

MAINE STATE LEGISLATURE

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STATE OF MAINE

OFFICE
OF THE
SECRETARY OF STATE

MATTHEW DUNLAP
SECRETARY OF STATE

RECEIVED JAN 31 2019

February 1, 2019

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 2018.

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 2018, there were 278 rule adoption filings. Following is a list of the agencies with the number of adopted rule filings:

Agency	Total Adopted	Routine Technical	Major Substantive	Emergency	Non Emergency
Department of Agriculture, Conservation and Forestry	30	30	0	12	18
Department of Professional and Financial Regulation	24	24	0	0	24
Department of Education	11	8	3	0	11
Department of Environmental Protection	15	13	2	0	15
Department of Inland Fisheries and Wildlife	12	12	0	2	10
Department of Health and Human Services	59	52	7	22	37
Department of Labor	7	7	0	0	7
Department of Marine Resources	42	41	1	15	27
Department of Public Safety	11	10	1	0	11
Department of Transportation	2	2	0	0	2
Department of Administrative and Financial Services	4	4	0	0	4
Secretary of State	11	11	0	2	9
Public Utilities Commission	9	8	1	0	9

Agency	Total Adopted	Routine Technical	Major Substantive	Emergency	Non Emergency
Independent agencies:					
Workers' Compensation Commission	16	16	0	0	16
Board of Licensure of Water System Operators	1	1	0	0	1
Maine Health Data Organization	1	1	0	0	1
Maine Arts Commission	2	2	0	0	2
Kim Wallace Adaptive Equipment Loan Program Fund Board	1	1	0	0	1
Commission on Governmental Ethics and Election Practices	2	1	1	0	2
Maine Public Employees Retirement System	2	2	0	0	2
Finance Authority of Maine	2	2	0	0	2
Motor Carrier Review Board	3	3	0	0	3
Efficiency Maine Trust	2	2	0	0	2
Maine State Housing Authority	8	8	0	0	8
Maine Rural Development Authority	1	1	0	0	1
Totals for 2018	278	262	16	53	225

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 1/1/2018 to 12/31/2018
Prepared by the Secretary of State

Log #	Umbrella-unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2018-041	01-001	Department of Agriculture, Conservation and Forestry	Ch. 61	Maine Milk Pool Cost of Administration	7 MRS §3154	Routine Technical	No	4/12/2018
2018-117	01-001	Department of Agriculture, Conservation and Forestry	Ch. 565	Nutrient Management Rules	7 MRS ch. 747	Routine Technical	No	7/3/2018
2018-177	01-001	Department of Agriculture, Conservation and Forestry	Ch. 252	Rules Governing Certification of Seed Potatoes in the State of Maine	7 MRS ch. 401 §§ 2101-2105; 7 MRS ch. 1 §12; 7 MRS. ch. 411 §2352	Routine Technical	No	9/2/2018
2018-213	01-001	Department of Agriculture, Conservation and Forestry	Ch. 31	Rules for Operation of Potato Marketing Improvement Fund	2017 PL ch. 6; 7 MRS ch. 103 Article 1-A; 10 MRS §1023-N	Routine Technical	No	10/1/2018
2018-013	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #02-18	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	1/28/2018
2018-032	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #03-18	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	2/27/2018
2018-047	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #04-18	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	4/1/2018
2018-068	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #05-18	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	4/29/2018

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2018-090	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #06-18	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	6/3/2018
2018-114	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #07-18	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	7/1/2018
2018-144	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #08-18	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	7/29/2018
2018-176	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #09-18	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	9/2/2018
2018-207	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #10-18	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	9/30/2018
2018-229	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #11-18	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	10/28/2018
2018-259	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #12-18	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	12/2/2018
2018-275	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #01-19	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	12/30/2018

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Log #	Umbrella-unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2018-024	01-017	Department of Agriculture, Conservation and Forestry, Maine State Harness Racing Commission	Ch. 1	Administration	8 MRS §§ 263-A, 263-C, 264, 267-A, 268, 272-B, 272-C, 279, 279-A, 279-E, 281, 298	Routine Technical	No	2/21/2018
2018-025	01-017	Department of Agriculture, Conservation and Forestry, Maine State Harness Racing Commission	Ch. 3	Officials and Race Track Personnel	8 MRS §§ 263-A, 263-C, 264, 267-A, 268, 272-B, 272-C, 279, 279-A, 279-E, 281, 298	Routine Technical	No	2/21/2018
2018-026	01-017	Department of Agriculture, Conservation and Forestry, Maine State Harness Racing Commission	Ch. 13	Pari-Mutuel: Section 47, Trifecta	8 MRS §§ 263-A, 263-C, 264, 267-A, 268, 272-B, 272-C, 279, 279-A, 279-E, 281, 298	Routine Technical	No	2/21/2018
2018-027	01-017	Department of Agriculture, Conservation and Forestry, Maine State Harness Racing Commission	Ch. 15	Off-Track Betting	8 MRS §§ 263-A, 263-C, 264, 267-A, 268, 272-B, 272-C, 279, 279-A, 279-E, 281, 298	Routine Technical	No	2/21/2018

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Log #	Umbrella-unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2018-273	01-670	Department of Agriculture, Conservation and Forestry, Bureau of Parks and Lands	Ch. 57	Logging and Forestry Education Grant Program	12 MRS §1859; PL 2017 ch. 289 §9	Routine Technical	No	1/2/2019
2018-030	01-672	Department of Agriculture, Conservation and Forestry, Land Use Planning Commission	Ch. 10	Land Use Districts and Standards (Grid-scale Solar Energy Systems)	12 MRS §§ 685-A(3), 685-A(7-A), 685-C	Routine Technical	No	3/5/2017
2018-031	01-672	Department of Agriculture, Conservation and Forestry, Land Use Planning Commission	Ch. 10	Land Use Districts and Standards (Rural Business Development Subdistrict in Washington County)	12 MRS §§ 685-A(3), 685-A(7-A), 685-C(5)	Routine Technical	No	3/5/2017
2018-067	01-672	Department of Agriculture, Conservation and Forestry, Land Use Planning Commission	Ch. 10	Land Use Guidance Maps (Amended Zoning Maps): Zoning Petition: ZP 770 T1 R11 WELS. — Piscataquis County) (petitioner Maine Bureau of Parks and Lands)	12 MRS §§ 685-A(7-A), 689	Routine Technical	No	4/24/2018
2018-120	01-672	Department of Agriculture, Conservation and Forestry, Land Use Planning Commission	Ch. 10	Land Use Guidance Maps (Amended Zoning Maps): Zoning Petition: ZP 769 (Coplin Plt.. — Franklin County) (petitioner Russell Stewart)	12 MRS §§ 685-A(7-A), 689	Routine Technical	No	7/3/2018

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Log #	Umbrella-unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2018-168	01-672	Department of Agriculture, Conservation and Forestry, Land Use Planning Commission	Ch. 10	Land Use Guidance Maps (Amended Zoning Maps): Zoning Petitions: ZP 771 (Moosehead Junction Twp. — Piscataquis County) (petitioner Maine Bureau of Parks and Lands, James Vogel) ZP 772 (T16 MD BPP — Hancock County) (petitioner Next Phase Energy Services, LLC, Elliott Jordan and Son, Inc.)	12 MRS §§ 685-A(7-A), 689	Routine Technical	No	8/13/2018
2018-171	01-672	Department of Agriculture, Conservation and Forestry, Maine Land Use Planning Commission	Ch. 13	Metallic Mineral Exploration, and Mining Certifications	38 MRS §490-NN(2); 12 MRS §§ 685-A(3), C(5)(A); PL 2017 ch. 142 §12	Routine Technical	No	9/20/2018
2018-172	01-672	Department of Agriculture, Conservation and Forestry, Maine Land Use Planning Commission	Ch. 10	Land Use Districts and Standards	38 MRS §490-NN(2); 12 MRS §§ 685-A(3), C(5)(A); PL 2017 ch. 142 §12	Routine Technical	No	9/20/2018

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Log #	Umbrella-unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2018-173	01-672	Department of Agriculture, Conservation and Forestry, Maine Land Use Planning Commission	Ch. 10	Land Use Districts and Standards	12 MRS §§ 685-A(3), (7-A), 685-C(5)(A); 38 MRS §480-E-1; PL 2017 ch. 89 and ch. 236	Routine Technical	No	9/20/2018
2018-262	01-672	Department of Agriculture, Conservation and Forestry, Land Use Planning Commission	Ch. 10	Land Use Guidance Maps (Amended Zoning Maps): Zoning Petitions: ZP 710A (T1 R8 WELS — Penobscot County) (Hammond Ridge Development Co., LLC) ZP 773 (Albany Twp. — Oxford County) (petitioner Timothy and Anita Remington)	12 MRS §§ 685-A(7-A), 689	Routine Technical	No	11/14/2018

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Log #	Umbrella-unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2018-274	02-031	Department of Professional and Financial Regulation, Bureau of Insurance	Ch. 275	Medicare Supplement Insurance	24 MRS §2317-B; 24-A MRS §§ 212, 2413(1)(F), 4207(9), 5002-A, 5002-B, 5005, 5010-A, 5011; Resolve 2013 ch. 19	Routine Technical	No	1/26/2018

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Log #	Umbrella-unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2018-107	02-032	Department of Professional and Financial Regulation, Office of Securities	Ch. 527	Federal Regulation Crowdfunding Notice Filing and Fees	32 MRS §§ 16302, 16605	Routine Technical	No	6/16/2018

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Log #	Umbrella-unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2018-169	02-298	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Real Estate Appraisers	Ch. 220	Educational Course Requirements	32 MRS §§ 14012, 14027	Routine Technical	No	8/29/2018
2018-170	02-298	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Real Estate Appraisers	Ch. 240	Standards of Professional Practice	32 MRS §§ 14012, 14027	Routine Technical	No	8/29/2018

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Log #	Umbrella-unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2018-237	02-313	Maine Board of Dental Practice (affiliated with the Department of Professional and Financial Regulation)	Ch. 13	Continuing Education	32 MRS §§ 18308(4), 18324, 18350, 18351	Routine Technical	No	11/12/2018

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2018-189	02-360	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Licensure for Professional Land Surveyors	Ch. 10	Definitions	12 MRS ch. 141	Routine Technical	No	9/19/2018
2018-190	02-360	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Licensure for Professional Land Surveyors	Ch. 20	General Information	12 MRS ch. 141	Routine Technical	No	9/19/2018
2018-191	02-360	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Licensure for Professional Land Surveyors	Ch. 40	Qualifications for Licensure as Land Surveyors-in-Training	12 MRS ch. 141	Routine Technical	No	9/19/2018
2018-192	02-360	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Licensure for Professional Land Surveyors	Ch. 50	Qualifications for Licensure as Professional Land Surveyors	12 MRS ch. 141	Routine Technical	No	9/19/2018
2018-193	02-360	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Licensure for Professional Land Surveyors	Ch. 60	Licensure by Comity	12 MRS ch. 141	Routine Technical	No	9/19/2018

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Log #	Umbrella-unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2018-194	02-360	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Licensure for Professional Land Surveyors	Ch. 70	Continuing Education	12 MRS ch. 141	Routine Technical	No	9/19/2018
2018-195	02-360	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Licensure for Professional Land Surveyors	Ch. 90	Standards of Practice	12 MRS ch. 141	Routine Technical	No	9/19/2018
2018-196	02-360	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Licensure for Professional Land Surveyors	Ch. 100	Enforcement and Disciplinary Procedures	12 MRS ch. 141	Routine Technical	No	9/19/2018

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2018-043	02-373	Department of Professional and Financial Regulation, Board of Licensure in Medicine	Ch. 21	Use of Controlled Substances for Treatment of Pain	32 MRS §§ 3269(3),(7), 3300-F	Routine Technical	No	3/24/2018

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Log #	Umbrella-unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2018-044	02-380	Department of Professional and Financial Regulation, State Board of Nursing	Ch. 21	Use of Controlled Substances for Treatment of Pain	32 MRS §§ 2102(2-A), 2153-A(1), 2210	Routine Technical	No	3/24/2018
2018-228	02-380	Department of Professional and Financial Regulation, State Board of Nursing	Ch. 3	General Requirements Relating to Licensure	32 MRS §2153-A	Routine Technical	No	10/19/2018

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Log #	Umbrella-unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2018-045	02-383	Department of Professional and Financial Regulation, Board of Osteopathic Licensure	Ch. 21	Use of Controlled Substances for Treatment of Pain	32 MRS §§ 2562, 2600-C	Routine Technical	No	3/24/2018

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Log #	Umbrella-unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2018-118	02-384	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Alcohol and Drug Counselors	Ch. 7	Continuing Professional Education for Alcohol and Drug Counselors, Alcohol and Drug Counseling Aides and Certified Clinical Supervisors	10 MRS §8003(2-A)(E); 32 MRS §6212; PL 2017 ch.265	Routine Technical	No	7/7/2018

