeal and replace the existing Ch. 200, *Metallic Mineral Exploration, Advanced Exploration and Mining* rule. It updates Maine's mining regulations to provide a comprehensive application and permitting process for several types of mining activities, including exploration, advanced exploration and mining.

Basis statement:

The Mining Act

This rule implements the *Maine Metallic Mineral Mining Act* ("2012 Mining Act"), 38 MRS § 490-LL *et seq.* and will repeal and replace the existing Ch. 200, *Metallic Mineral Exploration, Advanced Exploration and Mining* rule. The 2012 Mining Act was enacted in 2012 by PL 2011 ch. 653, *An Act to Improve Environmental Oversight and Streamline Permitting for Metallic Mineral Mining in Maine*. Section 30 of that law directed the Department to provisionally adopt and submit to the Legislature for review major substantive rules related to the 2012 Mining Act. The 2012 Mining Act provides the statutory framework governing metallic mineral mining activities in Maine, including:

- Administration and enforcement, rules and local jurisdiction requirements;
- Mining permit application procedures;
- Mining permit duration, termination, revocation transfer and amendment procedures;
- Performance, operation and reclamation standards;
- Financial assurance requirements;
- Mining and reclamation reporting requirements; and
- Enforcement and violation provisions.

Initial Rulemaking

The Department initiated rulemaking activities to update and amend the exploration and advanced exploration permitting requirements in its existing mining rules in 2012. This routine technical rulemaking provided specific application, permitting and performance requirements for individuals seeking to conduct exploration or advanced exploration activities. The Department completed this rulemaking in March of 2013.

The formal rulemaking process for the major substantive mining rules began in mid-September, 2013, when the Department presented its proposal to the Board of Environmental Protection (Board), and requested that a public hearing be held on October 17, 2013. During the October 17th public hearing, the Board heard testimony from a number of consultants, interested parties and the general public. Additional comments were received during the written comment period, which closed on October 28, 2013.

Beginning in early November, the Board held four deliberative sessions on the proposal to discuss key issues raised by commenters with Department staff. At the conclusion of these

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sessions, the Board identified a number of suggested changes, and posted these changes to an additional written comment period ending on December 23, 2013.

On January 10, 2014, the Board reviewed a number of changes that were made to the proposal in response to public comments, and after receiving additional oral comments on the proposal pursuant to Title 38 §341-H(3)(c), deliberated, and voted to provisionally adopt the Department's proposal with several additional changes as identified by Board members. The Legislature passed a resolve in April 2014 disapproving the provisionally adopted rule, the Governor vetoed the resolve, and the Legislature sustained the veto. The sections of the 2012 Mining Act amending Title 38 (38 MRS §§ 490-LL *et seq.*), went into effect on June 1, 2014.

2016-2017 Rulemaking

In January 2015, the Department re-submitted the provisionally adopted rule to the Legislature. The Environment and Natural Resources (ENR) Committee of the Legislature, in the majority report for LD 750, recommended specific revisions to the provisionally adopted rule, but the bill did not pass.

On August 18, 2016, the Department requested that the Board post further revisions to Ch. 200 for public hearing. The Department developed the proposed rule from the version provisionally adopted by the Board in 2014, and included revisions requested by the Legislature in 2015 in LD 750 along with other revisions to address testimony and public comments received by the Board and the ENR Committee. The proposal addressed many significant concerns raised by commenters during rulemaking and legislative sessions, while still adhering to the provisions of the 2012 Mining Act and the jurisdictional limits of the Department.

The rule that was posted for public comment in 2016 updates Maine's mining regulations to provide a comprehensive application and permitting process for several types of activities related to mining, including exploration, advanced exploration and mining. Under the rule, exploration activities, which limit excavations to a maximum surface opening of no more than 300 square feet, would not require a permit, but must instead submit a work plan and meet a number of performance standards designed to protect natural resources and properly restore the exploration site. Advanced exploration activities, which involve more extensive sampling (along with the potential for more significant environmental impacts) fall within into two general categories: Tier One advanced exploration activities involve the excavation and removal of up to 2,000 tons of material, while Tier Two advanced exploration activities may involve up to 10,000 tons of excavated material. Under an advanced exploration mining permit, the on-site processing of samples is limited to mechanical size alteration (crushing) and sorting. All testing and characterization must take place in enclosed facilities, and all waste generated from on-site testing and characterization must be transported off-site for disposal. Tier Two advanced exploration activities are subject to comprehensive permitting requirements. Mining activities that involve the excavation of 10,000 tons or more of material are subject to a wide-ranging suite of requirements and more importantly, since these mining activities can include on-site beneficiation of ore and disposal of reactive mine wastes, applicants must demonstrate that mine waste units meet performance requirements designed to prevent the contamination of surface water and groundwater.

The Department received comments on its proposal from nearly 500 interested parties during two public comment periods. The final proposal before the Board in January 2017 incorporated a number of suggested changes, including: 1) prohibiting the wet storage of tailings (tailings ponds); 2) prohibiting the use of wet mine waste units after closure of a mine; 3) requirements for all mining operations to be inspected and monitored by a qualified independent inspector through the construction, operation and closure of the mine; 4) financial assurance requirements that address a worst-case scenario including the cost to investigate and remediate any and all possible releases of contaminants at the site, and

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conduct treatment activities for all expected fluids and wastes generated at the facility for a minimum of one hundred (100) years; and 5) standards for the protection of historic sites, unusual natural areas, scenic character, wildlife and fisheries. The public comments and the Department's responses and changes to the proposed rule are discussed a Supplemental Basis Statement dated January 5, 2017. The Department also made a number of formatting and other minor changes to the final proposal. On January 5, 2017, the Board provisionally adopted the Department's proposal after addressing several errata and revising the Department's response to Comment #41 to acknowledge that mining under water bodies has been successfully done in other jurisdictions, and that the lack of a prohibition does not constitute approval. The Department subsequently submitted the provisionally-adopted Ch. 200 to the Legislative Council on January 12, 2017.

Legislative Review of the Provisionally Adopted Rule

On June 7, 2017, the Maine Legislature enacted PL 2017 ch. 142, *An Act to Protect Maine's Clean Water and Taxpayers from Mining Pollution*. Ch. 142 amended the *Maine Metallic Mineral Mining Act* and other laws while also authorizing the final adoption of this major substantive rule, subject to the incorporation of specified amendments that provide consistency with these laws. The required amendments to the Department's rule include:

- (1) Prohibiting the issuance of a mining permit if any part of the proposed mining operation will be located wholly or partially located in, on or under any designated lands, state historic sites, state parks, public reserved lands, submerged lands, the Allagash Wilderness Waterway or certain state-owned wildlife management areas;
- (2) Adding or revising definitions for the terms "dry stack tailings management," "mine shaft," "mine waste," "mine waste unit," "open-pit mining" and "wet mine waste unit," and amending the existing definition for the term "tailings impoundment;"
- (3) Amending the mining permit approval conditions to allow only limited contamination of groundwater within a mining area, provided that this contamination does not result in: contamination of groundwater beyond the mining area; contamination of groundwater within the mining area that exceeds certain water quality criteria for pollutants; contamination of groundwater within the mining area due to pH or metals that exceeds limits set forth in the mining permit based on site-specific geologic and hydrologic characteristics; any violation of surface water quality standards; or, if groundwater or surface water quality within the mining area prior to the commencement of mining activity exceeds applicable water quality standards, further degradation of such groundwater or surface water quality. This amendment also provides a narrow definition of the term "mining area" applicable only to this provision on discharges causing groundwater contamination;
- (4) Prohibiting the placement of mining operations involving the removal of metallic minerals, the storage of metallic minerals or mine waste, the processing of metallic minerals or the treatment of mine waste in or on a flood plain or a flood hazard area;
- (5) Prohibiting the removal of metallic minerals in, on or from a river, stream or brook, a great pond, a freshwater wetland or a coastal wetland;
- (6) Prohibiting the placement of a mine shaft in, on or under a significant or outstanding river segment, an outstanding river, a high or moderate value waterfowl and wading bird habitat, a great pond or a coastal wetland;
- (7) Requiring the use of dry stack tailings management and prohibiting the use of wet mine waste units or tailings impoundments for the management of mine waste and tailings;
- (8) Prohibiting open-pit mining; and
- (9) Clarifying the financial assurance provisions to require the use of a trust fund secured with negotiable assets, provide for a mandatory third-party review of financial

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assurance obligations, and require an applicant for a permit or a permittee under the Mining Act to provide special financial assurance coverage for a worst-case catastrophic mining event or failure.

The mining rule that was provisionally adopted by the Board on January 5, 2017 was required to incorporate these legislatively-directed changes, along with additional changes necessary to ensure conformity with PL 2017 ch. 142 and other state laws. In addition, the Department also made grammatical, formatting and other non-substantive amendments prior to final adoption.

Fiscal impact of rule:

This rule will have varying fiscal impacts on the regulated community (potentially including, small businesses), depending on the type of mining activity being undertaken. For example, persons engaged in exploration activities will see only minimal costs associated with the preparation of an exploration workplan and follow-up report. At the other end of the spectrum, persons filing an application for a mining permit will be subject to a \$500,000 application fee, the need to reimburse intervenors for up to \$150,000 of costs, and annual license fees ranging from \$20,000 to \$50,000. The Department's rule requires applicants to meet financial assurance requirements for the reclamation of mined lands and surrounding areas affected by advanced exploration and mining activities so that the public will not bear the costs of reclaiming an abandoned mine site. In the event of such an abandonment or financial incapability by the operator, the financial assurance funds will be used by the Department to reclaim both the mined lands and any affected surrounding areas.

The rule should also minimize the fiscal impact on municipalities, as applicants are required to make adequate provisions for utilities, including electrical power, heating fuel supplies, water supplies, wastewater treatment facilities and solid waste disposal, and demonstrate that the mining operation will not have an unreasonable adverse effect on the existing or proposed utilities in a municipality or area served by those services. In addition, local municipalities (or the county commissioners in an unorganized area) are provided intervenor status upon request, and will be reimbursed by the applicant for up to \$50,000 (each) for their direct costs of intervention.

In addition, the Department believes that the application and other fees associated with filing for an advanced exploration or mining permit should be sufficient to cover the Department's expected review costs (including third-party expert analysis) of all application materials. In addition, there should be only minimal fiscal impacts on other state agencies, since the Department of Inland Fisheries and Wildlife, Department of Agriculture, Conservation and Forestry, and the Department of Marine Resources will be reimbursed for all expenses attributable to the application, including appeals.

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Agency name: **Clean-Up and Response Fund Review Board**
Umbrella-Unit: **90-564**
Statutory authority: 38 MRS §§ 568-A(3-A), 568-B(1), 568-A(1)(H), 551(4)
Chapter number/title: **Ch. 3**, Appeals Procedure
Ch. 4, Oil Import Fees
Ch. 5, Documentation Requirements for Application to the State Fire Marshal for Coverage by the Maine Ground and Surface Waters Clean-up and Response Fund at Above Ground Oil Storage Facilities
Filing number: **2017-074, 075, 076**
Effective date: 5/20/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This is put forward to implement changes to statute made by the Legislature during the 127th session in LD 1303 (PL 2015 c. 319).

Basis statement / summary:

The amendments to the Clean-up and Response Review Board's Ch. 3, 4, and 5 rules reflect statutory changes enacted by the 127th session of the Maine Legislature. PL 2015 ch. 319 combined the Maine Coastal and Inland Surface Oil Clean Up Fund and the Ground Water Oil Clean Up Fund, where fees received by the Board are deposited, to create the Maine Ground and Surface Waters Clean-up and Response Fund; combined the Fund Insurance Review Board and the Oil Spill Advisory Committee to create the Review Board; and changed the level that fees may be increased from 5 million dollars to 6 million dollars.

No comments were received during the public comment period.

Fiscal impact of rule:

This rulemaking conforms the rules with statutory changes already in effect; therefore no financial impact is expected as a result.

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Agency name: Finance Authority of Maine
Umbrella-Unit: 94-457
Statutory authority: 20-A MRS §§ 11810, 12107
Chapter number/title: Ch. 607, Access to Medical Education and Health Professions Loan Programs, *Amendment 10*
Filing number: 2017-014
Effective date: 2/12/2017
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The rule amendments provide for (a) partial loan forgiveness in the event of eligible but part-time employment except for borrowers under Sections IV and V; (b) loan forgiveness in the event of death or total and permanent disability; and (c) elimination of the annual report requirement for borrowers who withdrew from professional education or no longer reside in Maine.

Fiscal impact of rule:

There could be lost revenue due to non-payment upon death or total and permanent disability. However, these circumstances are unusual, and often resulted in limited recovery due to other factors. The amendment will not impose any costs on municipalities or counties.

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Agency name: Finance Authority of Maine
Umbrella-Unit: 94-457
Statutory authority: 20-A MRS §12107
Chapter number/title: Ch. 617, Health Professions Loan Program, *Amendment 1*
Filing number: 2017-015
Effective date: 2/12/2017
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The rule amendments provide for (a) loan forgiveness in the event of death or total and permanent disability; (b) elimination of the annual report requirement for borrowers who withdrew from professional education or no longer reside in Maine; and (c) limitation of post-graduate training to 6 years, except for dental and veterinary students.

Fiscal impact of rule:

There is the possibility of lost revenue due to non-payment after death or total and permanent disability. However, these circumstances are unusual, and often resulted in limited recovery due to other factors. The amendment will not impose any costs on municipalities or counties.

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Agency name: Finance Authority of Maine
Umbrella-Unit: 94-457
Statutory authority: 20-A MRS §12124
Chapter number/title: Ch. 618, Maine Veterinary Medicine Loan Program,
Amendment 1
Filing number: 2017-016
Effective date: 2/12/2017
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The rule amendments provide for (a) loan forgiveness upon death or total and permanent disability; and (b) elimination of the annual report requirement for borrowers who withdrew from professional education or no longer reside in Maine.

Fiscal impact of rule:

There could be lost revenue due to non-payment upon death or total and permanent disability. However, such circumstances are unusual, and often resulted in limited recovery due to other factors. The amendment will not impose any costs on municipalities or counties.

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Agency name: Finance Authority of Maine
Umbrella-Unit: 94-457
Statutory authority: 10 MRS §§ 969-A(14), 1026-A
Chapter number/title: Ch. 101, Loan Insurance Program, *Amendment 6*
Filing number: 2017-059
Effective date: 4/9/2017
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The amendment changes the maximum amount of leveraged loan insurance that the Authority can provide to one borrower from \$1 million to \$2.5 million, and makes other changes to conform to contingent statute changed by PL 2015 ch. 38 §1.

Fiscal impact of rule:

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

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Agency name: Finance Authority of Maine
Umbrella-Unit: 94-457
Statutory authority: 10 MRS §969-A(14)
Chapter number/title: Ch. 326, Compliance Assistance Loan Program
Filing number: 2017-171
Effective date: 11/8/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

A similar program administered by the Authority is no longer adequately funded. This rule informs borrowers of the requirements and standards for obtaining loans for certain oil storage tank and related projects from the Authority through the Clean Water State Revolving Loan Fund, in cooperation with the Maine Department of Environmental Protection and the Maine Municipal Bond Bank.

Basis statement:

The rule is necessary to inform borrowers of the requirements and standards for obtaining loans from the Clean Water State Revolving Fund made available for the purposes expressed in the rule. The rule sets forth eligibility requirements for borrowers and projects to be financed, and terms and conditions of loans. In drafting the rule, the Authority relied on its experience in administering similar programs, the professional judgement of its staff, and consultation with the Maine Department of Environmental Protection and the Maine Municipal Bond Bank.

During the comment period, one written comment was received from David E. Burns, Director of the Bureau of Remediation and Waste Management at the Maine Department of Environmental Protection, requesting clarification to Section 6(G) of the rule to conform the language of that Section to the rule of the Maine Department of Environmental Protection cited in that Section. The members of the Authority found that the clarification was warranted and consistent with the proposed rule, and adopted the clarification.

Fiscal impact of rule:

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

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Agency name: Department of Health and Human Services, **Maine Center for Disease Control and Prevention**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 7702-B(11), 7703(6), 7704, 7707(3), 7802(7), 8301(8), 8302-A(2), 8303-A(1)

Chapter number/title: **Ch. 33**, Family Child Care Provider Licensing Rule (*formerly* 10-148 Ch. 33, Rules for the Certification of Family Child Care Providers)

Filing number: **2017-147**

Effective date: 9/20/2017

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

These rule changes are intended to clarify the health and safety minimum licensing standards for family child care providers, which include adding lead drinking water testing, background checks, and standards for outdoor play areas to address specific health and safety concerns. Further, the Department intends to make the requirements easier to understand for providers to obtain and maintain a license, by clarifying evidence-based measures for child care licensing inspections. Finally, the Department is increasing transparency regarding the inspection, investigation and enforcement procedures, so that providers can more easily understand what will happen in the course of a license, or if violations occur. These changes are designed to increase the statewide access to, and availability of, family child care, and to improve the ability of licensees to comply with this rule.

Basis statement:

The Department rulemaking proposed to repeal 10-148 CMR Ch. 33, *Rules for the Certification of Family Child Care Providers*, and replace it with 10-144 CMR Ch. 33, *Family Child Care Providers Licensing Rule* on April 19, 2017. A public hearing was held on May 8, 2017, and written comments were accepted through May 18, 2017.

The 10-144 CMR Ch. 33 rule contains both routine technical and major substantive provisions. In this rulemaking, the Department repealed the 10-148 CMR Ch. 33 rule (*Rules for the Certification of Family Child Care Providers*), meaning that it is no longer legally effective, as of September 20, 2017. In addition, the Department finally adopts all the routine technical provisions, and provisionally adopts all the major substantive provisions of 10-144 CMR Ch. 33 (*Family Child Care Providers Licensing Rule*) to replace the previous rule in effect.

The rule contains a NOTICE on the first and last pages of the rule, notifying the reader that the rule contains both major substantive and routine technical provisions. All major substantive portions of the rule are shaded gray, so they are easy to identify as major substantive.

These changes to the rule achieve a variety of goals, which include increasing access to family child care providers in Maine, by affording licensees a chance to grow their business and care for more children, in order to address Maine's current shortage of infant care offered. By reducing administrative and subjective requirements beyond the limited scope of 22 MRS §8302-A(2), this rule clarifies and streamlines the licensing requirements for family child care providers, while retaining important health and safety standards. This rule increases transparency of the application, licensing, inspection and enforcement processes, so that licensees more easily understand how to become licensed and stay licensed. And finally, the licensee incurs far fewer chances of losing business or subsidies with the new escalation of enforcement actions, which allows greater opportunities for licensees to collaborate with the Department, correct violations, and contest violations than the previous rule.

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The Department intends to act within its authority granted in 22 MRS §8302-A(2). For example, Maine statute (22 MRS §8302-A(l)(F)) authorizes the Department to make rules for childcare facilities regarding the quality of the program, the statute for family childcare provider rules does not include quality standards. Therefore, it removed parts of the previous rule that did not focus on primary health and safety. These removed provisions, include, but are not limited to, the following:

- a. How the parents and providers interact;
- b. Record requirements beyond 22 MRS §8302-A(2);
- c. The requirement for applicant references;
- d. Specific requirements around how long a child watches TV;
- e. Specific requirements for comfortable pajamas.

Fiscal impact of rule:

Counties/Municipalities: These rule changes pose no fiscal impact to counties or municipalities.

Department: The Child Care Licensing Program does not anticipate any additional costs at this time.

Small Businesses: The expected impact will vary depending upon the provider. Some providers may not be impacted at all, particularly if they already operate in a manner that complies with the proposed rules. Other providers may save money from fewer required training hours. The child care licensing program does expect that some family child care providers will face some one-time expenses for play area surfacing and fencing.

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Agency name: Department of Health and Human Services, **Maine Center for Disease Control and Prevention**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 7702-B(11), 7703(6), 7704, 7707(3), 7802(7), 8301(8), 8302-A(2), 8303-A(1)

Chapter number/title: **Ch. 33**, Family Child Care Provider Licensing Rule (*formerly* 10-148 Ch. 33, Rules for the Certification of Family Child Care Providers)

Filing number: **2017-148**

Effective date: 9/20/2017

Type of rule: Major Substantive emergency adoption

Emergency rule: Yes

Principal reason or purpose for rule:

These rule changes are intended to clarify the health and safety minimum licensing standards for family child care providers, which include adding lead drinking water testing, background checks, and standards for outdoor play areas to address specific health and safety concerns. Further, the Department intends to make the requirements easier to understand for providers to obtain and maintain a license, by clarifying evidence-based measures for child care licensing inspections. Finally, the Department is increasing transparency regarding the inspection, investigation and enforcement procedures, so that providers can more easily understand what will happen in the course of a license, or if violations occur. These changes are designed to increase the statewide access to, and availability of, family child care, and to improve the ability of licensees to comply with this rule.

Basis statement:

The Department rulemaking proposed to repeal 10-148 CMR Ch. 33, *Rules for the Certification of Family Child Care Providers*, and to replace it with 10-144 CMR Ch. 33, *Family Child Care Providers Licensing Rule*. A public hearing was held on May 8, 2017, and written comments were accepted through May 18, 2017. The 10-144 CMR Ch. 33 rule contains both routine technical and also major substantive rule provisions.

On September 15, 2017, the Department repealed 10-148 CMR Ch. 33 and also :finally adopted the routine technical rule provisions of 10-144 CMR Ch. 33, and provisionally adopted its major substantive provisions. The routine technical rule provisions of 10-144 CMR Ch. 33 are legally effective on September 20, 2017, but, pursuant to 5 MRS §8072, the provisionally adopted major substantive rule provisions have no legal effect until the Legislature authorizes adoption of the major substantive rule. The Department now adopts all Major Substantive provisions in that rule on an emergency basis.

FINDINGS OF EMERGENCY

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. The Department's findings of emergency are as follows: Without this emergency major substantive rule, the major substantive rule provisions that were provisionally adopted by the Department would have no legal effect until they are reviewed and approved by the Maine Legislature. These provisions provide necessary protection for children, infants, and toddlers in family child care. Additionally, the Background Check Center provision is required by federal as well as state law. These major substantive provisions are both necessary for the primary health and safety of the children in family child care and are required by Maine law to be included in this rule. 22 MRS §8302-A(2). If these major

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substantive provisions are not in effect, there would no workable rule in place regarding Family Child Care Providers due to the repeal of the old rule.

The rule contains a NOTICE on the first and last pages of the rule, notifying the reader that the rule contains both major substantive and routine technical provisions. All major substantive portions of the rule are shaded gray, so they are easy to identify as major substantive.

This Emergency Major Substantive rule is identical to the 10-144 CMR Ch. 33 rule the Department adopted on September 15, 2017.

Fiscal impact of rule:

Counties/Municipalities: These rule changes pose no fiscal impact to counties or municipalities.

Department: The Child Care Licensing Program does not anticipate any additional costs at this time.

Small Businesses: The expected impact will vary depending upon the provider. Some providers may not be impacted at all, particularly if they already operate in a manner that complies with the proposed rules. Other providers may save money from fewer required training hours. The child care licensing program does expect that some family child care providers will face some one-time expenses for play area surfacing and fencing.

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Agency name: Department of Health and Human Services, **Office of MaineCare Services – Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(8), 3173
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 67**, Principles of Reimbursement for Nursing Facility Services
Filing number: **2017-004**
Effective date: 1/18/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These changes are being made in order to ensure adequate funding for Nursing Facility Services by increasing the Prospective and Final Prospective Rate to 100 percent (100%) of all calculated direct care and routine cost components effective retroactive to July 1, 2016.

The Department is seeking and anticipates receiving approval from the federal Centers for Medicare and Medicaid Services for this change.

Basis statement:

The Department of Health and Human Services (Department) adopts this rule change to Ch. III Section 67, “Principles of Reimbursement for Nursing Facility Services”, to increase the Nursing Facility Services’ prospective and final prospective rate to one hundred percent (100%) of all calculated direct care and routine cost components, which will increase reimbursement and continue to provide adequate funding for Nursing Facility Services effective retroactive to July 1, 2016.

The Department is seeking and anticipates receiving approval from the federal Centers for Medicare and Medicaid Services for this change. Pending approval, the increased rate will be effective retroactive to July 1, 2016.

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.

Fiscal impact of rule:

The Department estimates that the General Fund impact for these changes is \$10,674,230 in SFY 2017 and \$11,644,615 in SFY 2018, and estimates federal expenditures of \$6,826,170 in SFY 2017 and \$7,496,803 in SFY 2018.

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

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 42(8), 3173; PL 2016 ch. 83, (127th Legis. 2016), *Resolves, Directing the Department of Health and Human Services To Increase Reimbursement Rates for Home-based and Community-based Services*

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

Filing number: **2017-022**

Effective date: 2/22/2017

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The purpose of these rules is to comply with PL 2016 ch. 83, *Resolves, Directing the Department of Health and Human Services To Increase the Reimbursement Rates for Home-based and Community-based Services*, which requires the Department to amend its rules for reimbursement rates for personal care and related services provided under 10-144 CMR ch. 101, *MaineCare Benefits Manual*, Ch. II & III Section 12, “Consumer-Directed Attendant Services” and “Allowances for Consumer Directed Attendant Services”. This rulemaking adds modifiers and reimbursement rates for two person and three person member visits for attendant care services.

Ch. II, “Consumer-Directed Attendant Services”, informs providers, if a single provider is providing personal care services to more than one Section 12 member during a single visit, the two or three person procedure code and modifier shall be billed. This law went into effect on July 29, 2016, without the governor's signature.

The Department is seeking and anticipates receiving approval from the federal Center for Medicare and Medicaid Services for these changes. Pending approval, the increased reimbursement rates and modifiers will be effective retroactive to July 29, 2016. A notice of methodology change was published on July 28, 2016.

Basis statement:

The Department of Health and Human Services (Department) adopts these rule changes to Ch. II & III, “Consumer-Directed Attendant Services” and “Allowances for Consumer-Directed Attendant Services”, to increase reimbursement rates for personal care services to comply with Resolves 2015 ch. 83, *Resolve, Directing the Department of Health and Human Services To Increase the Reimbursement Rate for Home-based and Community-based Services*. This law went into effect on July 29, 2016, without the Governor’s signature.

The Department is seeking and anticipates receiving approval from the federal Centers for Medicare and Medicaid Services (“CMS”) for these changes. Pending approval, the increased reimbursement rates will be effective retroactive to July 29, 2016. In addition, in September of 2015, the Department proposed separate reimbursement rate changes to CMS; those rates are pending approval. As such, there are separate effective dates for various rates, as set forth more specifically in Ch. III. The Department finds that changes in Ch. III were required, to make this clear for the regulated community.

These changes are consistent with Resolves 2015 ch. 83, which requires the Department to change its reimbursement rates in Section 12 to reflect 50% of the increase in rates as set forth in a final February 1, 2016 report by Burns & Associates, Inc., and approved by the Legislature. For new codes specific to multiple person visits, as identified in Ch. III, the Department shall apply them prospectively only. Following review and advice from the Office of

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the Attorney General, the Department finds that changes were required to Ch. III from what was proposed to distinguish between the different effective dates.

The Department is authorized to adopt certain of these changes retroactively under 22 MRS §42(8) because these changes increase reimbursement rates for providers, and will have no adverse impact on either MaineCare providers or members.

This rulemaking also makes various clerical changes and updates in Ch. II, such as switching references from “Consumer Directed Attendant Services” to “Consumer-Directed Attendant Services”, “self direct” to “self-direct”, “mentally retarded” to “individuals with intellectual disabilities”, and updating the name of Office of Aging and Disability Services. Additionally, references to Section 22, the “Home and Community Benefits for the Physically Disabled”, have been removed, since that waiver service was merged into Section 19 effective January 1, 2015, and no longer exists.

Fiscal impact of rule:

The Department estimates that the General Fund impact for these changes is \$558,139 in SFY 2017 and estimates of federal expenditures of \$356,930.

This rulemaking will not impose any costs on municipal or county governments, or on small businesses employing twenty or fewer employees.

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

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 42(8), 3173; PL 2016 ch. 83, (127th Legis. 2016), *Resolves, Directing the Department of Health and Human Services To Increase Reimbursement Rates for Home-based and Community-based Services*

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

Filing number: **2017-023**

Effective date: 2/22/2017

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The purpose of the rule is to comply with PL 2016 ch. 83, *Resolve, Directing the Department of Health and Human Services To Increase the Reimbursement Rates for Home-based and Community-based Services*. PL 2016 ch. 83 requires the Department to amend its rules for reimbursement rates for personal care and related services provided under 10-144 CMR ch. 101, *MaineCare Benefits Manual*, Ch. II & III Section 96, “Private Duty Nursing and Personal Care Services”. This rulemaking adds modifiers and reimbursement rates for two person and three person member visits for various services as identified in Ch. III. This law went into effect on July 29, 2016, without the governor’s signature.

The Department is seeking and anticipates receiving approval from the federal Centers for Medicare and Medicaid Services (CMS) for a State Plan Amendment for these changes. Pending approval, pursuant to 22 MRS §42(8), the increased reimbursement rates, modifiers, and level of care caps will be effective July 29, 2016. The Department published a notice of change in reimbursement methodology, pursuant to 42 CFR §447.205, on July 28, 2016.

Basis statement:

The Department of Health and Human Services (Department) adopts these rule changes to Ch. II & III Section 96, “Private Duty Nursing and Personal Care Services”, to change reimbursement rates and level of care limits for personal care services and related services to comply with Resolves 2015 ch. 83, *Resolve, Directing the Department of Health and Human Services To Increase Reimbursement Rates for Home-based and Community-based Services*. This law went into effect on July 29, 2016, without the Governor’s signature.

The Department is seeking and anticipates receiving approval from the federal Centers for Medicare and Medicaid Services (“CMS”) for these changes. Pending approval, the increased reimbursement rates will be effective retroactive to July 29, 2016. In addition, in September of 2015, the Department proposed separate reimbursement rate changes to CMS; those rates are pending approval. As such, there are different effective dates for various rates, as set forth more specifically in Ch. II Appendix 2, and in Ch. III. The Department finds that changes were required in Ch. II Appendix 2 as well as in Ch. III to make this clear for the regulated community.

These changes are consistent with Resolves 2015 ch. 83, which requires the Department to change its reimbursement rates in Section 96 to reflect 50% of the increase in rates as set forth in a final February 1, 2016 report by Burns & Associates, Inc. The Department notes that for certain of the Section 96 rates, there was a decrease in reimbursement; each of those rates are consistent with what was modeled in the Burns & Associates report, and approved by the Legislature. Where the reimbursement rates decrease, the Department shall apply them prospectively only. Following review and advice from the

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Office of Attorney General, the Department finds that changes were required to Ch. III from what was proposed to distinguish between the different effective dates, depending on whether a rate increased or decreased.

The Department is authorized to adopt certain of these changes retroactively under 22 MRS §42(8) because the changes increase reimbursement for providers, and will have no adverse impact on either MaineCare providers or members.

This rulemaking also makes various clerical changes and updates in Ch. II, such as switching references from “authorized agent” to “authorized entity”, and updating the name of the Office of Aging and Disability Services. Additionally, references to Section 22, the Home and Community Benefits for the Physically Disabled, have been removed, since that waiver service was merged into Section 19 effective January 1, 2015, and no longer exists.

Fiscal impact of rule:

The Department estimates that the General Fund impact for these changes is \$2,969,225 in SFY 2017 and estimates federal expenditures of \$1,898,819 in SFY 2017.

This rulemaking will not impose any costs on municipal or county governments, or on small businesses employing twenty or fewer employees.

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Umbrella-Unit: **10-144**

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

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

Filing number: **2017-027**

Effective date: 2/26/2017

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 adopts these changes pursuant to Resolves 2015, ch. 82 (eff. April 26, 2016) and PL 2015, ch. 477 (eff. April 15, 2016). In addition, this rulemaking removes certain services that have been moved to Section 65, “Behavioral Health Services”, and makes minor technical edits and clarifications of policy. Overall, these changes are being added to support clinical best practices and improve the quality of care for MaineCare members. Each component of the rulemaking is stated below. 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, and minor adjustments to align with other sections of the MBM, and changes to language for clarity.

Transition Period

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 2015 ch. 82 (eff. April 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.

Service Provider Tax

Separately, the Legislature enacted *An Act to Increase Payments to MaineCare Providers that are Subject to Maine’s Service Provider Tax*, PL 2015, ch. 477 (eff. April 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 Center of Medicaid Services (CMS) approval of the reimbursement changes for Section 17 providers. Pending approval, the

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Department will reimburse providers under the new increased rates retroactively to July 1, 2016, pursuant to PL 2015, ch. 477 (eff. April 15, 2016).

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 2015 ch. 88). That law imposes a moratorium on rulemaking 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 2015 ch. 88 does not prevent the instant rule changes because (1) the separate law, PL 2015 ch. 477, is more specific in regard to changing reimbursement for providers impacted by the Service Provider Tax increase; and (2) these are reimbursement rate increases, thus providing a benefit to MaineCare providers.

Adult Needs and Strengths Assessment (ANSA)

This adopted rulemaking adds a standard to the policy for providers of Community Integration Services to begin using the ANSA as an assessment and treatment planning guide for members. The ANSA is a multipurpose tool that assesses the needs and strengths of adults seeking behavioral health services. The ANSA may be used to support decision making (including level of care and service planning), to facilitate quality improvement initiatives, and to allow for the monitoring of outcomes of services. The Department believes that this assessment tool is superior to current assessments in identifying member needs and strengths, and will better aid providers in their planning and in meeting member needs. Additionally, the ANSA will allow for the State to gather reliable data on this service and the members it serves to aid in future rulemaking and resource allocation.

Hold for Service

This adopted rulemaking adds a standard to the policy for members to choose to hold for services with a provider agency, when the initial seven (7) calendar day intake meeting requirement cannot be met, given the provider offers the member information on other providers within a 25 mile radius of the servicing area. This provision allows a member choice of providers when there is not immediate capacity to serve without penalizing the provider. Additionally, this choice will allow the member to remain involved with an agency should services not be immediately available, in an effort to streamline intake when the provider has the capacity to serve.

Treatment Plan: Access to Primary and Specialized Care

This adopted rulemaking adds a standard to the policy for providers to address a member's access to primary and specialized care in the treatment planning process for Community Integration Services. The Department believes that treatment planning for medical services is important as it is often an unmet need or area of resistance for this population. Additionally, this population frequently has medical concerns that should not go unaddressed. The Department feels it is important for providers to actively engage members to ensure their medical needs are being met, and this provision will require providers to discuss access to care during initial and ninety (90) day treatment plan reviews.

Clubhouse Services

This adopted rulemaking permanently removes Clubhouse services from this section of policy. Clubhouse services have been added and adopted in Section 65, Behavioral Health Services, as of November 23, 2016, and therefore continuing to cover this service in Section 17 would be duplicative.

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Certified Intentional Peer Support Specialist (CIPSS)

This adopted rulemaking updates language regarding the CIPSS role in Assertive Community Treatment for adults to reflect the current status of this credential in the process of CMS approval, and allows for the use of this credential pending approval.

Member Appeals

To conform with Federal law and Ch. I of the *MaineCare Benefits Manual*, this adopted rule modifies the language for member appeals to include that the decision to reduce, suspend, or terminate services will be provided to the member in writing.

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 rulemaking 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.

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

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 42, 42(8), 3173; 5 MRS §8054; PL 2016 ch. 477 (eff. 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: **2017-028**

Effective date: 2/27/2017

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The Department is adopting 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 who are subject to the service provider tax and who have experienced an increase in the tax from 5% to 6% since January 1, 2016. The Department filed these rate increases via emergency rulemaking, effective retroactive to April 15, 2016. To prevent lapse of the emergency rule changes, which are effective for ninety (90) days, the Department is now adopting these changes.

Basis statement:

The adopted rule includes rate increases to comply with PL 2015, ch. 477 (*An Act to Increase Payments to MaineCare Providers That Are Subject to Maine’s Service Provider Tax*). The Legislature enacted this law to provide additional appropriations to certain MaineCare providers who are subject to the service provider tax and who have experienced an increase in the tax from 5% to 6% since January 1, 2016.

The adopted rule results in a 1% rate increase for the following services:

- 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.
- 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.

Fiscal impact of rule:

The Department anticipates that this rulemaking 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.

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Agency name: Department of Health and Human Services, **Office of MaineCare Services – 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 20**, Home and Community Based Services for Adults with Other Related Conditions
Filing number: **2017-030**
Effective date: 3/1/2017
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 is adopting changes to Ch. II and III Section 20, “Home and Community Based Services for Adults with Other Related Conditions”, that seek to expand eligibility for services, add services, clarify existing services, increase rates, and more closely align with federal requirements for waiver services. Specific changes are outlined as follows.

Chapter II

The Department has made changes to Ch. II that help move the Section 20 waiver program towards compliance with 42 CFR §431.301(c). This federal regulation, effective March 17, 2014, sets forth new provisions for Home and Community Based Services (HCBS) waiver programs, including provisions outlining the person-centered planning process and provisions outlining the qualities of HCBS settings. The federal regulation requires states to engage in transition planning with the Centers for Medicare and Medicaid Services (CMS) to assure compliance with these provisions. The Department is currently engaged in this process with CMS. For this rulemaking, the Department has incorporated changes in Sections 20.01 (Introduction), 20.04-1 (Procedures for Developing the Care Plan), 20.04-2 (Content of the Care Plan), and 20.10-19 (Requirements for Residential Settings Owned or Controlled by a Provider), that reflect some of the person-centered planning requirements and HCBS setting requirements in 42 CFR §431.301(c). The Department made additional changes to the rule as a result of public comment.

In addition, the Department has updated Ch. II to expand eligibility criteria and services for Section 20 members. The Department added Muscular Dystrophy, Huntington’s, Spina Bifida or other rare developmentally based conditions to General Eligibility Criteria at Section 20.03-2. This expansion is the result of the Department’s FY 2016-2017 budget initiative to cover more individuals under this waiver and corresponding appropriations. See PL 2015 ch. 267 part A §A-31. The Department is seeking CMS approval for this waiver change. The Department also removed the provision in Section 20.03-2 that “any other condition will be reviewed for eligibility by the Office of MaineCare Services Medical Director” to be consistent with the current review process under Section 20.04-1(G) that requires the Office of Aging and Disability Services (OADS) to prior authorize and determine eligibility for all waiver recipients. The Department is also adding Career Planning Services as a new Section 20 service for members, consistent with other developmental services waiver programs. The Department is seeking and anticipates approval from CMS for this added benefit. The Department is also seeking approval from CMS to add Licensed Audiologists to the list of qualified providers of Communication Aids services in Section 20.10-4. Although not contained in the Ch. II rule

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proposal, this change is being adopted in Ch. II on the basis of additional findings by the Department that it will benefit members by expanding the number of professionals qualified to provide this service.