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Log #	Umbrella-unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2018-016	02-385	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Manufactured Housing Board	Ch. 110	State Certification of Modular Homes	10 MRS §§ 9001, 9005-A, 9006, 9021, 9041, 9042, 9061, 9063, 9064	Routine Technical	No	2/5/2018
2018-017	02-385	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Manufactured Housing Board	Ch. 380	Licensing – Adoption of Codes and Standards	10 MRS §§ 9001, 9005-A, 9006, 9021, 9041, 9042, 9061, 9063, 9064	Routine Technical	No	2/5/2018
2018-018	02-385	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Manufactured Housing Board	Ch. 890	Manufactured Home Installation Standards	10 MRS §§ 9001, 9005-A, 9006, 9021, 9041, 9042, 9061, 9063, 9064	Routine Technical	No	2/5/2018
2018-019	02-385	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Manufactured Housing Board	Ch. 900	Used Manufactured Home Installation Standards	10 MRS §§ 9001, 9005-A, 9006, 9021, 9041, 9042, 9061, 9063, 9064	Routine Technical	No	2/5/2018

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Log #	Umbrella-unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2018-081	02-392	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine Board of Pharmacy	Ch. 40	Authorization, Training and Procedures for Prescribing and Dispensing Naloxone Hydrochloride	32 MRS §§ 13720, 13815	Routine Technical	No	5/23/2018

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Log #	Umbrella-unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2018-112	02-396	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Licensure of Podiatric Medicine	Ch. 21	Use of Controlled Substances for Treatment of Pain	32 MRS §§ 3605-B, 3657	Routine Technical	No	6/30/2018

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Log #	Umbrella-unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2018-036	05-071	Department of Education	Ch. 118	Purposes, Standards and Procedures for Educational Personnel Support Systems	20-A MRS §§ 13011, 13015	Routine Technical	No	7/1/2018
2018-046	05-071	Department of Education	Ch. 82	School Bus Driver Fitness Determination	20-A MRS §§ 2311, 5401(17)	Routine Technical	No	3/25/2018
2018-054	05-071	Department of Education	Ch. 45	Rule for Vision and Hearing Screening in Maine Schools	20-A MRS §6451	Routine Technical	No	4/10/2018
2018-056	05-071	Department of Education	Ch. 51	Child Nutrition Programs in Public Schools and Institutions	20-A MRS §6602(5)	Routine Technical	No	4/10/2018
2018-057	05-071	Department of Education	Ch. 129	Rights and Responsibilities of Educators and Pupils	none	Routine Technical	No	4/10/2018
2018-058	05-071	Department of Education	Ch. 250	School Approval for Nontraditional Limited Purpose Schools	20-A MRS §2907	Routine Technical	No	4/10/2018
2018-060	05-071	Department of Education	Ch. 126	Immunization Requirements for School Children	20-A MRS §§ 6352-6359	Major Substantive	No	5/10/2018
2018-074	05-071	Department of Education	Ch. 14	Education of Homeless Students	20-A MRS §§ 261, 5205	Routine Technical	No	5/9/2018
2018-075	05-071	Department of Education	Ch. 180	Performance Evaluation and Professional Growth Systems	20-A MRS §13706	Major Substantive	No	6/3/2018
2018-108	05-071	Department of Education	Ch. 115	The Credentialing of Education Personnel, Part I	20-A MRS §13011(1)	Major Substantive	No	7/14/2018
2018-148	05-071	Department of Education	Ch. 13	Qualifying Examinations for Teachers, Educational Specialists, and Administrators	20-A MRS §13038	Routine Technical	No	8/20/2018

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Log #	Umbrella-unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2018-064	06-096	Department of Environmental Protection	Ch. 502	Direct Watersheds of Lakes Most at Risk from Development, Urban Impaired Streams	38 MRS §§ 341-D, 420-D, 484	Major Substantive	No	5/23/2018
2018-069	06-096	Department of Environmental Protection	Ch. 382	Wind Energy Act Standards	PL 2007 ch. 661 §E-2	Routine Technical	No	4/30/2018
2018-092	06-096	Department of Environmental Protection	Ch. 2	Rules Concerning the Processing of Applications and Other Administrative Matters	5 MRS §8051; 38 MRS §341-H	Routine Technical	No	6/9/2018
2018-098	06-096	Department of Environmental Protection	Ch. 850	Identification of Hazardous Wastes	38 MRS §§ 1301 <i>et seq.</i> , 1319-O, 1319-R	Routine Technical	No	6/11/2018
2018-099	06-096	Department of Environmental Protection	Ch. 851	Standars for Generators of Hazardous Waste	38 MRS §§ 1301 <i>et seq.</i> , 1319-O, 1319-R	Routine Technical	No	6/11/2018
2018-100	06-096	Department of Environmental Protection	Ch. 852	Land Disposal Restrictions	38 MRS §§ 1301 <i>et seq.</i> , 1319-O, 1319-R	Routine Technical	No	6/11/2018
2018-101	06-096	Department of Environmental Protection	Ch. 858	Universal Waste Rules	38 MRS §§ 1301 <i>et seq.</i> , 1319-O, 1319-R	Routine Technical	No	6/11/2018
2018-102	06-096	Department of Environmental Protection	Ch. 418	Solid Waste Management Rules: Beneficial Use of Solid Wastes	38 MRS §§ 341-D(1-B), 1304 (1,1-B & 13)	Major Substantive	No	7/8/2018

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Log #	Umbrella-unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2018-113	06-096	Department of Environmental Protection	Ch. 410	Solid Waste Management Rules: Composting Facilities	38 MRS §§ 341-H, 1304(1, 1-B)	Routine Technical	No	6/30/2018
2018-149	06-096	Department of Environmental Protection	Ch. 415	Reasonable Costs for Handling, Transportation, and Recycling of Electronic Wastes	38 MRS §§ 341-D(1-C), 1610(5)(D)(1)	Routine Technical	No	8/20/2018
2018-150	06-096	Department of Environmental Protection	Ch. 166	Industrial Cleaning Solvents	38 MRS §585-A	Routine Technical	No	8/22/2018
2018-205	06-096	Department of Environmental Protection	Ch. 691	Rules for Underground Oil Storage Facilities	38 MRS §§ 561-570-M	Routine Technical	No	9/26/2018
2018-206	06-096	Department of Environmental Protection	Ch. 693	Operator Training for Underground Oil, Hazardous Substance, and Field Constructed Underground Oil Storage Facilities, and Airport Hydrant Systems	38 MRS §§ 561-570-M	Routine Technical	No	9/26/2018
2018-235	06-096	Department of Environmental Protection	Ch. 310	Wetlands and Waterbodies Protection	38 MRS §341-H	Routine Technical	No	11/11/2018
2018-266	06-096	Department of Environmental Protection	Ch. 263	Maine Comprehensive and Limited Environmental Laboratory Accreditation Rule	22 MRS §567	Routine Technical	No	12/19/2018

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2018-003	09-137	Department of Inland Fisheries and Wildlife	Ch. 7	Rules for Importation, Possession, Propagation, Rehabilitation and Exhibition of Wildlife	12 MRS §§ 10104, 12152	Routine Technical	No	1/8/2018
2018-070	09-137	Department of Inland Fisheries and Wildlife	Ch. 4	Hunting and Trapping: 4.02, Migratory Birds	12 MRS §§ 10104, 11855	Routine Technical	No	5/5/2018
2018-088	09-137	Department of Inland Fisheries and Wildlife	Ch. 4	Hunting and Trapping: 4.05, Moose Hunting Season	12 MRS §§ 11551, 11552	Routine Technical	No	5/29/2018
2018-178	09-137	Department of Inland Fisheries and Wildlife	Ch. 4	Hunting and Trapping: 4.03, Deer Hunting Seasons; 4.04, Bear Hunting/Trapping Season; 4.06, Wild Turkey	12 MRS §§ 11152, 11251, 11401, 11701	Routine Technical	No	9/2/2018
2018-179	09-137	Department of Inland Fisheries and Wildlife	Ch. 4	Hunting and Trapping: 4.04, Bear Hunting/Trapping Season – Bear Traps	12 MRS §§ 10104, 12260	Routine Technical	Yes	8/29/2018
2018-180	09-137	Department of Inland Fisheries and Wildlife	Ch. 4	Hunting and Trapping: 4.02 Migratory Birds: H, Special Falconry Season; 4.05, Moose Hunting Season: K. Open and Closed Season	12 MRS §§ 10104, 11855, 11551	Routine Technical	No	9/3/2018
2018-200	09-137	Department of Inland Fisheries and Wildlife	Ch. 1	Open Water and Ice Fishing Regulations (Striped Bass Length and Bag Limits)	12 MRS §10104	Routine Technical	No	9/25/2018
2018-201	09-137	Department of Inland Fisheries and Wildlife	Ch. 1	Open Water and Ice Fishing Regulations	12 MRS §§ 10104, 12452, 12461	Routine Technical	No	1/1/2019

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2018-202	09-137	Department of Inland Fisheries and Wildlife	Ch. 1-A	State Heritage Fish Waters	12 MRS §§ 10104, 12452, 12461	Routine Technical	No	1/1/2019
2018-203	09-137	Department of Inland Fisheries and Wildlife	Ch. 4	Hunting and Trapping: 4.01, Upland Game and Furbearing Animals; G., Open Seasons for the Hunting and Trapping of Furbearing Animals; 1., Beaver Trapping; 1.b. Open and Closed Areas for Beaver Trapping; 3-A. Fisher Limit, Restrictions and Season Exceptions	12 MRS §10104	Routine Technical	No	9/25/2018
2018-204	09-137	Department of Inland Fisheries and Wildlife	Ch. 4	Hunting and Trapping: 4.03, Deer Hunting Seasons (Open and Closed Season – Eastport)	12 MRS §11402	Routine Technical	No	9/25/2018
2018-227	09-137	Department of Inland Fisheries and Wildlife	Ch. 4	Hunting and Trapping: 4.09, Transportation of Certain Wildlife and Fish into Maine from Outside of the State	12 MRS §§ 10104, 10105	Routine Technical	Yes	10/11/2018

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2018-105	10-144	Department of Health and Human Services, Maine Center for Disease Control and Prevention	Ch. 33	Family Child Care Provider Licensing Rule <i>(New; replaces 10-148 Ch. 33, Rules for the Certification of Family Childcare Providers, filing 2018-104)</i>	22 MRS §§ 7702-B(111), 7703(6), 7704, 7707(3), 7802(7), 8301(8), 8302-A(2), 8303-A(I)	Major Substantive	No	7/5/2018
2018-214	10-144	Department of Health and Human Services, Maine Center for Disease Control and Prevention	Ch. 36	Children's Residential Care Facilities Licensing Rule	22 MRS §8102	Routine Technical	No	10/10/2018
2018-224	10-144	Department of Health and Human Services, Division of Licensing and Certification	Ch. 60	Maine Background Check Center Rule	22 MRS §9065(1)	Routine Technical	No	10/17/2018
2018-004	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, 3173, PL 2017, ch. 284, §MMMMMM-1	Routine Technical	No	1/10/2018

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2018-015	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 (128th Legis. 2017) part MMMMMMM-1	Routine Technical	No	1/30/2018
2018-021	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 (128th Legis. 2017), part MMMMMMM-1	Routine Technical	No	2/12/2018
2018-033	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. VII Section 5, Estate Recovery	22 MRS §§ 42, 3173	Routine Technical	No	3/7/2018
2018-055	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. I Section 4, Telehealth Services	22 MRS §§ 42, 3173; PL 2017 ch. 307	Routine Technical	No	4/9/2018

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2018-061	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch.II & III Section 92, Behavioral Health Services	22 MRS §§ 42, 3173; PL 2012 ch. 542 §B-5; PL 111-148	Routine Technical	No	4/21/2018
2018-062	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; PL 2017 ch. 284	Major Substantive	No	5/13/2018
2018-071	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, 3173; PL 2017 ch. 284 §MMMMMM-2	Major Substantive	No	6/1/2018
2018-106	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch.II Section 60, Medical Supplies and Durable Medical Equipment	22 MRS §§ 42, 3173; 42 CFR §440.70; 42 USC §1396b	Routine Technical	No	6/13/2018
2018-121	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch.III Section 45, Hospital Services	22 MRS §§ 42, 3173; 5 MRS §8054; Resolves 2017 ch. 41	Routine Technical	Yes	7/10/2018

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2018-183	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. 459 part A.	Routine Technical	Yes	9/11/2018
2018-184	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. 459 part A.	Routine Technical	Yes	9/12/2018
2018-185	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. I Section 1, General Administrative Policies and Procedures	22 MRS §§ 42, 3173	Routine Technical	No	9/17/2018
2018-212	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. III Section 45, Principles of Reimbursement for Hospital Services	22 MRS §§ 42, 3173; 5 MRS §8054; Resolves 2017 ch. 41	Routine Technical	No	10/1/2018
2018-220	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II & III Section 107, Psychiatric Residential Treatment Facilities Services	22 MRS §§ 42, 3173; 5 MRS §8054	Routine Technical	No	10/3/2018