The Department is also making changes to Ch. II that CMS has already approved in the current waiver. These changes include clarifying the limits on the reimbursement of Assistive Technology Devices. For example, the rule clarifies that there is a combined limit of \$6,000.00 annually for devices and certain services associated with leasing, purchasing, and maintaining the devices; data transmission utility costs are also covered up to \$50.00 per month. Consistent with the current waiver, the adopted rule also clarifies that for Home Support Services in Section 20.05-9, an individual Personal Care Assistant, Personal Support Specialist, or Direct Support Professional shall not be reimbursed for more than forty hours per week for any one waiver member. This reimbursement provision accords with the existing limit for Personal Care Services at Section 20.05-14 and follows other developmental services waiver programs. The rule change helps ensure that individual providers are able to deliver services in a focused and safe manner.

Other changes to Ch. II include updating the Quality Reporting requirements in Section 20.14 to help ensure members are receiving quality services under this waiver.

Finally, the Department has made a number of formatting and clerical changes to Ch. II for rule clarity. These changes include replacing “Authorized Agent” with “Authorized Entity” throughout the rule for consistency within the MaineCare Benefits Manual, updating outdated citation references, and updating grammar and formatting.

Chapter III

For Ch. III, the rule adoption increases rates in accordance with PL 2015 ch. 477 (*An Act to Increase Payments to MaineCare Providers That Are Subject to Maine’s Service Provider Tax*). Effective April 15, 2016, this law provides 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 previously adopted these changes to Ch. III through emergency rulemaking effective October 5, 2016, and retroactive to April 15, 2016. The emergency rule has since lapsed. The Department now adopts these same changes, again retroactive to April 15, 2016, to ensure providers receive this increased reimbursement. This retroactive increase benefits providers and members and is permissible under 22 MRS §42(8).

Consistent with changes in Ch. II, the Ch. III rule adoption also clarifies reimbursement limits for Assistive Technology Devices. For Procedure Code T2035 U8, Assistive Technology-Transmission (Utility Services), the maximum allowance now reads “Up to \$50.00 per month.” For Procedure Code A9279 U8, Assistive Technology – (Monitoring feature/device, stand alone or integrated, any type, includes all accessories, components and electronics, not otherwise classified), the maximum allowance now reads “Up to \$6,000.00 annually.”

The Department also added Procedure Code T2015 U8, Career Planning (Habilitation, prevocational), at \$28.00 per hour. The Department inadvertently did not include this change in the filed rule proposal document, however, did notify the public in the notice documents of this change. The inclusion of the rate in Ch. III is consistent with the provisions of Ch. II and is necessary to facilitate proper billing.

Fiscal impact of rule:

The Department anticipates that for this rulemaking, the addition of Career Planning will cost approximately \$10,500 in SFY 2017, which includes \$3,919.65 in state dollars and \$6,580.35 in federal dollars, and \$14,000 in SFY 2018, including \$5,046.75 in state dollars and \$8,953.25 in federal dollars.

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Agency name: Department of Health and Human Services, **Office of MaineCare Services – Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 29**, Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder
Filing number: **2017-031**
Effective date: 3/4/2017
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The Department is adopting various changes in its rule that help move the Section 29 waiver program towards compliance with 42 CFR §431.301(c). This federal regulation, effective March 17, 2014, sets forth new provisions for Home and Community Based Services (HCBS) waiver programs, including provisions outlining the person-centered planning process and provisions outlining the qualities of HCBS settings. In addition, to protect members and increase the quality of the Covered Services, the Department is implementing various new provider requirements in Section 29.

Significant Updates and Changes to Chapter II, Section 29 include the following:

Changes were made to ensure consistency with the current version of the Diagnostic and Statistical Manual of Mental Disorders (the “DSM”), the DSM 5. Specifically, the reference in the title of this section was changed from “Autistic Disorder” to “Autism Spectrum Disorder.” In addition, throughout Section 29, the term “Mental Retardation” with the term “Intellectual Disability.”

Language was added to the Introduction, Section 29.01, to clarify the purpose of the rule and its intended impact. This change provides more detailed language than existed previously regarding the relationship of the rule to other MaineCare benefits and explains that the benefit is limited in scope.

Multiple changes were made to the Definitions, Section 29.02, including the following:

- A definition of Clinical Review Team (the “CRT”) was added at 29.02-7. The CRT is a newly formed entity that will handle Medical Add On requests. The definition describes the role of the CRT and its responsibilities.
- The definition of Direct Supports at 29.02-10 was amended to remove specific examples of particular Covered Services to preclude the interpretation that Direct Support could be utilized only for those particular Covered Services.
- A definition of Exploitation was added at 29.02-12, as this is one of the circumstances in which providers are expected to report to the Department.
- Language was added to the definition of Medical Add On at 29.02-16 in order to specify the meaning of the term and the services to which it applies, and to explain how it is determined whether to grant Medical Add On.
- Language was added to the “On Behalf Of” section at 29.02-19 in order to specify that it is a billable activity and to remove unnecessary language.

Subpart F was removed from Section 29.03-2, General Eligibility Criteria, Subpart F had specified “lives with family or on their own,” as an eligibility requirement. The Department determined that this language was too limiting, in that people have a variety of living scenarios,

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including living with unrelated roommates, or with paid staff or residing in a boarding or group home separate from the waiver.

Under Section 29.03-5, Waiting List and Offers for Funding Openings, language was added to specify that once a member receives an offer, he or she moves from the waiting list to a different status, of offer received. The intent is to clarify that such a member is no longer part of the waiting list, thereby freeing up a spot on the waiting list for placement of a new member, with the goal of getting Covered Services to more eligible members more quickly.

Under Section 29.04, Personal Plan, the language was updated to ensure that the member is driving the process and that the process is more closely aligned with 42 CFR §§ 441.301 and 441.303 (eff. March 17, 2017). Direct references to the CFR were included and the Department shall file copies of the incorporated regulations with the Secretary of State's Office pursuant to 5 MRS §8056(B)(1)-(3).

Multiple changes were made to Section 29.05, Covered Services, including,

- Under Section 29.05-2, Career Planning, quality-oriented language was added so that the Department could review plans more frequently for appropriateness for the member.
- Under Section 29.05-3, Community Support, language was added to reinforce the fact that career exploration is included as part of this Covered Service and to stress the importance of employment related activities.
- Where applicable, dollar caps were increased to reflect the reimbursement increases implemented by this rule.
- At 29.05-4, Employment Specialist Services, 29.05-11 and Work Support-Individual the limits were removed that prevented members from receiving Employment Specialist Services and Work Support Services while enrolled in high school. This will allow members in transition to begin receiving services sooner, to help them prepare for changes after high school and, ideally, attain employment.

Under Section 29.06, Non Covered Services, the provision excluding certain family members and guardians from providing direct and indirect services to members was removed. Some members receive services from family members, and the Department seeks to continue this practice, which makes services more accessible for members and offers greater member choice.

A number of changes were made to Section 29.07, Limits, including,

- At 29.07-2, Assistive Technology and Career Planning were removed from the annual dollar cap. These services are subject to separate limits as described at 29.07-14 for Assistive Technology and 29.07-15 for Career Planning.
- At 29.07-4 the limit for Home Accessibility Adaptions was increased from \$5,000 in a three year period to \$10,000 in a five year period. This provides more services and greater flexibility to members.
- At 29.07-10, the limit was removed that prevented members from receiving Work Support Services while enrolled in high school. This will allow members in transition to begin receiving services sooner, to help them prepare for changes after high school and, ideally, attain employment.
- At 29.07-15, the cap of 60 hours of services must be delivered within a six month period, instead of annually. The Department believes this will improve the quality and effectiveness of this Covered Service.
- At 29.07-16, language was added in order to prevent individuals living out of state from receiving MaineCare services, which is contrary to state and federal law.
- Throughout, the Department increased various dollar caps to reflect the 1% increase in reimbursement for providers.

At 29.10, Provider Qualifications and Requirements, new provisions were added to provide additional safeguards for member health and safety, improve quality of services and to increase training and the qualifications for providers. The following changes were made:

- Additional qualifications for Direct Support Professionals.
- Additional qualifications for Employment Specialist.

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- Clarification of Background Check Criteria.
- Clarification of Reportable Events & Behavioral Treatment.

At 29.12, Reimbursement, language was added to ensure compliance with the MaineCare rules as regards provider billing requirements.

In Appendix I, language was added to provide details regarding the role and composition of the Clinical Review Team, the types of services that would be appropriate for Medical Add On, and the requirements for Medical Add On determinations and approvals. The Department removed authority to approve Medical Add On retroactively to the date of application because Medical Add on is effectively a prior authorization, which by its nature cannot be backdated.

A new Appendix, Appendix IV- Additional Requirements for Section 29 Providers of Community Support Services, and Employment Specialist Services was added. The Department is adding these requirements to help ensure high quality services to members.

The following is a summary of significant changes that were made to the final rule as a result of the public comments and review by the Office of the Attorney General. A complete list of all changes to the final rule is contained in the Summary of Comments and Responses document.

At Sections 29.05-10 and 29.07-2, the program dollar cap was increased from \$23,771.00 to \$23,985.00, which reflects the 1% increase in reimbursement and assures no effective service reduction. Also, hourly caps were removed to make clear that the Department intends only to use the dollar caps. Elimination of the hourly caps removes redundancy and potential confusion from the rule, as the monetary cap accomplishes the same purpose as hourly caps.

As a result of comments as well as review by the Office of Attorney General, changes from proposed rule were removed so as to retain the requirement that various services must be implemented within ninety (90) days of assessment. See Section 29.04 (Personal Plan), 29.05-1 (Home Support Remote Support).

At 29.04-4, the term “Guardian” was added to make it clear that a member’s guardian may also request an update to the Personal Plan.

At 29.04-2, to be consistent with Section 21, citations to 42 CFR § 441.301(c)(1) and 34-B MRSA. § 5470-B(2) were added. Also, to ensure consistency with Section 21, at 29.04-2 and 21.10-1, clarification of policy mandating that Grievance Training must take place prior to working with members was added.

At 29.05-5, the limit for adaptations was changed from \$5,000 in a three year period to \$10,000 in a five year period in order to allow greater flexibility for members using this benefit.

At 29.05-7, Home Support-Remote Support the restriction that “sub-contracting is not permissible under this service” was removed. This will allow providers to subcontract with entities that specialize in technology and provider greater access to Covered Services for members. Section 29.08-4 (Provider Termination of a Member’s Service) was removed as a result of concerns raised by commenters and the Office of the Attorney General.

At 29.10-4, Background Check Criteria, the reference to “prospective” employees was removed as a result of concerns raised by commenters and the Office of Attorney General.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$38,338 in SFY 2016, which includes \$14,311 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.

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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 – Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173; LD 1638
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 21**, Home and Community Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder
Filing number: **2017-038**
Effective date: 3/5/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This waiver renewal adopts rule changes to the Comprehensive Home and Community Based Services (HCBS) Waiver for persons with Intellectual Disabilities and Autism Spectrum Disorder. The rule includes language that will bring the Department into compliance with new requirements from the Centers for Medicare and Medicaid Services (CMS) Home and Community-Based Services (HCBS) Settings Rule released on January 16, 2014 (see 42 CFR §441.301(c)). The Department is seeking and anticipates receiving CMS approval for this section. Ch. II Section 21 is a routine technical rule and does not require legislative approval prior to final adoption of the rule.

Basis statement:

This regulation governs a federal Medicaid home and community based federal Medicaid 1915C waiver service. In this rulemaking, the Department has made changes that help move the Section 21 waiver program towards compliance with 42 CFR §431.301(c). This federal regulation, effective March 17, 2014, sets forth new provisions for Home and Community Based services (HCBS) waiver programs. The federal regulation requires states to engage in transition planning with the Centers for Medicare and Medicaid Services (CMS) to assure compliance with these provisions. The Department is currently engaged in this process with CMS. For this rulemaking, the Department has incorporated changes regarding the Person-Centered planning process. Attached to this Basis Statement is a copy of a portion of the federal regulation, 42 CFR 431.301(c)(1), which is incorporated into this rule by reference.

Although the Department proposed changes (proposed 21.10-6 – Residential Settings Owned or Controlled by a Provider), in compliance with 42 CFR §441.301(c)(4)(vi)(B), the Department has chosen to not go forward with the proposed language. In response to the many comments the Department received complaining about the inclusion of the federal HCBS settings standards [codified in 42 CFR 441.301(c)(4)(vi)(B – F)] the Department has made the decision to remove, and not adopt, these proposed requirements in the final rule. The Department made this determination in an effort to balance the important goals of the federal HCBS settings standards regulation, and concerns of the Section 21 providers that compliance would be burdensome and expensive. According to CMS guidance, “Home and Community-Based Setting Requirements: Systemic and Site-Specific Assessments and Remediation” posted online at <https://www.medicare.gov/medicaid/hcbs/downloads/q-and-a-hcb-settings.pdf>, states have until March 17, 2019 to come into full compliance with the rule. The Department intends to re-propose these requirements in a future rulemaking.

Ch. II Section 21 is a routine technical rule and does not require legislative approval prior to final adoption of the rule. The companion rule, Ch. III Section 21, is a major

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substantive rule and requires legislative approval. With regard to the Ch. III rule, the Department adopted an emergency major substantive rule on September 28, 2016. The Department also went through proposed rulemaking for Ch. III, and provisionally adopted the rule on 24 February, 2017. The provisionally adopted rule will be submitted to the Maine Legislature for its approval and action.

This Ch. II proposed rule was publically noticed on September 28, 2016 and a public hearing was held on October 19, 2016 in Augusta. There were 54 people in attendance for the hearing. The Department received comments from 67 individuals until the close of the commenting period on October 29, 2016.

Changes to Ch. II Section 21 include:

- Renamed the section from Home & Community Benefits for Members with Intellectual Disabilities or Autistic Disorder to Home & Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder to be consistent with the Diagnostic and Statistical Manual of Mental Disorders (DSM).
- Throughout Section 21 to be consistent with the DSM, replaced the term “Mental Retardation” with “Intellectual Disabilities.”
- In the Definitions section:
 - In the definition of “DSM” the Department deleted the reference to the fourth edition, and substituted “current edition” so that the definition will always refer to the current edition of the DSM
 - Added clarifying language to Administrative Oversight Agency to include language that OADS needs to approve these agencies
 - Updated definition for Autism Spectrum Disorder.
 - Added Clinical Review Team as the entity to review service requests, including medical add-on services, to ensure clinical oversight.
 - Added clarifying language Correspondent, to add spectrum disorder to the term autism.
 - Removed language from Direct Supports to make the definition clearer.
 - Added clarifying language to Family-Centered Support.
 - Updated the definition of Intellectual Disability to be consistent with the Diagnostic and Statistical Manual of Mental Disorders.
 - Added the role of the CRT in reference to Medical Add On.
 - Deleted the term Mental Retardation, since that term is no longer used by DSM.
 - Clarified Prior Authorization
 - Moved language from Shared Living definition to the definition of Shared Living Provider.
- Under Determination of Eligibility, added clarifying language to Reserved Capacity
 - Updated General Eligibility Criteria added clarifying language and updated the diagnoses to be consistent with the DSM and added Rett Syndrome.
 - Under Redetermination of Eligibility added the requirement that every twelve months from the date of initial eligibility approval, the member’s case manager will need to resubmit an updated personal plan and a BMS 99. This is the codification of a current requirement.
- 21.03-5 Substituted “annual cost” for “annual budget” in order to be consistent with the hearings (Calculating the Estimated Annual Cost)
- 21.03-8. Added language regarding “Offers for funded opening” to the effect that at the time a member is offered a funded opening the member will be removed from the waiting list. The reason is that once the Department has determined an offer to

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meet the members needs has been offered, then the member no longer has to wait for an offer.

- 21.03-9 (Redetermination of Eligibility). Added requirement that eligibility for the waiver for each member has to be redetermined every 12 months. This requirement ensures that the member continues to be eligible for the service.
- 21.04-2 (Plan Requirements), adds language regarding conflict-free planning to ensure that members have informed choices, which is consistent with 42 CFR 441.301(c)(1).
- 21.05 (Covered Services)/Duplicative Services, moved the introductory sentence which stated that duplicative services were not covered, to the 21.06.1 (Duplicative Services) which section elaborates on the services which would be considered duplicative.
- Under Personal Plan and also Planning Team Composition, the language was updated throughout this section to ensure that the member is driving the process and that the process is more closely aligned with the CFR §441.301 and 34-B MRSA. §5470-B(2). Direct references to the CFR were included.
- 21.04-2 (Personal Plan), added the requirement that grievance training be provided to all staff, upon hire, and retraining every thirty six months. The reason for this is because the grievance process is a very important process, and staff members need this training, which benefits members.
- In the Covered Services section:
 - Under Communication Aids, added Augmented communication services to replace Facilitated communication services as an update.
 - Under Community Supports, added language that will allow for career exploration as part of the service, and allows a member to also receive Work Support services.
 - Community Supports, the Department deleted the hour cap and replaced it with a dollar cap of \$26,640.10 annually, for this service. This is not a reduction of community support services.
 - 21.05-6 (Consultation Services), the Department removed the cap on these services from this section and moved the cap to the Limit Section 21.07-7 (Consultation Services).
 - 21.05-9 (Employment Specialist Services), the Department deleted the limit that high school members could not receive this service, in order to help high school members transitioning from school to work.
 - 21.05-19 (Physical Therapy Maintenance), added new language so that this service may be provided up to three members at a time.
 - 21.05-20 (Shared living), added language to clarify that respite is not separate billable service because it is a component of the rate paid to the Administrative Oversight Agency.
- In the Limits section:
 - Added language which disallows duplicative services covered by other sections in the MaineCare Benefits Manual.
 - Under Consultation Services, added information regarding limits.
 - Definition of annual limits for: Occupational Therapy (Maintenance).
 - 21.07-2, the Department increased the limit for combined cost of Community Support, Work Support-individual and Work Support-Group.
 - Deleted 21.07-4 and moved that language to 21.07-3 (Home Accessibility Adaptations).
 - Added a new limit for Occupational Therapy.

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- 21.07-14, added new language to state that if a member was in continuous care in a hospital or a nursing facility for over six months, that member would be terminated from Section 21 waiver services. This is consistent with the Section 21 limit for duplicative services.
- In the Duration of Care Section, added requirements for Provider Termination of a Member's Services.
- 21.10 - In Provider Qualifications and Requirements, added language throughout to provide additional assurances for the health and safety of members as well as quality of services. These changes include updates to the following:
 - Requiring providers to train staff in identifying risks such as risk of abuse, neglect or exploitation;
 - Additional qualification for Direct Support Professionals.
 - Provider qualifications necessary to perform an Assistive Technology Assessment.
 - Shared Living (Foster Care, Adult), requiring that providers maintain a clean and healthy living environment for members.
 - Background Check Criteria, requiring background checks for any adult who may be providing direct or indirect services.
 - Reportable Events & Behavioral Treatment., requiring that providers provide staff with training on various Department regulations concerning reportable events, and rights of persons with intellectual disability.
- Appendix I. Clarifies that it is the CRT which reviews all increased levels of support requests. The Department also added Physician Assistants to the list of providers who can write a recommendation for medical support.
- Appendix II. Clarifies that it is the CRT that is responsible for review and approval of all Medical Add-ons. The Department also defined what medical conditions support the Medical Add on rate.
- Appendix V- Added Requirements for Section 21 Providers of Home Support Services, Community Support Services, and Employment Specialist Services. This new section of policy was added to assure the health and safety of members as well as quality of services, by placing requirements on certain providers. The requirements include requiring providers to comply with Department regulations for individuals with Intellectual Disabilities, and to comply with Department regulations regarding reporting incidents of abuse, neglect and exploitation of members with intellectual disability. Additional requirements include requiring providers to make available financial information to the Department, and include requirements of homeowners and/or rental insurance. These requirements protect Section 21 members, who are among Maine's most vulnerable citizens.

Although the Department proposed a change (21.08-4 in the proposed rule) which would have prohibited providers from terminating members without written approval of the Department, the Department has determined to not adopt this change, in light of many public comments challenging this change.

Although the Department proposed the change under 21.05-2 Career Planning which was quality oriented language, the Department has removed from the rule the language requiring that plans will need to be sent into the Department at 3 intervals as those intervals were not defined clearly in the proposed rule.

Fiscal impact of rule:

The Department anticipates that this rulemaking 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.

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

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 42, 3173; 5 MRS §8054; PL 2017 ch. 2 part P

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 93**, Opioid Health Home Services

Filing number: **2017-060**

Effective date: 4/11/2017

Type of rule: Routine Technical

Emergency rule: Yes

Principal reason or purpose for rule:

The Maine 128th Legislature passed legislation, PL 2017 ch. 2, *An Act To Make Supplemental Appropriations and Allocations for the Expenditures of State Government and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Year Ending June 30, 2017*. Part P (the “Supplemental Budget”) grants the Department emergency rulemaking authority to create the Opioid Health Home program without the necessity of demonstrating that immediate adoption is necessary to avoid a threat to public health, safety, or general welfare under 5 MRS §8054.

Further Basis statement:

The rule establishes the MaineCare Opioid Health Home (OHH) Services program for addressing the opioid crisis in Maine. The OHH initiative is an innovative model providing comprehensive, coordinated care focused on serving the MaineCare population. In addition to providing treatment for an individual’s substance abuse dependency, the OHH integrates physical, social, and emotional supports to provide holistic care. The model provides a community-based support system focused on team-based clinical care. MaineCare members diagnosed with opioid addiction and who have a second chronic condition or are at risk for having a second chronic condition are eligible for these services. The OHH services provide a multi-faceted approach and comprehensive treatment specifically targeted to the opioid dependent population. The program will increase access to treatment options, integrate health and dependency care, and promote stable recovery results. It is expected that this newly established OHH program will not only result in more individuals receiving the substance abuse treatment they need, but will also lead to improvements in the quality of care they are receiving.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$2,807,400 in SFY 2017, which includes \$1,000,000 in state dollars and \$1,807,400 in federal dollars.

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Agency name: Department of Health and Human Services, **Office of MaineCare Services – 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 19**, Home and Community Benefits for the Elderly and Adults with Disabilities
Filing number: **2017-078**
Effective date: 6/1/2017
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The Department is adopting changes to both Ch. II and Ch. III of Section 19, “Home and Community Benefits for the Elderly and Adults with Disabilities”, that seek to add services, clarify existing services, increase rates for personal care services, adjust rates and rate methodology for other services, more closely align the rule with federal requirements for waiver services, and make various clerical and formatting updates. Specific changes are outlined as follows:

Chapter II

Ch. II Section 19 was originally promulgated to provide members with the opportunity to remain in their own homes, avoiding or delaying institutional care. In furtherance of this goal, this rule adoption adds three new services that enhance members’ opportunities to access necessary supports and services within their communities: Home Delivered Meals, Living Well for Better Health, and Matter of Balance (Falls Prevention). The meals service will assist members who are unable to prepare their own meals and for whom no one else is responsible to prepare meals. The Living Well for Better Health and Matter of Balance program are evidence-based workshops available to all members that have been shown to improve quality of life for individuals with chronic disease.

In addition, the Department is moving Adult Day Health Services from Section 19 to the State Plan. This change benefits members by increasing options for services under the program cap. Services under the State Plan also do not limit members in the same manner under the Section 19 waiver in terms of scope and duration.

The Department is also increasing options for members through this adopted rule by adding a definition of “Budget Authority” to allow members under the Participant-Directed Option to determine the wages of hired Attendants. Similarly, the Department is adding a definition for “Fiscal Intermediary” so that the responsibilities of the Fiscal Management Services provider are also clear. The Fiscal Intermediary works with the member who self-directs services. In addition, the Department added language to the rule which clarifies that, under the Participant-Directed Option, the member is considered the employer of the Attendant. These changes give the member more autonomy in self-directing services under this waiver. All members are eligible to elect the Participant-Directed Option; however, some members may need the assistance of a Representative and the Department has added the definition of “Cognitive Capacity” in making this determination.

Other changes to the Ch. II rule adoption include the addition of the Person-Centered Planning definition and requirement that the Service Coordination Agency follow this model

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when working with the member to develop and implement services. The adoption of these rule provisions helps move the Section 19 waiver program towards compliance with 42 CFR §431.301(c). This federal regulation sets forth new provisions for Home and Community Based Services waiver programs. The Department is currently engaged in transition planning with the Center for Medicare and Medicaid Services (“CMS”) for all such waiver programs.

The Department made a number of other changes to the rule adoption to help clarify and improve upon existing processes for determining eligibility. This includes removing the requirement that the member provides a physician’s letter to the Service Coordination Agency, as all services will be medically authorized by the Assessing Services Agency; adding language to the rule that emphasizes consideration of the member’s needs and preferences; and updating the timeframes in which the Assessing Services Agency must complete both assessments and re-assessments, as reflected in current Departmental contracts.

As explained below, the Department is increasing several rates under Ch. III. To correspond with these rate increases, the Department is increasing the waiver cap in Ch. II.

Chapter III

Ch. III is the companion rule to Ch. II and provides billing codes and rates for the services described in Ch. II. With this rule adoption, the Department is making the following changes: (1) increasing the rates of reimbursement for personal care and related services; (2) incorporating other recommended rate changes pursuant to a rate study; (3) adding and removing rates to correspond with updates in covered services; (4) increasing the per diem rate for respite care not provided in the home; and (5) adding columns for modifiers and revenue codes.

First, the Department is adopting rate increases in accordance with Resolves 2015, ch. 83 (*Resolve, Directing the Department of Health and Human Services To Increase Reimbursement Rates for Home-based and Community-based Services*). Through this Resolve, the Legislature directed the Department to amend this rule “to reflect 50% of the increase in rates noted in the final rates modeled in the February 1, 2016 report ‘Rate Review for Personal Care and Related Services: Final Rate Models’ prepared for the department by Burns & Associates, Inc.” Several rates are affected by this legislative directive as denoted in the adopted rule. These rate increases will be retroactive to July 29, 2016, the effective date of the Resolve, and pursuant to 22 MRS §42(8).

Second, the Department is incorporating other changes to Ch. III as a result of other recommendations in the Burns & Associates rate study. The Department has decreased the rate for three procedure codes: Skilled Nursing Visit (RN), Other Nursing (LPN), and Home Health Aide Visit – Home Health services. In addition, the Department has added new rates and procedure codes in accordance, as set forth in the study, for personal care and related services provided to two and three members simultaneously. These changes will take effect on June 1, 2017.

Next, the Department has added procedure codes and rates for the three new services added under Ch. II: Home Delivered Meals, Living Well (Chronic Disease Management), and Matter of Balance (Falls Prevention). The Department has also removed the procedure code and rate for Adult Day Health Services, as this service will now be offered to members under the State Plan. These changes are effective June 1, 2017.

The Department also increased the rate for Respite Care Services, not in the home. The reason for this increase is to match the rate under Section 19 with the current nursing facility rate that was rebased as of July 1, 2016 elsewhere in the *MaineCare Benefits Manual*. This increase will be retroactive to July 1, 2016, and pursuant to 22 MRS §42(8).

Finally, the Department is adding columns to differentiate between procedure code, modifier, and revenue code in Ch. III. Providers need to ensure that they are using the

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appropriate procedure code, modifier, and revenue code for reimbursement of services. This change should assist providers in this responsibility.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$330,139.18 in SFY 2017, which includes \$117,595.57 in state dollars and \$212,543.60 in federal dollars, and \$1,320,556.70 in SFY 2018, which includes \$470,382.30 in state dollars and \$850,174.40 in federal dollars.

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

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 42(8), 3173; PL 2016 ch. 477; Resolves 2015 ch. 45, 2017 ch. 6

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

Filing number: **2017-091**

Effective date: 7/16/2017

Type of rule: Major Substantive

Emergency rule: No

Principal reason or purpose for rule:

These changes are being done in order 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 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 major substantive rulemaking.

The Department is seeking and anticipates receiving approval from the federal Centers for Medicare and Medicaid Services (CMS) for these changes. Pending approval, the increased reimbursement rates will be effective retroactive as to July 1, 2016.

This rulemaking follows an emergency rulemaking filed on October 25, 2016, which 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 finally adopts these major substantive rule changes to Ch. III Section 97, “Private Non-Medical Institution (PNMI) Services”. Pursuant to 5 MRS §8072, the Department submitted its provisionally adopted rule changes to the Legislature for review and authorization for final adoption. On March 30, 2017, the Legislature enacted “*Resolve, Regarding Legislative Review of Portions of Chapter 101: MaineCare Benefits Manual, Chapter III, Section 97, Private Non-Medical Institution Services, a Late-filed Major Substantive Rule of the Department of Health and Human Services*” (Resolves 2017, ch. 6 (effective April 19, 2017), which authorized the Department to finally adopt the provisionally adopted rule changes, as submitted (i.e., without any changes). The law included authority for the Resolve to take place immediately, given the Legislature’s emergency findings, and thus it took effect upon the Governor’s signature.

These rule changes effectuate a one (1) percent rate increase in the direct care component to PNMI Services providers who have experienced an increase in the Maine Service Provider Tax since January 1, 2016, pursuant to PL 2015 ch. 477, *An Act to Increase Payments to MaineCare Providers That Are Subject to Maine’s Service Provider Tax*. PNMIs are in need of increased funding to continue providing these services to Maine’s vulnerable citizens, including children, and individuals with intellectual disabilities and autistic disorder.

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The Department is seeking and anticipates receiving approval from the federal Centers for Medicare and Medicaid Service (CMS) for these changes. Pending approval, the increased reimbursement rates will be effective retroactive to July 1, 2016.

In addition, in Ch. III Section 97 (the “Main Rule”) and Ch. III Section 97 Appendix C only, the Department repealed and replaced 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*. These changes are incorporated into this final adoption rulemaking.

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.

The Department previously implemented these same changes through emergency major substantive rulemaking, effective as of October 25, 2016. The emergency major substantive rule changes shall remain in effect until the time that these finally adopted rule changes take effect, thirty days after filing with the Secretary of State’s Office. 5 MRS §8072(8).

Fiscal impact of rule:

This major substantive rulemaking is estimated to cost the Department approximately \$7,903,979 in SFY 2017, which includes \$3,093,823 in state dollars.

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Agency name: Department of Health and Human Services, **Office of MaineCare Services – Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173; 5 MRS §8054; PL 2017 ch. 2
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 93**, Opioid Health Home Services
Filing number: **2017-103**
Effective date: 7/10/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Maine 128th Legislature passed legislation, PL 2017 ch. 2, *An Act To Make Supplemental Appropriations and Allocations for the Expenditures of State Government and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Year Ending June 30, 2017*. Part P (the "Supplemental Budget") grants the Department emergency rulemaking authority to create the Opioid Health Home program without the necessity of demonstrating that immediate adoption is necessary to avoid a threat to public health, safety, or general welfare under 5 MRS §8054.

Basis Statement:

The Department adopts this rule pursuant to PL 2017 ch. 2 part P §P-1 (Establishment of Opioid Health Home Program). On April 11, 2017, the Department adopted an emergency rule which established the Opioid Health Home Service as a MaineCare service.

This rule makes permanent the April 11, 2017 emergency rule, with some changes. The MaineCare Opioid Health Home (OHH) Services program addresses the opioid crisis in Maine. The OHH initiative is an innovative model providing comprehensive, coordinated care focused on serving the MaineCare population. In addition to providing treatment for an individual's substance abuse dependency, the OHH integrates physical, social, and emotional supports to provide holistic care. The model provides a community-based support system focused on team-based clinical care. MaineCare members diagnosed with opioid addiction and who have a second chronic condition or are at risk for having a second chronic condition are eligible for these services. The OHH services provide a multi-faceted approach and comprehensive treatment specifically targeted to the opioid dependent population. The program will increase access to treatment options, integrate health and dependency care, and promote stable recovery results. It is expected that this newly established OHH program will not only result in more individuals receiving the substance abuse treatment they need, but will also lead to improvements in the quality of care they are receiving.

The Department has submitted a State Plan Amendment (SPA) request to CMS for approval, and anticipates that CMS will approve the Opioid Health Home SPA. Pending CMS approval, covered services will be provided as described in this rule.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$2,807,400 in SFY 2017, which includes \$1,000,000 in state dollars and \$1,807,400 in federal dollars.

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Rules Adopted January 1, 2017 to December 31, 2017
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 – Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. X Section 1**, Benefit for People Living with HIV/AIDS
Filing number: **2017-104**
Effective date: 7/10/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule updates outdated references identifying Department agencies, *MaineCare Benefit Manual* policies and services, and outdated Internet website addresses. The rule also clarifies and lists specific non-covered services and required co-payments for certain services in a more organized, easier to understand form. Additional changes to the rule include more specifically-defined objectives that may lead to disenrollment, simplification of disenrollment protocol, clarification of appeal rights language, and minor grammar and punctuation changes.

Basis Statement:

The rule changes set out the required co-payments for certain services in a more organized, easier to understand form, and removes the non-applicable 90-day supply co-pay.

Additionally, the rule more specifically-defines actions that may lead to disenrollment, it simplifies disenrollment protocol, and clarifies the appeal rights language.

The rule also updates references in the covered and non-covered services tables to reflect the current *MaineCare Benefit Manual* policies. For certain additions and removals of services, as noted in each instance in the rule, the Department is seeking and anticipates receiving CMS approval.

For example, the category title “Early Intervention” has been changed to “Services for Children with Intellectual Disability or Autism.” The previous title was misleading in that a federal program by that name exists, but it is not related to or the same as the name used in the MaineCare policies. The new title directly correlates to the MaineCare policy.

The rule also clarifies some of the non-covered services. For instance, non-covered Section 60 services, “Durable Medical Equipment”, currently include those that were previously identified in the sections of MaineCare policy that are now repealed; specifically Sections 32, “Waiver Services for Children with Intellectual Disability or Pervasive Developmental Disorders”, and Section 35, “Hearing Aids and Services”, have been repealed. As such, the Department removes references to them in this rule. Similarly, the non-covered services table in this rule previously identified in the now-repealed Section 22, “Home and Community Benefits for the Physically Disabled”. Because Section 22 was merged with Section 19, “Home and Community Benefits for the Elderly and for Adults with Disabilities”, and the Department removed reference to Section 22. Those services remain identified herein as non-covered.

Some of the services previously identified in Section 96, “Private Duty Nursing and Personal Care Services”, Section 97, “Private Non-Medical Institution Services”, and Section 102, “Rehabilitative Services”, as non-covered services have now been moved to Section 18, “Home and Community-Based Services for Adults with Brain Injury”. Accordingly, the Department added reference to Section 18 under the non-covered services table in this rule to ensure that the services that are now part of Section 18 remain identified as non-covered.

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This adopted rule updates many outdated references identifying Department agencies, *MaineCare Benefit Manual* policies and services, outdated internet website addresses, and contains minor grammar and punctuation changes.

Fiscal impact of rule:

This rulemaking is estimated to have no fiscal impact.

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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 – Division of Policy**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 42, 3173; 5 MRS §4551 *et seq.*; 22 MRS 42(8); 42 CFR 1007; PL 2014 ch. 444 (to be codified at 22 MRS §3174-WW); 42 USC 1320a-7; 42 CFR 431.55(h)(2); 42 CFR 455.416(c)1; Public Law 111-148; Public Law 111-256; LD 1596; 22 MRS §3173-C sub-§2, as amended by PL 2011 ch. 458

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

Filing number: **2017-105**

Effective date: 7/5/2017

Type of rule: Routine Technical

Emergency rule: No

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

Basis Statement:

This rulemaking adopts the following changes:

- 1.** References to the “Office of Integrated Access and Support” were updated to the “Office for Family Independence.” The name of this agency has changed, and the policy should reflect the name change.
- 2. Section 1.02-4(B)**, “Covered Health Care Provider” definition has been expanded to include “a provider of medical or health services and any other person or organization that furnishes, bills, or is paid for health care in the normal course of business” to more accurately mirror federal language.
- 3. Section 1.02-4(G)**, added language to the definition of “National Provider Identifier (NPI)” to clarify that the NPI is issued by CMS.
- 4. Section 1.02-4(H)(3)**, changed the definition of “Ordering, Prescribing and Referring (OPR) provider” to “Non-Billing, Ordering, Prescribing and Referring Provider (NOPR)” to conform with current online MaineCare billing practices.
- 5. Section 1.03-1**, change of language describing online provider enrollment. In the state of Maine, online enrollment is now the sole means through which providers enroll and update information. Therefore, language was added describing the online enrollment process through the Department’s Health PAS portal. This change is being made to institute the federally mandated revalidation requirements outlined in 42 CFR §424.515.
- 6. Section 1.03-1(A)**, addition of language describing the requirement for providers to complete subsequent enrollment applications every three to five years, depending on provider type in order to institute the federally mandated revalidation requirements outlined in 42 CFR §424.515.
- 7. Section 1.03-1**, addition language authorizing the Department to request additional information which demonstrates the provider applicant’s ability to provide high-quality care, services, and supplies, and to be financially responsible. This change is being made to better help ensure MaineCare’s ability to align with federally mandated revalidation requirements in 42 CFR §424.515.
- 8. Section 1.03-1(C)**, addition language describing the requirement for providers (with the exception of individual practitioners) to pay an enrollment fee for each provider site. Language was also added describing the option for providers to apply for a fee waiver, as well as the exemption from the fee for providers who have paid an enrollment fee for the site in question

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during the preceding 12 months to Medicare or another Medicaid agency. This enrollment fee language is being added to comply with 42 CFR §455.460.

9. Section 1.03-B, addition of language stating that providers must obtain a National Provider Identification (NPI) or Atypical Provider Identifier (API) plus three digit service location identifier and use this number in submitting all claims for payment. This change is being made to upgrade the provider enrollment process for efficiency purposes.

10. Section 1.03-2, addition of language stating that out-of-state providers are subject to the same enrollment requirements as in-state providers to ensure all MaineCare providers properly enroll.

11. Section 1.03-3, addition of a list of factors the Department must and may consider in determining whether to enroll or deny enrollment to a provider applicant. Certain situations will trigger automatic denial of enrollment. These changes are being added to conform with 42 CFR §455.410.

12. Section 1.03-3, addition of subsections that set forth the criteria for MaineCare's denial of provider enrollment or subsequent provider enrollment applications. These changes follow the federal regulations set forth in 42 CFR §455.416.

13. Section 1.03-5, addition of language stating that providers who are terminated from MaineCare (whether involuntarily or voluntarily), have one year from the end date of enrollment to submit claims for services provided during the period of active enrollment. This change was added to be consistent with the one-year regular timely filing noted in Section 1.10-2.

14. Section 1.03-6, addition of language regarding changes of ownership, closures and disenrollment. Providers will be required to notify the Provider Enrollment Unit of any Change in Ownership (CHOW), closure, or intention to disenroll from the MaineCare program no less than thirty (30) days prior to the intended change. Providers undergoing a CHOW will be required to submit a CHOW questionnaire. These changes are being made to conform with federal regulations set forth in 42 CFR §455.104.

15. Section 1.03-7, addition of language stating that the Department will terminate the enrollment of any provider (other than NOPR providers) who has not submitted a claim within 365 days of enrollment. Such providers are eligible to re-enroll at any time. This change is being added to ensure that the MaineCare system has the most current and relevant provider information on record.

16. Section 1.03-8 (F), language was updated involving provider nondiscrimination requirements to conform with state and federal laws. The current policy contains an incomplete list of groups whom providers are barred from discriminating against. The Department has added sexual orientation, gender identity, ancestry, age and any other category protected by state and federal law.

17. Section 1.03-8(V), addition of language requiring disclosure of certain ownership or control interests. These requirements follow those of 42 CFR §§ 455.101-105.

18. Section 1.06-2 (A), addition of language stating that the Department will not reimburse for interpreter travel time to help minimize abuse of the interpreter reimbursement.

19. Section 1.06-5, addition of language stating that providers may refuse to continue to see members who have repeatedly broken appointments without prior notice. In such situations, providers must provide advanced notice of office policies concerning no-shows to members before refusing to continue to see those members. This addition is being made to allow providers to refuse to continue to see members only in accordance with the provider's standard office policies for broken appointments.

20. Section 1.07-1(C), addition of language describing Early and Periodic Screening, Diagnosis and Treatment Services. This additional information provides more detailed and clarifying language regarding the Early and Periodic Screening, Diagnosis and Treatment Services.

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21. Section 1.07-3(C), addition of an exception to the requirement that providers appeal third party payer denials of services prior to billing MaineCare. The exception is when Medicare has denied services based on Local Coverage Determinations (LCDs) or National Coverage Determinations (NCDs), and also includes Licensed Marriage and Family Therapist (LMFTs), Licensed Professional Counselor (LCPCs), and Licensed Master Social Workers Clinical Conditional (LMSW-CCs) when the following criteria are met: 1) member has an established relationship with the provider; or 2) another provider is not available. This additional language is being added to allow for a more streamlined procedure for allowing for appeals because these provider types are not recognized by Medicare.

22. Section 1.09-2(J), addition of tobacco cessation products and services to the list of copayment exemptions. Copayments for tobacco cessation services are prohibited by 22 MRS §3174-WW.

23. Section 1.11-2, addition of language describing National Correct Coding Initiative (NCCI) edits, and a statement that MaineCare will reject claims not in conformity with NCCI requirements. This change is being made to mirror federal regulations set forth in National Correct Coding Initiative Policy Manual from CMS.

24. Section 1.06-2(I), removal of Private Non-Medical Institutions (PNMIs) from list of facilities that include interpreter services in their reimbursement calculations. Interpreter services are not included in the PNMI rate calculation.

25. Section 1.12-2 (D), addition of language stating that the liability for debts owed to the Department by the provider is enforceable against the provider, including any person who has an ownership or control interest in the provider, and against any officer, director or member of the provider who, in that capacity, is responsible for any control or any management of the funds or finances of the provider. Language has also been added defining “individuals or entities with an ownership or control interest.” These changes are being made to clarify that individuals with management or control over the funds or finances of the provider are personally liable. This addition also corresponds to the language of the MaineCare Provider Agreement, section (D)(3)(c).

26. Section 1.14-1(A), updating of the website address for information regarding prior authorizations.

27. Sections 1.14-2(A)(1) and 1.14-2(B)(3), removal of language allowing for MaineCare covered services to be rendered to members within five miles of the Maine/Canadian border. This language is pursuant to Section 6505 of the Affordable Care Act amending Section 1902(a) of the Social Security Act (the Act), and requires that a state shall not provide any payments for items or services provided under the State Plan or under a waiver to any financial institution or entity located outside of the United States (U.S.).

28. Section 1.15, removal of language regarding Section 113 Non-Emergency Transportation (NET) of the MaineCare Benefits Manual. Section 113 sets forth the policy for non-emergency transportation, so the duplicative language was removed from Section 1.15.

29. Termination from participation language that was in **former Section 1.03-4** has been moved to **new Section 1.19** entitled “Termination from Participation in MaineCare.”

30. Section 1.20(Z) & (AA), addition of two new grounds for sanctions: (1) an entity that is an HMO or is providing services under a Medicaid waiver program, and has a substantial contractual relationship with an entity that could be excluded from the Medicaid program; (2) if a provider has been convicted of a crime while performing services as a health care worker or provider. This change is being made to conform with the requirements of Section 1902 of the *Social Security Act* (42 USC 1396a).

31. Section 1.20-2(C), addition of a sanction action for limitation of services for which the provider is authorized to perform and receive payment. This change adds a sanction that may occur as a result of a grounds for sanction described in 1.20-1 (Grounds for Sanctions).

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- 32.** The Department is adopting a new provision, **Section 1.21**, entitled “Reinstatement from Termination or Exclusion.” Reinstatement language that was in former Section 1.19-4(F) has been moved to this new section. The Department is also making the change that requests for reinstatement from exclusion or termination be addressed to the Manager of Program Integrity, in writing. The language also sets forth factors that will be considered by the Department when making a decision to reinstate. The adopted language, in Subparagraph 2, also sets forth minimum periods of time before reinstatement can be considered, for certain violations of law or other exclusion or termination reasons. The time period requirements are consistent with the time period requirements imposed on the Federal Secretary of HHS in the *Social Security Act* Section 1128 (as codified in 42 USC 1320a-7) (Exclusion of Certain Individuals and Entities from Participation in Medicare and State Health Care Programs).
- 33.** Removal of references to the term “mentally retarded.” This term was replaced by the term “intellectually disabled.” This change follows the direction of *Rosa’s Law*, Public Law 111-256, which requires the federal government to change terminology in federal statute to eliminate use of the term “mental retardation.”
- 34.** Replacement of the term “Authorized Agent” with the term “Authorized Entity.” This change is being adopted across the agency in order to more accurately describe the Department’s relationship with the aforementioned entities. Contractors with the state are not legal agents of the state, so the term was replaced with “entity” to avoid confusion.
- 35. Section 1.25**, changes to the language describing the duties, role, and composition of the MaineCare Advisory Committee (MAC) in order to more closely align with federal requirements, as outlined in 42 CFR §431.12.
- 36.** Minor grammar and punctuation edits have also been made.
- Finally, 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, and changes to language for clarity.

Fiscal impact of rule:

The Department expects that the changes to tobacco cessation services exemptions will result in a cost to the Department. However, these costs are accounted for in rulemaking for Section 80, “Pharmacy Services”. There are no other costs associated with the changes in this rulemaking.

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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 – Division of Policy**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 42, 3173

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 29**, Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder

Filing number: **2017-114**

Effective date: 8/26/2017

Type of rule: Major Substantive

Emergency rule: No

Principal reason or purpose for rule:

This waiver renewal adopts rule changes to the Comprehensive Home and Community Based Services (HCBS) Waiver for Persons with Intellectual Disabilities and Autism Spectrum Disorder. Ch. III Section 29 is a companion to Ch. II Section 29, “Support Services for Members with Intellectual Disabilities or Autism Spectrum Disorder”. Ch. III is a major substantive rule and requires legislative approval prior to final adoption of the rule.

Significant Updates and Changes to Ch. III Section 29 include renaming of the Section from “Allowances for Support Services for Adults with Intellectual Disabilities or Autistic Disorder” to “Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder.”

The Department adopted via emergency rulemaking an increase to the rates in Ch. III in accordance with LD 1638. The legislature passed LD 1638 to authorize an increase in the service provider tax. 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”.

The increased rates were effective retroactive to April 15, 2016. The following services have a 1% increase as a result of LD 1638:

- T2017, Home Support-Quarter Hour, from \$6.27 to \$6.33.
- T2017 QC, Home Support-Remote Support-Monitor Only, from \$1.62 to \$1.63 per quarter hour.
- T2017 GT, Home Support-Remote Support-Interactive Support, from \$6.27 to \$6.33 per quarter hour.
- T2021, Community Support (day habilitation) from \$5.28 to \$5.33 per quarter hour.
- T2021 SC, Community Support (day habilitation) with Medical Add On from \$6.51 to \$6.57 per quarter hour.
- Replaced H023 HQ Work Support (supported employment) with the following modifiers below:
 - H2023 UN Work Support (supported employment-Group 2 members served, up to \$3.46 per ¼ hour.
 - H2023 UP Work Support (supported employment-Group 3 members served, up to \$2.30 per ¼ hour.
 - H2023 UQ Work Support (supported employment-Group 4 members served, up to \$1.73 per ¼ hour.
 - H2023 UR Work Support (supported employment-Group 2 members served, up to \$1.38 per ¼ hour.
 - H2023 US Work Support (supported employment-Group 2 members served, up to \$1.15 per ¼ hour.

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Basis Statement:

The Department finally adopts these major substantive changes to the reimbursement rates in Ch. III Section 29. Pursuant to 5 MRS §8072, the Department submitted its provisionally adopted rule changes to the Legislature for review and authorization for final adoption. On May 31, 2017 the Legislature enacted “*Resolve, Regarding Legislative Review of Portions of Chapter 101: MaineCare Benefits Manual, Chapter III, Section 29, Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder, a Late-filed Major Substantive Rule of the Department of Health and Human Services*” (Resolves 2017, Ch. 10 (effective May 31, 2017), which authorized the Department to finally adopt the provisionally adopted rule changes, as submitted (i.e., without any changes). The law included authority for the Resolve to take place immediately, given the Legislature’s emergency findings, and thus it took effect upon the Governor’s signature.

Most of the changes finally adopted in Section 29 were made pursuant to PL 2015 Ch. 477, *An Act to Increase Payments to MaineCare Providers That Are Subject to Maine’s Service Provider Tax* (eff. April 15, 2016). Through this law, the Legislature required a 1% increase in reimbursement for certain services to offset an increase in the service provider tax, which took effect January 1, 2016.

In addition, the Department seeks to permanently adopt new codes and rates for Work Support provided to multiple members at one time. The Department is making these changes to allow for providers to bill for different group sizes.

On September 28, 2016, the Department implemented the above-described changes through emergency major substantive rulemaking. Pursuant to 5 MRS §8073, emergency major substantive rules are effective for up to 12 months, or until the Legislature has reviewed and approved of the provisionally adopted rule. In addition, pursuant to 22 MRS §42(8), these emergency rule changes are effective retroactive to April 15, 2016.

Additional changes to Ch. III Section 29 that were not deemed emergency but were part of the proposed rule and the provisionally adopted rule include:

- Updating Section 1400(3), reducing the reimbursement for respite care to provide that the amount billed for any single day cannot exceed a per diem rate of \$90.00. The Department seeks to implement this change to make the rule consistent with the rates that are already in Appendix I and to be consistent with MIHMS.
- Renaming of the Section from “Allowances for Support Services for Adults with Intellectual Disabilities or Autistic Disorder” to “Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder.” The Department seeks to implement this change as this is the current terminology used in the DSM 5.
- Various clerical and formatting changes.

These finally adopted major substantive rule changes will be effective 30 days after the rule is filed with the Secretary of State, or at a later date as specified by the Department.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$38,338 in SFY 2016, which includes \$14,311 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.

The Department estimates that this rulemaking will not have any impact on municipalities or counties.

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Agency name: Department of Health and Human Services, **Office of MaineCare Services – Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173; LD 1638
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 21**, Allowances for Home and Community Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder
Filing number: **2017-121**
Effective date: 9/6/2017
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

This waiver renewal proposes rule changes to the “Comprehensive Home and Community-Based Services (HCBS) Waiver for Persons with Intellectual Disabilities and Autism Spectrum Disorder”. Ch. III Section 21 is a companion to Ch. II Section 21, “Home and Community-Based Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder”. Ch. III is a major substantive rule and requires legislative approval prior to final adoption of the rule.

Significant updates and changes to Ch. III Section 21 include:

- Renaming of the Section from “Allowances for Home and Community Benefits for Adults with Intellectual Disabilities or Autistic Disorder” to “Allowances for Home and Community Benefits for Adults with Intellectual Disabilities or Autism Spectrum Disorder.”
- Removal of Calculation of the Per Diem Rate for Agency Home Supports.
- Clarification of the Average Billing Method.
- Removal of the Range in Appendix IIA and IIB.

The Department will adopt via emergency rulemaking an increase to the rates in Ch. III in accordance with LD 1638, *An Act to Increase Payments to MaineCare Providers That Are Subject to Maine’s Service Provider Tax*. The legislature passed LD 1638 to authorize an increase in the service provider tax. 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”.

The increased rates will be effective retroactive to April 15, 2016. The following services will have a 1% increase as a result of LD 1638:

- T2017, Home Support (habilitation, residential, waiver), from \$6.27 to \$6.33 per quarter hour.
- T2017 SC, Home Support (habilitation, residential, waiver)-with Medical Add On from \$7.50 to \$7.57 per quarter hour.
- T2017 QC, Home Support (habilitation, residential, waiver)-Remote Support-Monitor Only, from \$1.62 to \$1.63 per quarter hour.
- T2017 GT, Home Support (habilitation, residential, waiver)-Remote Support-Interactive Support, from \$6.27 to \$6.33 per quarter hour.
- T2016, Agency Home Support (habilitation, residential, waiver), from \$22.43 to \$22.64 per diem.
- T2016 SC, Agency Home Support (habilitation, residential, waiver) with Medical Add On, from \$19.53 to \$19.72 per diem.
- T2016 SC, Agency Home Support (habilitation, residential, waiver), from \$27.15 to \$27.41 per diem.
- S5140, Shared Living (Foster Care, adult)-Shared Living Model-One member served, from \$126.19 to \$127.39 per diem.
- S5140 TG, Shared Living (Foster Care, adult)-Shared Living Model-One member served-increased level of support, from \$183.52 to \$185.27 per diem.
- S5140 UN, Shared Living (Foster Care, adult)-Shared Living Model-Two members served, from \$63.10 to \$63.71 per diem.

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- S5140 UN TG, Shared Living (Foster Care, adult)-Shared Living Model-Two members served-Increased level of support, from \$120.42 to \$121.57 per diem.
- T2016 U5, Home Support (habilitation, residential, waiver)-Family Centered Support-One member served, from \$104.17 to \$105.16 per diem.
- T2016 TG U5, Home Support (habilitation, residential, waiver)-Family Centered Support-One member served-Increased level of support, from \$216.96 to \$219.03 per diem.
- T2016 UN U5, Home Support (habilitation, residential, waiver)-Family Centered Support-Two members served, from \$85.8 to \$86.61 per diem.
- T2016 UN TG U5, Home Support (habilitation, residential, waiver)-Family Centered Support-Two members served-Increased level of support, from \$196.78 to \$198.65 per diem.
- T2016 UP U5, Home Support (habilitation, residential, waiver)-Family Centered Support-Three members served, from \$73.15 to \$73.85 per diem.
- T2016 UP TG U5, Home Support (habilitation, residential, waiver)-Family Centered Support-Three members served-Increased level of support, from \$178.40 to \$180.09 per diem.
- T2016 UQ U5, Home Support (habilitation, residential, waiver)-Family Centered Support-Four members served, from \$61.99 to \$62.58 per diem.
- T2016 UQ TG U5, Home Support (habilitation, residential, waiver)-Family Centered Support-Four members served-Increased level of support, from \$162.16 to \$163.71 per diem.
- T2016 UR U5, Home Support (habilitation, residential, waiver)-Family Centered Support-Five or members served, from \$55.29 to \$55.82 per diem.
- T2016 UR TG U5, Home Support (habilitation, residential, waiver)-Family Centered Support-Five or members served-Increased level of support, from \$153.42 to \$154.88 per diem.
- T2021, Community Support (day habilitation) from \$5.28 to \$5.33 per quarter hour.
- T2021 SC, Community Support (day habilitation) with Medical Add On from \$6.51 to \$6.57 per quarter hour.
- Replaced H023 HQ Work Support (supported employment) with the following modifiers below:
 - H2023 UN Work Support (supported employment)-Group 2 members served, up to \$3.46 per ¼ hour.
 - H2023 UP Work Support (supported employment)-Group 3 members served, up to \$2.30 per ¼ hour.
 - H2023 UQ Work Support (supported employment)-Group 4 members served, up to \$1.73 per ¼ hour.
 - H2023 UR Work Support (supported employment)-Group 2 members served, up to \$1.38 per ¼ hour.
 - H2023 US Work Support (supported employment)-Group 2 members served, up to \$1.15 per ¼ hour.

Basis Statement:

This regulation governs the reimbursement for a federal Medicaid 1915(c) waiver service. This regulation is a major substantive rule.

On September 28, 2016, the Department adopted an emergency major substantive rule for Ch. III Section 21, to comply with PL 2015 ch. 477 (*An Act to Increase Payments to MaineCare Providers that are Subject to Maine's Service Provider Tax*). The Maine Legislature enacted PL 2015, Ch. 477 on an emergency basis, and therefore the legislation took effect on the date that it was signed by Governor LePage; April 15, 2016. The September 28, 2016 emergency major substantive rule increased 23 codes/services by 1%, with a retroactive effective date of April 15, 2016. Pursuant to 5 MRS §8073, the September 28, 2016, emergency major substantive rule – with the 1% rate increases - is effective for up to twelve months or until the Legislature has completed its review of the provisionally adopted rule.

Pursuant to 5 MRS §8072(1), the Department engaged in proposed rulemaking for Ch. III Section 21. On February 24, 2017, the Department provisionally adopted the Ch. III Section 21 major substantive rule. The Department submitted the provisionally adopted rule to the

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Legislature, which authorized adoption of the rule with some legislative changes. Resolves 2017 Ch. 15, approved by the Governor on June 8, 2017.

This rulemaking makes the following changes, all of which were approved or initiated by the Legislature:

- To match the current terminology in the DSM 5, renamed the Section from “Allowances for Home and Community Benefits for Adults with Intellectual Disabilities or Autistic Disorder” to “Allowances for Home and Community Benefits for Adults with Intellectual Disabilities or Autism Spectrum Disorder.”
- In Appendix I changed “Consultation Services” for both Psychological and Speech Therapy to “Consultative Services” to be consistent with the approved service name in the waiver application. These changes have no impact on services or billing.
- Make permanent the 1% rate increase to 23 codes/services that received a 1% rate increase in the September 28, 2016 Emergency Major Substantive rulemaking. These codes, and the increased rates, are listed in Appendix I.
- To allow different billing options for different group sizes, 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 5 members served.
 - H2023 US Work Support (supported employment)-Group 6 members served.

When proposing the rule the Department proposed removing the range methodology in Appendix IIA and IIB. The reason for this was that it is the expectation of the Department that providers bill only for the services they provide. The range methodology was originally included in the rule to allow for fluctuations in staffing. Based on the comments received, the Department decided to not go forward with that rule change.

The Legislature, Resolves 2017 ch. 15, approved the changes listed above, and in addition made the following changes to the Final Rule:

1. §1050 the definition of per diem has been changed to remove the requirement that a provider bill only for days on which a member is receiving per diem Home Support at 11:59 p.m. The definition of per diem has been changed to clarify that there is no requirement that a provider bill only for days on which a member is physically present in the home at 11:59 p.m. and that on days when a member is transitioning between providers of home support, only the provider providing home support services at 11:59 p.m. may bill for home support.

2. §2000 (Audit of Services) the Legislature removed the proposed change in the documentation requirement for staffing schedules, so that the documentation requirement remains as it is in current rules, which require documentation showing the hours and the name of the direct staff scheduled to work at the facility.

The rule is final 30 days after it is filed with the Secretary of State.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$144,502 in SFY 2016, which includes \$53,943 in 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.

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Rules Adopted January 1, 2017 to December 31, 2017
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 – Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 80**, Pharmacy Services
Filing number: **2017-132**
Effective date: 9/1/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rulemaking increases the efficiency and effectiveness of the MaineCare Pain Management and Buprenorphine prescribing sections. This rulemaking also brings these sections into compliance with the Department’s Office of Substance Abuse and Mental Health Services rules governing the Controlled Substances Prescription Monitoring Program and Prescription of Opioid Medications. This rulemaking also aligns MaineCare policy with the CMS Covered Outpatient Drug final rule and adopts the recently completed New England States Consortium Systems Organization (NESCSO) pharmacy cost of dispensing survey into policy.

Basis Statement:

This rulemaking adopts the following changes:

1. Definitions of “Acute Pain,” “Buprenorphine,” “Chronic Pain,” “Opioid Medication,” and “Prescription Monitoring Program” have been added to Section 80.01, Definitions.
2. In Section 80.07-6, Policies and Procedures, Dispensing Practices, language has been added requiring that generic drugs must be dispensed as a ninety (90) day supply for drugs identified as maintenance drugs after the initial thirty (30) day supply, with additional language excluding opioid medications from the requirement.
3. The addition of a new section, Section 80.07-12, Prescribing Opioids for Pain Management, which aligns MaineCare with Maine statutes and the Department’s Office of Substance Abuse and Mental Health Services rules governing the Controlled Substances Prescription Monitoring Program and Prescription of Opioid Medications. The section incorporates current best practices guidelines and includes subsections on prescribing requirements for treating chronic pain; limitations and exemptions; rules regarding prior authorization for both acute and chronic pain prescriptions; and medical record documentation requirements.
4. The addition of a new section, Section 80.07-13, Buprenorphine and Buprenorphine Combination Products for Substance Use Disorder (SUD) which provides best practice guidelines for Medication-Assisted Treatment (MAT) using buprenorphine and derivatives for individuals who have been diagnosed with SUD. This sections includes subsections associated with prescriber requirements; detailed protocols; limitations on members qualified to receive the drug; and rules regarding prior authorizations. The section also outlines requirements for medical records which follow the model established by the Drug Addiction Treatment Act of 2000 (DATA).
5. Section 80.09, the reimbursement sections for retail and specialty pharmacy providers, has been amended to align MaineCare policy with the CMS Covered Outpatient Drug final rule. The change to this section also includes changing the pharmacy dispensing fee from \$3.35 to \$11.89 following the New England States Consortium Systems Organization (NESCSO) pharmacy cost of dispensing survey.

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Finally, 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, and changes to language for clarity. The Summary of Public Comments and Department Responses document identifies changes that were made to the final rule.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$2,155,243 in SFY 2018, which includes \$768,560 in state dollars and \$1,386,683 in federal dollars, and \$2,586,292 in SFY 2019, which includes \$922,272 in state dollars and \$1,664,020 in federal dollars.

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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 – Division of Policy**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §42(1) & (8), §3173; 5 MRS §8054, 8073; PL 2017 ch. 284, §§ MMMMMMM-2, TTTT-1

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 21**, Allowances for Home and Community Benefits for Adults with Intellectual Disabilities or Autism Spectrum Disorder

Filing number: **2017-156**

Effective date: 9/29/2017

Type of rule: Major Substantive

Emergency rule: Yes

Principal reason or purpose for rule:

The emergency adopted rule implements rate increases enacted by the Legislature in PL 2017 ch. 284 §MMMMMMM-2.

Basis Statement:

This emergency major substantive rule is adopted in accordance with PL 2017 ch. 284, §TTTT-1, which authorized the Department to adopt emergency rules as necessary to implement provisions of PL 2017 ch. 284, over which it has subject matter jurisdiction without the necessity of demonstrating that immediate adoption is necessary to avoid a threat to public health, safety or general welfare.

PL 2017 ch. 284 provides funding to increase reimbursement rates for 23 procedure codes in Ch. III Section 21. The legislation directed the Department to increase the rates for the specific procedure codes in equal proportion to the funding provided for that purpose.

In addition to the rate increases required by PL 2017 ch. 284, the Department has also increased the rate for a 24th procedure code – T2017 QC (Home Support, Habilitation, residential, waiver – Remote Support – Monitor only). In accordance with 5 MRS §8054, the Department has determined that this rate increase needs to be done in this emergency rulemaking for it is necessary to avoid an immediate threat to public health, safety or general welfare. The Department’s findings of an emergency are as follows: PL 2017 ch. 284 increased every other procedure code for Home Support: Quarter Hour and Home Support: Remote Support. Increasing the rate for the procedure code that was “left out” creates consistency with the other codes, in line with the Section 21 service and reimbursement scheme. If the rate for this code is not increased, it is likely to create pressure to move members to services with higher rates for financial reimbursement reasons, rather than member need.

These increased rates will be effective retroactive to July 1, 2017. The Department determined that a retroactive rate increase to the beginning of the state fiscal year was appropriate, since the appropriation is intended for the entire fiscal year. The retroactive application of this rule comports with 22 MRS §42(8) which authorizes the Department to adopt rules with a retroactive application for a period not to exceed 8 calendar quarters and there is no adverse financial impact on any MaineCare member or provider.

The Legislature did not appropriate additional funding for these rate increases beyond June 30, 2018; therefore, rates will revert to their current levels (pre-July 1, 2017) on July 1, 2018. The Department moved to emergency rulemaking once the rates were calculated and finalized. In creating the rates for the codes shown below, the Department examined utilization of these services, and then calculated rates to ensure parity between Section 21 and Section 29, to lessen administrative complications for providers.

This emergency major substantive rule increases the following rates:

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- In Section 1910, the group rates for Work Support have been increased:
 - 2 Members in Group
 - 3 Members in Group
 - 4 Members in Group
 - 5 Members in Group
 - 6 Members in Group
- In Appendix I:
 - T2017 home support
 - T2017 SC home support with medical add-on
 - T2017 GT home support – remote support
 - T2017 QC home support-remote support-monitor only
 - T2016 agency home support
 - T2016 agency home support over 168 hours
 - T2016 SC agency home support with medical add-on
 - S5140 shared living foster care, adult, one member
 - S5140 TG shared living foster care, adult, one member, increased level of support
 - S5140 UN shared living foster care, adult, 2 members
 - S5140 UN TG shared living foster care, adult, 2 members, increased level of support
 - T2021 community support
 - T2021 SC community support with medical add-on
 - T2015 career planning has been increased
 - T2019 employment specialist services
 - T2019 SC employment specialist services with medical add-on
 - H2023 work support, individual
 - H2023 SC work support with medical add-on
 - H2023 UN work support, group, 2 members
 - H2023 UP work support, group, 3 members
 - H2023 UQ work support, group, 4 members
 - H2023 UR work support, group, 5 members
 - H2023 US work support, group, 6 members
 - T2034 crisis intervention services

The Maine Legislature has designed the Ch. III Section 21 regulation as a major substantive rule. Pursuant to 5 MRS §8073, this emergency major substantive rule may be effective for up to twelve months, 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.

Fiscal impact of rule:

This rulemaking is estimated to cost approximately \$33,422,308 in SFY18, which includes \$9,909,714 in state dollars and \$21,507,255 in federal dollars.

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Rules Adopted January 1, 2017 to December 31, 2017
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 – Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §42, §3173; 5 MRS §8054; PL 2017 ch. 284
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 29**, Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder
Filing number: **2017-157**
Effective date: 10/1/2017
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis Statement:

The Department is adopting this emergency rule to make the following changes to Ch. II Section 29: (1) an increase in the combined services cap from \$23,985 to \$52,425; (2) the addition of Shared Living (Foster Care, Adult) as an available covered service to members; (3) the removal of Work Support services from and the addition of Shared Living services to the combined services cap; (4) an increase in the Respite Services cap from \$1,000 to \$1,100; and (5) the removal of the weekly cap for Home Support-Remote Support services.

These emergency rule changes were triggered by PL 2017 ch. 284, *An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2018 and June 30, 2019* (“Act”). part A §A-34 of the Act provides funding to increase the annual cap for combined services provided under the *MaineCare Benefits Manual*, Ch. II Section 29.07-2, from \$23,771 to \$47,500. The Act authorizes the Department to adopt this change on an emergency basis without the necessity of demonstrating that immediate adoption is necessary to avoid a threat to public health, safety, or general welfare. See part TTTT §TTTT-1.

The Department understands that the justification for increasing this cap to \$47,500 under the Act was to enable Section 29 members to have the option to apply for residential services under this waiver program. Therefore, this emergency rulemaking also adds Shared Living (Foster Care, Adult) services to the covered benefits under Section 29. To implement these services, the Department is adding definitions of Administrative Oversight Agency, Shared Living, and Shared Living Provider in Section 29.02 (Definitions), as well as provider requirements for Shared Living (Foster Care, Adult) in Section 29.10-4. These added definitions and provider requirements are consistent with Ch. II Section 21, “Home and Community Benefits for Adults with Intellectual Disabilities or Autism Spectrum Disorder”, which also offers Shared Living services. The Department is also including Shared Living in Appendix IV, which describes additional requirements for providers related to organizational structure, personnel management, operational policies and procedures, financial management, and environment, consistent with other Section 29 providers. The Department is likewise engaging in concurrent emergency rulemaking to add Shared Living services rates to Ch. III Section 29, so that eligible members can begin receiving these services. All of these changes are integral to fully implementing the new Shared Living service. These changes are immediately necessary for the safety and welfare of the vulnerable members of Section 29 who are in urgent need of the residential services the Department believes the Legislature contemplated in increasing the cap under the Act. 5 MRS §8054.

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The Department also understands that the \$47,500 cap increase authorized under the Act not only accounted for the addition of Shared Living services, but also accounted for the removal of Work Support services. Removing Work Support services from the cap, and including Shared Living services within the cap, as described in Section 29.07-2 (Limits), will immediately benefit members who may be eligible for residential services. Additionally, this change positively impacts members by allowing members who receive Work Support services to engage in these services with fewer restrictions. The Department asserts that these changes are necessary on an emergency basis in order to implement the Legislature's authorization to increase the cap. Absent these changes, members will be immediately and negatively impacted and restricted from receiving services the cap was intended to provide. 5 MRS §8054.

The Department has also increased the annual cap from the \$47,500 in the legislation to \$52,425. The Act directed the Department to increase the Shared Living services rates under Ch. III Section 21 for SFY2018 (effective July 1, 2017 through June 30, 2018). See part MMMMMMM §MMMMMMM-2(1). The Department has calculated the annual cost of the newly added Shared Living service to Section 29, at the increased rate for this service in Section 21, and has determined that the cap should be set at \$52,425 (instead of \$47,500) to fully benefit Section 29 members who may now be eligible for this service. Without this increase on an emergency basis, members will be harmed by not having full access to services and providers will be negatively impacted by having a disparity in rates between these Sections. 5 MRS §8054.

The addition of Shared Living services to Ch. II and the reconfiguration of which services are included under the combined services cap at Section 29.07-2 will be effective October 1, 2017, as this is the first date Shared Living services will be available to members. However, the new cap of \$52,425 for combined services under Section 29.07-2 will be retroactive to July 1, 2017. The reason for having the cap retroactive is two-fold. First, the Legislature increased the cap in the Act (to \$47,500) based on fiscal year calculations – i.e., starting on July 1, 2017. Second, the Act directs the Department to increase rates of reimbursement for procedure codes in Ch. III (effective July 1, 2017 to June 30, 2018), which the Department is doing through a concurrent emergency major substantive rulemaking. See part MMMMMMM, §MMMMMMM-2(2). Increasing the cap retroactive to July 1, 2017, will allow for the increased reimbursement rates to providers without harming members. 22 MRS §42(8).

For similar reasons, the Department has increased the annual cap on Respite Services from \$1,000 to \$1,100 to accommodate the rate increase for this service for SFY2018 directed by the Act and for which the Department is engaged in concurrent Ch. III rulemaking. Absent this cap increase on an emergency basis, members will be immediately be harmed if providers are able to retroactively submit claims at higher rates and no adjustment is made to the Respite Services cap (i.e., members' access to these services will be decreased). 5 MRS §8054. For this reason, the Department is adopting this change retroactive to July 1, 2017, as permitted under 22 MRS §42(8).

The final change in this emergency rule is the removal of the weekly cap from Home Support-Remote Support services under Section 29.05-7. Home Support services (both Remote and ¼ Hour) are currently included and will continue to be included under the combined services cap in Section 29.07-2. Removing the weekly hourly cap will accommodate the increase in the annual cap to \$52,425 so as to avoid immediate harmful effects on members. 5 MRS §8054.

Overall, the Legislature's authorization of an increased combined service cap and the related and necessary changes described above will enable Section 29 members to have increased flexibility in receiving services with fewer restrictions. The Department is seeking and anticipates approval from the Centers for Medicare and Medicaid Services for these changes.

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Pursuant to 5 MRS §8054(3), this emergency rule will be effective for 90 days. The Department will be pursuing routine technical rulemaking for Ch. II Section 29 to avoid any lapse.

Fiscal impact of rule:

The Department anticipates that this emergency rule will cost approximately \$19,770,210 in SFY18, which includes \$5,861,867 in state dollars and \$12,722,130 in federal dollars, and \$26,360,280 in SFY19, which includes \$7,818,459 in state dollars and \$16,960,204 in federal dollars.

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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 – Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §42(1) & (8), §3173; 5 MRS §8054, 8073; PL 2017 ch. 284, §§ MMMMMMM-2, TTTT-1
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 29**, Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder
Filing number: **2017-158**
Effective date: 10/1/2017
Type of rule: Major Substantive
Emergency rule: Yes

Principal reason or purpose for rule:

The emergency adopted rule implements rate increases enacted by the Legislature in PL 2017 ch. 284 §MMMMMMM-2 retroactive to July 1, 2017.

Basis Statement:

The Department is adopting this emergency major substantive rule in accordance with PL 2017 ch. 284, *An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2018 and June 30, 2019* (“Act”). This Act provides funding to increase reimbursement rates for 16 procedure codes in Ch. III Section 29. See part ZZZZZZ, ZZZZZZ-9. The legislation directs the Department to increase the rates for the specific procedure codes in equal proportion to the funding provided for that purpose, and to do so via major substantive rulemaking. See part MMMMMMM, §MMMMMMM-2(2) through -2(4). The Act further authorizes the Department’s adoption of rules on an emergency basis without the necessity of demonstrating that immediate adoption is necessary to avoid a threat to public health, safety or general welfare. See part TTTT §TTTT-1.

In addition to the rate increases required by the Act, the Department has also increased the rate for a 17th procedure code: T2017QC (Home Support-Remote Support-Monitor Only). Pursuant to 5 MRS §8054, the Department has determined that this rate increase is necessary to avoid an immediate threat to public health, safety, or general welfare. The Department’s findings of an emergency are as follows: the Act increased the other procedure codes related to Home Support services. Increasing the rate for the procedure code that was “left out” creates consistency with the other codes, in line with the Section 29 service and reimbursement scheme. If the rate for this code is not increased, it is likely to create pressure to move members to services with higher rates for financial reimbursement reasons, rather than member need.

These increased rates will be effective retroactive to July 1, 2017. The Department has determined that a retroactive increase to the beginning of the state fiscal year is appropriate, since the appropriation is intended for the entire fiscal year. The retroactive application comports with 22 MRS §42(8).

The Legislature did not appropriate additional funding for these rate increases beyond June 30, 2018, therefore rates will revert to their current levels (pre July 1, 2017) on July 1, 2018.

In addition, the Department is adding two procedure codes for Shared Living services (S5140 and S5140 UN). The Department is concurrently adopting an emergency rule for Ch. II Section 29 to add this benefit to available covered services for members. This change in Ch. II

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will ensure the Department's expeditious provision of this service to vulnerable members who are in need of residential stability. The Department is seeking and anticipates approval from the Centers for Medicare and Medicaid Services for this change. The Department has determined that the corresponding rates must be added on an emergency basis in Ch. III so as to allow the immediate implementation of this service. The Shared Living rates added to Section 29 are consistent with rates for these same services under Section 21 to ensure parity. Because the Legislature has appropriated funds to increase the rates for Shared Living services under Section 21 for SFY ending July 1, 2018, the Department is implementing these higher rates of reimbursement for Shared Living services under Section 29 for the same period. See PL 2017 ch. 284 part MMMMMMM §MMMMMMM-2(1).

The Department moved to emergency rulemaking once the rates were calculated and finalized. In creating the rates for the codes shown below, the Department examined utilization of these services, and then calculated rates to ensure parity between Section 29 and Section 21, to lessen administrative complications for providers.

This emergency major substantive rule makes the following changes:

- In Section 1400: Shared Living is added to the list of services being reimbursed at a standard rate.
- In Section 1810, the group rates for Work Support have been increased
- In Appendix I:
 - S5140 Shared Living (Foster Care, adult)-Shared Living Model-One member served has been added
 - S5140 UN Shared Living (Foster Care, adult)-Shared Living Model-Two members served has been added
 - T2017 Home Support-Quarter Hour has been increased
 - T2017 GT Home Support-Remote Support-Interactive Support has been increased
 - T2017 QC Home Support-Remote Support-Monitor only has been increased
 - T2021 Community Support (Day Habilitation) has been increased
 - T2021 SC Community Support (Day Habilitation) with Medical Add-On has been increased
 - T2019 Employment Specialist Services (Habilitation, Supported Employment waiver) has been increased
 - T2019 SC Employment Specialist Services (Habilitation, Supported Employment waiver) with Medical Add-On has been increased
 - H2023 Work Support (Supported Employment)-Individual has been increased
 - H2023 SC Work Support (Supported Employment)-Individual with Medical Add-On has been increased
 - H2023 UN Work Support (Supported Employment)-Group 2 members served has been increased
 - H2023 UP Work Support (Supported Employment)-Group 3 members served has been increased
 - H2023 UQ Work Support (Supported Employment)-Group 4 members served has been increased
 - H2023 UR Work Support (Supported Employment)-Group 5 members served has been increased
 - H2023 US Work Support (Supported Employment)-Group 6 members served has been increased
 - T2015 Career Planning (Habilitation, prevocational) has been increased
 - S5150 Respite Services-1/4 hour has been increased
 - S5151 Respite Services-Per Diem has been increased

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Pursuant to 5 MRS §8073, this emergency major substantive rule may be effective for up to 12 months, 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.