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2018-225	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II Section 19, Home and Community Benefits for the Elderly and Adults with Disabilities	22 MRS §§ 42, 3173; 5 MRS §8054; PL 2017 ch. 459	Routine Technical	Yes	10/9/2018
2018-226	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, 3173; 5 MRS §8054; PL 2017 ch. 459 part B	Routine Technical	Yes	10/9/2018
2018-231	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. III Section 23, Developmental and Behavioral Evaluation Clinic Services	22 MRS §§ 42, 3173; 5 MRS §8054; PL 2017 ch. 460 Part D	Routine Technical	Yes	11/6/2018
2018-232	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II & III Section 2, Adult Family Care Services	22 MRS §§ 42, 3173; 5 MRS §8054; PL 2017 ch. 460	Routine Technical	Yes	11/6/2018
2018-238	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. 459 parts A, B	Routine Technical	Yes	11/7/2018

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2018-241	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. III Section 28, Allowances for Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations	22 MRS §§ 42(8), 3173; 5 MRS §§ 8054, 8073; PL 2017 ch. 460 parts C, D	Major Substantive	Yes	11/8/2018
2018-245	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. 459 Part B	Routine Technical	Yes	11/13/2018
2018-246	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II & III Section 65, Behavioral Health Services	22 MRS §§ 42(8); 3173; 5 MRS §8054; PL 2017 ch. 460 Parts D, E, I	Routine Technical	Yes	11/13/2018
2018-247	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; 3173; 5 MRS §8054; PL 2017 ch. 459 Part B	Routine Technical	Yes	11/13/2018
2018-248	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. III Section 13, Allowances for Targeted Case Management	22 MRS §§ 42(8), 3173, 5 MRS §8054; PL 2017 ch. 460 Part D	Routine Technical	Yes	11/16/2018

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2018-249	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. III Section 17, Allowances for Community Support Services	22 MRS §§ 42(8), 3173, 5 MRS §8054; PL 2017 ch. 460 Part D	Routine Technical	Yes	11/16/2018
2018-250	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II & III Section 26, Day Health Services	22 MRS §§ 42, 3173, 5 MRS §8054; PL 2017 ch. 460 Part B-2	Routine Technical	Yes	11/19/2018
2018-251	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. III Section 97, Private Non-Medical Institution Services (PNMI)	22 MRS §§ 42(8), 3173, 7863; 5 MRS §§ 8054, 8072; PL 2017 ch. 304, 460	Major Substantive	Yes	11/20/2018
2018-260	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, 3104; 5 MRS §8054; PL 2017 ch. 460 part G	Routine Technical	Yes	11/27/2018

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2018-264	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. III Section 67, Principles of Reimbursement for Nursing Facilities	22 MRS §§ 42(8), 3173; 22 MRS §1708(3); 5 MRS §8054; PL 2017 ch. 460 sec. B-1, B-3; PL 2013 ch. 594 sec. 3	Routine Technical	Yes	12/4/2018
2018-252	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 115	Principles of Reimbursement for Residential Care Facilities – Room and Board Costs	22 MRS §42(8), §3173; PL 2017 ch. 304; PL 2017 ch. 460	Routine Technical	Yes	11/20/2018
2018-001	10-144	Department of Health and Human Services, Maine Center for Disease Control and Prevention	Ch. 130	Epinephrine Auto-Injector Training and Certification Rule	22 MRS ch. 423	Routine Technical	No	1/10/2018
2018-223	10-144	Department of Health and Human Services, Maine Center for Disease Control and Prevention	Ch. 201	Administration and Enforcement of Establishments Regulated by the Health Inspection Program	22 MRS §§ 2496, 1551-A; 32 MRS §§ 1242, 4251, 4313, 4326	Routine Technical	No	10/10/2018
2018-059	10-144	Department of Health and Human Services, Maine Center for Disease Control and Prevention	Ch. 261	Immunization Requirements for School Children	20-A MRS §§ 6352-6359	Major Substantive	No	5/10/2018

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2018-265	10-144	Department of Health and Human Services	Ch. 263	Maine Comprehensive and Limited Environmental Laboratory Accreditation Rule	22 MRS §567	Routine Technical	No	12/19/2018
2018-236	10-144	Department of Health and Human Services, Maine Center for Disease Control and Prevention	Ch. 283	Newborn Bloodspot Screening Rule	12 MRS §§ 1532, 1533	Routine Technical	No	11/14/2018
2018-221	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 301	Food Supplement Program, FS Rule #205E: COLA SUA FFY 2019: FS-000-1, Basis of Issuance; FS 555-5, Income and Deductions	22 MRS §§ 42, 3104; 5 MRS §8054; 7 CFR §273.9(d)	Routine Technical	Yes	10/1/2018
2018-242	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 301	Food Supplement Program, FS Rule #204A: FS-777, Administrative Procedures (EBT Card Replacement)	22 MRS §§ 42(1), 3104	Routine Technical	No	11/14/2018
2018-263	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 301	Food Supplement Program, FS Rule #205A (COLA SUA FFY 2019): FS-000-1, Basis of Issuance; FS 555-5, Income and Deductions	22 MRS §§ 42, 3104; 5 MRS §8054; 7 CFR §273.9(d)	Routine Technical	No	12/12/2018
2018-187	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 323	Maine General Assistance Manual, Rule #20A	22 MRS §42(1)	Routine Technical	No	9/18/2018
2018-222	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 331	Maine Public Assistance Manual, TANF #111E: Annual Increase to the TANF Maximum Benefit	22 MRS §§ 42(1), 3769-C	Routine Technical	Yes	10/1/2018

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2018-244	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 331,	Maine Public Assistance Manual (TANF), Rule #111A: Annual Increase to TANF Maximum Benefit	22 MRS §§ 42(1), 3769-C	Routine Technical	No	11/14/2018
2018-042	10-144	Department of Health and Human Services, Office of Family Independence	Ch. 332	MaineCare Eligibility Manual: MC Rule #288E (Cub Care): Part 5, Children's Health Insurance (CHIP) Program – Cub Care; Section 3, Basic Eligibility Requirements	22 MRS §42(1); PL 2017 ch. 284 part TTTT §1	Routine Technical	Yes	3/20/2018
2018-110	10-144	Department of Health and Human Services, Office of Family Independence	Ch. 332	MaineCare Eligibility Manual, Part 5: Children's Health Insurance Program (CHIP) - Cub Care	22 MRS §42(1)	Routine Technical	No	6/25/2018
2018-182	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 332	MaineCare Eligibility Manual, MC Rule #287A: FPL Based Changes	22 MRS §§ 42(1), 3173	Routine Technical	No	9/9/2018
2018-209	10-146	Department of Health and Human Services, Maine Center for Disease Control and Prevention	Ch. 4	Disclosure of Vital Statistics Data, Reports and Records (<i>formerly Public Access to Vital Records</i>)	22 MRS §§ 2701, 2706	Routine Technical	No	10/3/2018
2018-210	10-146	Department of Health and Human Services, Maine Center for Disease Control and Prevention	Ch. 8	Release of Restricted Vital Statistics Data (<i>Repeal: subject matter integrated into Ch. 4</i>)	22 MRS §§ 2701, 2706	Routine Technical	No	10/3/2018

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2018-104	10-148	Department of Health and Human Services, Bureau of Child and Family Services	Ch. 33	Rules for the Certification of Family Childcare Providers (<i>repeal; replaced by 10-144 Ch. 33, Family Child Care Provider Licensing Rule, filing 2018-105</i>)	22 MRS §§ 7702-B(111), 7703(6), 7704, 7707(3), 7802(7), 8301(8), 8302-A(2), 8303-A(l)	Major Substantive	No	7/5/2018
2018-215	10-148	Department of Health and Human Services, Office of Child and Family Services	Ch. 18	Rules for the Licensure of Residential Child Care Facilities	22 MRS §8102	Routine Technical	No	10/10/2018
2018-216	10-148	Department of Health and Human Services, Office of Child and Family Services	Ch. 18-A	Rules for the Licensure of Private Non-Medical Institutions – Residential Child Care Facilities	22 MRS §8102	Routine Technical	No	10/10/2018
2018-048	10-148	Department of Health and Human Services, Maine Center for Disease Control and Prevention	Ch. 101	AIDS Case Management Program Standards	5 MRS §19205; 22 MRS §42	Routine Technical	No	4/11/2018
2018-085	10-149	Department of Health and Human Services, <i>part of</i> Office of Aging and Disability Services	Ch. 1	Adult Protective Services System	22 MRS §§ 42; 3493; 34-B MRS §5604-A	Routine Technical	No	7/28/2018
2018-086	10-149	Department of Health and Human Services, <i>part of</i> Office of Aging and Disability Services	Ch. 5	Policy Manual (<i>deleted Sections 11, 12, 14</i>)	22 MRS §§ 42; 3493; 34-B MRS §5604-A	Routine Technical	No	7/28/2018

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2018-217	14-118	Department of Health and Human Services, Office of Substance Abuse	Ch. 18	Rules for the Licensure of Residential Child Care Facilities	22 MRS §8102	Routine Technical	No	10/10/2018
2018-218	14-193	Department of Health and Human Services, Office of Adult Mental Health	Ch. 18	Rules for the Licensure of Residential Child Care Facilities	22 MRS §8102	Routine Technical	No	10/10/2018
2018-087	14-197	Department of Health and Human Services, <i>part of</i> Office of Aging and Disability Services	Ch. 12	Reportable Events System (<i>formerly</i> Regulations Governing Reportable Events, Adult Protective Investigations and Substantiation Hearings Regarding Persons with Mental Retardation or Autism	34-B MRS §5604-A	Routine Technical	No	5/28/2018

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2018-269	12-150	Department of Labor, Division for the Blind and Visually Impaired	Ch. 101	Rules Governing Vocational Rehabilitation Services for Individuals who are Blind or Visually Impaired	26 MRS §1418-C	Routine Technical	No	12/13/2018
2018-270	12-152	Department of Labor, Division of Vocational Rehabilitation	Ch. 1	Division of Vocational Rehabilitation Services Rules	26 MRS ch. 19 §1411 A-E	Routine Technical	No	1/1/2018
2018-147	12-170	Department of Labor, Bureau of Labor Standards	Ch. 11	Rules Governing Hazardous Occupations for Minors under the Age of Eighteen in Non-Agricultural Employment	26 MRS §772	Routine Technical	No	8/19/2018
2018-119	12-172	Department of Labor, Unemployment Insurance Commission	Ch. 2	Employer Notices, Records, Contribution and Reimbursement Payments and Reports	26 MRS §§ 1043(19), 1082, 1221	Routine Technical	No	7/2/2018
2018-095	12-179	Department of Labor, Board of Occupational Safety and Health	Ch. 4	Occupational Safety and Health Standards for Firefighting in the Public Sector	26 MRS §565	Routine Technical	No	6/10/2018
2018-096	12-179	Department of Labor, Board of Occupational Safety and Health	Ch. 6	Recording Occupational Injuries and Illnesses in the Public Sector	26 MRS §565	Routine Technical	No	6/10/2018
2018-097	12-179	Department of Labor, Board of Occupational Safety and Health	Ch. 7	Minimum Driver Training Requirements for Fire Apparatus	26 MRS §565	Routine Technical	No	6/10/2018

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2018-002	13-188	Department of Marine Resources	Ch. 11	Scallops: Targeted Closures 10 (Hussey Sound), (11) Roque Island Harbor (Sand Bay)	12 MRS §6171(3)	Routine Technical	Yes	1/1/2018
2018-014	13-188	Department of Marine Resources	Ch. 11	Scallops: Targeted Scallop Conservation Closures (Casco Passage within Swan's Island Rotational Area, Johnson Bay & Eastport Breakwater (Cobscook Bay))	12 MRS §6171(3)	Routine Technical	Yes	1/21/2018
2018-020	13-188	Department of Marine Resources	Ch. 11	Scallops: Targeted Scallop Conservation Closures (Machias and Sand Bays within Lower Englishman Bay Rotational Area; Whiting, Denny's and Cobscook Bays)	12 MRS §6171(3)	Routine Technical	Yes	2/4/2018
2018-023	13-188	Department of Marine Resources	Ch. 11	Scallops: Targeted Scallop Conservation Closures (Harrington & Pleasant Rivers within Addison Rotational Area, Upper Frenchman Bay Rotational Area)	12 MRS §6171(3)	Routine Technical	Yes	2/18/2018
2018-034	13-188	Department of Marine Resources	Ch. 11	Scallops: Targeted Scallop Conservation Closures (St. Croix River, Addison Rotational Area, Fox Islands Thorofare within East Vinalhaven Rotational Area)	12 MRS §6171(3)	Routine Technical	Yes	3/4/2018
2018-039	13-188	Department of Marine Resources	Ch. 2	Limited Purpose Aquaculture License Program	12 MRS §6072-C	Routine Technical	No	3/19/2018

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2018-040	13-188	Department of Marine Resources	Ch. 32	Eel Regulations: 32.05, Area Closures – Eel Fishing; 32.35, Elver Quota System for 2018 Season	12 MRS §6505-A	Routine Technical	No	3/19/2018
2018-065	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	4/23/2018
2018-066	13-188	Department of Marine Resources	Ch. 41	Ch. 41, Menhaden	12 MRS §6171	Routine Technical	No	4/28/2018
2018-083	13-188	Department of Marine Resources	Ch. 32	Eel Regulations: 32.65, Closure of the 2018 Elver Season	12 MRS §6171(3)	Routine Technical	Yes	5/24/2018
2018-089	13-188	Department of Marine Resources	Ch. 11	Scallops: 11.14, Atlantic Sea Scallop Limited Entry Program	12 MRS §6706(3)	Major Substantive	No	6/24/2018
2018-093	13-188	Department of Marine Resources	Ch. 36	Herring Regulations: 36.01, Herring Management Plan	12 MRS §6171(3)(C)	Routine Technical	Yes	6/2/2018
2018-143	13-188	Department of Marine Resources	Ch. 36	Herring Regulations: 36.01, Herring Management Plan	12 MRS §6171(3)(C)	Routine Technical	Yes	7/21/2018
2018-145	13-188	Department of Marine Resources	Ch. 25	Lobster and Crab: 25.04, Lobster Trawl Limits	12 MRS §§ 6446, 6447	Routine Technical	No	10/1/2018
2018-151	13-188	Department of Marine Resources	Ch. 7	Requirements for Municipalities Having Shellfish Conservation Programs	12 MRS §6671	Routine Technical	No	8/21/2018
2018-152	13-188	Department of Marine Resources	Ch. 14	Oysters	12 MRS §6171	Routine Technical	No	8/21/2018
2018-153	13-188	Department of Marine Resources	Ch. 24	Importation of Live Marine Organisms	12 MRS §6071	Routine Technical	No	8/21/2018

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2018-154	13-188	Department of Marine Resources	Ch. 25	Lobster and Crab: 25.70, Legal Lobster Tail (Lobster Tail Weights)	12 MRS §6851-B	Routine Technical	No	8/21/2018
2018-155	13-188	Department of Marine Resources	Ch. 26	Sea Urchin Regulations (2018-2019 Harvesting Season)	12 MRS §§ 6171, 6749	Routine Technical	No	8/21/2018
2018-156	13-188	Department of Marine Resources	Ch. 34	Groundfish Regulations: 34.07, Atlantic Halibut (<i>Hippoglossus hippoglossus</i>)	12 MRS §6171	Routine Technical	No	8/21/2018
2018-157	13-188	Department of Marine Resources	Ch. 40	Smelt Regulations	12 MRS §6171	Routine Technical	No	8/21/2018
2018-158	13-188	Department of Marine Resources	Ch. 94	Sanitary Control of Molluscan Shellfish	12 MRS §§ 6171-A, 6856	Routine Technical	No	8/21/2018
2018-159	13-188	Department of Marine Resources	Ch. 15	General Shellfish Sanitation Requirements	12 MRS §§ 6171-A, 6856	Routine Technical	No	8/21/2018
2018-160	13-188	Department of Marine Resources	Ch. 16	Uniform Physical Plant Equipment and Operation	12 MRS §§ 6171-A, 6856	Routine Technical	No	8/21/2018
2018-161	13-188	Department of Marine Resources	Ch. 17	Shucker-Packer	12 MRS §§ 6171-A, 6856	Routine Technical	No	8/21/2018
2018-162	13-188	Department of Marine Resources	Ch. 18	Shellstock Shipping	12 MRS §§ 6171-A, 6856	Routine Technical	No	8/21/2018
2018-163	13-188	Department of Marine Resources	Ch. 19	Reshipping	12 MRS §§ 6171-A, 6856	Routine Technical	No	8/21/2018
2018-164	13-188	Department of Marine Resources	Ch. 20	Depuration	12 MRS §§ 6171-A, 6856	Routine Technical	No	8/21/2018
2018-165	13-188	Department of Marine Resources	Ch. 21	Shellfish Relay	12 MRS §§ 6171-A, 6856	Routine Technical	No	8/21/2018
2018-166	13-188	Department of Marine Resources	Ch. 23	Standards for Closure of Contaminated or Polluted Flats	12 MRS §§ 6171-A, 6856	Routine Technical	No	8/21/2018

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2018-186	13-188	Department of Marine Resources	Ch. 36	Herring Regulations: 36.01, Herring Management Plan	12 MRS §6171(3)(C)	Routine Technical	Yes	9/12/2018
2018-199	13-188	Department of Marine Resources	Ch. 41	Menhaden: 41.30, Menhaden Program	12 MRS §6171(3)(B)	Routine Technical	Yes	9/15/2018
2018-219	13-188	Department of Marine Resources	Ch. 36	Herring Regulations: 36.01, Herring Management Plan	12 MRS §6171(3)(C)	Routine Technical	Yes	9/29/2018
2018-243	13-188	Department of Marine Resources	Ch. 11	Scallops: 2018-2019 Season	12 MRS §§ 6171, 6722	Routine Technical	No	11/14/2018
2018-253	13-188	Department of Marine Resources	Ch. 10	Clams and Quahogs: 10.05, Taking of Quahogs in the Sub-tidal Waters of the New Meadows, Brunswick and West Bath	12 MRS §6171	Routine Technical	No	11/24/2018
2018-254	13-188	Department of Marine Resources	Ch. 25	Lobster and Crab: 25.04, Lobster Trawl Limits	12 MRS §§ 6446, 6447	Routine Technical	No	11/24/2018
2018-255	13-188	Department of Marine Resources	Ch. 36	Herring Regulations: 36.01, Herring Management Plan	12 MRS §6171(3)(C)	Routine Technical	Yes	11/24/2018
2018-256	13-188	Department of Marine Resources	Ch. 37	Freshwater Fish Regulations	12 MRS §6171	Routine Technical	No	11/24/2018
2018-257	13-188	Department of Marine Resources	Ch. 91	Spat Collection	12 MRS §6174-A	Routine Technical	No	11/24/2018
2018-258	13-188	Department of Marine Resources	Ch. 110	Marine Harvesting Demonstration License	12 MRS §6810-A	Routine Technical	No	11/24/2018
2018-271	13-188	Department of Marine Resources	Ch. 11	Scallops: 11.08, Targeted Closures: (7), Gouldsboro and Dyers Bays	12 MRS § 6171(3)	Routine Technical	Yes	12/16/2018

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2018-278	13-188	Department of Marine Resources	Ch. 11	Scallops: 11.08, Targeted Closures: (8), Machias and Little Machias Bays	12 MRS § 6171(3)	Routine Technical	Yes	12/31/2018

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2018-167	16-219	Department of Public Safety, Office of the Commissioner	Ch. 71	Uniform Standardized Forensic Examination Kit for Sexual Assault Evidence Collection	5 MRS §3360-M; 24 MRS §2986; 25 MRS §2915; 25 MRS §3821; PL 2017 c. 156	Routine Technical	No	7/17/2018
2018-084	16-633	Department of Public Safety, Gambling Control Board	Ch. 28	Advanced Deposit Wagering	8 MRS §1003(1)(B)(I), (3)(J); 8 MRS §1031(1).	Major Substantive	No	6/23/2018
2018-140	16-633	Department of Public Safety, Gambling Control Board	Ch. 30	Rules Relating to Beano by Federally Recognized Indian Tribes (<i>formerly</i> 16-222 ch. 7)	17 MRS §§ 317, 1843	Routine Technical	No	7/25/2018
2018-141	16-633	Department of Public Safety, Gambling Control Board	Ch. 31	Rules Relating to Beano (<i>formerly</i> 16-222 ch. 3)	17 MRS §§ 317, 1843	Routine Technical	No	7/25/2018
2018-142	16-633	Department of Public Safety, Gambling Control Board	Ch. 32	Rules Relating to Games of Chance (<i>formerly</i> 16-222 ch. 2)	17 MRS §§ 317, 1843	Routine Technical	No	7/25/2018
2018-006	16-642	Department of Public Safety, Office of State Fire Marshal, Bureau of Building Codes and Standards	Ch. 1	Maine Uniform Building Code and Uniform Energy Code - Administrative Procedures	10 MRS §9722	Routine Technical	No	1/23/2018
2018-007	16-642	Department of Public Safety, Office of State Fire Marshal, Bureau of Building Codes and Standards	Ch. 2	Maine Uniform Building Code and Uniform Energy Code - Third Party Inspectors ("TPI")	10 MRS §9722	Routine Technical	No	1/23/2018

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2018-008	16-642	Department of Public Safety, Office of State Fire Marshal, Bureau of Building Codes and Standards	Ch.. 3	Maine Uniform Building Code - Commercial Building Code of Maine	10 MRS §9722	Routine Technical	No	1/23/2018
2018-009	16-642	Department of Public Safety, Office of State Fire Marshal, Bureau of Building Codes and Standards	Ch. 4	Maine Uniform Building Code - Existing Building Code	10 MRS §9722	Routine Technical	No	1/23/2018
2018-010	16-642	Department of Public Safety, Office of State Fire Marshal, Bureau of Building Codes and Standards	Ch. 5	Maine Uniform Building and Energy Code and Maine Uniform Building Code - Residential Building Code for One and Two Family Dwellings in Maine	10 MRS §9722	Routine Technical	No	1/23/2018
2018-011	16-642	Department of Public Safety, Office of State Fire Marshal, Bureau of Building Codes and Standards	Ch. 6	Maine Uniform Energy Code - Energy Conservation Code of Maine	10 MRS §9722	Routine Technical	No	1/23/2018

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2018-208	17-229	Department of Transportation	Ch. 601	Rules Relating to the Maine State Ferry Service	Resolve 2015 ch. 86; 23 MRS §52	Routine Technical	No	9/29/2018
2018-261	17-229	Department of Transportation	Ch. 210	Utility Accommodation Rules	23 MRS §52; 35-A MRS §2503(16); 23 CFR §645.211	Routine Technical	No	12/1/2018

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2018-072	18-125	Department of Administrative and Financial Services, Bureau of Revenue Services	Ch. 205	Certification of Assessors	36 MRS §§ 310-314	Routine Technical	No	5/7/2018
2018-073	18-125	Department of Administrative and Financial Services, Bureau of Revenue Services	Ch. 202	Tree Growth Tax Law Valuations - 2018	36 MRS §576	Routine Technical	No	5/8/2018
2018-267	18-125	Department of Administrative and Financial Services, Bureau of Revenue Services	Ch. 805	Composite Filing	36 MRS §§ 112, 5192(5)	Routine Technical	No	12/17/2018
2018-146	18-553	Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations / Maine State Liquor and Lottery Commission	Ch. 102	Premises Licensed for On Premises Consumption Only	28-A MRS §83-B	Routine Technical	No	8/15/2018

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2018-005	29-250	Secretary of State, Bureau of Motor Vehicles	Ch. 159	Rules Governing the Administration of the Permanent, Semipermanent Semitrailer Registration Programs	29-A MRS §512	Routine Technical	No	1/17/2018
2018-029	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	2/27/2018
2018-079	29-250	Secretary of State, Bureau of Corporations, Elections and Commissions, Division of Elections	Ch. 535	Rules Governing the Administration of Elections Determined by Ranked-Choice Voting	21-A MRS §723-A sub-§5	Routine Technical	Yes	5/11/2018
2018-091	29-250	Secretary of State, Bureau of Motor Vehicles	Ch. 159	Rules Governing the Administration of the Permanent, Semipermanent Semitrailer Registration Programs	29-A MRS §512	Routine Technical	No	6/4/2018
2018-109	29-250	Secretary of State, Bureau of Corporations, Elections and Commissions, Division of Elections	Ch. 536	Rules Establishing Procedures for Requesting and Conducting Recounts of Elections Determined by Ranked-Choice Voting	21-A MRS §723-A sub-§5-A	Routine Technical	Yes	6/20/2018
2018-230	29-250	Secretary of State, Bureau of Corporations, Elections and Commissions, Division of Elections	Ch. 535	Rules Governing the Administration of Elections Determined by Ranked-Choice Voting	21-A MRS §723-A sub-§5-A	Routine Technical	No	11/7/2018
2018-233	29-250	Secretary of State, Bureau of Corporations, Elections and Commissions, Division of Elections	Ch. 502	Rules Governing the Conduct and Procedures for Election Recounts, in Election Contests Determined by Plurality	21-A MRS §723-A sub-§12, 738	Routine Technical	No	11/13/2018

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2018-234	29-250	Secretary of State, Bureau of Corporations, Elections and Commissions, Division of Elections	Ch. 536	Rules Establishing Procedures for Requesting and Conducting Recounts of Elections Determined by Ranked-Choice Voting (<i>New</i>)	21-A MRS §723-A sub-§5-A	Routine Technical	No	11/13/2018
2018-239	29-250	Secretary of State, Bureau of Motor Vehicles	Ch. 162	The Administration of the International Registration Plan	29-A MRS §531	Routine Technical	No	11/13/2018
2018-240	29-250	Secretary of State, Bureau of Motor Vehicles	Ch. 165	The Administration of the International Fuel Tax Agreement and the Intrastate Fuel Tax Program	29-A MRS §525	Routine Technical	No	11/13/2018
2018-277	29-255	Secretary of State, Maine State Archives	Ch. 10	Rules for Disposition of Local Government Records (<i>Repealed</i>)	5 MRS ch. 6 §95-B; 30-A MRS §1705 (<i>repealed</i>)	Routine Technical	No	1/2/2019