Fiscal impact of rule:

This emergency rule is estimated to cost approximately \$4,520,357 in SFY18 for rate increases, which includes \$1,340,286 in state dollars and \$2,908,850 in federal dollars.

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Agency name: Department of Health and Human Services, **Office of MaineCare Services – Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(1), 42(8), 3173; 5 MRS §8054; PL 2017 ch. 284 §§ MMMMMMM-1, TTTT-1
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 19**, Home and Community Benefits for the Elderly and Adults with Disabilities
Filing number: **2017-169**
Effective date: 11/1/2017
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis Statement:

This emergency rule increases reimbursement rates to comply with PL 2017 ch. 284, (Ch. 284) part MMMMMMM-1, *An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Funds and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2018 and June 30, 2019.*

PL 2017 ch. 284 part MMMMMMM-1 requires the Department to amend its rules for reimbursement rates for home-based and community-based personal care and related services provided under the provisions of 10-144 CMR Ch. 101, *MaineCare Benefits Manual*, Ch. III Section 19, “Home and Community Benefits for the Elderly and Adults with Disabilities” and referenced in the February 1, 2016 report “*Rate Review for Personal Care and Related Services: Final Rate Models*” prepared for the Department by Burns & Associates, Inc. Further, part MMMMMMM-1 directs the Department that the increase in rates of reimbursement must be applied in equal proportion to all home-based and community-based personal care and related services referenced in the Burns & Associates, Inc. report using the funding provided for that purpose in Ch. 284. Ch. 284 provides funding to increase these rates. See part ZZZZZZ §ZZZZZZ-2.

PL 2017 ch. 284 part TTTT §TTTT-1 authorizes the Department to adopt rules increasing these rates on an emergency basis without the necessity of demonstrating that immediate adoption is necessary to avoid a threat to public health, safety or general welfare.

The Legislature did not appropriate additional funding for these rate increases beyond June 30, 2018; therefore, rates will revert to their current levels (pre-July 1, 2017) on July 1, 2018.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$3,146,974.00 in SFY 18, which includes \$1,121,896 in state dollars and \$2,025,078 in federal dollars.

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Agency name: Department of Health and Human Services, **Office of MaineCare Services – Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173; PL 2017 ch. 284 §ZZZZZZ-9
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 45**, Hospital Services
Filing number: **2017-173**
Effective date: 11/14/2017
Type of rule: Routine Technical
Emergency rule: No

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

Basis Statement:

The Department is adopting changes in these rules, as set forth below. The Department is seeking and anticipates receiving approval from CMS for the rule changes. Pending CMS approval, the rule changes are effective November 14, 2017. The changes include the following:

Chapter II

- a) An amendment to Section 45.05-4, “Restricted Services”, clarifying that dental services which are medically necessary and done in a hospital setting are allowed.
- b) A clarification in Section 45.05-6, “Restricted Physician Services Associated with Hospital Services”, stating that all hospital-based providers are subject to the limitations in Ch. II Section 90, “Physician Services”.
- c) An update to language in Section 45.13, “Reporting Requirements for Acute Care Critical Access Hospitals and Private Psychiatric Hospitals”, to reflect current reporting requirements; to provide additional guidance for updating 340B status changes when applicable; and include the requirement to have mechanisms in place to prevent duplicate discounts on drugs.
- d) The addition in Section 45.04-4, “Supplies, Appliances and Equipment”, of separate reimbursement for Long Acting Reversible Contraceptives (LARC) when the device is inserted during the postpartum inpatient hospital stay. The LARC will be covered in addition to the hospital Diagnosis-Related Group (DRG) payment to provide adequate reimbursement to providers for the device.
- e) An update to Section 45.04-8, “Diabetes Self-Management Training Services”, amending the language to accurately reflect the program’s current title and model.
- f) Correction and/or deletion of outdated references and minor language editing for clarification purposes.

Chapter III

- a) Updates throughout the rule of the term “radiology” to “imaging” to reflect prevalent terminology usage.
- b) Expansion of the definition of “Discharge” (§45.01-6) to include inpatient maintenance chemotherapy as an exception to the fourteen-day (14) readmission protocol due to the required planning for standards of care.
- c) The addition to Section 45.02-5, “Reporting and Payment Requirements”, of requirements for providers to submit mapping documents as part of the required documentation when filing the As-Filed Medicare Cost Report with the Department to aid the Department in payment methodology calculations.

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- d) Amend 45.02-5(E), “Payment Requirements in the Event of an Overpayment to the Hospital”, to require payment of 100% (instead of 50%) of the hospital-discovered overpayment as determined by the As-filed Medicare Cost Report. This change is required by federal law. (42 USC §1320a-7k)
- e) The addition of the Payment Window Rule (Sections 45.03-1(D)(1)(b) and 45.06-1(B)(2)) instructing hospitals, or entities wholly-owned or wholly-operated by a hospital, to bill the technical component of outpatient services provided within a 3-day (or 1-day) window preceding inpatient admission on the inpatient claim. The 1-day payment window applies to distinct rehabilitation, psychiatric, and substance abuse units. This provision is consistent with 42 CFR §412.2(c)(5) and 42 CFR §413.40(c)(2), and is currently in place by Medicare to treat certain technical components as operating costs of the inpatient hospital services.
- f) Added a new provision, Section 45.03-1(D)(3), “Hospital Outpatient Provider-Based Departments” (PBDs). This provision adopts the Medicare Outpatient Prospective Payment System/Ambulatory Surgical Center (OPPS/ASC) rule, which essentially requires that, with the exception of dedicated emergency department services, services furnished in off-campus provider-based hospital outpatient departments that began billing under the OPPS on or after November 2, 2015, no longer be paid under the OPPS. With the exception of these “excepted locations,” services provided in PBDs must use modifiers to identify non-excepted items and services. These non-excepted services are paid at a reduced MaineCare rate.
- g) In Section 45.07, an increase in the amount of the supplemental pool is being made to comply with PL 2017 ch. 284 §ZZZZZ-9. The Department is also adopting a restructuring of the supplemental pool methodology. The new methodology creates two supplemental pools; an inpatient supplemental pool and an outpatient supplemental pool. This change is to ensure that the annual supplemental payments can be issued to providers without exceeding the allowable upper payment limits as described in 42 CFR §447.272 (upper payment limits for inpatient services) and §447.321 (upper payment limits for outpatient services). The new methodology is based on a calculation of a hospital’s relative share of inpatient or outpatient MaineCare payments (rather than a hospital’s relative share of inpatient MaineCare discharges) since the new methodology is utilizing both an inpatient and an outpatient supplemental pool. The data used to calculate the relative share of a hospital’s MaineCare payment is data from the state fiscal year 2014, which provides a consistent and more accurate basis with minimal risk of additional claim activity.
- h) Updating the prospective interim payment (Section 45.04-2) methodology used to identify the estimated departmental annual obligation relating to both inpatient and outpatient services. This change provides for more accuracy in estimating prospective interim payments.
- i) Addition of language in the Out-of-State Hospitals’ reimbursement, Section 45.10, clarifying that reimbursement for laboratory and imaging outpatient service shall not exceed the 100% of Medicare reimbursement rate for the Maine area ’99 locality, and that the hospitals are required to report and are subject to all applicable pricing modifiers. This change is to ensure payments do not exceed Medicare amounts.
- j) Clarification of language in the “Clinical Laboratory and Imaging Services”, Section 45.11, to more succinctly explain how services are covered and reimbursed in accordance with applicable sections of the *MaineCare Benefits Manual*.
- k) Revision of language in Section 45.13-2 to reflect that the Final, rather than Interim, Cost Report will be used by the Department when calculating a Disproportionate Share Hospital (DSH) settlement to more accurately reflect inpatient utilization rates.

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This is also consistent with the regulation which provides that hospitals within the category are assessed for DSH eligibility “after final settlement is complete for all hospitals in a category.”

- l) Addition of ICD-10 code H65.01, Acute serous otitis media, right ear, to Appendix B, which had been inadvertently left out during the last amendment to this rule.
- m) Minor corrections and editing of language and formatting for clarification and organizational purposes.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$4,539,234 in SFY 2018, which includes \$1,618,939 in state dollars and \$2,920,295 in federal dollars, and \$4,539,234 in SFY 2019, which includes \$1,618,691 in state dollars and \$2,920,543 in federal dollars. This is the net impact from the cost of the supplemental pool increase and the savings from the other reimbursement changes in this rulemaking.

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Agency name: Department of Health and Human Services, **Office of MaineCare Services – Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(8), 3173; 5 MRS §8054; PL 2017 ch. 284 (128th Legis.) part MMMMMMM-1
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 12**, Allowances for Consumer-Directed Attendant Services
Filing number: **2017-174**
Effective date: 11/14/2017
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 the rates of reimbursement for home-based and community-based personal care services pursuant to PL 2017 ch. 284 part MMMMMMM-1, *An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2018 and June 30, 2019*.

PL 2017 ch. 284 part MMMMMMM-1 requires the Department to amend its rules for reimbursement rates for home-based and community-based personal care and related services provided under the provisions of 10-144 CMR Ch. 101, *MaineCare Benefits Manual*, Ch. III Section 12, “Allowances for Consumer-Directed Attendant Services”, and referenced in the February 1, 2016 report: “Rate Review for Personal Care and Related Services: Final Rate Models” prepared for the Department by Burns & Associates, Inc. Further, part MMMMMMM-1 directs the Department that the increase in rates of reimbursement must be applied in equal proportion to all home-based and community-based personal care and related services referenced in the Burns & Associates, Inc. report using funding provided for that purpose in Ch. 284. In addition to this Section 12 rule, the Department is also adopting increased rate changes, on an emergency basis, for Sections 19 & 96 rules. Ch. 284 provides funding to increase these rates. See part *ZZZZZZ §ZZZZZZ-2*.

PL 2017 ch. 284 part TTTT and §TTTT-1 authorize the Department to adopt rules increasing these rates on an emergency basis without the necessity of demonstrating that immediate adoption is necessary to avoid a threat to public health, safety, or general welfare.

This emergency rule increases the following rates:

- * S5125, Attendant Care Services
- * S5125 U2 UN, Attendant Care Services - 2 person
- * S5125 U2 UP, Attendant Care Services - 3 person

Pursuant to 5 MRS §8054, this emergency rule may be effective for up to ninety (90) days. The Department intends to proceed with routine technical rulemaking to permanently adopt this rule.

The increased rates will be effective retroactive to July 1, 2017. The Department has determined that a retroactive increase to the beginning of the state fiscal year is appropriate, since the appropriation was intended for the entire fiscal year. The retroactive application comports with 22 MRS §42(8) which authorizes the Department to adopt rules with a retroactive application for a period not to exceed 8 calendar quarters and there is no adverse financial impact on any MaineCare member or provider.

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The Legislature did not appropriate additional funding for these rate increases beyond June 30, 2108. Therefore, rates will revert to their current levels (Pre-July 1, 2017 rates) on July 1, 2018.

The Department is seeking, and anticipates receiving, approval from the Centers for Medicare and Medicaid Services (CMS) for these rate changes.

Fiscal impact of rule:

The Department expects this rulemaking will cost the Department approximately \$407,024 in SFY 2018, which includes \$145,104 in state dollars and \$261,920 in federal dollars.

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Agency name: Department of Health and Human Services, **Office of MaineCare Services – Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(8), 3173; 5 MRS §8054; PL 2017 ch. 284 (128th Legis.) parts MMMMMMMM-1, TTTT-1
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 96**, Private Duty Nursing and Personal Care Services
Filing number: **2017-176**
Effective date: 11/14/2017
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 these emergency rules to increase the rates of reimbursement and level of care limits for home-based and community-based personal care and other related services pursuant to PL 2017 ch. 284 part MMMMMMMM-1, *An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2018 and June 30, 2019.*

PL 2017 ch. 284 part MMMMMMMM-1 requires the Department to amend its rules for reimbursement rates for home-based and community-based personal care and related services provided under the provisions of 10-144 CMR ch. 101, *MaineCare Benefits Manual*, ch. II & III section 96, “Private Duty Nursing and Personal Care Services”, and referenced in the February 1, 2016 report: “Rate Review for Personal Care and Related Services: Final Rate Models” prepared for the Department by Burns & Associates, Inc. Further, part MMMMMMMM-1 directs the Department that the increase in rates of reimbursement must be applied in equal proportion to all home-based and community-based personal care and related services referenced in the Burns & Associates, Inc. report using the funding provided for that purpose in Ch. 284. In addition to this Section 96 rule, the Department is also adopting increased rate changes on an emergency basis for Section 12, “Allowances for Consumer-Directed Attendant Services” and Section 19, “Home and Community Based Services for the Elderly and Adults with Disabilities” rules. Ch. 284 provides funding to increase these rates. See part ZZZZZZ §ZZZZZZ-2.

PL 2017 ch. 284 part TTTT §TTTT-1 authorizes the Department to adopt these rules increasing these rates and level of care caps on an emergency basis without the necessity of demonstrating that immediate adoption is necessary to avoid a threat to public health, safety, or general welfare.

This Ch. III emergency rule increases the following rates:

- G0299 (0551)-RN Services
- G0299 TD UN (0551)-RN Services–multiple patients (2)
- G0299 TD UP (0551)-RN Services–multiple patients (3)
- G0300 TE (0559)-LPN Services
- G0300 TE UN (0559)-LPN Services–multiple patients (2)
- G0300 TE UP (0559)-LPN Services–multiple patients (3)
- T1000 TD-Independent RN
- T1000 TD UN-Independent RN–multiple patients (2)
- T1000 TD UP-Independent RN–multiple patients (3)

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T1004 (0571)-Home Health Aide/Certified Nursing Assistant Services
T1004 UN (0571)-Home Health Aide/Certified Nursing Assistant Services-multiple patients (2)
T1004 UP (0571)-Home Health Aide/Certified Nursing Assistant Services-multiple patients (3)
T1019 (0589)-Personal Support Services
T1019-Personal Support Services (PCA Agencies only)
T1019 UN-Personal Support Services (PCA Agencies only) multiple patients (2)
T1019 UP-Personal Support Services (PCA Agencies only) multiple patients (3)
S5125 TF (0589)-PCA Supervisit
S5125 TF UN (0589)-PCA Supervisit-multiple patients (2)
S5125 TF UP (0589)-PCA Supervisit-multiple patients (3)
S5125 TF-PCA Supervisit (PCA Agencies only)
S5125 TF UN-PCA Supervisit (PCA Agencies only) multiple patients (2)
S5125 TF UP-PCA Supervisit (PCA Agencies only) multiple patients (3)
This Chapter II emergency rule increases the following level of care limits:
Level I
Level II
Level III
Level IV
Level V
Level VIII
Level IX

Pursuant to 5 MRS §8054, these emergency rules may be effective for up to ninety (90) days. The Department intends to proceed with routine technical rulemaking to permanently adopt these rules.

The increased rates and level of care limits will be effective retroactive to July 1, 2017. The Department has determined that a retroactive increase to the beginning of the state fiscal year is appropriate, since the appropriation was intended for the entire fiscal year. The retroactive application comports with 22 MRS §42(8) which authorizes the Department to adopt rules with a retroactive application for a period not to exceed eight (8) calendar quarters and there is no adverse impact on any MaineCare member or provider.

The Legislature did not appropriate additional funding for these rate and level of care increases beyond June 30, 2018. Therefore, rates will revert back to their current levels (pre-July 1, 2017) on July 1, 2018.

Fiscal impact of rule:

The Department expects these rulemakings will cost approximately \$2,826,925 in SFY 2018, which includes \$1,007,574 in state dollars and \$1,818,721 in federal dollars.

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Agency name: Department of Health and Human Services, **Office of MaineCare Services – Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(8), 3173; PL 2015 ch. 481 part C
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 2**, Adult Family Care Services
Filing number: **2017-201**
Effective date: 12/23/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule complies with 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 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*. PL 2015 ch. 481 part C directs the Department to set the inflation amount adjustment in accordance with the United States Department of Labor, Bureau of Labor Statistics' Consumer Price Index-Medical Care Services Index for the fiscal year ending June 30, 2018.

This rule seeks to implement a three and a half (3.5) percent cost-of-living rate increase for adult family care services for the fiscal year ending June 30, 2018. Ch. III Section 2, "Adult Family Care Services", increases the unadjusted price from \$46.79 to \$48.43 and the resource-adjusted prices increased accordingly. In addition, Ch. III Section 2, "Adult Family Care Services", increases the resource-adjusted prices accordingly to adult family care homes that satisfy the definition of remote island facilities from \$48.43 to \$55.69.

The Department is seeking and anticipates receiving approval from the federal Centers for Medicare and Medicaid Services (CMS) for this change. Pending CMS approval, the three and a half (3.5) percent cost-of-living rate increase will be effective retroactive to July 1, 2017. A Change in Reimbursement Methodology Notice was posted June 28, 2017 on the Office of MaineCare Services' website.

Basis Statement:

The Department of Health and Human Services (Department) adopts this rule change to 10-144 CMR ch. 101, *MaineCare Benefits Manual (MBM)*, Ch. III Section 2, "Adult Family Care Services", to effectuate a three and a half (3.5) percent cost-of-living rate increase for the fiscal year ending June 30, 2018. The proposed changes were filed with the Secretary of State's Office on August 8, 2017, and the Department now adopts them permanently.

The cost-of-living rate increase is made pursuant to 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* (effective April 16, 2016). This legislation required the Department to make two cost-of-living rate increases for Section 2, "Adult Family Care Services", the first being a four percent (4%) increase for the fiscal year ending June 30, 2017 which the Department already accomplished through rulemaking, and the second being a cost-of-living increase set in accordance with the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index (CPI) medical care services index, which the Department seeks to achieve through this current rulemaking. The Department has adjusted the Section 2, "Adult Family Care Services" rates by three and a half (3.5) percent by utilizing CPI data measuring annual inflation as of December 2016, and

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by utilizing the more specified inflation factor for “nursing home and adult day services,” a subcategory of “medical care services.” This approach is consistent with other MBM rules that rely on changes in the CPI indices and also ensures parity in reimbursement to providers of both Section 2, “Adult Family Care Services”, and Section 97, “Private Non-Medical Institution Services”.

The Department is seeking and anticipates receiving approval from the federal Centers for Medicare and Medicaid Services (CMS) for this change. Pending CMS approval, the three and a half (3.5) percent cost-of-living rate increase will be effective retroactive to July 1, 2017. This retroactive rate increase is consistent with the underlying legislation requiring the rate increase for SFY 2018, and is permitted under 22 MRS §42(8) since the rate increase is a benefit to both providers and members. A Change in Reimbursement Methodology Notice was posted on June 28, 2017 on the Office of MaineCare Services’ website pursuant to 42 CFR §447.205.

The Department estimates that the General Fund impact for this change is \$378,144 in SFY 2018 and estimates federal expenditures of \$243,449.

This rulemaking will not impose costs on municipal or county governments, or on small businesses employing twenty or fewer employees.

Fiscal impact of rule:

The Department does not anticipate that this rulemaking will result in any additional cost to the Department or other Offices.

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

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 42, 3173

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 21**, Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder

Filing number: **2017-203**

Effective date: 12/24/2017

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The rule change will expand the number of members who are eligible as Priority 1 on the waitlist for Ch. II Section 21, “Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder”. The language addresses waitlist eligibility for members whose primary caregiver has reached the age of 65 or has a terminal illness and is having difficulty providing the necessary supports to the member, where the member has no other responsible or willing caregiver. The rule specifies criteria whereby those members may qualify as Priority 1 based on the member’s medical condition or behavioral need; high risk for institutionalization; history of hospitalizations; and imminent danger to the member or others. A provision is also included specifying that Priority 1 is granted only when the member’s needs cannot be met absent provision of services under this comprehensive waiver program. Therefore, Priority 1 on the Section 21 waitlist would be available only for members who specifically need these services; members whose needs could be met with the less intense services provided under the State Plan or Section 29 would be referred to those services. This provision does not preclude the member waiting at another Priority level on the Section 21 waitlist. This rulemaking is required in order to establish clear criteria for prioritization of members, beyond what currently exists. While the Department may offer funded openings to Priority 2 members in the event Priority 1 is exhausted, the Department wishes to establish clear, codified criteria to guide access, now and in the future.

The rule also expands the number of members who are eligible as Priority 2. The language expands eligibility to members whose primary caregiver has reached the age of sixty and is having difficulty providing the necessary supports to the member in the family home. A definition of primary caregiver is also included. This will supersede language in the current rule that applies this criterion only to the member’s parents. The provision expands the Priority 2 provision to members being cared for by extended family members, and whose parents are deceased, missing, or unable to care for the member.

The rule requires an annual review of the priority assignments of members, in order to remain on the Section 21 waitlist.

Basis Statement:

The Department is adopting changes to Ch. II Section 21, “Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder”, that expand the number of members who qualify for Priority 1 status on the waitlist for funded openings. The expansion of the Priority 1 waitlist applies to members who do not yet meet the need for adult protective services (APS), but: (1) whose primary caregiver has reached the age of 65 or has a terminal illness, and is having difficulty providing the necessary supports to the member; (2) who have no other responsible or willing caregiver; and (3) who satisfy at least one and are at risk of another additional risk factors. In conjunction with these changes, the

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Department is also adopting a definition of “Primary Caregiver” to address the reality that members may be receiving care from their parents or from extended family members when their parents are deceased, missing, or unable to care for the member.

The expanded criteria for Priority 1 status in the rule adoption reflects public input on the rule proposal and accords with the Department’s intent to make services available to vulnerable members for whom APS involvement may be avoided. For similar reasons, the Department is declining to adopt a provision in the rule proposal that Priority 1 status is granted only when the member’s needs cannot be met absent provision of services under the State Plan or the Section 29 waiver program. The Department’s goal is to expand the provision of services, not limit them.

In addition to establishing clear criteria for members with Priority 1 status, this rule adoption also clarifies that Priority 2 status is granted to members who do not yet satisfy Priority 1 status, but who nonetheless remain at risk for abuse, neglect, or exploitation absent the provision of services. Consistent with changes in Priority 1, the Department has modified the examples of members who may qualify for Priority 2 status by including members with a “Primary Caregiver” who has reached the age of sixty and is having difficulty providing the necessary supports. The Department believes this clarification will help expand members placed on the Priority 2 waitlist.

The Department is also adopting changes to this rule to ensure that the waitlist for Section 21 services accurately reflects members’ continued interest in services by requiring an annual confirmation. In response to comments, the adopted rule includes a more detailed process for this confirmation than articulated in the rule proposal. This process balances the Department’s efforts to maintain an updated waitlist while minimizing any burden to the member in completing the confirmation or risk to the member of unwanted removal from the waitlist. For similar reasons, the Department also modified language for the final rule adoption to remove the annual review of the priority assignments of members; this will be optional for the member and the member can request the Department’s evaluation of priority status at any time.

The Department is in the process of seeking and anticipates receiving approval from the Centers for Medicare & Medicaid Services for these changes.

Fiscal impact of rule:

The Department anticipates that this rulemaking will result in expenditure of up to \$7.5 million from the State General Fund, with total impact of \$25.3 million, including Federal Medicaid match.

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Agency name: Department of Health and Human Services, **Office of MaineCare Services – Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173; PL 2017 ch. 284
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 29**, Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder
Filing number: **2017-209**
Effective date: 12/28/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule implements the direction of the Legislature in PL 2017 ch. 284.

Basis Statement:

The Department adopted amendments to this routine technical rule to make the following changes to Ch. II Section 29: (1) an increase in the combined services cap from \$23,985 to \$52,425; (2) the addition of Shared Living (Foster Care, Adult) as an available covered service to members; (3) the removal of Work Support services from and the addition of Shared Living services to the combined services cap; (4) an increase in the Respite Services cap from \$1,000.00 to \$1,100.00; and (5) the removal of the weekly cap for Home Support-Remote Support services. These final adopted amendments implement changes that were made to Section 29 on an emergency basis effective October 1, 2017, and which are effective for ninety (90) days.

These rule changes were triggered by PL 2017, ch. 284, *An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2018 and June 30, 2019* (the “Act”). Part A, Sec. A-34 of the Act provides funding to increase the annual cap for combined services provided under the *MaineCare Benefits Manual*, Ch. II Section 29.07-2, from \$23,985 to \$47,500. The Department understands that the justification for increasing this cap to \$47,500 under the Act was to enable Section 29 members to have the option to apply for residential services under this waiver program. Therefore, this rulemaking also added Shared Living (Foster Care, Adult) services to the covered benefits under Section 29. To implement these services, the Department has added definitions of Administrative Oversight Agency, Shared Living, and Shared Living Provider in Section 29.02 (Definitions), as well as provider requirements for Shared Living (Foster Care, Adult) in Section 29.10-4. These added definitions and provider requirements are consistent with Ch. II Section 21, “Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder”, which also offers Shared Living services. The Department has also included Shared Living in Appendix IV, which describes additional requirements for providers related to organizational structure, personnel management, operational policies and procedures, financial management, and environment, consistent with other Section 29 providers. The Department adopted concurrent, emergency amendments effective October 1, 2017 for up to twelve months to add Shared Living services rates to Ch. III, Section 29, a major substantive rule, so that eligible members could begin receiving these services. All of these changes are integral to fully implementing the new Shared Living service under Section 29 of the *MaineCare Benefits Manual*.

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The Department also understands that the \$47,500 cap increase authorized under the Act not only accounted for the addition of Shared Living services, but also accounted for the removal of Work Support services. Removing Work Support services from the cap, and including Shared Living services within the cap, as described in Section 29.07-2 (Limits), will benefit members who may be eligible for residential services. Additionally, this change positively impacts members by allowing members who receive Work Support services to engage in these services with fewer restrictions.

The Department has also increased the annual cap from the \$47,500 in the legislation to \$52,425. The Act directed the Department to increase the Shared Living services rates under Ch. III Section 21 for SFY2018 (effective July 1, 2017 through June 30, 2018). See Part MMMMMMM, Sec. MMMMMMM-2(1). The Department has calculated the annual cost of the newly-added Section 29 Shared Living service, at the increased rate for this service in Section 21, and has determined that the cap should be set at \$52,425 (instead of \$47,500) to fully benefit Section 29 members who may now be eligible for this service.

The addition of Shared Living services to Ch. II and the reconfiguration of which services are included under the combined services cap at Section 29.07-2 was adopted through emergency rulemaking, effective October 1, 2017. However, the new cap of \$52,425 for combined services under Section 29.07-2 is retroactive to July 1, 2017. The reason for having the cap retroactive is two-fold. First, the Legislature increased the cap in the Act (to \$47,500) based on fiscal year calculations – i.e., starting on July 1, 2017. Second, the Act directed the Department to increase rates of reimbursement for procedure codes in Ch. III (effective July 1, 2017 to June 30, 2018), which the Department did through concurrent emergency major substantive rulemaking. See Part MMMMMMM, Sec. MMMMMMM-2(2). Increasing the cap retroactive to July 1, 2017, will allow for the increased reimbursement rates to providers without harming members. 22 MRS §42(8).

For similar reasons, the Department increased the annual cap on Respite Services from \$1,000.00 to \$1,100.00 to accommodate the rate increase for this service for SFY2018 funded by the Act that was another subject of the emergency amendments to Ch. III, effective October 1, 2017 and also retroactive to July 1, 2017, as permitted under 22 MRS §42(8).

The final change in this final adopted rule is the removal of the weekly cap on Home Support-Remote Support services under Section 29.05-7. Home Support services (both Remote and ¼ Hour) are currently included and will continue to be included under the combined services cap in Section 29.07-2. Removing the weekly hourly cap accommodates the increase in the annual cap to \$52,425 so as to avoid harmful effects on members. 5 MRS §8054.

Overall, the Legislature's authorization of an increased combined service cap and the related and necessary changes described above will enable Section 29 members to have increased flexibility in receiving services with fewer restrictions. The Department is seeking and anticipates approval from the Centers for Medicare and Medicaid Services for these changes.

Fiscal impact of rule:

The Department anticipates that this rulemaking, to increase the cap in Section 29, will cost approximately \$19,770,210 in SFY18, which includes \$5,861,867 in state dollars and \$12,722,130 in federal dollars, and \$26,360,280 in SFY19, which includes \$7,818,459 in state dollars and \$16,960,204 in federal dollars.

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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: 22 MRS ch. 558-C; 22 MRS §42; 22-A MRS §205
Chapter number/title: **Ch. 122**, Maine Medical Use of Marijuana Program Rule
Filing number: **2017-168**
Effective date: 2/1/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These rule changes implement revisions enacted by the 126th and 127th Legislature and streamline the rule by removing language that duplicates statute. Additionally, this rulemaking seeks to provide details to clarify processes employed by the Department to operationalize the statute (e.g., ensure compliance and written certification issuance), include new terms and definitions, remove outdated language, address inconsistencies, revise construction and wording to improve and clarify the rule.

Basis statement:

The adoption of this rule amends 10-144 CMR ch. 122 and implements changes enacted by the 126th and the 127th Legislature. These changes clarify processes employed by the Department to operationalize statutory requirements specific to regulating the cultivation, dispensing and administration of marijuana for medical use, including the issuance of registry identification cards, dispensary certificates of registration and written certifications. Changes also remove duplicative and outdated language, address inconsistencies, revise construction and wording for clarity. The effective date for this adopted rule is 90 days from the date the Department files the rule with the Secretary of State.

The adopted rule provides a more thorough explanation of the Department's administrative procedures, including compliance monitoring and enforcement, and establishes standards for compliance. Amendments include added terms and definitions, revised language around the acquisition and lawful disposal of prepared marijuana for medical use, and requirements for inventory interruption, reporting and record-keeping for caregivers and dispensaries, patient designations and cultivation by family and household members. Changes clarify that remote healthcare services are not prohibited, that a food establishment license is required prior to the preparation of consumable goods containing marijuana, and identifies more clearly what constitutes a collective. The adopted rule includes registry identification card application submission and approval criteria and adjusted fees to reflect current practice.

This adopted rule includes the following changes to implement legislative changes:

(1) allow primary caregivers to possess and administer a non-smokable form of a minor qualifying patient's medical marijuana on school grounds and on school buses; (2) allow certified nurse practitioners to issue written certifications for the medical use of marijuana; (3) allow registered primary caregivers to have one employee; (4) allow qualifying patients to use allowable forms of medical marijuana as residents in an inpatient hospice or nursing facility; and (5) allow primary caregivers to dispose of excess prepared marijuana by transferring it to a registered dispensary, a qualifying patient or another primary caregiver. In Section 8, the adopted rule changes will provide for reduced applicant fees and subsequent reductions to fees outside of rulemaking.

Additionally, this rule adds clarification to program operations that implement statutory requirements. The adopted changes include the following: (1) in Section 10, the procedural details for the Department compliance assurance activities; (2) revisions to the Department's

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processes for registration applications, patient designations, petitions to add a qualifying debilitating condition, the transfer of excess marijuana, and issuance of written certifications by a medical provider directly to qualifying patients and, for minor qualifying patients, without delay in the absence of a list of consulting physicians; (3) revised policy requirements for facilities that are subject to other regulating sources; and (4) additional reporting requirements for dispensary inventory and patient designation.

The Department has determined that the effective date for this rule is 90 days following adoption, which will allow regulated parties to make necessary adjustments, in order to comply with requirements. This additional time will allow for the Department to update forms, procedures and practices to effectively regulate the Maine Medical Marijuana Program based on adopted changes. The Department has determined that the additional regulatory requirements are necessary for compliance purposes and for future program planning. These additional requirements outweigh the minimal administrative burdens that caregivers and dispensaries may experience. The Department anticipates an increase in workload for staff, especially due to reporting requirements, which will be managed by the Department's current capacity.

Fiscal impact of rule:

No fiscal impact is anticipated on DHHS or municipalities. The Maine Medical Use of Marijuana Program, a self-funded program, provides funds to address costs associated with the Program, including the secure online portal that is part of the new written certification process. Indirectly, there may be potential impact on the MMMP fund as applicants realize reduced fees, and on the Department of Public Safety (legality of possession) and Maine Revenue Services (taxation of marijuana).

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Rules Adopted January 1, 2017 to December 31, 2017
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: 22 MRS §§ 42, 1541-1550; PL 2015 ch. 318
Chapter number/title: **Ch. 249**, Smoking in Public Places Rule
Filing number: **2017-204**
Effective date: 12/27/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These rule changes are intended to ensure a safer and healthier environment for Maine residents and visitors, because it is clarifying prohibitions and exceptions for smoking in public places. Some of the changes occurred as a result of recent statutory updates to 22 MRS ch. 262, specifically §1541 Definitions section which added a definition for “electronic smoking device” and amended the “smoking” definition.

Basis statement / concise summary:

These changes to the Smoking in Public Places Rule delete unnecessary definitions (“club,” “member” and “not open to the public” for this rule, add a new definition for “electronic smoking device,” amend the definition of “smoking,” reorganize Section 2 (smoking prohibitions and limitations), add a subsection to Section 3, and correct citations throughout the rule. The Department amended the final rule based on comments, by restoring the definition of “invited guest”, changing the term “environmental smoke” to “secondhand smoke”, and clarifying the definition of “ventilation” to state that ventilation technologies do not adequately protect people from secondhand smoke. Additional changes to the rule, based on public comment, include clarifying Section 2(A)(5) regarding smoking prohibitions in a beach or playground, 2(B)(1)(a) to correctly name private residence smoking prohibition, when family child care providers or baby sitters are caring for children, and Section 2(C)(5), regarding the allowance of smoking in lodging places.

Defining “electronic smoking device” and amending the definition of “smoking” align with statutory changes in 22 MRS §§ 1541(1-A) and 1541(6). Eliminating three definitions in Section 1 resolves any duplication in the Department’s *Rules Relating to Smoking in the Workplace*, at 10-144 CMR Ch. 250. Section 2 mostly reorganizes specific prohibitions and limitations, in order to better clarify where smoking is prohibited and where it is *not* prohibited, so that the distinction is clearer, rather than the current line between smoking indoors or smoking outdoors, which did not clearly explain the prohibitions. Section 4 adds a section that was moved from Section 2(A)(5), in order to more clearly explain Section 4, now titled *Posting Signs, Notifications*, rather than just *Posting Signs*. All changes in response to comments further assure that the rule more clearly establishes protection of public health by protecting them from secondhand smoke when occupying public places in Maine.

These changes further restrict the use of electronic smoking devices in Maine and also reduce others’ exposure to electronic smoking devices. In addition, the public will more clearly understand where smoking is allowed and where it is prohibited. This clarity will further protect Maine residents and visitors from secondhand smoke when they are in public.

Fiscal impact of rule:

None anticipated.

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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: 22 MRS §§ 8944, 8943
Chapter number/title: **Ch. 280**, Maine Birth Defects Program Rule
Filing number: **2017-194**
Effective date: 12/13/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These changes update the reportable birth defects listing and clarify wording for referral to the Part C Agency (Child Development Services) in Maine.

Basis statement / concise summary:

This rule establishes the responsibilities of hospital administrators, physicians and other health care providers, including licensed midwives, for reporting birth defects in infants and fetuses; provides the confidentiality requirements of the Maine Birth Defects Program; describes the nature of contact between the Maine Birth Defects Program and families of children with birth defects; and describes parental objection to birth defect reporting or participation in the birth defect registry. This amendment updates the reportable birth defects listing and clarifies wording for referral to the Part C Agency (Child Development Services) in Maine. Changes include minor technical changes and reformatting.

Fiscal impact of rule:

No fiscal impact anticipated

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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**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(1), 3104; 7 CFR §§ 272.1, 272.6, 272.8(a), 273.4, 273.7, 273.11, 273.18, 273.24
Chapter number/title: **Ch. 301**, Food Supplement Program Certification Manual, **FS Rule #195A**: Disqualified Members, Work Registration, and Child Support Orders
Filing number: **2017-100**
Effective date: 7/3/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The reasons for the rule changes are as indicated, by section, below. In addition, the rule includes formatting changes and removal of outdated references.

Section FS-1 – Changes update non-discrimination civil rights policy according to federal requirements and to add Employment and Training to the list of limitations of disclosure of participation in the program.

Section FS-111-5 – Work Registration. Requirement for members to register with the Department of Labor, Maine Job Bank to increase exposure to available employment and assist members in finding employment. Updates to the Work Requirements policy to clarify and correct the current manual to ensure a clear description of member expectations, consequences, and good cause.

Section FS-111-7 – Federally required “good cause” exemptions for times that ABAWDS are temporarily unable to meet work requirements based on circumstances outside of his/her control. The current manual does not have a good cause provision that covers ABAWD work requirements, even though federal rules require such an exemption.

Section 111-8 – Cooperation with Child Support Orders to require non-custodial parents who have an existing child support order to be in compliance with the terms of the order to qualify for FS benefits. This requirement is to compel compliance with support orders.

Section 444-4 – Disqualified Members. The changes associated with this rule are to bring the state into compliance with federal requirements for treatment of income, assets, and deductions for several disqualified household members; to change the benefit calculation for households that include ineligible aliens, to more accurately reflect those household’s economic circumstances; and to account for policy changes this rule makes in other sections.

Section FS-555-7 - The Budget Worksheet changes correct typos.

Section FS-666-5 – This rule changes are in order to better align the Transitional Food Assistance (TFA) rule with the its purpose of providing transitional food assistance to former TANF recipients who have gone to work. To do so, it removes as triggers of TFA eligibility those TANF-disqualifying events that are not related to getting work.

Section FS-666-8 – Certified Household. Changes to this section are to remove the old policy referencing simplified reporting based on the new policy of change reporting.

Section FS-999 – Definitions. The definition for “fleeing felon” is added to comply with federal requirements from the 2014 Farm Bill.