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2018-012	65-407	Public Utilities Commission	Ch. 880	Attachments to Joint-Use Utility Poles; Determination and Allocation of Costs; Procedure	35-A MRS §§ 111, 301, 711, 7903, 8302; PL 2017 ch. 199	Routine Technical	No	1/24/2018
2018-028	65-407	Public Utilities Commission	Ch. 285	Maine Telecommunications Education Access Fund	35-A MRS §§ 104, 111, 7104-B	Routine Technical	No	7/1/2018
2018-035	65-407	Public Utilities Commission	Ch. 284	Prepaid Wireless Fee	35-A MRS §§ 101, 111, 7104, 7104-B; PL 2011 ch. 600, and PL 2017 ch. 244	Routine Technical	No	3/10/2018
2018-049	65-407	Public Utilities Commission	Ch. 324	Small Generator Interconnection Procedures	35-A MRS §§ 104, 111; Resolve 2007 ch. 183	Routine Technical	No	4/8/2018
2018-063	65-407	Public Utilities Commission	Ch. 520	Tour, Charter and Water Taxi Services, and Unscheduled Freight Services in Casco Bay	35-A MRS §§ 5101-D, 5101-E	Routine Technical	No	4/25/2018
2018-094	65-407	Public Utilities Commission	Ch. 308	Standards of Conduct for Transmission and Distribution Utilities and Affiliated Generators	35-A MRS §§ 104, 111, 3204(11); Resolves 2017 ch. 49	Major Substantive	No	7/4/2018

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2018-211	65-407	Public Utilities Commission	Ch. 305	Licensing Requirements, Annual Reporting, Enforcement and Consumer Protection Provisions for Competitive Provision of Electricity	35-A MRS §§ 104, 111, 3203	Routine Technical	No	9/30/2018
2018-272	65-407	Public Utilities Commission	Ch. 288	Maine Universal Service Fund	35-A MRS §§ 104, 111, 7104-B	Routine Technical	No	12/24/2018
2018-276	65-625	Public Utilities Commission, Emergency Services Communications Bureau	Ch. 4	Requirements for the Dispatch Center Consolidation Grant Program	25 MRS §2927 sub-§3-D; PL 2017 ch. 428	Routine Technical	No	1/1/2019

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2018-122	90-351	Workers' Compensation Board	Ch. 1	Payment of Benefits	39-A §§ 101 <i>et seq.</i>	Routine Technical	No	9/1/2018
2018-123	90-351	Workers' Compensation Board	Ch. 2	Section 213 Compensation for Partial Incapacity	39-A §§ 101 <i>et seq.</i>	Routine Technical	No	9/1/2018
2018-124	90-351	Workers' Compensation Board	Ch. 3	Form Filing	39-A §§ 101 <i>et seq.</i>	Routine Technical	No	9/1/2018
2018-125	90-351	Workers' Compensation Board	Ch. 4	Independent Medical Examiner	39-A §§ 101 <i>et seq.</i>	Routine Technical	No	9/1/2018
2018-126	90-351	Workers' Compensation Board	Ch. 5	Medical Fees; Reimbursement Levels; Reporting Requirements	39-A §§ 101 <i>et seq.</i>	Routine Technical	No	9/1/2018
2018-127	90-351	Workers' Compensation Board	Ch. 6	Rehabilitation	39-A §§ 101 <i>et seq.</i>	Routine Technical	No	9/1/2018
2018-128	90-351	Workers' Compensation Board	Ch. 7	Utilization Review, Treatment Guidelines, Permanent Impairment	39-A §§ 101 <i>et seq.</i>	Routine Technical	No	9/1/2018
2018-129	90-351	Workers' Compensation Board	Ch. 8	Procedures for Payment	39-A §§ 101 <i>et seq.</i>	Routine Technical	No	9/1/2018
2018-130	90-351	Workers' Compensation Board	Ch. 9	Procedures for Coordination of Benefits	39-A §§ 101 <i>et seq.</i>	Routine Technical	No	9/1/2018
2018-131	90-351	Workers' Compensation Board	Ch. 12	Formal Hearings	39-A §§ 101 <i>et seq.</i>	Routine Technical	No	9/1/2018
2018-132	90-351	Workers' Compensation Board	Ch. 13	Rules of Appellate Division	39-A §§ 101 <i>et seq.</i>	Routine Technical	No	9/1/2018
2018-133	90-351	Workers' Compensation Board	Ch. 14	Review by Full Board	39-A §§ 101 <i>et seq.</i>	Routine Technical	No	9/1/2018
2018-134	90-351	Workers' Compensation Board	Ch. 15	Penalties	39-A §§ 101 <i>et seq.</i>	Routine Technical	No	9/1/2018

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2018-135	90-351	Workers' Compensation Board	Ch. 16	Confidentiality of Files	39-A §§ 101 <i>et seq.</i>	Routine Technical	No	9/1/2018
2018-136	90-351	Workers' Compensation Board	Ch. 18	Examinations by Impartial Physician(s) Pursuant to 39-A MRSA Section 611	39-A §§ 101 <i>et seq.</i>	Routine Technical	No	9/1/2018
2018-268	90-351	Workers' Compensation Board	Ch. 5	Medical Fees; Reimbursement Levels; Reporting Requirements	39-A §§ 101, 209-A	Routine Technical	No	1/1/2019

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2018-080	90-429	Board of Licensure of Water System Operators	Ch. 1	Water System Operators Licensing Rule	22 MRS ch. 601 §2628	Routine Technical	No	7/1/2018

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2018-111	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	6/27/2018

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2018-037	94-088	Maine Arts Commission	Ch. 2	Rules for Awarding Grants and Providing Services	27 MRS §409	Routine Technical	No	3/14/2018
2018-038	94-088	Maine Arts Commission	Ch. 3	Rules to Carry Out the Percent for Art Act	27 MRS §458	Routine Technical	No	3/14/2018

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2018-103	94-178	Kim Wallace Adaptive Equipment Loan Program Fund Board <i>(administered by the Department of Labor)</i>	Ch. 501	Kim Wallace Adaptive Equipment Loan Program Rule	10 MRS §371	Routine Technical	No	6/12/2018

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2018-076	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	6/3/2018
2018-115	94-270	Commission on Governmental Ethics and Election Practices	Ch. 1	Procedures	1 MRS §1003(1)	Routine Technical	No	7/2/2018

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2018-082	94-411	Maine Public Employee Retirement System	Ch. 803	Participating Local District Consolidated Retirement Plan	5 MRS §§ 17103(4), 18200 <i>et seq.</i> , 18801 <i>et seq.</i>	Routine Technical	No	5/26/2018
2018-188	94-411	Maine Public Employees Retirement System	Ch. 803	Participating Local District Consolidated Retirement Plan	5 MRS §§ 17103(4), 18200 <i>et seq.</i> , 18801 <i>et seq.</i>	Routine Technical	No	9/19/2018

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2018-022	94-457	Finance Authority of Maine	Ch. 611	Maine College Savings Program	10 MRS §969-A; 20-A MRS §11485	Routine Technical	No	2/12/2018
2018-181	94-457	Finance Authority of Maine	Ch. 1	Bylaws and Administration of the Finance Authority of Maine, Amendment 6	10 MRS ch. 110 §969-A(6),(14),(16)	Routine Technical	No	9/5/2018

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2018-137	94-591	Motor Carrier Review Board	Ch. 1	Bylaws of the Maine Motor Carrier Review Board	29-A MRS §562(4)	Routine Technical	No	7/24/2018
2018-138	94-591	Motor Carrier Review Board	Ch. 2	The Process for the Selection and Review of Motor Carriers with Significant and Repeated Safety Violations	29-A MRS §562(4)	Routine Technical	No	7/24/2018
2018-139	94-591	Motor Carrier Review Board	Ch. 3	Hearing Procedures	29-A MRS §562(4)	Routine Technical	No	7/24/2018

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2018-197	95-648	Efficiency Maine Trust	Ch. 3	Electric Efficiency and Conservation Programs <i>(formerly Ch. 380)</i>	35-A MRS §§ 10110, 10104	Routine Technical	No	9/22/2018
2018-198	95-648	Efficiency Maine Trust	Ch. 4	Natural Gas Energy Conservation Programs <i>(formerly Ch. 480)</i>	35-A MRS §§ 10111, 10104	Routine Technical	No	9/22/2018

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2018-050	99-346	Maine State Housing Authority	Ch. 2	Cooperation with Local Governments	30-A MRS §4741.1	Routine Technical	No	4/8/2018
2018-051	99-346	Maine State Housing Authority	Ch. 13	Allocation of Stae Ceiling for Housing-Related Bonds	30-A MRS §4741.1	Routine Technical	No	4/8/2018
2018-052	99-346	Maine State Housing Authority	Ch. 17	Natural Disaster Home Assistance Program	30-A MRS §4741.1	Routine Technical	No	4/8/2018
2018-053	99-346	Maine State Housing Authority	Ch. 21	Land Acquisition Improvement and Housing Opportunity Zones Program	30-A MRS §4741.1	Routine Technical	No	4/8/2018
2018-077	99-346	Maine State Housing Authority	Ch. 1	Home Mortgage Program Rule	30-A MRS §4741.1	Routine Technical	No	5/9/2018
2018-116	99-346	Maine State Housing Authority	Ch. 16	Low Income Housing Tax Credit Rule	30-A MRS §§ 4741(1), 4741(14); Section 42 of the <i>Internal Revenue Code of 1986</i> , as amended	Routine Technical	No	7/4/2018
2018-174	99-346	Maine State Housing Authority	Ch. 24	Home Energy Assistance Program Rule	30-A MRS §§ 4722(1)(W), 4741(15), 4991 <i>et seq.</i> ; 42 USCA §§ 8621 <i>et seq.</i>	Routine Technical	No	9/1/2018

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Rules Adopted 1/1/2018 to 12/31/2018
Prepared by the Secretary of State

Log #	Umbrella-unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2018-175	99-346	Maine State Housing Authority	Ch. 33	AccessAble Home Tax Credit Rule	30-A MRS §4741(1); 36 MRS §5219-PP	Routine Technical	No	9/1/2018

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Rules Adopted 1/1/2018 to 12/31/2018
Prepared by the Secretary of State

Log #	Umbrella-unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2018-078	99-626	Maine Rural Development Authority	Ch. 3	Rule Manufacturing and Industrial Site Redevelopment Program	5 MRS §§ 13120-L, 13120-R	Routine Technical	No	5/9/2018

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Rules Adopted January 1, 2018 to December 31, 2018
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**
Umbrella-Unit: **18-125**
Statutory authority: 36 MRS §§ 310-314
Chapter number/title: **Ch. 205**, Certification of Assessors
Filing number: **2018-072**
Effective date: 5/7/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Rule 205 (*Certification of Assessors*) is being amended to clarify and streamline the procedures related to the previously expanded levels of assessor certification, to institute a formal procedure for revocation of certifications, and to make other, housekeeping, changes. Certification and the continuing education of property tax assessors in the State of Maine is the responsibility of the Bureau. This rule governs the nature and timing of the certification examinations as well as the enforcement of the continuing education requirements required under 36 MRS §311.

Basis statement:

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

The amendment clarifies and streamlines the procedures related to the previously expanded levels of assessor certification, to institute a formal procedure for revocation of certifications, and makes other, housekeeping, changes.

Fiscal impact of rule:

Minimal.

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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**
Umbrella-Unit: **18-125**
Statutory authority: 36 MRS §576
Chapter number/title: **Ch. 202**, Tree Growth Tax Law Valuations - 2018
Filing number: **2018-073**
Effective date: 5/8/2018
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:

This rule establishes an efficient and uniform procedure for the valuation of forestland.

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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**
Umbrella-Unit: **18-125**
Statutory authority: 36 MRS §§ 112, 5192(5)
Chapter number/title: **Ch. 805**, Composite Filing
Filing number: **2018-267**
Effective date: 12/17/2018
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

Rule 805 ("Composite Filing") 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, non-substantive changes, the rule is being revised to set the tax rate for composite returns at the highest marginal rate in 36 MRS §5111 "for the applicable tax year" rather than referring to the specific rate set in 36 MRS §5111(E), which is outdated. However, the tax rate will not change. A copy of the revised 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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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-B

Chapter number/title: **Ch. 102**, Premises Licensed for On Premises Consumption Only

Filing number: **2018-146**

Effective date: 8/15/2018

Type of rule: Routine Technical

Emergency rule: No

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

Basis statement:

This amendment adds language to conform with federal and state labor standards that permit persons 14 years old to be employed to bus tables in the food service industry where liquor is served.

Fiscal impact of rule:

There is no known fiscal impact.

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Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Agriculture, Conservation and Forestry (General)
Umbrella-Unit: 01-001
Statutory authority: 7 MRS §3154
Chapter number/title: Ch. 61, Maine Milk Pool Cost of Administration
Filing number: 2018-041
Effective date: 4/12/2018
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 2017. Based on the last twelve months expenses, it is estimated that the Pool costs for similar expenses for 2018 will be about \$60,000.

The total pounds in the Pool for the last twelve months (December 2016 - November 2017) were 626,473,188. It is estimated that the total pounds in the Pool for 2018 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 2018 at \$0.01/cwt.

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 Agriculture, Conservation and Forestry (General)
Umbrella-Unit: 01-001
Statutory authority: 7 MRS ch. 747
Chapter number/title: Ch. 565, Nutrient Management Rules
Filing number: 2018-117
Effective date: 7/3/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These rules establish procedures for the storage, management, and utilization of farm nutrients on farms and farming operations under the *Maine Nutrient Management Act*, 7 MRS ch. 747, and clarify some provisions of the nutrient management rules.

Basis statement:

These rules establish the standards for nutrient management plans required under 7 MRS §4204 for Maine farms, the process for certifying persons to write and approve nutrient management plans, the requirements for obtaining a livestock operations permit, and the procedures for implementing the requirements of the *Nutrient Management Act*. These rules establish the standards for compost management plans and the requirements for persons writing compost management plans.

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 Agriculture, Conservation and Forestry (General)
Umbrella-Unit: 01-001
Statutory authority: 7 MRS ch. 401 §§ 2101-2105; 7 MRS ch. 1 §12; 7 MRS. ch. 411 §2352
Chapter number/title: **Ch. 252**, Rules Governing Certification of Seed Potatoes in the State of Maine
Filing number: **2018-177**
Effective date: 9/2/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The principal reasons for amending this rule are to allow for full laboratory testing of post-harvest samples as an alternative to the winter grow out in Florida as this will reduce cost to the Department and provide a better more consistent virus testing result for the growers. The second change to rule will be to amend the elimination of blackleg lots which are over tolerance for the generation, it is proposed that any lot exceeding the blackleg tolerance for that generation will be downgraded to the next generation in which it meets that blackleg tolerance. This is proposed to better maintain seed markets and stabilize supply.

Basis statement:

This rule change for Ch. 252, 7 MRS ch. 401, §§ 2101-2105; 7 MRS ch. 1 §12; and 7 MRS ch. 411 §2352, came about from input from the Executive Seed Council of the Maine Potato Board and other industry members to address concerns related to post-harvest virus testing. The rule eliminates the Florida grow-out in favor of post-harvest laboratory virus testing which is more cost effective and consistent. The second part is to change the blackleg tolerances so that any lot exceeding the blackleg tolerance for that generation will be downgraded to the next generation in which it meets that blackleg tolerance. This was proposed to better maintain seed markets and stabilize supply.

Fiscal impact of rule:

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

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

Agency name: Department of Agriculture, Conservation and Forestry (General)
Umbrella-Unit: 01-001
Statutory authority: 2017 PL ch. 6; 7 MRS ch. 103 Article 1-A; 10 MRS §1023-N
Chapter number/title: **Ch. 31**, Rules Governing Certification of Seed Potatoes in the State of Maine
Filing number: **2018-213**
Effective date: 10/1/2018
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule amendment implements revisions made by 2017 Public Law ch. 6, which amended 7 MRS ch. 103 Article 1-A §974-A. The law now states that for any project for which the total cost exceeds \$150,000 (rather than the previous \$50,000), no state loan may exceed 45% of the project cost. The law also now states that for any project for which the total cost is \$150,000 or less (rather than the previous \$50,000 or less), no state loan may exceed 55% of the project cost. This rule amendment also changes what activities can be undertaken with Potato Marking Improvement funds, by creating the Support Facilities Loan Program and the Value Added Loan Program.

Fiscal impact of rule:

No fiscal impact, other than funds being made more readily available for qualified projects.

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 #02-18**
Filing number: **2018-013**
Effective date: 1/28/2018
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 2018** minimum Class I price is **\$17.50/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 **\$3.26/cwt.** handling fee for a total of **\$23.63/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

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Rules Adopted January 1, 2018 to December 31, 2018
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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 **\$15.44/cwt.** and a Class IV price of **\$13.51/cwt.** for **December 2017.**

The Class II price for **December 2017** is **\$14.49/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$17.50/cwt. plus \$1.63/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on January 18, 2018 and therefore should be passed on in minimum prices effective January 28, 2018. These prices also include a handling fee of \$3.26/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.

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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 #03-18**

Filing number: **2018-032**

Effective date: 2/27/2018

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 2018** minimum Class I price is **\$16.61/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 **\$4.19/cwt.** handling fee for a total of **\$23.67/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$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 **\$14.00/cwt.** and a Class IV price of **\$13.13/cwt.** for **January 2018.**

The Class II price for **January 2018** is **\$14.11/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$16.63/cwt. plus \$1.63/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on February 22, 2018 and therefore should be passed on in minimum prices effective February 27, 2018. These prices also include a handling fee of \$4.19/cwt.**

The schedule of prices listed herein reflects the latest Class I, Class II, Class III and Class IV prices plus the minimum dealer, producer and retail margins adopted by the Commission's Orders (DM) Dealer Margins, (PM) Producer Margins, and (RM) Retail Margins. The Class I prices reflect a Processor Assessment of **\$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.

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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 #04-18**

Filing number: **2018-047**

Effective date: 4/1/2018

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 2018** minimum Class I price is **\$17.35/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 **\$3.72/cwt.** handling fee for a total of **\$23.94/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 **\$13.40/cwt.** and a Class IV price of **\$12.87/cwt.** for **February 2018**.

The Class II price for **February 2018** is **\$13.44/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$17.35/cwt. plus \$1.63/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on March 22, 2018 and therefore should be passed on in minimum prices effective April 1, 2018. These prices also include a handling fee of \$3.72/cwt.**

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

Fiscal impact of rule:

None.

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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 #05-18**

Filing number: **2018-068**

Effective date: 4/28/2018

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 2018** minimum Class I price is **\$17.69/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 **\$3.26/cwt.** handling fee for a total of **\$23.82/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 **\$14.22/cwt.** and a Class IV price of **\$13.04/cwt.** for **March 2018**.

The Class II price for **March 2018** is **\$13.88/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$17.69/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 April 19, 2018 and therefore should be passed on in minimum prices effective April 29, 2018. These prices also include a handling fee of \$3.26/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.

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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 #06-18**

Filing number: **2018-090**

Effective date: 6/3/2018

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 2018** minimum Class I price is **\$18.50/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 **\$23.70/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$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 **\$14.47/cwt.** and a Class IV price of **\$13.48/cwt.** for **April 2018**.

The Class II price for **April 2018** is **\$14.03/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 **\$18.50/cwt. plus \$1.63/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on May 24, 2018 and therefore should be passed on in minimum prices effective June 3, 2018. 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.

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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 #07-18**

Filing number: **2018-114**

Effective date: 7/1/2018

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 2018** minimum Class I price is **\$18.61/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 **\$23.81/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 **\$15.18/cwt.** and a Class IV price of **\$14.57/cwt.** for **May 2018**.

The Class II price for **May 2018** is **\$14.47/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 **\$18.61/cwt. plus \$1.63/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on June 21, 2018 and therefore should be passed on in minimum prices effective July 1, 2018. 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.

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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 #08-18**

Filing number: **2018-144**

Effective date: 7/29/2018

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 2018** minimum Class I price is **\$17.40/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 **\$3.72/cwt.** handling fee for a total of **\$23.99/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 **\$15.21/cwt.** and a Class IV price of **\$14.91/cwt.** for **June 2018.**

The Class II price for **June 2018** is **\$15.48/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 **\$17.40/cwt. plus \$1.63/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on July 19, 2018 and therefore should be passed on in minimum prices effective July 29, 2018. These prices also include a handling fee of \$3.72/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 #09-18**

Filing number: **2018-176**

Effective date: 9/2/2018

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 2018** minimum Class I price is **\$18.10/cwt. plus \$1.63/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$2.79/cwt.** handling fee for a total of **\$23.76/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$3.72.**

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 **\$14.10/cwt.** and a Class IV price of **\$14.14/cwt.** for **July 2018.**

The Class II price for **July 2018** is **\$15.20/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 **\$18.10/cwt. plus \$1.63/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on August 23, 2018 and therefore should be passed on in minimum prices effective September 2, 2018. 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 **\$.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, 2018 to December 31, 2018
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 #10-18**

Filing number: **2018-207**

Effective date: 9/30/2018

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 2018** minimum Class I price is **\$19.58/cwt. plus \$1.63/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$1.40/cwt.** handling fee for a total of **\$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 **\$3.73**.

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 **\$14.95/cwt.** and a Class IV price of **\$14.63/cwt.** for **August 2018**.

The Class II price for **August 2018** is **\$15.07/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 **\$19.58/cwt. plus \$1.63/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on September 20, 2018 and therefore should be passed on in minimum prices effective September 30, 2018. 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, 2018 to December 31, 2018
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 #11-18**
Filing number: **2018-229**
Effective date: 10/28/2018
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 2018** minimum Class I price is **\$18.77/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 **\$23.97/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$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 **\$16.09/cwt.** and a Class IV price of **\$14.81/cwt.** for **September 2018.**

The Class II price for **September 2018** is **\$15.13/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 **\$18.77/cwt. plus \$1.63/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on October 18, 2018 and therefore should be passed on in minimum prices effective October 28, 2018. 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, 2018 to December 31, 2018
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 #12-18**

Filing number: **2018-259**

Effective date: 11/27/2018

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 2018** minimum Class I price is **\$18.30/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 **\$2.79/cwt.** handling fee for a total of **\$23.96/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 **\$15.53/cwt.** and a Class IV price of **\$15.01/cwt.** for **October 2018.**

The Class II price for **October 2018** is **\$15.13/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 **\$18.30/cwt. plus \$1.63/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on November 21, 2018 and therefore should be passed on in minimum prices effective December 2, 2018. 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 **\$.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, 2018 to December 31, 2018
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 #01-19**

Filing number: **2018-275**

Effective date: 12/30/2018

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 2019** minimum Class I price is **\$18.37/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 **\$2.79/cwt.** handling fee for a total of **\$24.03/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 **\$14.44/cwt.** and a Class IV price of **\$15.06/cwt.** for **November 2018.**

The Class II price for **November 2018** is **\$15.63/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 **\$18.37/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 20, 2018 and therefore should be passed on in minimum prices effective December 30, 2018. 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 **\$.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, 2018 to December 31, 2018
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, 263-C, 264, 267-A, 268, 272-B, 272-C, 279,
279-A, 279-E, 281, 298

Chapter number/title: **Ch. 1, Administration**

Filing number: **2018-024**

Effective date: 2/21/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The amendments move some grounds for suspension, revocation and denial of licenses from Ch. 17 (Penalties) to Ch. 1 where the licensing provisions are contained.

Basis statement:

The Commission adopted an amendment to Section 10 subsection 1-A of Ch. 1, to consolidate and strengthen the grounds for which a license can be suspended, revoked, refused or denied. The Commission also clarified the criteria necessary for obtaining a driver's or trainer's license under Section 10 subsection 2, since a poorly drafted "or" clause lent itself to misinterpretation.

Fiscal impact of rule:

(Not addressed.)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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, 263-C, 264, 267-A, 268, 272-B, 272-C, 279,
279-A, 279-E, 281, 298

Chapter number/title: **Ch. 3, Officials and Race Track Personnel**

Filing number: **2018-025**

Effective date: 2/21/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The amendments update the process for licensing and assigning judges to the tracks, and update the education requirements.

Basis statement:

The Commission amends Section 1 subsection 1 and 1-A of 3, to update the section to align with current practice. The Commission does not appoint judges to specific associations as described in the existing rule. Instead, the Department licenses judges provided that they are qualified.

The Commission had proposed to add a new section to Ch. 7 outlining the duties of the Race Secretary. The new section was intended to ensure that Race Secretaries place special emphasis on constructing race programs that offer equivalent opportunities for all classes of horses to compete for purses. The Department later recognized that Ch. 3 already contained a section relating to the duties of the Race Secretary, and it submitted a comment suggesting that the new section proposed for Ch. 7 be moved to and merged with the existing Section in Ch. 3.

The Commission agreed that Ch. 3 was the more logical location for such standards, and that adding the additional standards from the proposed amendments to the existing duties would be beneficial. Consequently, the Commission elected to merge and combine the two set of duties into Ch. 3.

Finally, the Commission received a comment observing that Section 8.13 of Ch. 3 conflicts with a similar standard in Section 37-G of Ch. 7 relative recalling a start. The Commissioners determined that Judges need to ability to recall a start when the horses are out of position. Consequently, they elected to amend the language in Ch. 3 Section 37-G.