Basis statement:

This rule adopts numerous changes to the *Food Supplement Manual*. There are changes to the treatment of income, resources, and deductions of disqualified household members and new policies that require mandatory work registrants to register with the Department of Labor,

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Rules Adopted January 1, 2017 to December 31, 2017
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require compliance with child support orders, establish good cause for ABAWD noncompliance, and limit eligibility for the transitional food assistance program. Other changes include adding the federally required non-discrimination statement, administrative updates, and removal of outdated references. The Department added the federal definition of “fleeing felon” to the definitions section. The adopted rule pages include changes that are unrelated to policy, such as page formatting and updating references to other programs and citations of law.

Fiscal impact of rule:

The benefit impact on members is unknown. The impact to the state will be changes to ACES and staff training, but the cost should be minimal because both have already been included in the yearly budget.

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Rules Adopted January 1, 2017 to December 31, 2017
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**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3104; 5 MRS §8054
Chapter number/title: **Ch. 301**, Food Supplement Program Certification Manual, Food Supplement Program Manual, **FS Rule 292E** (COLA SUA FFY 2018): **FS-000-1**, Basis of Issuance: **FS 333-1**, Asset Eligibility Standards; **FS-444-8**, Households with Special Circumstances: **FS-555-5** and **FS-555-6**, Income and Deductions
Filing number: **2017-145**
Effective date: 10/1/2017
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

Federal rules 7 CFR §273.9 and 7 CFR §273.8(b)(1) require that income allowances, standard and excess shelter standards, minimum and maximum benefit limits, and standard heating/cooling, non-heat, phone allowances, as well as resource standards be updated each year, effective October 1, 2017. USDA Food and Nutrition Services (FNS) provides updated income allowances, standard and excess shelter, minimum and maximum benefit standards, and resource standards to states and territories, annually. FNS also annually approves SUA allowances determined by states that are based on changes in the Consumer Price Index for fuel and utilities, for June 2016 and June 2017.

Fiscal impact of rule:

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

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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**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3104; PL ch. 284 sec, NNNNNNN-8; 7 CFR §§ 273.9(d), 273.8(B)(1), 273.10; “Supplemental Nutrition Assistance Program: Eligibility, Certification, and Employment and Training Provisions of the Food, Conservation and Energy Act of 2008”
Chapter number/title: **Ch. 301**, Food Supplement Program (Maine Food Supplement Program Certification Manual), **FS Rule #202A** (COLA SUA FFY 2018 and Food Act 2008) – multiple sections
Filing number: **2017-197**
Effective date: 12/19/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

A rule change is necessary to remain in compliance with 7 CFR §§ 273.9(d), 273.8(b)(1), and 273.10, which require annual review and adjustment to federal income, standard deduction, resource standards, minimum and maximum benefit levels, as well as annual adjustment to standard utility allowances (SUA). Additionally, it is necessary to comply with recent changes in state and federal law, as identified in the “statutory authority” section, above.

Basis statement:

Sections: FS-000-1 Basis of Issuance; FS-222-4 Interview Process; FS-333-1 and FS-333-2 Asset Eligibility Standards; FS-444-4 and FS-444-8 Households with Special Circumstances; FS-555-5 and FS-555-6 Income and Deductions; FS-666-6 Certified Households; FS-888-1 and FS-888-5 Income and Eligibility Verification System

This rule adopts the following:

- The annual update for standard heating/cooling and non-heat/cooling utility allowances, and phone allowance
- An increase in the Asset Limit for Households that include elderly/disabled individuals
- Updates the annual Cost of Living Allowances, which will cause Food Supplement benefits to decrease for some households.

Emergency Rule #202E implemented these values, effective as of October 1, 2017.

Additionally, this rule adopts the following:

- Federal provisions from the *Food, Conservation and Energy Act of 2008* which includes the provision that dependent care deductions may apply to children under 18 and individuals of any age who are incapacitated, adds retirement accounts as asset exclusions, specifies that reporting requirements for income changes are related to receipt of the first payments associated with income changes, adds clarification on receipt of unclear information, and adds the provision of telephone interviews to be used in lieu of face-to-face interviews in most situations.
- Achieving a Better Life Experience (ABLE) education savings accounts as excluded assets (as determined by USDA guidance, dated April 4, 2016) – this provision is from the *Tax Increase Prevention Act of 2014* and is consistent with Section 5(d)(10) of the *Food and Nutrition Act of 2008*.

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- Provision from PL ch. 284 sec. NNNNNNN-8, 22 MRS §3104 sub-§§ 15 and 16, which determines certain felons convicted of violent crimes and sexual assault to be ineligible for Food Supplement benefits.
- Removes outdated text associated with rounding up \$1, \$3, and \$5 allotments to \$2, \$4, and \$6 respectively; the need to round up is associated with FS coupons, which have been discontinued and replaced by EBT cards. A small number of households that are receiving benefits in these increments may see a \$1 decrease in benefits.
- Removes references to related TANF and MaineCare rules from all affected rule pages.
- Removes duplicate statements and rule pages.
- Formatting of pages to the correct font size, margins and adjusted affected page numbers.

Change from the proposed rule: FS-444-4 page 1, Disqualified Members, item F, the 6th bullet: the phrase, “is ineligible to receive food assistance through the food supplement program” was removed as it was redundant and confusing in context.

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

Fiscal impact of rule:

None. Because they are federally funded benefits, changes to benefit levels, which will be minor, will not impact the Department.

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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**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 3762(3)A, 3763(11)-(12), 3769-A
Chapter number/title: **Ch. 331**, Maine Public Assistance Manual (TANF), **TANF Rule #106A (EBT): Ch. VI**, Administrative Procedures, Electronic Benefit Transfer System
Filing number: **2017-006**
Effective date: 2/1/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule implements the statutory changes restricting the purchase of certain items using TANF benefits through the electronic benefit (EBT) system, and creates penalties for violations of the rule. The policy change will enhance and ensure program integrity that TANF funds are used for living necessities and not for non-essential and discretionary purchases such as tobacco/liquor, gambling and firearms. The penalties for knowingly violating the rule include issuing an overpayment in the amount used for the prohibited purchase, and the possibility of an increased period of disqualification from the TANF benefits, depending on the number of offenses. The statutory changes enacted in April 2016 were made via PL 484 and codified as 22 MRS §3763(11)-(12).

Basis statement:

This rule implements the statutory changes restricting the purchase of certain items using TANF benefits through the electronic benefit (EBT) system and creating penalties for violation of the rule. The penalties for knowingly violating the rule include establishing an overpayment in the amount used for the prohibited purchase, and the possibility of an increased period of disqualification from TANF benefits depending on the number of offenses. The statutory changes enacted in April 2016 via PL 484 are codified at 22 MRS §3763(11)-(12).

The rule serves to clarify potentially ambiguous terms in the statute, including ammunition and vacation and travel services. After notice and comment, the Department modified its definition of vacation and travel services to make clear that routine transportation and emergency travel are not restricted. The proposed version allowed for that type of interpretation, which was not the intent of the statute.

This rule also includes formatting changes throughout the chapter to improve overall appearance, readability, and consistency of terminology. For example, the term “individual” is changed to “recipient,” and “assistance unit” is changed to “assistance group.” Cross references to the *Food Supplement Manual* have been removed to ensure that obsolete policy is not referenced by mistake.

Fiscal impact of rule:

None known.

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Rules Adopted January 1, 2017 to December 31, 2017
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**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(1), 3762(3)(A); 45 CFR 400.301
Chapter number/title: **Ch. 331**, Maine Public Assistance Manual (TANF), **TANF Rule #108A** (Repeal of RCA): Table of Contents, Introduction; **Ch. VI**, Types and Methods of Payments; Overpayments; Electronic Benefits Transfer (EBT) System; **Ch. VII**, Refugee Cash Assistance Program (RCA)
Filing number: **2017-146**
Effective date: 9/20/2017
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule is promulgated to effectuate the termination of administration of the Refugee Cash Assistance program (RCA). The State of Maine, through the Department, will no longer administer the federally funded Refugee Resettlement Program, which includes RCA. Federal regulations allow a state to repeal the choice to administer the program, and notice of revocation was given to the Federal Government in November 2016. A third party agency has taken over administration of the RCA program.

Fiscal impact of rule:

The impact will be a reduction of revenue in the amount of \$168,000 and a reduction of expenditures by the same amount. There will be minor technology changes associated with removing eligibility rules from the Department's integrated eligibility system, the costs for which are already factored into the yearly budget.

No known impact to small businesses or municipalities.

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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**

Umbrella-Unit: **10-144**

Statutory authority: 5 MRS §8054; 22 MRS §§ 42(1), 3762, sub-§3, B, 3769-C, sub-§1, 3782-A(6), 3785 sub-§8, g 3790(7); PL 2017 ch. 256 (22 MRS §§ 3762 sub-§3, 3785); PL 2017 ch. 290 (22 MRS §§ 3762 sub-§3); PL 2017 ch. 284 pt. NNNNNNN § 9, 11, 14; pt. TTTT §1

Chapter number/title: **Ch. 331**, Maine Public Assistance Manual (TANF), **TANF Rule #109E** (128th Legislative Changes): **Introduction; Ch. I**, Eligibility Process; **Ch. II**, Eligibility Requirements (Non-Financial); **Ch. IV**, Budgeting Process; **Ch. V**, Post TANF Benefits; **Ch. VI**, Administrative Procedures; **Ch. VIII**, Emergency Assistance; **Ch. XI**, TANF Economic Support for Working Families; **Appendices, Charts, Budget Sheets**

Filing number: **2017-151**

Effective date: 9/19/2017

Type of rule: Routine Technical

Emergency rule: Yes

Principal reason or purpose for rule:

To conform to policy changes made in statute in the 128th legislative session, this rule makes several changes to the *Maine Public Assistance Manual* (TANF). The changes include increases in the maximum payment amounts for the TANF basic benefit and the Special Need Housing Allowance payment. Eligibility changes include the removal of the deprivation requirement for TANF and changes to the ratio of housing costs to income for the Special Need Housing Allowance payment. The description of good cause reasons for failure to cooperate with the TANF employment and training program, ASPIRE, has been revised and specific examples have been deleted and replaced with a reference to the good cause section of the TANF-ASPIRE program. A TANF Work Incentive Payment has been created to pay a once in a lifetime \$400 payment to recipients who go to work and keep their job for four consecutive months.

Basis statement:

This rule makes several changes to the *Maine Public Assistance Manual* (TANF). The changes include increases in the maximum payment amounts for the TANF basic benefit and the Special Need Housing Allowance payment. Eligibility changes include the removal of the deprivation requirement for TANF and changes to the ratio of housing costs to income for the Special Need Housing Allowance payment. The description of good cause reasons for failure to cooperate with the TANF employment and training program, ASPIRE, has been revised and specific examples have been deleted and replaced with a reference to the good cause section of the TANF-ASP[RE] program. A TANF Work Incentive Payment has been created to pay a once in a lifetime \$400 payment to recipients who go to work and keep their job for four consecutive months.

With the removal of the deprivation requirement, TANF eligibility will no longer require that a child be deprived of the care and support of a parent. Families, where both parents are parenting, will now be eligible for TANF provided all other eligibility requirements are met. This rule will increase the maximum payment by 20% and will create a potential annual increase based on the COLA. In addition, the maximum payment for Special Needs Housing Allowance will increase from \$200 to \$300. Also, eligibility will expand to include those families whose shelter costs are 50% or more of their income for the Special Needs Housing allowance group. This rule will provide a work incentive payment of \$400 to TANF recipients employed for at

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least 30 hours per week and maintain their employment for 4 consecutive months. This payment is available to a recipient once in their lifetime. The purpose is to incentivize employment with a goal of encouraging recipients to remain employed. Finally, the rule shortens and modifies the list of good cause reasons for noncompliance with ASPIRE work participation requirements.

Fiscal impact of rule:

The provisions removing the deprivation requirement and changing the special needs housing allowance are expected to increase TANF block grant expenditures by \$4,324,002 in fiscal year 2017-2018 and \$5,765,337 in fiscal year 2018-2019, according to the chapter fiscal note for LD 336.

There is insufficient data to estimate the cost of providing a one-time \$400 incentive payment to certain TANF recipients, but the TANF block grant will cover the expense.

Increasing the TANF basic benefit amount is expected to increase TANF block grant expenditures by \$5,191,636 in fiscal year 2017-2018 and by \$5,198,645 in fiscal year 2018-2019, according to allocations in the budget.

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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**

Umbrella-Unit: **10-144**

Statutory authority: 5 MRS §8054; 22 MRS §§ 42(1), 3762, sub-§3, B, 3769-C, sub-§1, 3782-A(6), 3785 sub-§8, g 3790(7); PL 2017 ch. 256 (22 MRS §§ 3762 sub-§3, 3785); PL 2017 ch. 290 (22 MRS §§ 3762 sub-§3); PL 2017 ch. 284 pt. NNNNNNN § 9, 11, 14

Chapter number/title: **Ch. 331**, Maine Public Assistance Manual (TANF), **TANF Rule #109A** (128th Legislative Changes): **Introduction**; **Ch. I**, Eligibility Process; **Ch. II**, Eligibility Requirements (Non-Financial); **Ch. III**, Eligibility Requirements (Financial); **Ch. IV**, Budgeting Process; **Ch. V**, Post TANF Benefits; **Ch. VI**, Administrative Procedures; **Ch. VIII**, Emergency Assistance; **Ch. XI**, TANF Economic Support for Working Families; **Appendices, Charts, Budget Sheets**

Filing number: **2017-198**

Effective date: 12/19/2017

Type of rule: Routine Technical

Emergency rule: No

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

Basis statement:

To conform to policy changes made in statute in the 128th legislative session, this rule makes several changes to the *Maine Public Assistance Manual* (TANF). The changes include increases in the maximum payment amounts for the TANF basic benefit and the Special Need Housing Allowance payment. Eligibility changes include the removal of the deprivation requirement for TANF and changes to the ratio of housing costs to income for the Special Need Housing Allowance payment. The description of good cause reasons for failure to cooperate with the TANF employment and training program, ASPIRE, has been revised and specific examples have been deleted and replaced with a reference to the good cause section of the TANF-ASPIRE program. A TANF Work Incentive Payment has been created to pay a once in a lifetime \$400 payment to recipients who go to work and keep their job for four consecutive months. To comply with statutory requirements, these rule changes were adopted on an emergency basis in a separate filing in September.

In addition to the changes noted above, the rules makes several other changes. These changes could not be included in the emergency rule and thus were added to the proposed rule only. These additional changes to the Introduction and Ch. I, II, III, IV, VI, VII, and the Appendices were done to reformat and re-organize chapters, and to reword and make some ambiguously drafted provisions more clear. Whereas the proposed rule would amend several chapters, it would also completely repeal and replace Ch. II and XI. The removal of the deprivation requirement from Ch. II by emergency rule required several sections to be reformatted, and so the Department addressed the entire chapter to make it more intuitively organized and more precisely drafted. Ch. XI is replaced for better organization of its provisions. Except where expressly stated below, the repeal and replacement of those chapters does not include any policy change that is not already part of the emergency rulemaking. Ch. VII is being repealed altogether and not replaced, with its provisions being redistributed to more appropriate chapters in the manual. This also does not represent a change in policy. A detailed description of the non-emergency rule changes follows, by chapter:

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Introduction. References to the Refugee Cash Assistance Program, which is no longer administered by DHHS were removed, as well as a reference to Ch. VII Non-Citizens, which is being repealed.

Ch. I Application Process. Removed reference to internal processes that are not rule, reworded for clarity, changed "Bureau" to "Office," removed guidance on eligibility for Medicaid and inserted reference to MaineCare Program Manual. Removed Exception for attending TANF Orientation for applicants who had attended an Orientation in the previous 90 days. This assures participants become engaged with ASPIRE as early as possible.

Ch. II Eligibility Requirements (non-financial). Changes include a general clean-up of Ch. II. Revised format, deleted "GENERAL RULE" as a heading. Deleted "NOTES" and incorporated information into the relevant subsection, removed Food Supplement Program cross-references, removed references to internal process, reworded for clarity/consistency, corrected spelling, grammar errors and removed rules that belong in a different chapter. The deprivation section of this chapter was removed by emergency rule. Maintenance of a home has been clearly defined and rules have been revised to better identify which parent in shared custody situations is eligible to apply for TANF for that child. The rule defines when a minor parent/pregnant minor is considered to be maintaining a home for the child. Removed the requirement that if a minor parent is parenting her child, she must apply as a caretaker relative. Removed the rule that allowed a TANF family whose child(ren) had been taken into custody by OCFS to retain their TANF grant in limited circumstances. This rule was not used and did not meet the needs of the parent as continued TANF benefits did not include MaineCare for the adult. An exemption from ASPIRE participation for an SSDI recipient was added. This was previously excluded in error. Relocated eligibility requirements for the state-funded non-citizen cash assistance program from Ch. VII to Ch. II to consolidate the eligibility requirements for the state funded program into the chapter that address the non-financial rules for other applicants/recipients.

Additional changes to Ch. II following proposal - Age. An ASPIRE requirement related to school attendance was placed in this section in error. It has been removed. Several formatting errors were corrected and words substituted to clarify intent. Several references to deprivation were missed in the proposed rule and were removed in the adopted rule. The entire section on Assignment of Rights to Medical Payments was removed as it no longer applies to TANF.

Ch. III Eligibility Requirements (financial). Moved the rules regarding treatment of sponsor income and assets for certain non-citizens to this chapter to consolidate all financial eligible requirements into one chapter.

Additional changes to Ch. III following proposal - A reference to deprivation was removed. This was missed in the proposed rule. Formatting changes were made to p. 26, Sponsor Deeming.

Ch. IV Budgeting Process. The section explaining the Special Need Housing Allowance was rewritten for clarity. There were no substantial changes other than those made in the emergency rule.

Changes to Ch. V – Post TANF Benefits. Removal of Deprivation requirement – References to the deprivation requirement for TANF eligibility have been removed from this chapter on pages 1 and 6.

Additional changes to Ch. V following proposal - Several additional references to deprivation were identified and have been removed. Reference to the Transitional MaineCare Program was removed. This program is not relevant to TANF and is included in the MaineCare manual.

Ch. VI Administrative Procedures. Moved the rule for the collection of overpayments by sponsors of aliens to this chapter from Ch. VII-Non-Citizens to consolidate all rules relating

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to overpayments in one chapter. Removed a chart showing the maximum allowed recoupment of overpayments. This is explained in the chapter and the chart was duplicative.

Ch. VII Non-Citizens. This chapter is repealed. Non-financial eligibility requirements for the state-funded cash assistance program for certain non-citizens has been relocated to Ch. II-Eligibility Requirements (non-financial) and the financial eligibility requirements for sponsors of aliens to Ch. III- Eligibility Requirements (financial). Rules regarding the recoupment of overpayments from sponsors of aliens has been moved to Ch. VI-Administrative Procedures.

Ch. VIII Emergency Assistance. The reference to the deprivation requirement on page 4 has been removed.

Ch. XI TANF Economic Support for Working Families. This chapter is repealed and replaced for improved organization and readability.

Appendix. A statement to the chart on page 2 has been added that states the TANF benefit may increase annually. The benefit level charts were updated to reflect the increase to the maximum benefit and Standard of Need.

Additional changes to the Appendix - Change to the wording explaining the annual benefit increase as a result of public comments. Errors were found in the benefit level charts when calculating the benefit increase. These changes have been corrected.

This rule may have an indirect impact on municipalities or small businesses, to the extent that TANF families have more spending power.

Fiscal impact of rule:

The provisions removing the deprivation requirement and changing the special needs housing allowance are expected to increase TANF block grant expenditures by \$4,324,002 in fiscal year 2017-2018 and \$5,765,337 in fiscal year 2018-2019, according to the chapter fiscal note for LD 336.

There is insufficient data to estimate the cost of providing a one-time \$400 incentive payment to certain TANF recipients, but the TANF block grant will cover the expense.

Increasing the TANF basic benefit amount is expected to increase TANF block grant expenditures by \$5,191,636 in fiscal year 2017-2018 and by \$5,198,645 in fiscal year 2018-2019, according to allocations in the budget.

The additional changes will have no associated costs.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(1), 3173, 3274, 3763(11); 42 USCS §1382g
Chapter number/title: **Ch. 332**, MaineCare Eligibility Manual, **Rule #285A: Part 11**, State Supplement; **Section 10**, EBT Method of Payment; Permissible Use
Filing number: **2017-097**
Effective date: 7/1/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To ensure the consistency of allowable purchases for cash benefits expended using an Electronic Benefit Transfer, (EBT) card, regardless of the source of the cash benefits (i.e., State Supplement benefits, Temporary Assistance for Needy Families (TANF) benefits).

Basis statement:

This rule change aligns the purchases allowed to be made with State Supplement benefits placed on an Electronic Benefits Transfer (EBT) card with the purchases allowed to be made with Temporary Assistance for Needy Families (TANF) benefits that are placed on EBT cards. Restrictions on the use of State Supplement benefits on an EBT card will be the same as the restrictions described in 22 MRS §3763(11) for TANF benefits on EBT cards.

The Department made changes to the rule after the comment period. A commenter raised the issue that the Department does not have authority to restrict State Supplement benefits without specific legislation restricting the use of those benefits. Under 22 MRS §42(1), the Department has broad authority to promulgate rules for the administration of the programs it provides. The purpose of this rule is to provide consistency in the use of the EBT card with MRS §3763(11), which restricts the use of TANF benefits for certain purchases. Although 22 MRS §3763(11) did not address State Supplement benefits, such benefits are often issued on the same EBT card as TANF. The Department relies on retailers to refuse sale of restricted items and services when an EBT card is the payment method, and this rule change is necessary to allow retailers to do so.

However, to resolve the commenter's concerns and with the advice of the Office of the Attorney General, the Department made clear in the final rule that the restriction only applies to State Supplement benefits that have been issued on an EBT card, and not to such benefits that a recipient has elected to receive via direct deposit or check. Additionally, on advice of the AG, the Department will make a bona fide effort to notify State Supplement recipients and new applicants of this change and of their option to receive State Supplement benefits by direct deposit, for which the restrictions described in 22 MRS §3763(11) will not apply.

In response to another comment, the final rule also makes clear that these restrictions do not apply to federal SSI benefits.

Fiscal impact of rule:

No fiscal impact is anticipated.

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Rules Adopted January 1, 2017 to December 31, 2017
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**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §42(1); 45 CFR 400.301
Chapter number/title: **Ch. 332**, MaineCare Eligibility Manual, **Rule #286A: Part 3**, Eligibility Groups Requirements; **Section 3.1**, Refugees / Asylees
Filing number: **2017-136**
Effective date: 9/3/2017
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule is promulgated to effectuate the termination of administration of the Refugee Medical Assistance (RMA) program, which is a repeal of part 3 §3.1, "Refugees/ Asylees". The State of Maine, through the Department, will no longer administer the federally funded Refugee Resettlement Program (RRP, of which RMA is part). Federal regulations allow a state to repeal the choice to administer the program and notice of revocation was given to federal government in November 2016.

Fiscal impact of rule:

There will be minor technology changes associated with removing eligibility rules from the Department's integrated eligibility system, the costs for which are already factored into the yearly budget.

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Rules Adopted January 1, 2017 to December 31, 2017
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**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §42(1); 42 USC §§ 664, 666; 36 MRS §5276-A

Chapter number/title: **Ch. 351**, Maine Child Support Enforcement Manual:
Ch. 2, Definitions;
Ch. 16, Federal Income Tax Refund Offset;
Ch. 17, State Income Tax Refund Offset;
Ch. 19, Periodic Review and Modification of Support Orders

Filing number: **2017-048**

Effective date: 3/14/2017

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

These chapters in the current Manual contain errors or contain portions which are obsolete.

Basis statement:

This rulemaking corrects and updates chapters in the current *Maine Child Support Enforcement Manual* which contain errors, and portions of which are obsolete. The changes are minor, and are as follows:

Ch. 16 and **17** – repairs references to specific paragraphs in other Manual chapters which were edited in a previous rulemaking, resolves incorrect references to “welfare” vs. “non-welfare” cases, and simplifies each chapter for easier readability.

Ch. 19 is being abbreviated to contain only those provisions required by federal law, to prevent confusion with similar provisions in Ch. 12.

Ch. 2 – the definitions of “Arrears,” “Overdue Support” and “Past-due Support” were added to differentiate the terms and lend clarity to edited provisions of Ch. 16 and 17.

The changes in this rulemaking are to improve the integrity of the Manual, and to avoid confusion over these passages in the future.

Fiscal impact of rule:

None.

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Rules Adopted January 1, 2017 to December 31, 2017
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**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §42(1)
Chapter number/title: **Ch. 351**, Maine Child Support Enforcement Manual:
Ch. 2, Definitions
Filing number: **2017-119**
Effective date: 8/9/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The *Flexibility, Efficiency and Modernization in Child Support Enforcement Programs* final rule was published by the Federal government on December 20, 2016. Several provisions in the new regulation necessitate changes to the *Maine Child Support Enforcement Manual* ("Manual") in order to remain in compliance with the State Plan for Child Support Enforcement. This rulemaking brings the Manual up to date with these changes.

Ch. 2 - Definitions: This rulemaking will update the definition of "Medical Support" to include public assistance, and adds a definition for "Payee," which includes the designation of a conservator as required by the Federal Regulation.

Basis statement:

The *Flexibility, Efficiency and Modernization in Child Support Enforcement Programs* final rule was published by the Federal government on December 20, 2016. Several provisions in the new regulation necessitate changes to the *Maine Child Support Enforcement Manual* ("Manual") in order to remain in compliance with the State Plan for Child Support Enforcement. This rulemaking brings the Manual up to date with these changes.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §42(1); 81 Fed. Ref. 93492

Chapter number/title: **Ch. 351**, Maine Child Support Enforcement Manual:
Ch. 5, Limitation of Debt; Bar Against Collection
Ch. 12, Proceedings to Amend or Set Aside Administrative Decisions; Proceedings to Appeal Agency Action
Ch. 13, Disposition of Proceedings by Settlement, Stipulation or Consent Decision; Waivers
Ch. 25, Securing and Enforcing Medical Support

Filing number: **2017-120**

Effective date: 8/9/2017

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The *Flexibility, Efficiency and Modernization in Child Support Enforcement Programs* final rule was published by the Federal government on December 20, 2016. Several provisions in the new regulation necessitate changes to the *Maine Child Support Enforcement Manual* ("Manual") in order to remain in compliance with the State Plan for Child Support Enforcement. This rulemaking brings the Manual up to date with these changes.

Basis statement:

The *Flexibility, Efficiency and Modernization in Child Support Enforcement Programs* final rule was published by the Federal government on December 20, 2016. Several provisions in the new regulation necessitate changes to the *Maine Child Support Enforcement Manual* ("Manual") in order to remain in compliance with the State Plan for Child Support Enforcement. This rulemaking brings the Manual up to date with these changes.

Ch. 5 - Limitation of Debt; Bar Against Collection (19-A MRS §2301);

SSI: This change is to add a requirement that any funds incorrectly seized from an obligor's account must be returned within 5 days of discovery of the error.

Ch. 12 - Proceedings to Amend or Set Aside Administrative Decisions; Proceedings to Appeal Agency Action: This changes references to "written documents" to "in a record", reflecting a change in terminology at the Federal level, to account for the advent of electronic communications.

Ch. 13 - Disposition of Proceedings by Settlement, Stipulation or Consent

Decision; Waivers: This change adds a Notice requirement for incarcerated obligors and the custodial parents to whom they owe a child support debt, to allow temporary suspension of the debt while the obligor is incarcerated, as required by the new Federal regulation.

Ch. 25 - Securing and Enforcing Medical Support: Changes terminology from "health insurance" to "health care coverage," and institutes the new requirement that health care coverage cost be considered reasonable when the total cost is (in the case of Maine) 6% of the obligor's gross income (rather than just considering the cost of adding a child or children to the plan).

Fiscal impact of rule:

None.

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Rules Adopted January 1, 2017 to December 31, 2017
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**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(1), 3762 *et seq.*, 3781-A *et seq.*, 3782-A(6), 42 USC §§ 601, 602, 607, 609 (*as amended*)
Chapter number/title: **Ch. 607**, ASPIRE-TANF Program Rules, **ASPIRE Policy #23A** (Clarify and Correct)
Filing number: **2017-009**
Effective date: 2/6/2017
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule clarifies and corrects the ASPIRE-TANF Program Rules. Overall, changes encourage work and training participation by removing discretionary language that hinders success. For example, the rule strengthens job search requirements to include a more robust expectation of job search activities and follow up, which the Department or its designee will monitor. Participants in paid job training will now be required to accept employment offers of minimum wage and up, which will in turn open up paid job training opportunities for other unemployed participants. Additional changes include, but are not limited to, removing obsolete law and outdated procedures; adopting good cause exemptions in TANF manual; updating notification practices; removing references to postal mail; and clearly defining procedures for seeking payment of support services.

The revisions to the manual outline the Department's expectations for participants, Department staff, and case managers in administering the ASPIRE-TANF program. Participants can expect a less ambiguous procedure and will have a clearer understanding of expectations and responsibilities for themselves and of the Department. The Department removed references to ambiguous program requirements that do not effectively assist participants in the transition from reliance on public benefits to self-sufficiency. The rule also eliminates specific references to who must perform certain administration functions to allow the Department more flexibility.

There were several changes to the final rule made as a result of public comment and the advice of the Assistant Attorney General. In summary, the changes to the final rule are as follows;

- **Definitions (Section 1-1)** - Clarification of the definition of "appropriate childcare" to include that a participant chooses the provider for child care and background checks are required under 22 MRS §§ 8301-A and 8302-A.
- **ASPIRE participation exemptions (Section 3-1)** - Added ASPIRE-participation exemptions based on state and federal law. The additions include clarification of the only custodial parent or caretaker relative with a child under the age of 1 year, excluding those individuals under 20 years of age who have not completed high school; a recipient who is a child in the assistance unit, which includes minor parents; and an applicant or recipient parent caring for a disabled family member living in the household.
- **On the Job Training (OJT) (Section 13-2. A.5.)** – Added a phrase to state that the standards are based on those required by state law.

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Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

- **Promptness of Payment of Emergency Support Services (14-8, 9 IV)** – Clarification of procedure for request and receipt of emergency support services to include electronic method of payment (and not just via check).
- **Parents as Scholars (PaS) eligibility and participation requirements** – Two proposed changes to the eligibility criteria and participation requirements for the Parents as Scholars (PaS) program will not be adopted because 22 MRS §3790(3) requires that the current rule remain in place. A parent meeting certain assessment results must be accepted to the program even if space is limited (as opposed to the proposed “may be accepted”) and a participant is required to have an average of twenty participation hours a week, instead of the proposed “minimum” average of twenty hours a week.

This rule may have an impact on municipalities and small businesses by adding new or returning workers to the workforce with updated skills, training, and education.

Fiscal impact of rule:

None anticipated.

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Rules Adopted January 1, 2017 to December 31, 2017
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**
Umbrella-Unit: **10-144**
Statutory authority: 5 MRS §8054; 22 MRS §§ 42(1), 3762 *et seq.*, 3782-A(6), 3785, 3790(7); PL 2017 ch. 284 part NNNNNNN §§ 13 *thru* 16, part TTTT §1
Chapter number/title: **Ch. 607**, ASPIRE-TANF Program Rules, **ASPIRE Policy #24E:** Budget-related Changes for Good Cause and Parents as Scholars Program
Filing number: **2017-152**
Effective date: 9/19/2017
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The state budget, PL 2017 ch. 284, which was enacted on July 4, 2017, included several TANF-ASPIRE measures that became effective July 1. This rulemaking incorporates those legislative changes into the policy manual.

Basis statement:

This rule is being processed as an emergency measure pursuant to PL 2017, ch. 284 part TTTT Sec 1, which explicitly grants the Department authority to do so.

The rule makes two changes to ASPIRE policy, based on state statutory changes from the 128th legislative session. First, mirroring such changes to state law, it shortens and modifies the list of good cause reasons for noncompliance with ASPIRE work participation requirements. Second, it adds a requirement to the Parents as Scholars Program (PaS) that the education path must be for the pursuit of a degree or certification with at least an average job outlook. The rule expands on the statutory directive by specifying that in deciding whether an educational path meets that criterion, the Department will rely on publicly available job-market data and analysis from Maine Department of Labor. It also specifies that the “Commissioner’s designee,” referred to in statute to approve education plans on a case by case basis that fail to meet that job-outlook criteria will be an ASPIRE Program Manager.

This rule may have an indirect impact on municipalities and small businesses by adding new or returning workers to the workforce with updated skills, training, and education.

Fiscal impact of rule:

No fiscal impact is anticipated.

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Rules Adopted January 1, 2017 to December 31, 2017
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**
Umbrella-Unit: **10-144**
Statutory authority: 5 MRS §8054; 22 MRS §§ 42(1), 3762 *et seq.*, 3782-A(6), 3785, 3790(7); PL 2017 ch. 284 part NNNNNNN §§ 13 *thru* 16, part TTTT §1
Chapter number/title: **Ch. 607**, ASPIRE-TANF Program Rules, **ASPIRE Policy #24E**: Budget-related Changes for Good Cause and Parents as Scholars Program
Filing number: **2017-199**
Effective date: 12/19/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The state budget, PL 2017 ch. 284, which was enacted on July 4, 2017, included several TANF-ASPIRE measures that became effective July 1. This rulemaking incorporates those legislative changes into the policy manual. It also includes a clarification that a single parent with a child under 6 can meet the work requirements with 20 hours a week of work activities.

Basis statement:

This rule makes changes to ASPIRE policy, based on state statutory changes from the 128th legislative session.

First, mirroring such changes to state law, it shortens and modifies the list of good cause reasons for noncompliance with ASPIRE work participation requirements.

Second, it adds a requirement to the Parents as Scholars Program (PaS) that the education path must be for the pursuit of a degree or certification with at least an average job outlook. The rule expands on the statutory directive by specifying that in deciding whether an educational path meets that criterion, the Department will rely on publicly available job-market data and analysis from Maine Department of Labor. In response to comments, the Department added objective criteria for petitioning the Commissioner or his or her designee when an occupation was not well-defined by established criteria.

Unrelated to legislative changes, the rulemaking adds detail to the manual to clarify – consistent with longstanding practice and applicable law – that a single parent with a child under 6 can meet the work requirements with 20 hours a week of work activities.

This rule may have an indirect impact on municipalities and small businesses by adding new or returning workers to the workforce with updated skills, training, and education.

Fiscal impact of rule:

No fiscal impact is anticipated.

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Rules Adopted January 1, 2017 to December 31, 2017
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: **10-146**
Statutory authority: 22 MRS §42; 19-A MRS §660
Chapter number/title: **Ch. 14**, Late-filed Certificate for Application of Marriage Rule
Filing number: **2017-196**
Effective date: 12/20/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule permits eligible applicants to apply for a late-filed certificate of marriage in the event that their marriage certificate was never filed in a municipal office and/or DHHS Office of Data, Research and Vital Statistics.

Basis statement:

The Department of Health and Human Services establishes the *Late-Filed Application for Certificate of Marriage Rule* to implement provisions within 19-A MRS §660 regarding the delayed issuance of a certificate of marriage to eligible applicants.

This rule describes the application process, the minimum marriage facts to be established, along with the requirements for documentary evidence necessary for the Department to determine eligibility of an applicant requesting a certificate of marriage that occurred more than one year previously and was never filed in a municipal office and/or with the Maine Center for Disease Control and Prevention, Data, Research and Vital Records.

Fiscal impact of rule:

None anticipated.

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Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of Child and Family Services**
Umbrella-Unit: **10-148**
Statutory authority: 22 MRS §§ 42, 4008(7), 5601-5610; PL 2015 c. 501
Chapter number/title: **Ch. 201**, Procedures for the Abuse or Neglect Substantiation Process, for Appeals for Persons Substantiated as Perpetrators of Abuse or Neglect of Children, and Appeals for Denial of Access to Confidential Records
Filing number: **2017-072**
Effective date: 5/15/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To be in compliance with changes in 22 MRS §4008(7) and PL 2015 c. 501.

Basis statement:

These rules are being adopted to ensure that individuals who are substantiated for child abuse or neglect and are facing collateral consequences have the opportunity to appeal that substantiation. In addition, these rules are adopted to ensure that individuals being denied access to their child's record have the ability to appeal the Department's denial of said records.

Fiscal impact of rule:

No fiscal impact anticipated.

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Rules Adopted January 1, 2017 to December 31, 2017
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**
Umbrella-Unit: **14-118**
Statutory authority: 22 MRS §7252; PL 2015 ch. 488
Chapter number/title: **Ch. 11**, Rules Governing the Controlled Substances Prescription Monitoring Program and Prescription of Opioid Medications
Filing number: **2017-126**
Effective date: 9/16/2017
Type of rule: Routine Technical *and* Major Substantive
Emergency rule: No

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

Basis statement:

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* (PMP) (Title 22, Chapter 1603) to include prescriber limits on opioid medication prescribing, effective January 1, 2017. PL 2015 ch. 488 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 State of Maine Health Officer, Dr. Christopher Pezzullo, 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, 2017 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, 2016.

In order to comply with the Legislature's mandates, including the January 1, 2017 effective date, the Department adopted an Emergency Major Substantive/Routine Technical rule, with an effective date of January 1, 2017.

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. Pursuant to 5 MRS §8054, the emergency routine technical rule provisions are effective for up to 90 days.

The Department engaged in rulemaking to make permanent the emergency routine technical rule provisions of the January 1, 2017 emergency rule.

That rulemaking also provisionally adopted the emergency major substantive rule provisions of the January 1, 2017 emergency rule. This rulemaking was submitted to the Maine Legislature for its review.

The routine technical provisions of the rule, which were made finally effective by the emergency rulemaking, are **bolded** in the rule text, and also marked "routine technical" in the left hand margin.

The Department held a public hearing on February 16, 2017. Additionally, 89 written comments were submitted during the comment period.

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This finally adopted rulemaking makes the following changes:

- (1) Adds definitions (including definitions for “administer,” “acute pain,” “Benzodiazepine,” “chronic pain,” “hospital,” “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) Requires prescribers to include a designation on the prescription as to whether the prescription is for the treatment of acute or chronic pain.
- (5) Indicates the statutory requirement regarding electronic prescriptions and waivers of such;
- (6) Requires that dispensers report information to the PMP by electronic means and indicates the statutory waivers of such;
- (7) Requires prescribers, dispensers and veterinarians to check the PMP system;
- (8) Indicates the statutory limits on opioid medication prescribing;
- (9) Defines exemptions to limits on opioid medication prescribing;
- (10) 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;
- (11) Establishes civil violations for prescribers and dispensers;
- (12) Establishes administrative sanctions for prescribers and dispensers;
- (13) Establishes standards for immunity from liability for disclosure of information;
- (14) 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
- (15) Authorizes the Department to verify and audit prescriber and dispenser compliance with the rules.