Fiscal impact of rule:

(Not addressed.)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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, 263-C, 264, 267-A, 268, 272-B, 272-C, 279,
279-A, 279-E, 281, 298

Chapter number/title: **Ch. 13**, Pari-Mutuel

Filing number: **2018-026**

Effective date: 2/21/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The amendments allow for wagering the trifecta bet on a five-horse field.

Basis statement:

The Commission adopted an amendment to Section 47 subsection 8 of Ch. 13, to allow trifectas be programmed for races with no less than five separate betting interests, instead of six as contained in the existing rule.

Fiscal impact of rule:

The amendment to Ch. 13 should improve revenue for licensed venues.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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, 263-C, 264, 267-A, 268, 272-B, 272-C, 279,
279-A, 279-E, 281, 298

Chapter number/title: **Ch. 15**, Off-Track Betting

Filing number: **2018-027**

Effective date: 2/21/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The amendments include just one minor change to this chapter to require licensed off-track betting facilities to remain open while live Maine racing is occurring.

Basis statement:

The Commission adopted an amendment to Section 7 subsection 5 of Ch. 15, requiring that off-track betting facilities remain open if the signal is being sent out for instate live racing until the final race is declared official.

Fiscal impact of rule:

The amendment to Ch. 15 would theoretically increase operating costs slightly for the four licensed off-track betting facilities. However, all four facilities have publicly stated that they are generally open during these periods and it would not present a hardship.

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Rules Adopted January 1, 2018 to December 31, 2018
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 §1859; PL 2017 ch. 289 §9
Chapter number/title: **Ch. 57** (*New*), Logging and Forestry Education Grant Program
Filing number: **2018-273**
Effective date: 1/2/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
Required by 12 MRS §1859 (PL 2017 ch. 289 §9).

Basis statement:
The law requires the Commissioner of Agriculture, Conservation and Forestry, through the Bureau of Parks and Lands (BPL), to establish standards for the BPL's administration of an educational grant program for public secondary or public postsecondary institutions or career and technical education centers that are related to logging or forestry.

Fiscal impact of rule:
None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 (LUPC)**
Umbrella-Unit: **01-672**
Statutory authority: 12 MRS §§ 685-A(3), 685-A(7-A), 685-C
Chapter number/title: **Ch. 10**, Land Use Districts and Standards (Grid-scale Solar Energy Systems)
Filing number: **2018-030**
Effective date: 3/5/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Land Use Planning Commission sought public comment on a petition to amend Ch. 10, *Land Use Districts and Standards*, to allow development of grid-scale solar energy generation facilities with a permit in the Commercial Industrial Development Subdistrict (D-CI). The changes include a set of criteria that help identify eligible locations for redistricting to D-CI for the purpose of developing a grid-scale solar energy generation facility. AD-CI subdistrict designated for the purpose of developing a grid-scale solar energy generation facility would automatically revert to the prior subdistrict designation if the facility is not developed within a reasonable period of time, or if built, upon decommissioning of the facility.

Basis statement:

The purpose of these rule revisions is to allow development of grid-scale solar energy generation facilities with a permit in the Commercial Industrial Development Subdistrict (D-CI).

They include a set of criteria that help identify eligible locations for redistricting to D-CI for the purpose of developing a grid-scale solar energy generation facility. By meeting the proposed criteria in Section 10.21.A,2,b,(2), a petitioner would demonstrate that the area proposed for redistricting is consistent with the portions of the Comprehensive Land Use Plan (CLUP) related to the location of development. The locational criteria include the following:

- Accessibility from a public road by a legal right of access that would allow construction, operation, maintenance, and decommissioning of the facility;
- Located within one mile of the proposed point of interconnection with the existing transmission grid and no other area suitable for the facility and closer to a point of interconnection is reasonably available to the petitioner, unless the petitioner demonstrates that redistricting an area no more than three miles from the point of interconnection would result in a project location that is compatible with current land uses and does not expand the pattern of development beyond already developed areas; and
- Located a reasonable distance from emergency service providers to allow for adequate response in the event of an emergency.

New D-CI subdistricts proposed for the purpose of developing a grid-scale solar energy generation facility may be established in areas with soils recognized by the U.S. Department of Agriculture as prime agricultural soils, provided that upon decommissioning of the facility all structures and materials associated with the development are removed, and that affected soils will be replaced or restored to a state such that they could be utilized for active agricultural production.

A D-CI subdistrict established for the purpose of developing a grid-scale solar energy generation facility would automatically revert to the prior subdistrict designation if the facility is not developed within a reasonable period of time, or if built, upon decommissioning of the facility. Additionally, areas that are redistricted to D-CI for this purpose shall not provide the basis for subsequent redistricting of the area to another development subdistrict, nor shall it

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

serve to satisfy those requirements for redistricting surrounding areas to development subdistricts pursuant to Section 10.08.

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 (LUPC)**
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 (Rural Business Development Subdistrict in Washington County)
Filing number: **2018-031**
Effective date: 3/5/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Maine Land Use Planning Commission adopts amendments to Ch. 10, *Land Use Districts and Standards*, regarding extending the opportunity for Rural Business Development subdistricts into Washington County in partnership with the Washington County Commissioners through the Commission's Community Guided Planning and Zoning program. This regional planning effort implements the directive in Public Law 2011 ch. 68, section 34, for the Commission to initiate prospective zoning in the unorganized and deorganized parts of the state. The purpose of the Rural Business Development Subdistrict (D-RB) is to encourage an appropriate range of business development in rural areas, and locate development in or at the edge of existing development and in concentrated areas along appropriate portions of major transportation corridors. The locations for the D-RB are selected to maintain the rural character of the region and avoid significant visual, natural resource, and fiscal impacts of unplanned growth. The D-RB subdistrict would include areas to accommodate a range of small commercial, light manufacturing, and institutional facilities and businesses that are generally compatible with, and complementary to, natural resource-based land uses; but may create some adverse impacts to residential uses, recreation uses, or resource protection.

Basis statement:

The Maine Land Use Planning Commission (LUPC) adopts rule revisions to its Ch. 10, *Land Use Districts and Standards*, regarding extension of eligible areas for the Rural Business Development subdistrict to certain minor civil divisions (MCDs) in Washington County and the addition of a height limitation for Route 191 in Trescott Twp. The rulemaking was initiated in partnership with the Washington County Commissioners through the Commission's Community Guided Planning and Zoning (CGPZ) program. This regional planning effort implements the directive in Public Law 2011 ch. 682 section 34, for the Commission to initiate prospective zoning in the unorganized and deorganized parts of the state. The purpose of the Rural Business Development Subdistrict (D-RB) is to encourage an appropriate range of business development in rural areas, and locate development in or at the edge of existing development and in concentrated areas along appropriate portions of major transportation corridors.

According to the report, "A Regional Plan for the Washington County Unorganized Territories" (Regional Plan), prepared by the Washington County Council of Governments and dated July 2017, Washington County chose to specifically engage in a CGPZ process to streamline permitting processes and identify areas for residential and commercial development. The report states "When the Washington County Commissioners approved the use of TIF funds from the Unorganized Territories, they did so with the observation and belief that this planning activity would support economic development in parts of Washington County." The public process was challenged by equally important yet conflicting goals, so the Washington County CGPZ Planning Committee looked to find a tool or tools that offered economic opportunity and regulatory flexibility, while allowing for future adjustments to

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

address any resulting adverse impacts. The recommendations of the Planning Committee to achieve that opportunity and flexibility included in part a recommendation to extend eligibility for D-RB subdistricts to certain areas in Washington County they deemed suitable. The recommendations also included a proposed height limitation on Route 191 in Trescott to minimize the visual impact of any new development along that roadway, protecting the highway's scenic qualities.

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 (LUPC)
Umbrella-Unit: **01-672**
Statutory authority: 12 MRS §§ 685-A(7-A), 689
Chapter number/title: **Ch. 10**, Land Use Guidance Maps (Amended Zoning Maps): Zoning
Petition: ZP 770 (T1 R11 WELS — Piscataquis County) (petitioner
Maine Bureau of Parks and Lands)
Filing number: **2018-067**
Effective date: 4/13/2018
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 770

**PETITIONER OR
COPETITIONER**

Maine Bureau of
Parks and Lands

LOCATION

T1 R11 WELS
Piscataquis County

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 (LUPC)

Umbrella-Unit: **01-672**

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

Chapter number/title: **Ch. 10**, Land Use Guidance Maps (Amended Zoning Maps): Zoning
Petition: ZP 769 (Coplin Plt. — Franklin County) (petitioner Russell
Stewart)

Filing number: **2018-120**

Effective date: 7/3/2018

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 769

**PETITIONER OR
COPETITIONER**

Russell Stewart

LOCATION

Coplin Plt.
Franklin County

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 (LUPC)

Umbrella-Unit: **01-672**

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

Chapter number/title: **Ch. 10**, Land Use Guidance Maps (Amended Zoning Maps):
Zoning Petitions:
ZP 771 (Moosehead Junction Twp. — Piscataquis County)
(petitioner Maine Bureau of Parks and Lands, James Vogel);
ZP 772 (T16 MD BPP — Hancock County) (petitioner Next Phase
Energy Services, LLC, Elliott Jordan and Son, Inc.)

Filing number: **2018-168**

Effective date: 8/13/2018

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 771	Maine Bureau of Parks and Lands, James Vogel	Moosehead Junction Twp. Piscataquis County
ZP 772	Next Phase Energy Services, LLC Elliott Jordan and Son, Inc.	T16 MD BPP Hancock County

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 (LUPC)

Umbrella-Unit: **01-672**

Statutory authority: 38 MRS §490-NN(2); 12 MRS §§ 685-A(3), C(5)(A); PL 2017
ch. 142 §12

Chapter numbers/titles: **Ch. 13**, Metallic Mineral Exploration, and Mining Certifications
(filed with parts of Ch. 10)
Ch. 10, Land Use Districts and Standards *(filed with Ch. 13)*

Filing number: **2018-171, 172**

Effective date: 9/20/2018

Type of rule: Routine Technical

Emergency rule: No

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

Basis statement:

Ch. 13 of the Commission's rules, originally adopted pursuant to 38 MRS §349-A, contains rules for metallic mineral exploration, advanced exploration, and mining, including requirements for permitting advanced exploration and mining. Ch. 10 of the Commission's Rules, adopted in accordance with 12 MRS ch. 206-A, contains definitions, requirements for development and management subdistricts, and activity-specific standards related to mining.

Prior to 2012, the Commission and the Department of Environmental Protection (Department or DEP) separately regulated exploration and mining within their respective service areas. The Commission did so primarily through application of its Ch. 10, *Land Use Districts and Standards*, as well as through its Ch. 13, *Rules for Metallic Mineral Exploration, Advanced Exploration and Mining*. The Commission's Ch. 13 rule was originally adopted jointly with DEP's Ch. 200, *Metallic Mineral Exploration, Advanced Exploration and Mining* rule.

In 2012, reform legislation went into effect and shifted permitting authority for projects qualifying for review under the *Site Location of Development Act* (Site Law) from the Commission to the Department. That changed the regulation of metallic mineral mining activities in that, at the time, metallic mineral mining was regulated under the Site Law. From the reform legislation, the Commission was tasked with certifying whether metallic mineral mining and advanced exploration are an allowed use in the subdistrict in which they are proposed and whether they satisfy the Commission's land use standards not addressed by the DEP in its permit application review. The Commission's responsibilities for metallic mineral exploration were not changed by the reform legislation and the Commission continues to have regulatory authority over exploration under its Ch. 10 and Ch. 13 rules.

The *Maine Metallic Mineral Mining Act*, 38 MRS §§ 490-LL *et seq.*, (the Mining Act) also was enacted in 2012, but did not become effective until June of 2014 (Public Law 2011 ch. 653, "An Act to Improve Environmental Oversight and Streamline Permitting for Metallic Mineral Mining in Maine.") The mining legislation retained the same general permitting framework. DEP is responsible for permitting metallic mineral mining and advanced exploration, and the Commission is tasked with certifying those activities. The Commission retains its responsibilities to regulate exploration under its rules.

In the last few years, there have been several significant legislative actions relating to DEP and Commission rulemaking for mining activities. The 2012 mining legislation, in addition to enacting the Mining Act, directed the Commission to remove any provisions related to permitting from its rezoning procedures for metallic mineral mining. The Commission revised its Ch. 12, *Land Use District Requirements for Metallic Mineral Mining and Level C*

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Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Mineral Exploration Activities rule, effective May 27, 2013, in response to the legislation. That legislation also directed the Commission to adopt rules regarding LUPC certification of metallic mineral mining projects reviewed by the DEP as major substantive rules, and mining exploration and advanced exploration as routine technical rules. At the same time, the legislation required the DEP to adopt major substantive rules related to the Mining Act, including standards to protect public health and safety and the environment, language referencing the requirement for LUPC certification in the permitting process, and amendments for exploration and advanced exploration activities. Both agencies proceeded with rulemaking initiatives in response to the legislation.