Additionally, 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, and changes to language for clarity. The Summary of Public Comments and Department Responses document identifies any changes that were made to the final rule.

The Maine State Legislature conducted a major substantive review of this rulemaking following the provisional adoption on March 31, 2017, and made additional changes to the rule, per Resolves 2017 Ch. 16. Those changes include:

- (1) In Section 4, subsection A, paragraph 4, subparagraph b, division (i) in the portion of the rule that is a routine technical rule, Exemption Code A for active and aftercare cancer treatment, the 6-month limit for aftercare cancer treatment post remission has been removed;
- (2) In Section 4, subsection A, paragraph 4, subparagraph b, division (i) in the portion of the rule that is a routine technical rule, Exemption Code H has been amended to provide that if an individual is prescribed a 2nd opioid after proving unable to tolerate a first opioid, the individual is not required to return the initial prescription to a pharmacy for collection prior to dispensation of the 2nd prescription. Language has also been added requiring dispensers to provide patients with guidance on proper disposal of the first opioid prescription;
- (3) In Section 4, subsection B of the rule, a new paragraph 3 has been added to allow for dispensers to provide an early refill of a prescription to an individual before the

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Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

refill date if, in the judgment of the dispenser, the early refill does not represent a pattern of early refill requests by the individual;

- (4) In Section 4, subsection B of the rule, a new paragraph 4 has been added to allow for dispensers to contact prescribers by telephone to verify and document information about prescriptions;
- (5) In Section 4, subsection B of the rule, a new paragraph 5 has been added to establish a process for a dispenser who receives a prescription for an opioid medication from an out-of-state prescriber that does not comply with Department rules. The section allows the dispenser to fill the prescription if the dispenser records an oral confirmation with the validity of the prescription from the out-of-state prescriber and documents any missing information such as diagnosis code, exemption code, and acute or chronic pain notation and the dispenser makes a reasonable effort to determine that the oral confirmation came from the prescriber or prescriber's agent, which may include a telephone call to the prescriber's telephone number listed in a telephone directory or other directory; and
- (6) In Section 5, subsection C, paragraph 1, subparagraph n of the rule, the requirement for dispensers to provide information to the Prescription Monitoring Program on the exemption code and ICD-10 code has been delayed until July 1, 2018 and a provision was added to authorize a waiver after that date from the Department for dispensers who are unable with good cause to comply with the requirement.

Finally, the Maine Legislature enacted PL 2017 ch. 213, on June 16, 2017. This legislation amended sections of Maine Statute that govern these Ch. 11 rules. Those changes include: (Please note that because there are section in the rule that reference statute, no changes to the rule text were made in those instances, however the underlying statutory language changes will impact operation of this rule.)

- (1) Amending the statutory definitions of palliative care, serious illness, and dispenser.
- (2) Removing the statutory requirement that dispensers must submit Prescription Monitoring Program (PMP) information to the Department regarding controlled substances that are dispensed by a hospital emergency department for use during a period of forty-eight (48) hours or less.
- (3) Amending the statute to clarify that the requirement to check the PMP does not apply for surgical procedures.
- (4) Adding language to the statute clarifying that directly ordering or administering an opioid or benzodiazepine in connection with surgical procedures is exempt from the one hundred (100) morphine milligram equivalents limitation.
- (5) Adding to the list of statutorily allowed individuals who can access PMP information.
- (6) Removing the statutory requirement that dispensers must notify the PMP program if the dispenser has reason to believe the prescription is fraudulent or duplicative, while maintaining the requirement that the dispenser contact the prescriber.
- (7) Clarifying that an opioid medication that, according to federal Food and Drug Administration labeling, is to be dispensed only in a stock bottle with a supply exceeding 7 days, may be dispensed in accordance with the stock supply, so long as the amount dispensed does not exceed a 14 day supply.

As a result of final legal review by the Office of the Attorney General the necessary corrections and additions to the rule were made to be consistent with Maine law as explained above.

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These finally adopted major substantive rule changes will be effective 30 days after the rule is filed with the Secretary of State, or at a later date as specified by the Department.

Fiscal impact of rule:

The fiscal impact of this rulemaking could not be determined.

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Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §10104
Chapter number/title: Ch. 1, Open Water and Ice Fishing Regulations (*Ice fishing season extension*)
Filing number: 2017-055
Effective date: 4/1/2017
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The emergency rule will extend the ice fishing season on bodies of water in the North Region that would have closed on March 31, 2017 to remain open April 1 – April 16, 2017 so that anglers will be able to continue to fish those bodies of water. Based on unusually cold weather conditions and lack of open water availability in the North Region, the Commissioner has determined that an extension of the ice fishing season will enhance fishing opportunities for anglers.

Basis statement:

The Commissioner of Inland Fisheries and Wildlife, in accordance with an emergency Resolve passed by the 128th Legislature (Ch. 2 Resolves), has amended the *Open Water and Ice Fishing Regulations* to allow bodies of water that are currently open to ice fishing in the North Region to continue to be open April 1 through April 16, 2017.

All rules and regulations for those waters that are already open to ice fishing in the North Region will remain in effect. Based on unusually cold weather conditions and lack of open water availability in the North Region, the Commissioner has determined that an extension of the ice fishing season is necessary to enhance fishing opportunities for anglers in that region.

Currently, waters in the south zone are open year round to both ice fishing and open water season unless closed by special rule. This provides those in the south with fishing opportunity no matter if there is an early or delayed spring. Extending the ice fishing season in Northern Maine provides similar opportunity for areas that would normally be free and clear of ice for open water fishing but are still ice covered. This will allow waters that are currently open to ice fishing to be ice fished while still protected under current regulations.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 12808-A, 12804
Chapter number/title: Ch. 8, Endangered Species: 8.06, Protection Guidelines and Broad Activity Exemptions for Bats
Filing number: 2017-057
Effective date: 4/8/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

The little brown bat, northern long-eared bat, and eastern small-footed bat were added to the Maine Endangered and Threatened Species list in 2015 due to widespread population declines as a result of White-Nose Syndrome. The *Maine Endangered Species Act* (MESA) prohibits the 'taking' of a Threatened or Endangered Species, except as specifically authorized through an Incidental Take Plan or a Broad Activity Exemption (12 MRS §12808-A(4)). Because these bats are widely distributed and their presence is hard to detect, questions have arisen for ongoing activities that could potentially result in the "take" of listed bats. These activities include 1) routine tree removals, 2) disturbance of winter hibernacula, 3) removal and exclusion of bats from buildings, and 4) mortality of bats at wind energy facilities. The rule establishes protection guidelines to minimize the take of listed bat species, and to provide an exemption for certain activities that may result in the occasional take of listed bats.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 11855
Chapter number/title: Ch. 4, Hunting and Trapping: 4.02, Migratory Bird Hunting
Filing number: 2017-065
Effective date: 5/1/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

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

Basis statement:

These rules are adopted for the purpose of implementing the Federal Migratory Bird Treaty Act, which establishes the general guidelines within which the States are permitted to regulate the hunting of migratory game birds. The policy behind the Federal Act and, therefore, behind these rules, is to protect the migratory game birds from over-harvest by hunters.

After receiving the framework from the United States Fish and Wildlife Service (USFWS), the Department's proposal contained three items of interest that differed from the previous year. The Department was proposing to have a split season in the North Zone, an increase in the black duck harvest from 1 to 2, and a decrease in the pintail harvest from 2 to 1. The proposal for a split in the North Zone was to potentially allow for later duck hunting opportunity for waterfowlers at the southern end of the zone. The season was proposed to run from September 27 to November 25, close for 8 days, and then December 8 – December 16. This was in response to input from waterfowlers over the last few years that late season migrant ducks were arriving after the traditional north zone closure in central Maine.

A public hearing was held on March 13, 2017 with 24 citizens in attendance, including members of the Waterfowl Advisory Council. The Department presented the proposal and discussed the season frameworks and bag and possession limits. Testimony was overall in favor of the increase to a 2 black duck limit, and the majority of those testifying were not in favor of the split season in the North Zone stating some may actually lose hunting opportunity because of lakes and ponds being frozen during the second season.

The Department also received 9 written comments. Comments were acknowledged and forwarded to appropriate Department staff as well as the Commissioner's Advisory Council. Seven comments were opposed to the split season in the North Zone and recommended keeping a straight season similar to prior years. A comment from the Maine Guides Association requested an opening day of November 9th for the sea duck hunting season, and a comment was also received requesting a later starting time for hunting in the Coastal Zone.

After reviewing the comments and discussion with staff, the Commissioner amended the original proposal and removed the split season in the North Zone to a straight season of September 25 through December 2, 2017. The 2 black duck limit remained as well as the reduction in pintail harvest to 1.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §11552
Chapter number/title: Ch. 4, Hunting and Trapping: 4.05, Moose Hunting Season
Filing number: 2017-066
Effective date: 5/2/2017
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.

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 2017 season. The Department advertised a proposal on March 1, 2017 with a recommended total of 2,080 permits be issued in order to meet moose harvest objectives. This was a decrease of 60 permits from 2016 with the reductions occurring in WMDs 23, 25 and 26. 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 there had been to reduce moose/vehicle collisions. Permit numbers in remaining WMDs with moose hunting seasons remain unchanged from 2016.

A public hearing was held in Augusta on March 20, 2017 with 2 citizens in attendance. The one person that offered testimony applauded the Department for trying to strike a balance between moose watchers and those that wanted to harvest moose.

During the comment period the Department received 6 written comments from the public. Comments were acknowledged and forwarded to the Commissioners Advisory Council and Department staff for consideration. In summary, 4 comments were received stating moose permit numbers should be reduced but did not indicate any specific WMD; 1 comment requesting a reduction in the permit numbers for WMD 8; 1 comment requesting no antlerless permits for WMD 4.

After review of public comments and discussion with staff the Commissioner recommended no changes to the original proposal. The Commissioner’s Advisory Council met on April 21, 2017 and of the 8 members present voted unanimously to adopt the proposal as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §13051
Chapter number/title: Ch. 13, Watercraft Rules: 13.07, Rules of Operation for Watercraft on Internal Waters
Filing number: 2017-067
Effective date: 5/2/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

The rule establishes rules of operation (rules of the road) for watercraft on Maine internal waters. Having standards of conduct within rule will assist the public in understanding how to safely operate a boat and enable prosecution for cases where death or serious bodily injury occurs as a result of a person's failure to navigate inland waters using a reasonable and prudent manner. In some of our boating accidents where there had been negligence of one party or the other, during the prosecution phase, it had been raised to the Warden Service who had the right of way and what should they have done differently in the operation of their boat. For watercraft, there were federal navigation rules but we did not have set rules in Maine on how you should appropriately operate watercraft. The rules will provide necessary direction for Warden Service and prosecutors to address operating to endanger.

No public hearing was held on the proposal and no comments were received during the comment period. The Commissioner brought the original proposal forward to the Advisory Council for adoption at their meeting held on April 21, 2017 and the 8 members present voted unanimously in favor to adopt the rule as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §11701
Chapter number/title: Ch. 4, Hunting and Trapping: 4.06(2), Wild Turkey (Fall Season)
Filing number: 2017-092
Effective date: 7/1/2017
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule is in response to input over the last few years from both Department employees observing turkeys in the field and from wild turkey hunters in WMD 27 to consider opening the district to a fall wild turkey hunt. Biologists evaluated the status of the wild turkey population using the trend of the spring wild turkey season harvest, documented turkey production and observations of wild turkeys in WMD 27. Over the last three years the spring harvest has been relatively stable. August brood survey data has shown steady reproduction over that same three year period and general observations by staff biologists and wardens support a stable population. This information supports opening WMD 27 to a fall season with a one bird limit. Opening the season to a one bird harvest is the conservative approach to allow for assessment prior to opening this district in the future to a two bird season.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 11152, 11401
Chapter number/title: Ch. 4, Hunting and Trapping: 4.03, Deer Hunting Seasons
Filing number: 2017-127
Effective date: 8/23/2017
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 2017 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 2016-17 was of below-average severity in most of the state, which resulted in higher survival rates for our over-wintering deer.

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 2016-2017 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 66,050 permits was proposed to achieve a doe harvest of approximately 6,964 deer; an increase of 45% in permits that were issued in 2016 (45,625).

The Department held a public hearing on June 21, 2017 and there were four (4) members of the public in attendance. Testimony given at the hearing focused mostly on permit recommendations in WMDs 7 and 27 and that the proposed allocations were too high in those areas. They hunted in those areas and felt the deer population was low based on their observations.

The Department received 10 written comments which were acknowledged and forwarded to the Commissioner's Advisory Council members and Department staff. One comment was received generally in favor of the proposed permit allocations; 3 comments were opposed to permit numbers in various WMDs; 4 comments were opposed to allocations for WMD 27; 1 comment was received in support of permit allocations in WMD 27; additional comments were received from an attendee at the public hearing regarding WMD 27. Comments that were received opposing permit numbers in WMD 27 stated they were not seeing deer and felt the population was too low to sustain harvesting of does. Some felt the district should be managed on a town level to address areas having issues with deer, not issue permits for the entire district.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §11402
Chapter number/title: Ch. 4, Hunting and Trapping: 4.03, Deer Hunting Seasons (Open and Closed Seasons – City of Eastport)
Filing number: 2017-153
Effective date: 9/27/2017
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The City of Eastport has requested that the Maine Department of Inland Fisheries and Wildlife (MDIFW) authorize for a second year a Special Hunt to target the removal of 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. A one year special hunt was granted to Eastport for 2016 which allowed the issuance of 30 permits with one deer tag per permit holder. The conservative approach in terms of numbers of permits and limit of one tag per permit holder was to demonstrate to Eastport residents that a special hunt could be coordinated with MDIFW and successfully conducted with low incidents of complaints and violations, which was realized. The second year plan increases doe removals per permit holder while maintaining certain aspects of the hunt plan that worked effectively, given the limitations of hunting in Eastport.

To encourage landowners to make their property available to the hunt, where appropriate, qualified Eastport residents will be favored in a drawing of permittees, and there will again be a minimum 10% allocation for non-Eastport residents. The same amount of permits that were issued in 2016 (30) is being issued again this year, but to maximize the potential for doe removals, the overall number of deer tags has been significantly increased to 90 for the hunt. Each permit holder will receive one deer tag with their permit. If they are successful, they would again be required to register their deer at a designated registration station. The successful permit holder would then be allowed to present the registration form to a City official and obtain another deer tag to continue hunting if desired. This will maximize opportunity for successful hunters. To facilitate participation by permit holders, the special hunt will again occur for a period of two continuous weeks, November 27 - December 9, 2017. As in 2016, the City of Eastport will be largely responsible for administering the special hunt including conducting the lottery to select qualified applicants, approving specific hunting locations, and enforcing compliance with City ordinances.

WMD 27 was also allocated 50 permits as part of the 2017 annual deer permit lottery which will make Eastport accessible to the taking of does by archery and youth day deer hunters for the first time in 11 years. This, in addition to the continuation of the special hunt will help Eastport achieve desired population goals. Eastport residents will continue to be surveyed by the Department and Eastport Deer Reduction Committee for satisfaction ratings.

Fiscal impact of rule:
No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §10104
Chapter number/title: Ch. 4, Hunting and Trapping: 4.01, Upland Game and Furbearing Animals (Beaver Trapping)
Filing number: 2017-155
Effective date: 10/2/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To establish beaver trapping season dates and individual township openings and closings for the beaver trapping season.

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's proposal was to adjust dates for beaver trapping season to reflect the 2017 calendar, and also included areas that would be open and closed to beaver trapping based on landowner requests.

A public hearing was held on the proposal on August 29, 2017 in Augusta with 5 members of the public in attendance. There were also 22 written comments received on the proposal. Some individuals sent written comments and spoke at the public hearing. Comments were acknowledged and forwarded to the Commissioner's Advisory Council as well as appropriate Department staff for consideration.

Overall, the comments received both in writing and at the public hearing were not directed at the Department's proposal, but in opposition to trapping methods and trapping in general and also stated the benefits of beaver and that they should not be removed or considered "nuisance" animals. One comment was received in favor of the proposal and one neither for nor against that simply pointed out the benefits of having beaver on the landscape.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife
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: 2017-160, 161
Effective date: 1/1/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rulemaking is 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 2018 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 continue the second phase of fishing regulations reform. In 2016 the Department focused on the structure, organization and presentation of the laws and in 2017 the focus was more on removal of unnecessary regulations and looking for opportunities for simplification where we could do so without adversely impacting our natural resources. The two year simplification process will improve the clarity and overall use of our fishing regulations. The proposed changes were advertised with 5 public hearings held in Presque Isle, Millinocket, Ellsworth, Farmington and Brunswick. The Department also received 24 comments in writing both for and against various proposals.

In summary, the packet of 229 proposals contained sections that dealt with "housekeeping" issues which would constitute a change in language in the regulation which didn't affect use opportunity. Another section dealt with statewide proposals, water specific proposals were advanced by the regional biologists and 17 waters were nominated for the Heritage Fish Waters list. Attendance at the 5 public hearings was light; there were no members of the public who attended the hearing in Brunswick. Written comments were acknowledged and forwarded to the Commissioner's Advisory Council as well as appropriate staff. As addressed in the summary sheet, several bodies of water received written comments.

The Department did put forth four amendments to original proposals based on public comment and review for the following bodies of water: Unnamed Ponds in Comstock Twp.; Black River (Big) in T14 R16 WELS to T15 R13 WELS; Saint John River in Aroostook County and Basin Pond, Upper and Lower in Mt. Katahdin Twp.

Fiscal impact of rule:

No fiscal impact anticipated as a result of this rule.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12152
Chapter number/title: Ch. 6, Educational and Scientific Collection Permit Rules:
6.01, Scope of Rules; **6.02**, Permit Required
Filing number: 2017-195
Effective date: 12/16/2017
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule change is required in order to reflect statutory changes that were made to 12 MRS §12152 during the 1st session of the 127th Legislature (2017). The section of statute that referred to the educational and scientific collection permit was moved from repealed §12704 so the statutory reference needed to be updated. Additionally, the reference to “wild animals and wild birds” within statute was changed to “wildlife” to include reptile, amphibians and some invertebrates in addition to wild animals and wild birds and clarifies the use of native species for educational and scientific purposes.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Labor, **Bureau of Labor Standards**
Umbrella-Unit: **12-170**
Statutory authority: 26 MRS §850
Chapter number/title: **Ch. 10**, Rules Governing Employment Leave for Victims of Violence
Filing number: **2017-087**
Effective date: 6/12/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

PL 2015 c. 343 Pt. A §1 increased the fine the Department of Labor may assess upon an employer from up to \$200 per violation to up to \$1,000 per violation. It also provided that, for denial of leave in violation of the law, the employer must pay the affected individual an amount three times the total assessed fines. And for termination in connection with exercising a right granted under the law, the affected individual may choose either to receive an amount three times the total assessed fines or reemployment with the employer with back wages.

Basis statement:

The rule amendment reflects the changes identified in PL 2015 c. 343 Pt. A §1 by increasing the fine the Department of Labor may assess upon an employer from up to \$200 per violation to up to \$1,000 per violation. It also provides that, for denial of leave in violation of the law, the employer must pay the affected individual an amount three times the total assessed fines. And for termination in connection with exercising a right granted under the law, the affected individual may choose either to receive an amount three times the total assessed fines or reemployment with the employer with back wages.

Fiscal impact of rule:

No additional fiscal impact estimated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Labor, **Maine Unemployment Insurance Commission**
Umbrella-Unit: **12-172**
Statutory authority: 26 MRS §1082(2)
Chapter number/title: **Ch. 9**, Able and Available Requirements
Filing number: **2017-189**
Effective date: 12/9/2017
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

Modification of this rule is sought to clarify eligibility for claimants who are only available for part-time work; to provide factors for consideration in determining whether a claimant has an acceptable means of transportation to get to a job or to an area in which there are sufficient job opportunities; and to clarify the application of the able and available requirements to claimants who are absent from their labor market area.

Fiscal impact of rule:
N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Labor, **Maine Unemployment Insurance Commission**
Umbrella-Unit: **12-172**
Statutory authority: 26 MRS §1082(2)
Chapter number/title: **Ch. 16**, Benefit Payments to Aliens
Filing number: **2017-190**
Effective date: 12/9/2017
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

Modification of this rule is sought to update references to federal agencies regarding immigration and to add a provision to Section 2(A) permitting the use of other documentation as approved by the United States Department of Homeland Security (DHS) so that the rule does not need to be updated to reflect each new piece of documentation that DHS approves.

Fiscal impact of rule:
N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Labor, **Maine Unemployment Insurance Commission**
Umbrella-Unit: **12-172**
Statutory authority: 26 MRS §1082(2)
Chapter number/title: **Ch. 19**, Other Remuneration
Filing number: **2017-191**
Effective date: 12/9/2017
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

Modification of this rule is sought to simplify the allocation rules for other remuneration and modify the treatment of bonus payments to make it more consistent with the Employment Security Law.

Fiscal impact of rule:
N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Labor, **Maine Unemployment Insurance Commission**
Umbrella-Unit: **12-172**
Statutory authority: 26 MRS §1082(2)
Chapter number/title: **Ch. 20**, Unemployment Fraud or Misrepresentation by Claimants
Filing number: **2017-192**
Effective date: 12/9/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

Modification of this rule is sought to remove the certified mail requirement from Section 2(B) and to remove Section 2(C), as it is not legally required and not appropriate in all circumstances. Instead, the agency will prepare a standard operating procedure or other policy as to the methodology for interviewing the claimant in a fraud or misrepresentation case.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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: **2017-207**
Effective date: 12/26/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To assure the rules covering public employees conform with the federal standards as required in Title 26 MRS, Chapter 6, Section 565.

Basis statement:

The purpose of this chapter is to incorporate by reference certain rules governing Occupational Safety and Health in general industry employment as promulgated by the Federal Occupational Safety and Health Administration at 29-CFR Part 1910 as most recently amended as of June 1, 2017.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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: **2017-208**
Effective date: 12/26/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To assure the rules covering public employees conform with the federal standards as required in Title 26 MRS, Chapter 6, Section 565.

Basis statement:

The purpose of this chapter is to incorporate by reference certain rules governing Occupational Safety and Health in construction industry employment as promulgated by the Federal Occupational Safety and Health Administration at 29-CFR Part 1926 as most recently amended as of June 1, 2017.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: **Maine Health Data Organization**
Umbrella-Unit: **90-590**
Statutory authority: 22 MRS §§ 8703(1), 8704(4), 8708(6-A), 8712(2)
Chapter number/title: **Ch. 243**, Uniform Reporting System for Health Care Claims Data Sets
Filing number: **2017-045**
Effective date: 3/13/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule change adds language that provides for the voluntary submission of self-funded ERISA plans data for Maine residents. In addition, the minimum threshold for submission of adjusted premiums or claims processed, for premiums or claims subject to required reporting, is increased to \$2,000,000. Other minor technical changes are being made to conform to industry standards.

Basis statement / summary:

The Maine Health Data Organization is authorized by statute to collect health care data. The purpose of this chapter is to explain the provisions for filing health care claims data sets from all third-party payers, third-party administrators, Medicare health plan sponsors and pharmacy benefits managers.

This rule change adds language that provides for the voluntary submission of self-funded ERISA plans data for Maine residents. In addition, the minimum threshold for submission of adjusted premiums or claims processed, for premiums or claims subject to required reporting, is increased to \$2,000,000. Other minor technical changes are being made to conform to industry standards.

These changes are intended to give payers direction regarding requirements in light of the United States Supreme Court's 2016 decision in *Gobeille v. Liberty Mutual Insurance Company*.

These changes include the following major themes:

- I. General submission requirements
 - A. Clarification of general provisions/requirements (page 1)
 - B. Section 2: Health Care Claims Data Set Filing Description. Language added to conform to decision in *Gobeille v. Liberty Mutual Insurance Company*. (page 3)
 - C. Section 2(A)(9)(a) Filing Exclusions. The minimum threshold for submission of adjusted premiums or claims processed, for premiums or claims subject to required reporting, is increased to \$2,000,000. (page 4)
 - D. Section 2(8)(1) Filled Fields. Removal of language that is no longer needed. (page 6)
 - E. Section 2(8)(3) Signs. Clarification regarding the use of special, obsoleted characters. (page 6)
 - F. Section 3(A) Registration/Contact and Enrollment Update. Proposes a new deadline for annual payer registration/information update. (page 7)
 - G. Section 3(F) Filing Periods. Quarterly filing period redefined to be consistent with the removal of the minimum enrollment threshold in Section 2(A)(9)(a). (page 7)
 - H. Sections 5 & 7 include new language regarding Voluntary File Submissions. (page 9)
- II. Appendices
 - A. Appendix A - Source Codes. (HSRI)
 - B. Appendix D-1 Medical Claims File Specifications. Typographical error (page 47)
 - C. Appendix D-2 Medical Claims File Mapping to National Standards.

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

1. Removes ICD-10 code mapping to fields reserved for ICD-9 coding. (page 52)
 2. Updates mapping of diagnosis codes for CMS-1500.
- D. Appendix F-1 Dental Claims File Specifications. Typographical errors (pages 72- 73)
- E. Appendix F-2 Dental Claims File Mapping to National Standards. Corrected section header.

Fiscal impact of rule:

There is no fiscal impact on state municipalities, counties or businesses.

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Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: **Maine Health Data Organization**
Umbrella-Unit: **90-590**
Statutory authority: 22 MRS ch. 1683 §8704 sub-§4, §8708
Chapter number/title: **Ch. 241**, Uniform Reporting System for Hospital Inpatient Data Sets and Hospital Outpatient Data Sets
Filing number: **2017-166**
Effective date: 10/31/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The changes contain clarifications, additions and deletions that will improve the content and value of the MHDO hospital encounter data for authorized data users. MHDO is aware of the challenges created for the hospitals when changes are made to the MHDO file layout. Therefore, we have minimized the disruption of the changes in the layout by ensuring that most of the changes occur at the end of a record type. Lastly, several of the changes align with updates to the national standards and the MHDO's new data submission process.

Basis statement / summary:

The Maine Health Data Organization is authorized by statute to collect health care data. This chapter governs the provisions for filing hospital inpatient data sets and hospital data outpatient data service sets. The provisions include identification of the organizations required to report; requirements for the content, form, medium, and time for filing the data; standards for the data reported; and compliance provisions.

These changes contain clarifications, additions and deletions that will improve the content and value of the MHDO hospital encounter data for authorized data users. MHDO is aware of the challenges created for the hospitals when changes are made to the MHDO file layout. Therefore, we have minimized the disruption of the changes in the layout by ensuring that most of the changes occur at the end of a record type. Lastly, several of the changes align with updates to the national standards and the MHDO's new data submission portal.

Fiscal impact of rule:

There is no fiscal impact on state municipalities, counties or businesses.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Defense, Veterans and Emergency Management,
Maine Emergency Management Agency
Umbrella-Unit: **15-214**
Statutory authority: 37-B MRS §745
Chapter number/title: **Ch. 5, Maine Disaster Recovery Fund**
Filing number: **2017-073**
Effective date: 6/10/2017
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

This major substantive rule governs the process for the expenditure of funds from the Disaster Recovery Fund, established pursuant to Title 37-B MRS §745. It establishes priorities for use of the Fund among the uses authorized by statute including aid to individuals and families, aid to municipalities and low-interest loans to businesses. It also defines under what circumstances use of the Fund will be authorized and provides for administration of the Fund in conjunction with state agency and nonprofit partners

Basis statement:

This major substantive rule governs the process for the expenditure of funds from the Disaster Recovery Fund, established pursuant to Title 37-B MRS §745. It establishes priorities for use of the Fund among the uses authorized by statute including aid to individuals and families, aid to municipalities and low-interest loans to businesses. It also defines under what circumstances use of the Fund will be authorized and provides for administration of the Fund in conjunction with state agency and nonprofit partners.

The Maine Emergency Management Agency oversees the administration of the Maine Disaster Recovery Fund. The Fund is established under Title 37-B MRS §745 and until now has only been used to pass through State funding to County, Local and Tribal jurisdictions during the recovery from Presidentially-declared major disasters. The rule sets priorities, establishes procedures and thresholds for use of the Fund for incidents which may significantly impact the State of Maine and its jurisdictions, yet not rise to the level of a Presidentially-declared major disaster under the *Robert T. Stafford Act*. The rule outlines in high-level terms the ability of the Governor and the Agency to administer the Fund in conjunction with other disaster response/relief partner agencies.

The rule is modeled on Federal law in the *Robert T. Stafford Disaster Relief and Emergency Assistance Act* (PL 93-288) as amended: <https://www.fema.gov/robert-t-stafford-disaster-relief-and-emergency-assistance-act-public-law-93-288-amended> .

The Agency also considered its own historical data during development of the rule, such as administrative records from past declared disasters, as well as data collected on events that did not reach the Presidential declaration threshold. Other documents developed by the Agency and its partners such as the Maine Interagency Disaster Recovery Plan, the Maine Donations Coordination Plan and the Maine Disaster Relief Fund Guidelines (an annex to the Donations Coordination Plan) were used to guide the development of the proposed rules. Links to the working drafts of these documents can be found at: <http://www.maine.gov/mema/rulemaking/> .

Fiscal impact of rule:

There will be no adverse fiscal impact on municipalities or counties; instead, the rule provides a fiscal benefit to local governments which qualify for disaster recovery funds.

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Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053 sub-§5

Agency name: **Maine Public Employees 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: **2017-133**
Effective date: 8/30/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule governs the Consolidated Plan for Participating Local Districts. MainePERS is recommending changes to the rule in response to inquiries from local districts seeking more flexibility in available benefit options.

Basis statement / summary:

As provided by 5 MRS §1880, sub-§6, the Board of Trustees accepted the recommendation of retirement system staff, as reviewed and agreed upon by the Participating Local District Consolidated Plan Advisory Committee, and fashioned several amendments to Ch. 803. The proposal for rule-making was noticed on June 21, 2017, and the public was given the opportunity to submit written comments.

Public comments were received by Jonathan L. Carter, Town Manager for the Town of Wells, and Ray Cote, Business Agent for Teamsters Local Union No. 340, prior to the July 28, 2017 comment deadline. Both comments were in support of the proposed rule amendments. No comments in opposition to the proposed amendments were received.

The amendments remove certain limits on what benefits participating local districts can offer prospectively to new hires. Specifically, the amendments remove prohibitions on: 1) a withdrawn district resuming participation at a lower level of benefit than it offered before withdrawal; 2) a district selecting a non-COLA plan unless it provided one prior to the establishment of the Consolidated Plan; and 3) a district changing the election it made in the early 1990s regarding membership for part-time, seasonal and temporary workers. Removing these restrictions provide more flexibility to local districts that participate in the plan in terms of the benefits that can be elected for the district's employees.

At the Board's regular meeting held on August 10, 2017, Kenneth Williams made the motion, seconded by Richard Metivier, to adopt the amended rule. The motion was unanimously approved by those Board members present.

Fiscal impact of rule:

None.

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Rules Adopted January 1, 2017 to December 31, 2017
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, 4741.18, 4852 *et seq.*
Chapter number/title: Ch. 19, Homeless Solutions Rule
Filing number: 2017-106
Effective date: 7/11/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The replacement rule repeals and replaces the current *Homeless Solutions Rule*. The replacement rule amends the funding formula allocation by changing the definition of "Clients Assessed and Stabilized" and provides for a one-time payment adjustment.

Basis statement / summary:

This rule replaces in its entirety the current *Homeless Solutions Rule*. MaineHousing uses funds from certain federal and state resources to give grants to agencies for a variety of activities to assist people who are experiencing homelessness or the risk of becoming homeless. The rule governs MaineHousing's allocation of resources for such programs, program design, the publication and distribution of program guides, basic criteria for determining eligible recipients, and potential selection criteria. This replacement *Homeless Solutions Rule* amends the definition of Clients Assessed and Stabilized in order to ensure the fairest allocation of payments consistent with the overall intent of the rule.

Fiscal impact of rule:

None.

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Rules Adopted January 1, 2017 to December 31, 2017
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(l)(W), 4741(15), 4991 *et seq.*; 42 USCA §§ 8621 *et seq.*
Chapter number/title: **Ch. 24**, Home Energy Assistance Program Rule
Filing number: **2017-107**
Effective date: 7/11/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The replacement rule repeals and replaces the current *Home Energy Assistance Program Rule*. The replacement rule: (i) Eliminates the asset test for minor, low cost work for the Central Heating Improvement Program (CHIP) and only requires it for higher cost, system replacements; (ii) adds clarifying language regarding how the benefit is determined for CHIP Heating System Replacement, when assets actually exceed the allowable threshold; (iii) requires the determination of who is responsible for maintenance of a home in life estate of life lease situations, only for higher cost system replacements; (iv) excludes from a household's income calculation any income from a qualifying full-time college student; (v) simplifies the application process for an applicant whose dwelling does not have electricity or water. In such cases, the Community Action Agency will verify eligibility without needing to request a waiver from MaineHousing; (vi) expands the list of allowable Energy Crisis Intervention Program (ECIP) expenditures to include additional intervention measures such as purchasing space heaters, assisting with temporary relocation (hotel/ motel), and assistance for rent with heat included applicants who are facing eviction due to nonpayment of rent; (vii) other non-substantive policy clarifications and changes necessary due to the new Hancock (HEAT) computer system used for weatherization activities.

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) eliminates asset test for minor, low cost work for the Central Heating Improvement Program (CHIP) and only requires it for higher cost system replacements; (ii) excludes from Household's income calculation any income from a qualifying full-time college student; (iii) adds clarifying language regarding how the benefit is determined for CHIP heating system replacement, when assets exceed the allowable threshold; (iv) simplifies the application process for an applicant whose dwelling does not have electricity or water; (v) expands allowable Energy Crisis Intervention Program (ECIP) expenditures to include additional intervention measures; and (vi) excludes the value of primary residence as an asset when determining eligibility for a heating system replacement.

Fiscal impact of rule:

None.

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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), 4741(14), and Section 42 of the *Internal Revenue Code of 1986*, as amended
Chapter number/title: **Ch. 16**, Low Income Housing Tax Credit Rule
Filing number: **2017-183**
Effective date: 11/26/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is the qualified allocation plan for allocating and administering the federal low-income housing tax credit in the State of Maine, including without limitation the State's housing credit ceiling for calendar year 2018, as required pursuant to Section 42 of the *Internal Revenue Code*. The rule repeals and replaces the current Ch. 16, *Low-Income Housing Tax Credit Rule*.

Basis statement / summary:

This rule is the qualified allocation plan for allocating and administering federal low income housing tax credits ("LIHTC") in the State of Maine, which MaineHousing, as the State's designated housing credit agency, is required to adopt pursuant to Section 42 of the *Internal Revenue Code* and the above-referenced sections of the *Maine Housing Authorities Act*.

This rule replaces the prior rule and includes the following changes.

- The rule has been overhauled and reformatted to make it simpler and easier to use.
- The rule includes the process for allocating the 2018 state ceiling of federal low-income housing tax credits for the State of Maine (the "State Ceiling"). The scoring criteria points are normalized to a total score of 100.
 - The Preservation Set-aside is reserved for existing affordable housing assisted under a Rural Development program or HUD's Rental Assistance Demonstration (RAD) Program and the minimum rehabilitation requirement for the set-aside is reduced to \$50,000 per unit to ensure the preservation of affordable housing that is difficult, if not impossible, to preserve under other MaineHousing programs.
 - The pre-application process is more interactive and informative. The pre-application review is still mandatory, but applications will not be rejected at the pre-application stage. MaineHousing will meet with each applicant at least 30 days before the full application is due to provide feedback on eligibility and scoring issues. An application may be rejected at the full application stage if eligibility issues raised by MaineHousing during the meeting are not addressed.
 - The State Ceiling application limits extend to consultants because of capacity concerns in the last round. Consultants cannot be a consultant or a principal in more than 3 applications in each round or in more than 4 outstanding projects at any time.
 - The application, allocation and monitoring fees increased to cover the cost of administering the program.
 - Investors that fail to make required capital contributions are barred from the program. Uncertainty about the federal corporate tax rate caused a significant drop in LIHTC pricing in the last round, and for the first time in Maine, an investor failed to meet its funding obligations. With the support of MaineHousing and the construction lender, the developer was able to find another investor and make the project work financially, but the default increased

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project costs and reduced the capital investment in the project because of lower LIHTC pricing available in the market.

- The State Ceiling selection process is streamlined to reduce the number of applications that are scored in an effort to expedite the selection process. Only applications with the highest self-scores will be selected for scoring until the LIHTC is fully awarded to the applications with the highest actual scores.
- Smaller projects (less than 20 units) with limited financial capacity and projects that abut and have access to other projects with telemedicine facilities are excluded from the obligation to provide telemedicine facilities. Alternative methods for delivering telemedicine services and additional uses of the telemedicine room may be allowed.
- The scoring criteria provide greater balance between family and senior housing. Only one senior housing project was awarded State Ceiling in the last round. The TDC benchmark for new non-family housing is slightly increased from \$180,000 to \$185,000 per unit and 5 additional points are available under the accessibility scoring criteria for senior projects to incent more new senior housing.
- New scoring bands have been added to the TDC scoring category which narrow the scoring differential between bands to minimize any incentive for developers to submit artificially low budgets to maximize their TDC score. Higher point values are awarded at levels closer to the caps than previously.
- The weight of the property tax relief scoring criteria is less because certain municipalities have expressed that they do not want to feel pressured to provide tax increment financing to have affordable housing developed in their communities.
- The housing need scoring criteria uses the same formula, but is updated with the latest data. Changes in the senior housing criteria reflect population shifts. There are significant shifts in the non-senior housing criteria; 14 communities moved into higher point categories and 12 new communities were added. These changes reflect population shifts and an increase in the number of households in the State that qualify for LIHTC housing.
- The rent differential scoring criteria include a new 3 point category for areas where the difference between the market rent and the tax credit is 20% or more to incent the development of new affordable housing in tightening rental markets in the State.
- Proximity to downtown is removed from the smart growth scoring criteria because the other criteria are indicative of downtown areas. The definition of “safe walking distance” in the smart growth criteria no longer includes paved wide shoulders because they are not a safe and suitable means for walking to the destinations addressed in the smart growth criteria.
- The LIHTC training requirement in the management experience scoring criteria is limited to LIHTC units, to which the training relates, rather than total units in projects.
- The rule includes new performance scoring criteria. One replaces the negative point for failing to start construction within 15 months of an award notice with a negative point for failing to develop projects in accordance with the progress timelines in the award notice. The other criteria builds on the management performance criteria and includes a loss of up to 2 points based on the number of projects with two consecutive below average or unsatisfactory management reviews.
- The reuse of existing sites scoring criteria is expanded to include buildings that are municipally-designated for renewal because of environmental hazards to the occupants, such as lead-based paint, asbestos and radon.
- The most efficient use of MaineHousing’s scarce resources, i.e. LIHTC and 0% deferred debt, replaces total development cost (TDC) per unit as the first tie breaker for prioritizing applications with the same score to incent developers to use less of these resources.

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- The net developer fee for projects that involve the rehabilitation of existing housing and new construction will be pro-rated based on the relative number of new and existing units to better reflect the complexity of developing the projects.

- The limits on general contractor intermediary costs reflect the National Council of State Housing Authority's best practices for the LIHTC Program.

The rule clarifies MaineHousing's administration of the gross rent floor (i.e. the lowest tax credit rent limit for a project) under Section 42 of the Code. Unless an owner elects the project's placed-in-service date using the new form attached to the rule, the gross rent floor will be established on the date of the first LIHTC allocation (often a carryover allocation) for State Ceiling projects, and the date of the LIHTC award notice, which is the first eligibility determination under Section 42(m) of the Code, for automatic LIHTC projects.

Fiscal impact of rule:

The State's housing credit ceiling for calendar year 2018 is expected to generate approximately \$29,500,000 of private investor capital. Additional capital may be generated through the allocation of federal low-income housing tax credits for housing that is financed with tax-exempt facility bonds pursuant to Section 42 (h)(4) of the *Internal Revenue Code*. 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.

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Rules Adopted January 1, 2017 to December 31, 2017
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: 11.05, Scallop Harvesting Gear Restrictions; 11.08, Targeted Scallop Conservation Closures; 11.09, Limited Access Areas
Filing number: 2017-001
Effective date: 1/1/2017
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 Portland Harbor, Hussey Sound/Chandler Cove (hand harvest by scuba diving allowed), Narraguagus/Pigeon Hill Bay Rotational Area and Chandler Bay in order to protect Maine's scallop resource due to the risk of imminent depletion and unusual damage. 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. In the Hussey Sound/Chandler Cove area, high concentrations of both seed and sublegal scallops were observed in the December 2, 2016 pre-season fishery independent DMR survey. 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. 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 2016-17 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 South Portland Harbor, Hussey Sound/Chandler Cove (hand harvest by scuba diving allowed), Narraguagus/Pigeon Hill Bay and Chandler Bay, as authorized by 12 MRS §6171(3). In addition, there are a number of clarifications in this rulemaking which include:

11.05: Additional language was added to clarify the exact points of land that the Blue Hill Bay Drag Restriction pertains to;

11.08: A correction is needed to clarify that (1) Muscle Ridge is open to dragging on Mondays and Tuesdays in the opening paragraph of section 11.08, in addition to (10)(11)(12) & (13) being added;

11.09: A clarification that Limited Access Areas are open unless otherwise indicated in section 11.08, such as Sheepscoot River and Muscongus Bay being clarified that they are in fact closed during the 2016-17 scallop season. In addition, a clarification was needed to change Southwest Harbor to Northeast Harbor for the southern boundary of the (5) Mount Desert Island Limited Access Area, and

11.12: A correction to the C Third Rotation (7) Lower Penobscot Bay & Outer Islands Rotational Area which removed the language referring to Little Green and Large Green Islands as they are actually in Zone 1, not Zone 2 and are therefore not subject to rotational management.

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Rules Adopted January 1, 2017 to December 31, 2017
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Basis statement:

The Department is taking emergency rulemaking action to implement targeted closures in the following areas: Portland Harbor, Hussey Sound/Chandler Bay (hand harvest by scuba diving allowed), Narraguagus/Pigeon Hill Bay Rotational Area and Chandler 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 areas during the fishing season has 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 and therefore the areas described above will be closed to fishing (except Hussey Sound/Chandler Cove, which shall remain open to divers). In addition, there are a number of clarifications in this rulemaking which include:

- **11.05:** Additional language to clarify the exact points of land that the Blue Hill Bay Drag Restriction pertains to;
- **11.08:** A correction is needed to clarify that (1) Muscle Ridge is open to dragging on Mondays and Tuesdays in the opening paragraph of section 11.08;
- **11.09:** A clarification that Limited Access Areas are open unless otherwise indicated in section 11.08, such as the Sheepscot River and Muscongus Bay being closed during the 2016-17 scallop season. Also, a clarification was needed to change Southwest Harbor to Northeast Harbor for the southern boundary of the (5) Mount Desert Island Limited Access Area, and
- **11.12:** A correction to the C Third Rotation (7) Lower Penobscot Bay & Outer Islands Rotational Area which removed the language referring to Little Green and Large Green Islands as they are actually in Zone 1, not Zone 2, and are therefore not subject to rotational management.

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.

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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: 11.08, Targeted Scallop Conservation Closures: (1) Muscle Ridge, (13) Chandler Bay / Head Harbor, (14) Inner Cranberry Isle Area
Filing number: 2017-008
Effective date: 1/22/2017
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 Muscle Ridge, Jonesport Area and Cranberry Isle Area in order to protect Maine's scallop resource as authorized by 12 MRS §6171(3) due to the risk of imminent depletion and unusual damage. 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. In addition, high concentrations of sublegal scallops in both the Muscle Ridge and Inner Cranberry Isle Area require protection from incidental mortality caused by drag gear; however, due to the negligible impacts divers have during hand harvest to sublegal product, diving in these two areas will be allowed to continue. The Department is concerned that unrestricted harvest during the remainder of the 2016-2017 fishing season in these specific areas may damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reducing broodstock essential to a recovery. In addition, there is a clarification in this rulemaking to the Hussey Sound/Chandler Bay targeted closure to reflect that it is open to divers for continued harvest.

Basis statement:

The Department is taking emergency rulemaking action to implement targeted closures in the following areas: Muscle Ridge (hand harvest by scuba diving only), Inner Cranberry Isle Area (hand harvest by scuba diving only), and Chandler Bay/Head Harbor Area. 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 exceeded the 30% removal target that ensures the fishery continues to rebuild. In addition, high concentrations of sublegal scallops in both the Muscle Ridge and Inner Cranberry Isle Area require protection from incidental mortality caused by drag gear; however, due to the negligible impacts divers have during hand harvest to sublegal product, diving in these two areas will be allowed to continue. 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 and therefore the areas described above will be closed to fishing (except Muscle Ridge and Inner Cranberry Isle Area, which shall remain open to divers). In addition, there is a clarification to the Hussey Sound/Chandler Cove targeted closure to reflect that is open to hand harvest by scuba diving only.

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.

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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: **11.08**, Targeted Scallop Conservation Closures: (2nd paragraph, and) (11) Casco Bay, (13) Chandler Bay / Head Harbor, (15) Upper Damariscotta River, (16), North Haven, (17), Mid Penobscot Bay, (18), Lower Blue Hill Bay / Jericho Bay; **11.09**, Limited Access Areas: (2), Damariscotta / Sheepscot Area; **11.12**, Ten (10) Year Rotational Management Plan: 1. Zone Two (2) Eastern Maine; B. Second Rotation
Filing number: **2017-012**
Effective date: 2/5/2017
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 Casco Bay, Chandler Bay/Head Harbor Island, Upper Damariscotta River, North Haven, Mid Penobscot Bay, and Lower Blue Hill Bay/Jericho Bay in order to protect Maine's scallop resource as authorized by 12 MRS §6171(3) due to the risk of imminent depletion and unusual damage. The Department is concerned that unrestricted harvest during the remainder of the 2016-2017 fishing season in these specific areas may damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reducing broodstock essential to a recovery. 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 exceeded the 30% removal target that ensures the fishery continues to rebuild. In addition, high concentrations of sublegal scallops in Casco Bay require protection from incidental mortality caused by drag gear. Due to the negligible impacts divers have to sublegal product, diving in this area will be allowed to continue when the Zone 1 dive season resumes on March 1. Divers will also be allowed continued access in North Haven, Upper Damariscotta River and Lower Blue Hill Bay/Jericho Bay until such time as further management actions are necessary.

Basis statement:

The Department is taking emergency rulemaking action to implement targeted closures in the following areas: Casco Bay (hand harvest only), Upper Damariscotta River (hand harvest only), Mid Penobscot Bay (draggers limited to Mondays & Tuesdays), North Haven (hand harvest only), Lower Blue Hill Bay/Jericho Bay (hand harvest only) and Chandler Bay/Head Harbor Island. 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 exceeded the 30% removal target that ensures the fishery continues to rebuild. In addition, high concentrations of sublegal scallops in Casco Bay require protection from incidental mortality caused by drag gear. Due to the negligible impacts divers have during hand harvest to sublegal product, diving in these two areas will be allowed to continue as divers have not had access to the area since the first week of January and will resume fishing on March 1. Diving will also be allowed to continue in Upper Damariscotta River as a section of the furthest reaches of the upper river has not yet been fully exploited and will provide additional opportunity to divers when their season resumes on March 1. Finally, diving will also be allowed to continue in both North Haven and Lower Blue Hill Bay/Jericho Bay. Since the beginning of the season, draggers have had a total of 41 fishing days in these areas

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while the divers have only had 34 days. To provide equal access to the resource for both gear types, access will remain open for divers. Continued fishing threatens the remaining broodstock scallops 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 and therefore the areas described above will be closed to fishing, except Casco Bay, Upper Damariscotta River, North Haven and Lower Blue Hill Bay/Jericho Bay, which shall remain open to divers until such a time as further management actions are necessary.

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.

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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)
Chapter number/title: Ch. 11, Scallops: 11.08, Targeted Scallop Conservation Closures: (2nd paragraph, and) (13) Chandler Bay / Head Harbor Island; (15) Damariscotta River; (16) North Haven; (17) Mid Penobscot Bay; (18) Lower Blue Hill Bay / Jericho Bay; 11.12, Ten (10) Year Rotational Management Plan: (5) Lower Blue Hill Bay / Jericho Bay; (7) Mid Penobscot Bay
Filing number: 2017-033
Effective date: 2/26/2017
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 Chandler Bay/Head Harbor Island, Damariscotta River (hand harvest only), North Haven, Mid Penobscot Bay and Lower Blue Hill Bay/Jericho Bay in order to protect Maine's scallop resource as authorized by 12 MRS §6171(3) due to the risk of imminent depletion and unusual damage. The Department is concerned that unrestricted harvest during the remainder of the 2016-2017 fishing season in these specific areas may damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reducing broodstock essential to a recovery. 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 exceeded the 30% removal target that ensures the fishery continues to rebuild. Divers will also be allowed continued access to Damariscotta River until such time as further management actions are necessary.

Basis statement:

The Department is taking emergency rulemaking action to implement expanded targeted closures in the following areas: Chandler Bay/Head Harbor Island, Damariscotta River (hand harvest only), North Haven, Mid Penobscot Bay rotational area and Lower Blue Hill Bay/Jericho Bay rotational area. 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 exceeded the 30% removal target that ensures the fishery continues to rebuild. Diving will be allowed to continue in the Damariscotta River as the upper portion of the river has not yet been fully exploited and will provide additional opportunity to divers when their season resumes on March 1, 2017. Finally, harvest by divers in both North Haven and Lower Blue Hill Bay/Jericho Bay will close; these two areas remained open to divers only for additional opportunity to ensure that both the divers and the draggers had equal access to the resource, as divers had a reduced season in January and February. Continued fishing threatens the remaining broodstock scallops 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 and therefore the areas described above will be closed to fishing, except in the Damariscotta River which shall remain open to divers until such a time as further management actions are necessary.

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.

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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 §§ 6447, 6448
Chapter number/title: Ch. 25, Lobster and Crab: 25.04, Lobster Trawl Limits; 25.93, Management Framework for Limiting Lobster Fishing Effort on a Local or Regional Basis – Operational Rules; 25.96, Lobster Apprentice Program
Filing number: 2017-041
Effective date: 3/12/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

This rulemaking 1) expands the Hancock County Trawl Limit area in Zone B, 2) amends the exit ratio for Zone B, 3) creates an exit ratio for Zone C, 4) amends the exit ratio for Zone E, 4) creates a separate waiting list for existing lobster license holders wishing to change their declared lobster zone (a “transfer” list) and 5) makes minor clarifications for consistency with recent legislative changes.

This rulemaking expands the Hancock County Trawl Limit area in Zone B. In this area it is unlawful to have more than 3 lobster traps on any trawl. One of the lobster zone council authorities is to propose the number of lobster traps allowed on a trawl. The Zone B Council proposed extending the western boundary of the Hancock County Trawl Limit line to the 6-mile line.

This rulemaking changes the Zone B 5:1 exit ratio using the currency of lobster licenses not renewed to a 3:1 exit ratio using the currency of lobster license not renewed. At the Lobster Zone B Council meeting on September 21, 2016, there was a unanimous vote by the Zone B Council to change their exit ratio in this way.

This rulemaking establishes Zone C as a limited entry zone with an exit ratio of 1:1 using the currency of lobster licenses not renewed. At the Lobster Zone C Council meeting on September 8, 2016, there was a majority vote by the Zone C Council to establish this exit ratio.

This rulemaking changes the Zone E 5:1 exit ratio currency from the number of trap tags associated with licenses not renewed to the number of licenses not renewed. At the Lobster Zone E Council meeting on February 29, 2016, there was a majority vote by the Zone E Council to change their exit ratio in this way.

For consistency with changes in statute, this rulemaking requires that limited entry zones that opt to use trap tags retired in their exit ratio calculation, use the historic high of trap tags purchased, up to the current zone limit.

This rulemaking addresses the lobster waiting lists, which currently consists of both apprentices who do not have a lobster license, as well as individuals that do hold a lobster license, but are requesting to switch to a different lobster zone. The Legislature recently passed a law directing the Department of Marine Resources to remove those individuals who already hold a lobster license from the existing waiting list, and create a separate “transfer” waiting list, as authorized by 12 MRS §6448. This rulemaking creates a single “transfer” list and make transfers “one for one” with no net increase from transfers in any zone. The Department of Marine Resources will authorize any such “swaps” annually until there are no matches remaining.

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Finally, this rulemaking clarifies that if an individual completes the apprentice program in multiple zones, individuals would still be required to document at least the minimum of 1,000 fishing hours that is accumulated over a minimum of 200 calendar days in each desired zone. However, the minimum of the 24-month requirement is met 24 months from the date the individual logs their first day in the apprenticeship program.

Fiscal impact of rule:

Enforcement of these proposed amendments would not require additional activity in this Agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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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 §6446
Chapter number/title: Ch. 25, Lobster and Crab: 25.94, Lobster Management Zones
Filing number: 2017-042
Effective date: 3/12/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule is intended to achieve greater clarity regarding the Lobster Zone line boundaries.

Basis statement:

This rulemaking makes clerical corrections to the Lobster Zone line boundaries, amends the regulation for greater clarity, and adds positions where Lobster Zone lines intersect with the Lobster Management Area 3 line.

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.

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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 §§ 6302-B, 6505-A
Chapter number/title: **Ch. 32**, Eel Regulations; **32.35**, Elver Quota System for 2017 Elver Season; **32.40**, Elver Transaction Cards; **32.50**, Mandatory Elver Dealer Meeting to Prepare for the 2017 Elver Season
Filing number: **2017-043**
Effective date: 3/12/2017
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rulemaking establishes the elver quota allocations for the 2017 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. 2017 allocations will be the same as the 2016 allocations, plus any quota associated with licenses not renewed in 2016 or suspended for the duration of 2017. Finally, the regulation clarifies that an individual may not possess or sell in any combination an amount of elvers that exceeds that individual's individual elver individual fishing quota, and that a transaction card may only be used to sell elvers that individual has taken.

Fiscal impact of rule:

No fiscal impact is anticipated.

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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. 40, Smelt Regulations: 40.12(C), Smelt Management Zone Restrictions
Filing number: 2017-044
Effective date: 3/12/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rulemaking amends the smelt regulations for Zone One (1), which is the area from the New Hampshire border to Owl's Head Light. In this Zone, it would permit the taking of smelting only by hook and line through the ice. Currently, fishing is prohibited after March 15, whether there is ice or not. This change allows fishing for smelt as long as the ice is present. The existing four quart limit would remain in place.

Basis statement:

This rulemaking was initiated at the request of a smelt camp operator, who wanted the smelt camps to be able to remain on the ice beyond March 15, in those years where ice is still present after that date. Under the existing rule, no fishing is allowed after March 15. The Department felt that this was a reasonable request, and that the impact on the smelt population of continued fishing through the ice at that time of year would not be significant. As a result of the amendment to the rule, in Zone 1 (New Hampshire border to Owl's Head Light) smelt may only be taken by hook and line through the ice and there are no limitations on the season.

Fiscal impact of rule:

No fiscal impact is anticipated.

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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: 11.08, Targeted Scallop Conservation Closures: *(2nd paragraph, and)* (19) Cobscook Bay
Filing number: 2017-049
Effective date: 3/12/2017
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 in order to protect Maine's scallop resource as authorized by 12 MRS §6171(3) due to the risk of imminent depletion and unusual damage.

Basis statement:

The Department is taking emergency rulemaking action to implement an expanded targeted closure in Cobscook Bay. The Department is concerned that unrestricted harvest during the remainder of the 2016-2017 fishing season in this specific area may damage sublegal scallops potentially being caught with an increased frequency, and also, reduce the level of broodstock essential to continuing recovery. Based on observations and direct input from Marine Patrol, industry participants, and data provided by the Department's monitoring program, the level of fishing effort in this area has exceeded the 30% removal target. Continued fishing threatens both seed and the remaining broodstock scallops in the area needed for future recruiting and successful spawning as management maintains a rebuilding strategy to increase overall stock biomass.

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.

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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. 34, Groundfish Regulations: 34.07, Atlantic Halibut
(*Hippoglossus hippoglossus*)
Filing number: 2017-068
Effective date: 4/30/2017
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

The Department is taking emergency rulemaking action to implement a clarification that it is illegal to possess Atlantic Halibut when operating seaward of Maine's territorial waters. In January 2017, the New England Fishery Management Council passed a motion to ask the United States Coast Guard and states operating under a Joint Enforcement Agreement with the National Oceanic and Atmospheric Administration (NOAA) that enforcement of the three nautical mile limit be a high priority during the Atlantic halibut season in Maine. This motion was passed based on concerns that state waters-only license holders are targeting Atlantic halibut outside of Maine's territorial waters, resulting in increased catch rates. Based on State landing reports, the State waters fishery from 2010-2014 has historically caught an average of 65 percent of the sub-Annual Catch Limit and in fishing year 2015 (May 1, 2015-April 30, 2016), caught 101 percent. It is anticipated that 2016 landings may be even higher. This rule clarifies that fishermen targeting halibut with State commercial tags may not possess Atlantic halibut outside of Maine's territorial waters. This action is intended to protect and conserve the halibut resource from unusual damage and imminent depletion. For these reasons, the Commissioner has determined that it is necessary to take emergency action under 12 MRS 6171(3)(A).

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.

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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. 36, Herring Regulations: 36.01, Herring Management Plan
Filing number: 2017-083
Effective date: 6/4/2017
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rule is intended to align State of Maine regulations with those set forth by the ASFMC and the management plan decided upon by the Atlantic Herring Section during the Days Out meeting held May 23, 2017.

Basis statement:

Atlantic herring may only be landed from Management Area 1A on days that have been designated landing days by the Atlantic States Marine Fisheries Commission (ASMFC). At their Days Out Meeting in May 23, 2017, the Atlantic Herring Section determined that landing days for all vessels issued a Federal Limited Access Atlantic Herring Category A Permit for Management Area 1A, Sub-ACL Trimester 2 (June 1 – September 30) shall be three consecutive days, beginning on 6:00 p.m. Sunday to 6:00 p.m. Wednesday and are limited to landing 400,000 lbs. (10 trucks) weekly; and, may transfer to one carrier vessel per week up to 80,000 lbs. All vessels issued a Federal Limited Access Atlantic Herring Permit Category C shall fish and land Atlantic herring on seven consecutive days a week and shall not transfer fish caught to a carrier vessel at sea. All vessels landing herring caught in Management Area 1A in any Maine port are limited to one landing per 24 hour period (6:00 p.m. to 6:00 p.m.). The Commissioner has determined that it is necessary to take emergency action to implement these limitations to prevent the depletion of the supply of Atlantic herring and to comply with the changes to the interstate management of the Atlantic herring resource. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3).

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.

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Rules Adopted January 1, 2017 to December 31, 2017
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: 41.30, Menhaden Program (Menhaden Fishery Closure)
Filing number: 2017-084
Effective date: 6/3/2017
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 2017 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 close the fishery 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 2017 fishing season of 200,000 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 amount allocated to Maine for 2017 is 171,882 lbs. States have the responsibility to close their directed commercial fisheries in their state once their quota has been reached. Based on its knowledge of existing fishing activity, Maine DMR is aware that the 2017 menhaden quota has been reached, and is closing the menhaden fishery for 2017 in order to avoid unusual damage and imminent depletion of the menhaden resource. The Commissioner adopts this emergency rulemaking under the authority provided by §6171-3(A).

Fiscal impact of rule:

No fiscal impact anticipated.

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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: 41.05, Territorial Waters Trawl Prohibition; 41.30, Menhaden Program (Episodic Event Fishery)
Filing number: 2017-088
Effective date: 6/8/2017
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, and potentially exceeded. However, there remains significant fishable biomass in Maine territorial waters 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 there is biomass still available such that an episodic event fishery is necessary. Requirements for executing an episodic event fishery include: daily trip level reporting for all harvesters, menhaden harvested in state waters to be landed in Maine, and limiting daily harvests and landings to 120,000 pounds/vessel. These effort controls 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.

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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. 36, Herring Regulations: 36.01, Herring Management Plan
Filing number: 2017-101
Effective date: 7/1/2017
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rule is intended to align State of Maine regulations with those set forth by the ASFMC and the management plan decided upon by the Atlantic Herring Section during the Days Out meeting via telephone on June 28, 2017.

Basis statement:

Atlantic herring may only be landed from Management Area 1A on days that have been designated landing days by the Atlantic States Marine Fisheries Commission (ASMFC). During the Days Out Conference Meeting on June 28, 2017, the Atlantic Herring Section determined that landing days for all vessels issued a Federal Limited Access Atlantic Herring Category A Permit for Management Area 1A, Sub-ACL Trimester 2 (June 1 – September 30) shall be four consecutive days, beginning on 6:00 p.m. Sunday to 6:00 p.m. Thursday and are limited to landing 600,000 lbs. (15 trucks) weekly; and, may transfer to only one carrier vessel per week up to 80,000 lbs. All vessels issued a Federal Limited Access Atlantic Herring Permit Category C may fish and land Atlantic herring on seven days a week and are restricted to the transfer of Atlantic herring to one carrier vessel only and no more than 80,000 lbs. per week. All harvesters issued a State Commercial Pelagic and Anadromous License may fish and land Atlantic herring on seven days a week and are restricted to the transfer of Atlantic herring to one carrier vessel only and no more than 80,000 lbs. per week. All vessels landing herring caught in Management Area 1A in any Maine port are limited to one landing per 24 hour period (6:00 p.m. to 6:00 p.m.). The Commissioner has determined that it is necessary to take emergency action to implement these limitations to prevent the depletion of the supply of Atlantic herring and to comply with the changes to the interstate management of the Atlantic herring resource. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3).

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.

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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: 41.30, Menhaden Program (Menhaden Episodic Event Fishery Closure)
Filing number: 2017-102
Effective date: 7/3/2017
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Department has received confirmation from the Atlantic States Marine Fisheries Commission's Atlantic Menhaden Board that over 80% of the episodic quota has been harvested. The Commission has directed all States participating in the episodic fishery to close midnight on Wednesday, July 5, 2017. For this reason, 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. Upon the closure of the episodic event fishery, a vessel may fish for or take up to 6,000 pounds of menhaden per day as incidental bycatch and the vessel shall not land more than 6,000 lbs. per calendar day. A vessel that is taking Atlantic menhaden as incidental bycatch shall not transfer Atlantic menhaden at sea.

Maine DMR has received confirmation from the Atlantic States Marine Fisheries Commission's Atlantic Menhaden Board that over 80% of the episodic quota has been harvested. The Commission has directed all States participating in the episodic fishery to close at 11:59 p.m. on Wednesday, July 5, 2017. For this reason, the Commissioner has determined that it is necessary to take emergency action under 12 MRS 6171(3)(C) to close the Atlantic Menhaden episodic event fishery.

Fiscal impact of rule:

No fiscal impact anticipated.

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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. 36, Herring Regulations: 36.01, Herring Management Plan
Filing number: 2017-115
Effective date: 7/29/2017
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rule is intended to align State of Maine regulations with those set forth by the ASFMC and the management plan decided upon by the Atlantic Herring Section during the Days Out meeting via telephone on July 26, 2017.

Basis statement:

Atlantic herring may only be landed from Management Area 1A on days that have been designated landing days by the Atlantic States Marine Fisheries Commission (ASMFC). Effort controls for the Atlantic Herring fishery are reviewed by the Atlantic Herring Section of the ASMFC bi-weekly using the best available data from staff. During the latest Days Out Conference Meeting on July 26, 2017, the Atlantic Herring Section determined that landing days for all vessels issued a Federal Limited Access Atlantic Herring Category A Permit for Management Area 1A, Sub-ACL Trimester 2 (June 1 – September 30) shall be five consecutive days, beginning on 6:00 p.m. Sunday to 6:00 p.m. Friday and are limited to landing 680,000 lbs. (17 trucks) weekly; and, may transfer to only one carrier vessel per week up to 120,000 lbs. All vessels issued a Federal Limited Access Atlantic Herring Permit Category C may fish and land Atlantic herring seven days a week and are restricted to the transfer of Atlantic herring to one carrier vessel only and no more than 120,000 lbs. per week. All harvesters issued a State Commercial Pelagic and Anadromous License may fish and land Atlantic herring on seven days a week in territorial waters and are restricted to the transfer of Atlantic herring to one carrier vessel only and no more than 120,000 lbs. per week. Harvester vessels may transfer catch to another harvester vessel while at-sea. All vessels landing herring caught in Management Area 1A in any Maine port are limited to one landing per 24 hour period (6:00 p.m. to 6:00 p.m.). The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3)(C).

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §§ 6749, 6173
Chapter number/title: Ch. 26, Sea Urchin Regulations
Filing number: 2017-116
Effective date: 8/7/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This regulation would establish open harvest days for the taking of sea urchins by divers, rakers, trappers, and draggers in Zones 1 and 2 for the 2017-2018 season. It also establishes the utilization of harvester swipe cards for picking days to fish. This is a pilot project which aims to evaluate the swipe card system which could potentially provide industry the flexibility to fish in a more safe manner and to increase sea urchin roe quality.

For Zone 1, 20-day seasons are proposed for divers, trappers, rakers and draggers in 2017-2018, from which harvesters may only fish up to 15 days of their choosing, the same number of days allowed during the 2016-2017 season. The Sea Urchin Zone Council recommended the selection of these particular days. Divers, rakers and trappers may fish 15 days beginning in September into October ("early season"), or 15 days in December and February ("late season"); and, draggers may fish 15 days in December ("early season"), or February and March ("late season").

For Zone 2, 45-day seasons are proposed for divers, trappers, rakers and draggers in 2017-2018, from which harvesters may only fish up to 38 days of their choosing, the same number of days allowed during the 2016-2017 season. The Sea Urchin Zone Council recommended the selection of these particular days for divers, rakers and trappers who may fish 38 days in September through December ("early season"), or 38 days in December through March ("late season"). Based on the recommendation and discussions at the most recent Sea Urchin Zone Council meeting, the Department proposes a single season calendar for Zone 2 draggers, who may fish 38 days beginning in mid-October through to March.

For the Whiting & Dennys Bays Limited Access Area in Zone 2, a 15-day season is proposed for Zone 2 divers, trappers, rakers and draggers in 2017-2018, which is six additional days compared to the 2016-17 season. Zone 2 divers, rakers and trappers may fish 15 days in October, November and December ("early season"), or 15 days in December, January, February and March ("late season"); Zone 2 draggers would have 15 days in November, December, January, February and March. The particular days mirror days which the Sea Urchin Zone Council recommended for the Zone 2 season calendars

This regulation also establishes a limited access area in Blue Hill Bay for a Department-initiated, five year collaborative, research project in which industry partners are provided with spatial trackers. The goal of this project is to gain insight into the dynamics between fishery removals and the resource at the reef level. The spatial tracker must be turned on and continuously recording data for the entire duration of each season, chosen by the harvester. Scientific evidence indicates that a critical mass of sea urchins is required to maintain a productive "barren", urchin's preferred habitat. Information collected through this project will assist in establishing optimum harvesting strategies which could help the fishery rebuild and support potential new entrants.

Basis statement:

This regulation establishes open harvest days for the taking of sea urchins by divers, rakers, trappers, and draggers in Zones 1 and 2 through the 2017-2018 season. In order to

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provide industry with greater flexibility and possibly improve roe quality, the regulation establishes the utilization of harvester swipe cards for picking days to fish. For Zone 1, 20-day seasons are established for divers, trappers, rakers and draggers in 2017-2018, from which harvesters may only fish up to 15 days of their choosing. For Zone 2, 45-day seasons are established for divers, trappers, rakers and draggers in 2017-2018, from which harvesters may only fish up to 38 days of their choosing. For the Whiting & Dennys Bays Limited Access Area in Zone 2, a 15-day season is established for Zone 2 divers, trappers, rakers and draggers in 2017-2018. This regulation establishes a limited access area in Blue Hill Bay for a Department-initiated, five year research project in collaboration with industry using Department issued spatial trackers. These management approaches were developed through a series of meetings with industry members and fishermen to determine outcomes that would be amenable to stakeholders and encourage resource preservation.

Based on comments received during the proposed rulemaking, the Department has split the proposed single Zone 2 dragger calendar into early and a late season calendars, as has been the practice in previous fishing seasons. This will address many of the commenters concerns regarding the proposed Zone 2 dragger calendar, particularly those regarding the co-occurrence of the lobster fishery in the later summer/early fall. The days chosen reflect concerns cited by fishermen during the public comment period balanced with the recommendations of the Sea Urchin Zone Council at their March 23, 2017 meeting in Brewer. Finally, the Whiting and Dennys Bay's Limited Access Area calendars were also revised to ensure that there was access in the area for both the early and late season Zone 2 draggers, as well as switching the dive days from Wednesdays to Tuesdays to minimize gear conflict and provide for safer fishing in the area.

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: **Ch. 34**, Groundfish Regulations: **34.06**, Recreational Groundfish Restrictions (Recreational Cod, Haddock and Pollock Federal Compliance and Technical Changes)
Filing number: **2017-117**
Effective date: 8/7/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

In accordance with the New England Fisheries Management Council (NEFMC) and for consistency with the National Marine Fisheries Service (NMFS) federal regulations effective May 25, 2017, the Department adopts changes for the charter, party and recreational vessels operating in state waters regarding cod, haddock and pollock.

Basis statement:

In compliance with the New England Fisheries Management Council (NEFMC) and the National Marine Fisheries Service (NMFS) federal regulations, the Department proposed changes for charter, party and recreational vessels operating in state waters regarding cod, haddock and pollack. In 2016 recreational fishermen exceeded their sub-ACL of cod by 92%. The NEFMC recommended zero (0) possession of cod on all charter, party and recreational vessels. Therefore, a zero (0) possession limit is adopted for cod. Recreational possession limits for haddock are decreased from 15 to 12 fish along with a new closed season for the fall, in addition to the spring closure. While the original rulemaking proposed a season closure for an expanded time period, which encompassed both options which were being considered in the federal proposal (September 1 through October 31 annually), the final closure period has been reduced to ensure consistency with what has been adopted federally, which is September 17 through October 31 annually. In 2016 recreational fishermen exceeded their 2016 sub-ACL of haddock by 15%. Therefore, the NEFMC recommended that recreational haddock possession be further restricted. For pollack, possession limit and the minimum size limit of 19" (48.3 cm) is removed for consistency with adjacent state recreational fisheries and to provide additional fishing opportunities for the fleet, as the pollack resource is considered to be in a healthy state.

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.

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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: 2017-118
Effective date: 8/7/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule is intended to align State of Maine regulations with those set forth by the ASFMC and the management plan decided upon by the Atlantic Herring Section during the Days Out meeting held May 23, 2017. Also, clarifying regulation regarding landing limits for State only license holders as well as the individual trimesters of Management Area 1A has been added.

Basis statement:

The Atlantic Herring Section of the Atlantic States Marine Fisheries Commission has pre-scheduled conference call meetings to discuss and review effort controls for the Atlantic herring fishery. These "Days Out" meetings use updated information by ASMFC technical staff to better inform the members of the Days Out committee of the current status of the Atlantic herring fishery. Since May, there have been subsequent Days Out meetings to modify the effort controls. At the beginning of the season, the restrictions for Federal Limited Access Atlantic Herring Category A Permit were that of a weekly limit of 400,000 lbs. (10 trucks); a prohibition on harvester to harvester transfers at-sea; and, a transfer limit to carrier vessels of 80,000 lbs. (2 trucks).

During the latest Days Out Conference Meeting, the Atlantic Herring Section determined that landing days for all vessels issued a Federal Limited Access Atlantic Herring Category A Permit for Management Area IA, SubACL Trimester 2 (June 1 - September 30) shall be five consecutive days, beginning on 6:00 p.m. Sunday to 6:00 p.m. Friday and are limited to landing 680,000 lbs. (17 trucks) weekly; and, may transfer to only one carrier vessel per week up to 120,000 lbs. All vessels issued a Federal Limited Access Atlantic Herring Permit Category C may fish and land Atlantic herring seven days a week and are restricted to the transfer of Atlantic herring to one carrier vessel only and no more than 120,000 lbs. per week. All harvesters issued a State Commercial Pelagic and Anadromous License may fish and land Atlantic herring on seven days a week in territorial waters and are restricted to the transfer of Atlantic herring to one carrier vessel only and no more than 120,000 lbs. per week. Harvester vessels may transfer catch to another harvester vessel while at-sea. All vessels landing herring caught in Management Area 1A in any Maine port are limited to one landing per 24 hour period (6:00 p.m. to 6:00 p.m.).

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171-A
Chapter number/title: Ch. 115, *Vibrio parahaemolyticus* Control Plan
Filing number: 2017-123
Effective date: 8/9/2017
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rule incorporates the New Meadows River into certain elements of the existing *Vibrio parahaemolyticus* (Vp) control plan in order to reduce the likelihood that American and European oysters (*Crassostrea virginica* and *Ostrea edulis*) and hard clams (*Mercenaria mercenaria*) harvested from the New Meadows River will cause Vp infections in consumers.

Basis statement:

This emergency rule incorporates the New Meadows River, north of Bath/State Rd in Brunswick and West Bath, into certain elements of the existing *Vibrio parahaemolyticus* (Vp) control plan. The addition of the New Meadows River is intended to reduce the likelihood that American and European oysters (*Crassostrea virginica* and *Ostrea edulis*) and hard clams (*Mercenaria mercenaria*) harvested from the New Meadows River will cause Vp infections in consumers. Independent, biological sampling of hard clams (quahogs) in the New Meadows River has shown positive results for total Vp, so the organism is known to be present in the growing area. The Maine Department of Marine Resources recognizes that the New Meadows River has the environmental characteristics (primarily water and air temperature and salinity) that potentially pose a threat to public health with regard to Vp infections. As a result, DMR seeks to reduce the potential for Vp illnesses, by requiring industry members to shade product upon harvest and to adequately ice the product until delivery to a certified dealer. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171-A.

Fiscal impact of rule:

Enforcement of these amendments would not require additional activity in this agency. The regulation imposes minor changes to harvesting practices for shellfish harvesters.

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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)
Chapter number/title: Ch. 36, Herring Regulations: 36.01, Herring Management Plan, D., Catch Restrictions
Filing number: 2017-149
Effective date: 9/17/2017
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rule is intended to align State of Maine regulations with those set forth by the ASFMC and the management plan decided upon by the Atlantic Herring Section during the Days Out Conference meeting via telephone on September 15, 2017.

Basis statement:

Atlantic herring may only be landed from Management Area 1A on days that have been designated landing days by the Atlantic States Marine Fisheries Commission (ASMFC). Effort controls for the Atlantic Herring fishery are reviewed by the Atlantic Herring Section of the ASMFC bi-weekly using the best available data from staff. During the latest Days Out Conference Meeting on September 15, 2017, the Atlantic Herring Section determined that landing days for all vessels issued a Federal Limited Access Atlantic Herring Category A Permit for Management Area 1A, Sub-ACL Trimester 2 (June 1 – September 30) shall be seven consecutive days, and are limited to landing 1 million lbs (25 trucks) weekly; and, may transfer to only one carrier vessel per week up to 120,000 lbs. All vessels issued a Federal Limited Access Atlantic Herring Permit Category C may fish and land Atlantic herring seven days a week and are restricted to the transfer of Atlantic herring to one carrier vessel only and no more than 120,000 lbs per week. All harvesters issued a State Commercial Pelagic and Anadromous License may fish and land Atlantic herring on seven days a week in territorial waters and are restricted to the transfer of Atlantic herring to one carrier vessel only and no more than 120,000 lbs per week. Harvester vessels may transfer catch to another harvester vessel while at-sea. The Atlantic Herring Section also designated landing days for Area 1A Trimester 3 (October 1 – December 31). Designated landing days for all vessels shall be three consecutive days, beginning on 6:00 p.m. Sunday to 6:00 p.m. Wednesday. All vessels landing herring caught in Management Area 1A in any Maine port are limited to one landing per 24 hour period (6:00 p.m. to 6:00 p.m.). The immediate adoption of this rule is necessary to comply with changes to federal or interstate fisheries management plans. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. §6171(3)(C).

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.

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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(A)
Chapter number/title: Ch. 41, Menhaden: 41.30, Menhaden Program, 2., State Allocation Fishery
Filing number: 2017-159
Effective date: 9/30/2017
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

Landings for Atlantic menhaden have continued well beyond what is typical for this fishery. Excessive fishing pressure may cause harm to the Atlantic menhaden resource, as the available quotas have been achieved. The extended presence of Atlantic menhaden, into September is not considered typical behavior for this fish species. For this reason, the Commissioner has determined that it is necessary to further limit the daily take of menhaden through this emergency action under 12 MRS §6171(3)(A).

Basis statement:

The fishery for Atlantic menhaden is managed through the Atlantic States Marine Fisheries Commission (ASMFC). Maine is allocated 171,882 lbs. of the overall quota, which was harvested by June 3, 2017, at which point the state fishery was closed. Maine was then authorized by ASMFC to open an "episodic event" fishery. The quota for the episodic event fishery was reached and that fishery was subsequently closed on July 3, 2017. Since that time, the fishery has been operating as an incidental take fishery, with a daily limit of no more than 6,000 lbs. It is unusual for menhaden to persist in Maine waters into late September. Without a further limitation on the take of menhaden, the regulation will revert to a 120,000 pound daily limit, which will cause Maine to exceed its allocation and negatively impact the management of the menhaden resource. A very limited take is appropriate to supplement the bait supply for the lobster fishery. For this reason, this regulation lowers the existing incidental take daily limit of 6000 lbs. to 5000 lbs. The Commissioner has determined that it is necessary to take this emergency action under 12 MRS §6171(3)(A), to protect and conserve the Atlantic menhaden population from unusual damage from excessive fishing pressure.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 10, Clams and Quahogs: 10.05, Taking of Quahogs in the Sub-Tidal Waters of New Meadows Lake, Brunswick and West Bath
Filing number: 2017-177
Effective date: 11/19/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule would establish closed periods for the taking of quahogs in the New Meadows Lakes to protect the resource from depletion. The closed periods were developed in consultation with industry.

Basis statement:

This rule establishes Sunday closed periods and a seasonal closed period for the taking of quahogs in the New Meadows Lakes. Harvesters are prohibited from fishing or taking quahogs in the New Meadows Lakes on Sundays, and winter months from sunset on December 31 through sunrise on April 1. The winter closed period sunsets April 1, 2019. Recent surveys of the New Meadows Lakes conducted by the Maine Department of Marine Resources indicate a decline in the quahog population. These effort control measures were proposed at meetings with industry members held in the spring of 2017, and are intended to reduce fishing pressure on the quahog resource, and to minimize the mortality associated with winter fishing. During the comment period, industry expressed concern that a weekend closed period would concentrate harvesting efforts Monday through Friday. To address these concerns, the Department has reduced the weekend closed period to Sundays only.

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §§ 6171, 6722, 6728-C
Chapter number/title: Ch. 11, Scallops: 2017-18 Season
Filing number: 2017-178
Effective date: 11/19/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Scallop Regulations must be updated for each new season to adjust the schedules and closure lines based on lessons learned from the previous season.

Basis statement:

This rule establishes the 2017-2018 scallop fishing season. As in the 2016-2017 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 for draggers begins on December 4, 2017 and the last day of the season is April 10, 2018. For Zone 1, a 60-day season for divers starts on December 1, 2017 and the last day of the season is April 15, 2018. For Zone 2, a 70-day season for draggers starts on December 4, 2017 and the last day of the season is March 29, 2018. For Zone 2, a 70-day season for divers starts on December 1, 2017 and the last day of the season is April 14, 2018. For Zone 3, a 55-day season for draggers begins on December 4, 2017 and the last day of the season is March 28, 2018. For Zone 3, a 55-day season for divers begins on December 1, 2017 and the last day of the season is April 14, 2018.

In Zone 1, Casco Bay, Sheepscot River and Muscongus Bay/W. Penobscot Bay Areas, as well as Whiting/Dennys Bays in Zone 3 are Limited Access Areas with reduced harvesting days. In Zone 2, territorial waters surrounding Machias Seal Island and North Rock are open to harvest daily for the month of March 2018, only.

DMR will maintain the following targeted closures based on depletion, high concentrations of seed/sub legal scallops and/or the presence of spat-producing scallops: Muscle Ridge, Lower Muscle Ridge, Eastern Casco Bay, Upper Sheepscot River, Ocean Point, Damariscotta River, New Meadows River, Card Cove and Beals-Jonesport Bridge.

Additionally, the daily possession and harvest limits for individuals issued a license under either 12 M.R.S §6701 or §6702 and 6302-A are updated to reflect possession limits for divers have both a personal limit and a vessel limit.

Based upon comments received during the rulemaking process, the Department has changed the following items:

- The proposed dates for open harvest within territorial waters surrounding Machias Seal Island and North Rock has been changed to the month of March 2018, from December 2017.
- Zone 2 Drag Calendar: Six days were moved from April and redistributed to December (2 additional days), January (1 additional day), February (1 additional day) and March (2 additional days). Both the price and quality of meat for landed product is generally better in all months prior to April.
- Zone 2 Dive Calendar: Nine days from March (4) and April (5) were redistributed to January (5 additional days) and February (4 additional days) to maintain four-day fishing weeks in lieu of three day fishing weeks during January and February to provide divers with better access to the resource before potential mid-season closures are implemented.

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- Zone 3 Drag Calendar: Six days were moved from April and redistributed to December (5 additional days) and January (1 additional day). This is based on industry feedback that the price and quality of meat for landed product is generally better in months prior to April.
- A technical change to modify the waypoint of the Eastern Casco Bay Target Closure and the Casco Bay Limited Access Area from RN "4" at Drunkers Ledges to RN "2" at Eastern Drunkers Ledge for alignment between legal text and existing charts.
- The proposed removal of a vessel limit for individuals issued a license under either 12 MRS §6701 or §6302-A for scallop diving has been amended to implement both an individual and a vessel limit.

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 25, Lobster and Crab: Technical Corrections and Jonah Crab Claw Exception
Filing number: 2017-179
Effective date: 11/19/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To make technical corrections for the purpose of greater clarity, and to provide an exemption to the possession of crab claws at sea that was permitted by the Atlantic States Marine Fisheries Commission in Addendum II to the Jonah Crab Fishery Management Plan.

Basis statement:

This regulation makes technical corrections to Ch. 25. It moves existing lobster trawl limits that are currently in Ch. 55 into Ch. 25, so that all lobster trawl limits are in the same chapter. It strikes expired language regarding second zone tags in Zones Band C, and F and G, now that a statewide second zone tag system is in place. It clarifies language regarding construction of green crab traps. Finally, it creates an exemption that would allow a lobster and crab fishing license holder to possess up to 5 gallons of crab claws detached at sea.

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this agency.

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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 44, American Shad Limits
Filing number: 2017-180
Effective date: 11/19/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To improve the ability to enforce the existing limitations on fishing for shad by adding "take" to limits on 2 fish per day.

Basis statement:

This regulation makes a correction to Ch. 44, *American Shad*, to specify that an individual may not take or possess more than 2 shad per day. Prior to this change the regulation only prohibited possession, which led to challenges with proper enforcement of the intended limitation.

Fiscal impact of rule:

Enforcement of this rule will not require additional activity in this agency.

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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 55, Gear Restrictions: Technical Corrections
Filing number: 2017-181
Effective date: 11/19/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To make technical corrections for greater clarity of the regulations within Ch. 55.

Basis statement:

This regulation makes technical corrections to Ch. 55. It corrects an inaccurate reference under 55.06. It deletes existing lobster trawl limits that are currently in Ch. 55 so that they are moved into Ch. 25, so that all lobster trawl limits are now located in the same chapter. It reinstates language regarding fishing in the Sheepscot River, Lincoln County, which had been moved into Ch. 32.

Fiscal impact of rule:

Enforcement of this rule will not require additional activity in this agency.

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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171-A
Chapter number/title: Ch. 115, *Vibrio parahaemolyticus* Control Plan
Filing number: 2017-182
Effective date: 11/19/2017
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule incorporates the New Meadows River, north of Bath/State Rd. in Brunswick and West Bath, into the existing *Vibrio parahaemolyticus* (Vp) control plan. The addition of the New Meadows River is intended to reduce the likelihood that American and European oysters (*Crassostrea virginica* and *Ostrea edulis*) and hard clams (*Mercenaria mercenaria*) harvested from the New Meadows River will cause Vp infections in consumers. Independent, biological sampling of hard clams (quahogs) in the New Meadows River has shown positive results for total Vp, so the organism is known to be present in the growing area. The Maine Department of Marine Resources recognizes that the New Meadows River has the environmental characteristics (primarily water and air temperature and salinity) that potentially pose a threat to public health with regard to Vp infections. Research indicates that the most reliable way to minimize potential Vp illnesses is to utilize time and temperature controls.

Based on comments received, the Department has removed the New Meadows River from the 115.04(E) mandatory ambient air temperature records as 115.05(B)(2) requires icing immediately after harvest for the New Meadows River. The Department also added a provision to the dealer plan that requires dealers to indicate how they will maintain and continue cooling of the product that was initiated by the harvester. These modifications are intended to avoid redundancies in the regulation and to ensure proper temperature controls are maintained after harvest.

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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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. 36, Herring Regulations: 36.01, Herring Management Plan
Filing number: 2017-205
Effective date: 12/18/2017
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rule is intended to align State of Maine regulations with those set forth by the ASFMC and the management plan decided upon by the Atlantic Herring Section during the Days Out Conference meeting via telephone on December 15, 2017.

Basis statement:

Atlantic herring may only be landed from Management Area 1A on days that have been designated landing days by the Atlantic States Marine Fisheries Commission (ASMFC). During the Days Out Conference Meeting on December 15, 2017, the Atlantic Herring Section amended the landing days for Area 1A Trimester 3 (October 1 - December 31) based on the most recent landings data available. Designated landing days for all vessels shall be seven consecutive days. All vessels landing herring caught in Management Area 1A in any Maine port are limited to one landing per 24 hour period (6:00 p.m. to 6:00 p.m.). The immediate adoption of this rule is necessary to comply with changes to federal or interstate fisheries management plans. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171 (3)(C).

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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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, 4202-A(1), 4218, 4222-A, 4309
Chapter number/title: **Ch. 191**, Health Maintenance Organizations
Filing number: **2017-098**
Effective date: 7/28/2017
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

Substantial portions of current Ch. 750 are obsolete in light of 2011 PL c. 90 and the federal *Affordable Care Act*. This final adoption of previously provisionally adopted rulemaking repeals the obsolete provisions while incorporating remaining relevant provisions into Ch. 191. Some updating of Ch. 191 is also provided.

Basis statement:

Pursuant to the June 7, 2016, Notice of Rulemaking, Superintendent of Insurance Eric Cioppa held a public hearing on July 7, 2016 at the Department of Professional and Financial Regulation building, 76 Northern Avenue, Gardiner, Maine. The public comment period was held open until Friday July 22, 2016 at 4:30 p.m. The federal *Affordable Care Act* (ACA) and PL 2011 c. 90 rendered substantial portions of rule Ch. 750 obsolete. The purposes of the amendments are to repeal the obsolete standards of rule Ch. 750 and to incorporate the remaining relevant standards into the current rule Ch. 191 in a manner consistent with PL 2011 c. 90 and the ACA. The changes also update rule Ch. 191 as to financial requirements for HMOs.

Fiscal impact of rule:

None.

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Agency name: Department of Professional and Financial Regulation,
Bureau of Insurance

Umbrella-Unit: **02-031**

Statutory authority: 24-A MRS §§ 212, 4202-A(1), 4218, 4222-A, 4309

Chapter number/title: **Ch. 750**, Standardized Health Plans

Filing number: **2017-099**

Effective date: 7/28/2017

Type of rule: Major Substantive

Emergency rule: No

Principal reason or purpose for rule / Basis statement / Fiscal impact of rule:
See filing 2017-098 (Ch. 191) above.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 §§ 16304(6-A), 16605
Chapter number/title: **Ch. 523**, Rule Regarding Short-Form Seed Capital Registrations
Filing number: **2017-093**
Effective date: 7/2/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of the changes to Ch. 523, the administrative rules authorized under 32 MRS §16304(6-A), Maine's crowdfunding law known as Fund-ME, is to provide issuers with more efficient registration and administration processes and to enhance investor protections. The updates repeal and replace the current Offering Circular with a simpler version that would still require the disclosures necessary to inform the Office of Securities and potential investors of the details of an offering or potential offering. The updates also repeal the Fund Impoundment Agreement and allow issuers to assume responsibility for administering impounded funds, resolving the need for an issuer to locate a depository institution willing to perform the task. The current Subscription Agreement remains unchanged. Finally, in an effort to increase investor protections, Fund-ME's minimum offering amount is raised from 30 percent to 50 percent of the total offering amount and new reporting requirements increase the information available to the Administrator and the public during the course of a Fund-ME offering.

Basis statement:

The Securities Administrator adopted changes to Ch. 523 to simplify the process of offering securities under Fund-ME, Maine's crowdfunding law found at 32 MRS §16304(6-A). The changes streamline the Offering Circular, which is the registration document issuers must complete, reduce the requirements associated with the impoundment of funds raised, increase the minimum offering amount from 30% to 50% of the total offering amount, and institute basic reporting requirements.

Fiscal impact of rule:

The changes to Ch. 523 do not alter the filing fees paid by a Fund-ME issuer. The changes are intended to make Fund-ME a more attractive option to raise capital, but increases in Fund-ME filings are expected to be relatively insignificant. Although the potential economic impact of these changes is difficult to predict or quantify, they are intended to improve access to critical capital for small businesses and start-ups that have the potential to impact Maine's economy significantly.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 §§ 16292(2)(D), 16605

Chapter number/title: **Ch. 536**, Securities Manuals

Filing number: **2017-094**

Effective date: 7/2/2017

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The purpose of the amendment to this rule is to remove Standard & Poor's from the list of "nationally recognized securities manuals" available for use with the *Maine Uniform Securities Act's* manual exemption at 32 MRS §16202(2)(D), in response to notice that Standard & Poor's is no longer publishing its securities manual, and to add to the list of nationally recognized securities manuals OTCQX and OTCQB electronic markets.

Basis statement:

The Securities Administrator changes Ch. 536 to remove Standard & Poor's from the list of "nationally recognized securities manuals" for use with §16202(2)(D) of the *Maine Uniform Securities Act* because the manual is no longer in publication, adds OTCQX and OTCQB electronic markets to the list of nationally recognized securities manuals to expand Maine investors, access to information about potential investments, and initiates an annual certification process for securities manuals.

Fiscal impact of rule:

There are no fees associated with this rule, and there is no fiscal impact associated with these changes.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

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

Umbrella-Unit: **02-288**

Statutory authority: 32 MRS §§ 214(1), 220(1)(B), 220(2)(B), 220-B(2) & (3); PL 2015
c. 414 §1 (*amending* 32 MRS §220(1)(B))

Chapter number/title: **Ch. 12**, Licensure of Architects

Filing number: **2017-017**

Effective date: 2/13/2017

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To reflect statutory changes implemented by PL 2015 c. 414 §1, "An Act to Amend Procedures for the Licensing of Architects and Foresters," which amended the practical experience requirement for applicants for architect licenses in Maine. The previous law required these applicants to complete 3 years of practical experience before sitting for the required exam, a requirement that was found to be more stringent than the requirements of most other states and thus discouraged potential applicants from becoming licensed in Maine.

Basis statement:

In 2016, legislation amended the Board's statute regarding the practical experience requirement for applicants for architect licenses in Maine (see PL 2015 c.414 amending 32 MRS §220). The previous law required applicants to complete 3 years of practical experience before sitting for the required exam, a requirement that was found to be more stringent than the requirements of most other states and thus discouraged potential applicants from becoming licensed in Maine.

In this rulemaking, the Board amended Ch. 12 by eliminating language that requires applicants for an architect license in Maine to have completed practical experience of at least 3 years duration.

In addition, the Board replaced all existing references to the "Intern Development Program" with references to the "Architectural Experience Program" to mirror changes to the program made by the National Council of Architectural Registration Boards ("NCARB"). Also, NCARB has updated the guidelines incorporated by reference into the board's rules. Therefore, the Board amended Ch. 12 to reference the most recent edition of those guidelines (June 2016).

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

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

Umbrella-Unit: **02-288**

Statutory authority: 32 MRS §§ 214(1), 220(1)(B), 220(2)(B), 220-B(2) & (3); PL 2015 c. 414 §1 (*amending* 32 MRS §220(1)(B))

Chapter number/title: **Ch. 15**, Application for Licensure

Filing number: **2017-018**

Effective date: 2/13/2017

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To reflect statutory changes implemented by PL 2015 c. 414 §1, "An Act to Amend Procedures for the Licensing of Architects and Foresters," which amended the practical experience requirement for applicants for architect licenses in Maine. The previous law required these applicants to complete 3 years of practical experience before sitting for the required exam, a requirement that was found to be more stringent than the requirements of most other states and thus discouraged potential applicants from becoming licensed in Maine.

Basis statement:

In 2016, legislation amended the Board's statute regarding the practical experience requirement for applicants for architect licenses in Maine (see PL 2015 c.414 amending 32 MRS §220). The previous law required applicants to complete 3 years of practical experience before sitting for the required exam, a requirement that was found to be more stringent than the requirements of most other states and thus discouraged potential applicants from becoming licensed in Maine.

In this rulemaking, the Board amended Ch. 15 by clarifying the requirements for examination under specific pathways to licensure. In sub-section 1 regarding architects, the Board set forth, for the different licensure pathways, the requirements that must be met in order for an applicant to obtain preliminary approval from the Board to register for the exam.

In sub-section 2 regarding landscape architects, the Board eliminated the requirement that an applicant for a landscape architect license first obtain preliminary approval from the Board to register for the exam. With no evidence that registering for the exam without prior Board approval creates any notable problem in the application process, the Board found no need for such preliminary approval.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

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

Umbrella-Unit: **02-288**

Statutory authority: 32 MRS §§ 214(1), 220(1)(B), 220(2)(B), 220-B(2) & (3); PL 2015
c. 414 §1 (*amending* 32 MRS §220(1)(B))

Chapter number/title: **Ch. 19**, Incorporation by Reference

Filing number: **2017-019**

Effective date: 2/13/2017

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To reflect statutory changes implemented by PL 2015 c. 414 §1, "An Act to Amend Procedures for the Licensing of Architects and Foresters," which amended the practical experience requirement for applicants for architect licenses in Maine. The previous law required these applicants to complete 3 years of practical experience before sitting for the required exam, a requirement that was found to be more stringent than the requirements of most other states and thus discouraged potential applicants from becoming licensed in Maine.

Basis statement:

The Board replaced all existing references to the "Intern Development Program" with references to the "Architectural Experience Program" to mirror changes to the program made by the National Council of Architectural Registration Boards ("NCARB"). Also, NCARB has updated the guidelines incorporated by reference into the board's rules. Therefore, the Board amended Ch. 19 to reference the most recent edition of those guidelines (June 2016).

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation,
Electricians' Examining Board
Umbrella-Unit: **02-318**
Statutory authority: 32 MRS §1102-B(2)
Chapter number/title: **Ch. 120**, Electrical Installation Standards
Filing number: **2017-170**
Effective date: 11/6/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule amendment adopts the *2017 National Electrical Code* ("NEC"), National Fire Protection Association ("NFPA") 70 and replaces the 2014 NEC. Changes in the rules adopt higher, safer standards for the construction industry for electricians and addresses public safety. This amendment reduces the risk of electric shock, electrocution and fire to the general public and electricians. This amendment is being adopted in many states as a necessary safety precaution.

The amendments to Ch. 120 allow Maine to conform to the 2017 NEC, NFPA 70.

This rule amendment also adopts revisions to article 210.8(8) of the NEC which requires additional ground fault circuit-interrupter ("GFCI") protection equipment to be installed for a minority of newly constructed and renovated non-residential occupancies. The installation of GFCI protection equipment has proven to reduce the number of injuries and deaths due to electric shock, electrocution and fire.

Basis statement:

The proposed amendments to Ch. 120 adopt the *2017 National Electrical Code* ("NEC"), National Fire Protection Association ("NFPA") 70, and replace the 2014 NEC. The amendments also change various provisions of the 2017 NEC as considered desirable by the Board for application in Maine. The exceptions to the *National Electrical Code* made in this chapter do not adversely affect the public safety.

Fiscal impact of rule:

Within the scope of the entire 2017 NEC, there are changes that both increase and decrease the costs. Adopting article 210.8(B) will increase the cost to install GFCI equipment in newly constructed or newly renovated nonresidential occupancies in the specific locations listed in Article 210.8(B). The average cost to install the GFCI equipment in the specific locations affected would be \$740.00.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation,
Maine Board of Dental Practice
Umbrella-Unit: **02-313**
Statutory authority: 32 MRS §§ 18324, 18379
Chapter number/title: **Ch. 14**, Rules for Use of Sedation and General Anesthesia
Filing number: **2017-128**
Effective date: 8/27/2017
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This effort is a complete repeal and replace of the current rule for the specific purposes as follows:

- Eliminates site permits.
- Eliminates temporary permits.
- Eliminates a board-required inspection prior to issuing permits.
- Eliminates the anesthesia committee.
- Identifies a new permit type to be issued to qualifying dentists such that they can provide itinerant dental sedation and/or general anesthesia services.
- Identifies the dentist's responsibilities when either providing the sedation services or when utilizing a sedation provider (e.g. patient monitoring, equipment, drugs, documentation, certifications, and personnel requirements).
- Requires dentist applicants to self-certify compliance with the sedation rule upon application to the Board.
- Requires 14 day notification to the Board prior to providing services as sedation provider licensed by the Board.
- Permit issued by the Board to transition to a two year permit to align with the dentist licensure cycle.

Fiscal impact of rule:
N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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 §§ 3266, 3269, 3271, 3276-3278, 3280-A, 3300-D;
10 MRS §§ 8003(5)(C), 8003-E, 8011(4)

Chapter number/title: **Ch. 1**, Rules Regarding Physicians

Filing number: **2017-200**

Effective date: 12/23/2017

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To update the requirements and processes for physician licensure and re-licensure, including reducing the time for processing license applications by delegating decision-making to staff; improving public protection by establishing continuing clinical competency requirements and requiring physicians to notify the Board regarding certain events such as criminal arrests or licensure actions taken by other state medical boards; amending the continuing medical education (CME) required for re-licensure to 40 hours of Category I CME by eliminating the existing requirement of an additional 60 hours of Category II CME; and establishing the duties of the Secretary of the Board.

Basis statement:

This is an update to an existing rule regarding physicians. The Board first published the rule for public comment on June 14, 2017. The Board did not receive requests for a public hearing on the proposed rule, and the comment period for the rule closed on July 14, 2017. On August 8, 2017, the Board reviewed the comments received regarding the proposed rule, and voted to make several substantive changes to it. The proposed rule with substantive changes was re-published for public comment on August 30, 2017. The Board did not receive requests for a public hearing on the re-published rule, and the comment period closed on September 29, 2017. The Board received 1 comment regarding the re-published rule.

As originally proposed, the new rule: created an Emeritus License for physicians who have retired from the active practice of medicine and who do not render medical services or prescribe medication; reorganizes the existing rule; created a requirement that all applicants for an active medical license (regardless of type) must have practiced clinical medicine for at least 3 of the 12 months immediately preceding the application; required physician applicants to complete the process of verifying their core credentials through the Federation Credentials Verification Service; eliminated the 60 hours of category 2 continuing medical education currently required to renew a license in active status; established notification requirements for physicians (e.g. change of contact information); established a process by which the Board and/or staff may issue citations to physicians for failing to comply with the notification requirements; and established the duties of the Secretary of the Board. The rule as originally proposed was organized into the following 14 sections:

Section 1 defined terms used throughout the rule.

Section 2 reaffirmed the principle that a physician must hold an active license in Maine in order to practice medicine in Maine.

Section 3 established the requirements for licensure of allopathic physicians in Maine.

Section 4 established the credential verification process for allopathic physicians seeking licensure in Maine.

Section 5 established the license application process.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Section 6 identified the specific types of medical licenses and the prerequisites for each.

Section 7 established the process for converting an inactive status license or administrative license to an active license.

Section 8 established the requirements for renewal, reinstatement and withdrawal of a license or registration.

Section 9 established fees.

Section 10 established the continuing medical education requirements.

Section 11 establishes physician notification requirements.

Section 12 established a process of issuing citations for physicians who violate the notification requirements.

Section 13 established that a violation of the Ch. 1 rule constitutes unprofessional conduct and grounds to discipline a physician's license.

Section 14 established the duties of the Secretary of the Board.

As indicated above, following review of public comments, the Board voted to make several substantive changes to the proposed rule, which included creating an additional section (Section 9 "Continuing Clinical Competency Requirements"). The substantive changes to the proposed rule included:

1. Exempting applicants for and/or registrants with an Interstate Telemedicine Consultation Registration from having to take the Maine Jurisprudence Examination;
2. Exempting certain applicants for licensure from having to complete the FCVS Credentials Verification process prior to the issuance of the license;
3. Removing the requirement that applicants for licensure demonstrate active clinical practice for at least 3 of the 12 months immediately preceding the application, and instead requiring them to demonstrate current clinical competence as required by the rule; and
4. Adding a new Section 9, which reads as follows:

SECTION 9. CONTINUING CLINICAL COMPETENCY REQUIREMENTS

1. Requirements

A. General

If an applicant has not engaged in the active practice of clinical medicine during the 24 months immediately preceding the filing of the application, the Board may determine on a case by case basis in its discretion whether the applicant has adequately demonstrated continued competency to practice clinical medicine.

B. Demonstrating Current Competency

The Board may require an applicant to submit to any competency assessment(s) or evaluation(s) conducted by a program approved by the Board. If the assessment/evaluation identifies gaps or deficiencies, the applicant must complete an educational/remedial program to address them. The Board retains the discretion regarding the method of determining continued competency based upon the applicant's specific circumstances. The methodology may include but is not limited to successful passage of examination(s), completion of additional training, and successful completion of a formal re-entry to practice program approved by the Board.

- C.** If the Board determines that an applicant requires a period of supervised practice and/or the completion of an educational or training program, the Board may at its discretion issue the applicant a probationary license pursuant to a consent agreement or issue an applicant a temporary license in conjunction with a return to practice plan.

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Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

D. All expenses resulting from the assessment and/or any training requirements are the sole responsibility of the applicant and not of the Board.

The foregoing changes resulted in a slight re-organization of the rule into the following 15 sections:

Section 1 defines terms used throughout the rule.

Section 2 reaffirms the principle that a physician must hold an active license in Maine in order to practice medicine in Maine.

Section 3 establishes the requirements for licensure of allopathic physicians in Maine.

Section 4 establishes the credential verification process for allopathic physicians seeking licensure in Maine.

Section 5 establishes the license application process.

Section 6 identifies the specific types of medical licenses and the prerequisites for each.

Section 7 establishes the process for converting an inactive status license or administrative license to an active license.

Section 8 establishes the requirements for renewal, reinstatement and withdrawal of a license or registration.

Section 9 establishes criteria for demonstrating current clinical competence.

Section 10 establishes fees.

Section 11 establishes the continuing medical education requirements.

Section 12 establishes physician notification requirements.

Section 13 establishes a process of issuing citations for physicians who violate the notification requirements.

Section 14 establishes that a violation of the Ch. 1 rule constitutes unprofessional conduct and grounds to discipline a physician's license.

Section 15 establishes the duties of the Secretary of the Board.

Fiscal impact of rule:

Minimal.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

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

Umbrella-Unit: **02-380**

Statutory authority: 32 MRS §§ 2102(2-A), 2153-A(1)

Chapter number/title: **Ch. 8**, Regulations Relating to Advanced Practice Registered Nursing

Filing number: **2017-082**

Effective date: 5/29/2017

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

Clarifies the nurse midwife scope of practice and adds the continuing education requirement for advanced practice registered nurses who prescribe opioids.

Basis statement:

The amendment to Ch. 8, *Regulations Relating to Advanced Practice Registered Nursing*, was undertaken at the request of the Certified Nurse Midwives to further clarify scope of practice for nurse midwives and to update the certification body information. Other sections of the rule were reorganized and the rule adds a provision for continuing education on the prescription of opioid medication, as required by 32 MRS §2210(4). Most substantive changes, however, were tailored to address the requests made by the Certified Nurse Midwives.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Public Safety, **Office of the Commissioner**
Umbrella-Unit: **16-219**
Statutory authority: 32 MRS §7353(2)
Chapter number/title: **Ch. 51**, Polygraph Examiner License Regulation
Filing number: **2017-026**
Effective date: 2/22/2017
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The regulation establishes rules to ensure for the effective administration of the *Maine Polygraph Examiners Act*, 32 MRS c. 86. More specifically, the regulation identifies the polygraph examiner courses approved by the Commissioner of the Department of Public Safety pursuant to 32 MRS §7382(1)(C); establishes the qualifications a person must have to be issued a polygraph examiner intern license; describes the responsibilities of a licensed polygraph examiner who is to serve as a sponsor of a polygraph examiner intern licensee; states the qualifications a person must have to be issued a polygraph examiner license; establishes continuing education requirements; and requires licensed polygraph examiners and intern polygraph examiners to abide by the most up-to-date standards of acceptable professional conduct set forth by the American Polygraph Association, as well as in the rule.

Fiscal impact of rule:

No additional fiscal impact is anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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, 1301, 3203(9), 3209-A, 3210
Chapter number/title: **Ch. 313**, Customer Net Energy Billing
Filing number: **2017-051**
Effective date: 3/29/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopts amendments to the net energy billing rule (Chapter 313). Specifically, the Commission amends the rule to reduce over time the amount of a generation facility's output that can offset, or be netted against, the transmission and distribution (T&D) utility portion of a customer's bill. Netting regarding the supply portion of the customer bill remains unchanged. Under the amended rule, the phase down will apply to facility installations on or after January 1, 2018, and existing net energy billing customers will be grandfathered for a fifteen year period.

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. 2016-00222, issued March 1, 2017; Commission's Order Adopting Final Rule, Docket No. 2011-398, issued on 1/11/12; Commission's Order Adopting Final Rule, Docket No. 2008-410, issued on June 9, 2009; Commission's Statement of Factual and Policy Basis and Order Adopting Rule, Commission Docket No. 98-621, issued on December 10, 1998; and Order Adopting Provisional Rule and Statement of Factual and Policy Basis, Commission Docket No. 2008-410, issued on January 8, 2009. Copies of this Statement and Order have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 101 Second Street, Hallowell Maine 04347, 18 State House Station, Augusta, Maine 04333-0018.

Fiscal impact of rule:

Minimal.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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, 7221; Resolves 2017 ch. 4
Chapter number/title: **Ch. 220**, Removal of Provider of Last Resort Service Obligation
Filing number: **2017-085**
Effective date: 7/6/2017
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission finally adopts Ch. 220, *Removal of Provider of Last Resort Service Obligation*, pursuant to recently enacted legislation, Resolves 2017 ch. 4.

Basis statement / summary:

The factual and policy basis for this rule is set forth in the Commission's Order Provisionally Adopting Rule and Factual and Policy Basis, Docket No. 2016-00235, issued on December 14, 2016. 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 Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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, 704, 1308, 3214
Chapter number/title: **Ch. 314**, Statewide Low-Income Assistance Plan
Filing number: **2017-110**
Effective date: 7/25/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopts amendments to Ch. 314 of the Commission's rules regarding the statewide electricity Low Income Assistance Plan.

Basis statement / summary:

The factual and policy basis for this rule is set forth in the Commission's Order Amending Rule and Factual and Policy Basis, Docket No. 2016-00256, issued on July 14, 2017. 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:

None

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Public Utilities Commission, **Emergency Services
Communications Bureau**
Umbrella-Unit: **65-625**
Statutory authority: 25 MRS §§ 2926, 2927, 2933; 35-A MRS §§ 103(2)(D), 111
Chapter number/title: **Ch. 2**, Requirements for the Enhanced 9-1-1 System Service
Provider and Local Exchange Carriers
Filing number: **2017-122**
Effective date: 8/13/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopts amendments to Ch. 2 of the Emergency Services Communication Bureau's Rules pertaining to requirements for Local Exchange Carriers regarding Enhanced 9-1-1 and the Enhanced 9-1-1 System Service Provider.

Basis statement / summary:

The factual and policy basis for this rule is set forth in the Commission's Order Amending Rule and Factual and Policy Basis, Docket No. 2017-00087, issued on July 27, 2017. 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 Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Secretary of State, **Bureau of Motor Vehicles**
Umbrella-Unit: **29-250**
Statutory authority: 29-A MRS §2382
Chapter number/title: **Ch. 157**, The Administration of Over Dimension and Overweight Permits
Filing number: **2017-002**
Effective date: 1/8/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To make changes to the state police escort requirements for overlength loads to provide more flexibility within the law to address issues with the availability of police escorts for extreme overlength loads.

Basis statement:

The amendment allows the Chief of the Maine State Police, a member of the department holding the rank of Lieutenant or higher or their designee, at their discretion, waive the requirement for a second police escort or require additional police escorts to safely complete a permitted move. The Maine State Police may not reduce the police escort requirements below what is listed in Title 29-A §2382 sub-§9-A.

The amendment clarifies that long term permits are available to four-axle or greater special mobile equipment up to 110,000 pounds. SME exceeding 110,000 pounds would be subject to single trip permits.

The amendment makes minor clarifications to administrative procedures.

Fiscal impact of rule:

Potentially significant time savings to motor carriers subject to police escort requirements.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Secretary of State, **Bureau of Motor Vehicles**
Umbrella-Unit: **29-250**
Statutory authority: 29-A MRS §153
Chapter number/title: **Ch. 7**, Rules for the Suspension of Licenses for Failure to Comply with Child Support Orders
Filing number: **2017-062**
Effective date: 4/19/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The primary purpose of these rules is to update them due to legislative changes.

Basis statement:

19-A MRS §2202 and 29-A MRS §§ 2459 and 2459-A-require the Secretary of State to suspend the driver's permits and licenses of an individual whom the Commissioner of Health and Human Services or the Penobscot Nation certifies is not in compliance with a child support order.

§ 1 recites the primary purpose of the rules.

§ 2 defines significant terms and phrases.

§ 3 requires a person to be in compliance with a child support order to be eligible for a driver's license.

§ 4 directs the Secretary of State to suspend an individual's driver's license upon receiving certification in writing from the Department of Health and Human Services or the Penobscot Nation of non-compliance with a child support order.

§ 5 describes when and how the Secretary of State may reinstate the driver's license for non-compliance with a child support order.

§ 6 describes the circumstances under which the Secretary of State may issue a temporary license relative to reinstatement of a driver's license for non-compliance with a child support order.

Fiscal impact of rule:

This rule is not expected to cause adverse economic impacts for municipalities, counties or small businesses.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Secretary of State, **Bureau of Motor Vehicles**
Umbrella-Unit: **29-250**
Statutory authority: 29-A MRS §153
Chapter number/title: **Ch. 11**, Rules Governing Motorcycle Rider Education
Filing number: **2017-089**
Effective date: 6/13/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The primary purpose of this rule is to: (1) establish minimum qualifications, licensing standards and procedures for the licensure of motorcycle rider education schools and instructors, and (2) to implement a standardized motorcycle rider education curriculum based on best practices. These rules repeal existing rules governing motorcycle rider education in accordance with PL 1995 ch. 505 §19.

Basis statement:

The enactment of Public Law 1993 ch. 11 sub-ch. III section 1352, established regulatory responsibility for driver education to the Department of the Secretary of State, Bureau of Motor Vehicles, effective July 14, 1994. That law requires the Secretary of State to:

- 1) Approve motorcycle education programs and examinations.
- 2) Conduct certification courses.
- 3) Establish standards and requirements for certification, including a provision to demonstrate proficiency in operating a motorcycle.
- 4) Assign qualified instructors if there is need for an instructor in a certain geographical area.
- 5) Waive required written examination on receipt of a course completion certificate.
- 6) Suspend, revoke or deny certification of a school or instructor for just cause.

The current rules were developed by the Secretary of State which outlined requirements for standardized curricula, instructor training, licensing, continuing education and prohibited conduct requirements. These new rules will repeal and replace all previous motorcycle rider education rules.

A public hearing was held on March 7, 2017 to receive comments on these rules.

A description of the rules follows.

Section 1 recites the primary purpose of these rules and provides for the repeal of existing rules governing motorcycle rider education except as discussed below.

Section 2 defines significant terms and phrases.

Section 3 establishes requirements for the issuance of a motorcycle rider education instructor license as required by 29-A MRSA §1352(3). Subsection 1 outlines the general requirements that all initial license applicants must satisfy. Except for the requirements listed in subsection 2 which apply only to initial license applicants, licensed instructors must, at all times, comply with the requirements established in subsection 2. Subsection 3 describes expiration and renewal requirements for a motorcycle rider education instructor license. Subsection 4 defines how an instructor must conduct a course.

Section 4 Establishes requirements for the issuance of a motorcycle rider education school license. Subsection 1 explains facility, range and equipment requirements.

Section 5 establishes motorcycle rider education program requirements. Subsection 1 requires an instructor to comply with curriculum requirements and participant requirements Paragraph A defines curriculum delivery time requirements. Paragraph B establishes student eligibility requirements. Paragraph C outlines recordkeeping requirements. Paragraph D

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establishes course completion certificate standards. Paragraph E describes the process to obtain a duplicate course completion certificate. Paragraph F provides the Secretary of State the authority to monitor all aspects of how a motorcycle rider education course is being conducted. Paragraph G describes refund and cancellation policy requirements. Paragraph H sets guidelines on harassment prevention. Paragraph I sets maximum student to instructor ratios.

Section 6 outlines the procedure for filing written complaints against motorcycle rider education schools and instructors.

Section 7 describes the Secretary of State's authority to deny, suspend or revoke motorcycle rider education licenses.

Section 8 outlines prohibited conduct.

Fiscal impact of rule:

N/A