The Commission provisionally adopted a repeal and replacement of its Ch. 13 rule, as a major substantive rulemaking in January of 2014. The revisions created, within Ch. 13, a new sub Ch. 3 with standards for Commission certification of metallic mineral mining and advanced exploration projects in the Commission's service area. In addition, at the same January 2014 meeting, routine technical revisions to Ch. 13 relating primarily to exploration activities and updating sub-ch. 1 and 2 were posted to public comment. This routine technical rulemaking also included related changes to Ch. 10. Together, the major substantive rulemaking and routine technical rulemaking were intended to completely overhaul Ch. 13, making the Commission's rule consistent with the new Mining Act. Corresponding changes to Ch. 10 were intended to ensure consistency.

Major substantive rules must be approved by the Legislature before final adoption at the agency level. In March of 2014, the Legislature rejected the major substantive mining rules provisionally adopted by both the Commission and DEP. At the same time, the Legislature directed the Commission and DEP to undertake new mining rulemaking. The Governor vetoed this action and the veto was sustained. (See LD 1771, 126th Legislature.) This meant the major substantive rules developed by the Commission and DEP did not go into effect and there was no directive to write new or revised rules. The Commission's routine technical rulemaking did not require legislative approval and was not addressed in LD 1771. As a practical matter, however, that rulemaking was designed to dovetail with the major substantive changes. When the major substantive changes were rejected by the Legislature, the Commission ceased the companion routine technical rulemaking. As a result, the Mining Act remained in place, but without updated rules. Since 2014, further action by the Commission has been on hold as it awaited clarity.

In 2017, the Legislature enacted PL 2017 ch. 142. This legislation revised certain provisions of the Mining Act, and approved final adoption of the Department's revised Ch. 200 rule, provided certain changes were made to the rule. The legislation contains a new directive for the Commission to complete rulemaking on certifications of mining permit applications. It also provides the Commission must include in the rulemaking any additional provisions necessary to ensure consistency with the Mining Act and rules adopted by the Department related to that act. This rulemaking complies with the Legislative directive in PL 2017 ch. 142.

Fiscal impact of rule:

These rule changes implement legislative directives. The rule is not expected to have a fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 (LUPC)

Umbrella-Unit: **01-672**

Statutory authority: 12 MRS §§ 685-A(3), (7-A), 685-C(5)(A); 38 MRS §480-E-1; PL 2017
ch. 89 and ch. 236

Chapter number/title: **Ch. 10**, Land Use Districts and Standards

Filing number: **2018-173**

Effective date: 9/20/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The Land Use Planning Commission is proposing routine maintenance of Ch.10, *Land Use Districts and Standards*. For organizational purposes, the proposal has been divided into three parts: **Part 1** includes responses to two laws in 2017 that affect the Commission, as well as other revisions that cover general housekeeping matters, update references, and clarify existing provisions.

Part 2 of this rulemaking updates the Commission's standards relating to protected natural resources to ensure consistency, as required in statute, with the goals of the Natural Resources Protection Act (NRPA). The NRPA-related updates clarify the existing practice for rezoning areas that include wetlands, ensure consistent application of existing standards to wetland alterations in all zoning subdistricts, establish that filling and grading an acre or more in the General Management Subdistrict (M-GN) requires a permit, and contain other miscellaneous revisions to improve clarity and consistency with other related statutes and rules.

Part 3 includes revisions that correct errors and update references in Appendix (-Alphabetical List of Lakes Showing Wildlands Lake Assessment Findings: Revisions include updating minor civil division and waterbody names, as well as correcting certain management classifications and resource values for some waterbodies.

Basis statement:

This rulemaking by the Maine Land Use Planning Commission generally involves routine maintenance of its Ch. 10 rules, *Land Use Districts and Standards*. For organizational purposes, the revisions have been divided into three parts: Part 1 includes responses to two laws in 2017 that affect the Commission, as well as other revisions that cover general housekeeping matters, update references, and clarify existing provisions. Part 2 of this rulemaking updates the Commission's standards relating to protected natural resources to ensure consistency, as required in statute, with the goals of the *Natural Resources Protection Act* (NRPA). Part 3 includes revisions that correct errors and update references in Appendix C, Alphabetical List of Lakes Showing Wildlands Lake Assessment Findings.

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 (LUPC)

Umbrella-Unit: **01-672**

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

Chapter number/title: **Ch. 10**, Land Use Guidance Maps (Amended Zoning Maps):
Zoning Petitions:
ZP 710A (T1 R8 WELS — Penobscot County) (petitioner Hammond Ridge Development Co., LLC)
ZP 773 (Albany Twp. — Oxford County) (petitioner Timothy and Anita Remington)

Filing number: **2018-262**

Effective date: 11/14/2018

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 710A	Hammond Ridge Development Co., LLC	T1 R8 WELS Penobscot County
ZP 773	Timothy and Anita Remington	Albany Twp., Oxford County

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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: 2018-076
Effective date: 6/3/2018
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

The Commission wishes to enhance its online qualifying contribution service to better serve candidates seeking *Maine Clean Election Act* funding.

Basis statement:

The Commission adopted changes to its rules relating to candidates' submission of qualifying contributions (QCs) to receive *Maine Clean Election Act* (MCEA) funding. These rule amendments were adopted to facilitate administrative changes that will increase the efficiency of current procedures.

In order to qualify for a basic level of MCEA funding, candidates must submit by April 1 or 20 of the election year (depending on the office) a minimum number of QCs from registered voters in the geographical region for the office sought by the candidate. In addition, each candidate must submit receipt and acknowledgement forms (R&A Forms) signed by the contributors and an alphabetical list of the contributors and their towns (usually prepared in Microsoft Word or Excel).

Under the Commission's past procedures, when a candidate receives a QC by check or money order, the candidate must verify that the contributor is registered to vote by taking the R&A Forms signed by the contributors to the local registrars of voters for the municipalities in the district. (Candidates for Governor must do this statewide.) In the lower left corner of the form, the municipal registrar indicates the number of contributors who are registered to vote. Sometimes, the candidate or a campaign volunteer must make two trips to the municipal office to (1) drop off the R&A Forms, and (2) subsequently pick them up. This adds to the administrative work in qualifying for MCEA funding, especially for candidates in larger legislative districts or gubernatorial candidates.

In 2016, the Commission staff began administering - for the first time - a system of supplemental payments of MCEA funds, approved by voters in a November 2015 citizen initiative. Candidates seeking the higher levels of MCEA funding submitted up to eight additional batches of QCs, R&A Forms and alphabetical lists. Some candidates made submissions that were inadvertently incomplete or contained technical errors that needed to be fixed (e.g., a name was omitted from an alphabetical list; a contributor did not sign their name to the R&A Form; or a money order was not signed). As 2016 candidates submitted successive contributor lists to the Commission staff, this led to ongoing confusion for some candidates and campaign staff as to how many QCs had been submitted and had been approved by the Commission staff as valid.

The Commission has been working with InforME on an enhancement to the existing online QC service. This is the website currently used by members of the public to make a QC by credit card. The Commission has expanded the service to relate to QCs received by check or money order. Under this expansion:

- When a candidate is ready to submit a batch of checks or money orders to the Commission, he or she would log in to an administrative section of the website, and enter the names and residential addresses of their contributors. This would be an

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Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

alternative or replacement for the current procedure of submitting alphabetical lists of QCs to the Commission in a Microsoft Excel or Word format.

- When done with the data entry, the candidate would click on an on-screen "Submit" button.
- The online QC service would attempt to verify whether the donors are registered to vote, by relying on data from the Secretary of State's central voter registry.
- Candidates could see a report of the submitted contributions. Those contributors whom the service could not verify would be printed on a special form, which the candidate could print out and bring to the municipal registrars.

This enhancement would eliminate the trips to the municipal office for many of the QCs received. The time savings for candidates in larger districts or gubernatorial candidates could be considerable. The only additional work would be typing the contributor's residential address in the online QC website, as compared to preparing a list of contributor names and municipalities in word or excel format.

The enhancement would also reduce confusion for candidates. The candidates could log into the system at any time to see a reliable list of submitted QCs and an accurate number of how many QCs had been approved by the Commission staff, or needed a remedy.

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Commission on Governmental Ethics and Election Practices
Umbrella-Unit: 94-270
Statutory authority: 1 MRS §1003(1)
Chapter number/title: Ch. 1, Procedures
Filing number: 2018-115
Effective date: 7/2/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Commission wishes to clarify how candidates may finance activities after a primary election that is subject to ranked choice voting and during recounts of elections.

Basis statement:

Ch. 1 §6(7) governs the limitations on contributions that candidates for state office may receive. In order to address questions from gubernatorial candidates who expect that determining the 2018 primary election winners will take longer than usual (due to ranked choice voting), the Commission adopted an amendment that would allow candidates who are in a political party to continue to collect primary election contributions until the Secretary of State tabulates the primary election results. Under this change, candidates could use primary election contributions to fund their activities if there is a period of time during which the results of the primary election are uncertain. Once the general election winner is determined, that candidate could rely on general election contributions for their campaign. The Commission's amendment also deleted two "notwithstanding clauses" from Ch. 1 §§ 6(7)(B)&(D) that were unnecessary and potentially confusing.

In addition, the amendments incorporated into Ch. 1 §6(7)(O) policies set out in 21-A MRS §1018-A permitting candidates to receive donations of goods or services for purposes of a recount of an election, with some limitations.

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 §§ 13011, 13015
Chapter number/title: **Ch. 118**, Purposes, Standards and Procedures for Educational Personnel Support Systems (*Repeal*)
Filing number: **2018-036**
Effective date: 7/1/2018
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:
The rule is being repealed as the underlying statute 20-A MRS §13015, “Local Support Systems”, is repealed effective July 1, 2018.

Fiscal impact of rule:
N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 §§ 2311, 5401(17)
Chapter number/title: Ch. 82, School Bus Driver Fitness Determination (*Repeal*)
Filing number: 2018-046
Effective date: 3/25/2018
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:
Repeal of the rule in response to feedback from the field.

Fiscal impact of rule:
N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 §6451
Chapter number/title: Ch. 45, Rule for Vision and Hearing Screening in Maine Schools
Filing number: 2018-054
Effective date: 4/10/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule outlines the standards and processes for periodic vision and hearing screenings. The purpose of a screening is to identify potential hearing or vision deficits among school age children and refer for further care. Updates to the rule reflect current national recommendations for hearing and vision screenings. The rule clarifies techniques and acceptable research-based tools for schools to use.

Basis statement:

This rule outlines the standards and processes for periodic vision and hearing screenings. The purpose of a screening is to identify potential hearing or vision deficits among school age children and refer for further care. Updates to the rule reflect current national recommendations for hearing and vision screenings. The rule clarifies techniques and acceptable research-based tools for schools to use.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 §§ 6602(5)
Chapter number/title: **Ch. 56**, Child Nutrition Programs in Public Schools and Institutions (*Repeal*)
Filing number: **2018-056**
Effective date: 4/10/2018
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The federal regulations articulate the responsibilities for the SAUs to follow, so the Department is repealing the regulation.

Fiscal impact of rule:
None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Education
Umbrella-Unit: 05-071
Statutory authority: none
Chapter number/title: Ch. 129, Rights and Responsibilities of Educators and Pupils
(Repeal)
Filing number: 2018-057
Effective date: 4/10/2018
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:
Repeal of the rule as the underlying authority in statute no longer exists.

Fiscal impact of rule:
N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 §2907
Chapter number/title: Ch. 250, School Approval for Nontraditional Limited Purpose Schools (*Repeal*)
Filing number: 2018-058
Effective date: 4/10/2018
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:
Repeal of the rule as the statute covers the language exactly.

Fiscal impact of rule:
N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Education
Umbrella-Unit: 05-071
Statutory authority: 20-A MRS §§ 6352-6359
Chapter number/title: Ch. 126, Immunization Requirements for School Children
Filing number: 2018-060
Effective date: 5/10/2018
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

The addition of a Meningococcal vaccine to the required school entry for children entering 7th grade is intended to protect Maine students from Meningococcal disease. Meningitis is more commonly spread amongst adolescents and young adults in a community setting. Adding one dose of Meningococcal vaccine will align with the U.S. Centers for Disease Control and Prevention and the Advisory Committee on Immunization Practices recommendation of receiving the vaccine between the ages of 11 to 12 years.

Basis statement:

This joint rule is established to ensure a safe and healthful school environment for all Maine students by requiring all children attending public or private schools in the State of Maine to receive the required vaccines recommended by the federal Centers for Disease Control (CDC) and the Advisory Committee on Immunization Practices (ACIP). Changes to this joint rule include the addition of meningococcal meningitis to diseases for which immunization is required for Maine's school children and prescribed dosage for quadrivalent meningococcal conjugate vaccines (MCV4). These changes are subject to major substantive rulemaking, pursuant to 20-A MRS §6358. The Legislature has reviewed the provisionally adopted joint rule and has authorized the Department of Health and Human Services and Department of Education to adopt the final joint rule pursuant to Resolves 2017 ch. 32, meaning the new immunization requirement will be in place prior to the start of the 2018 school year.

In recent years, new vaccines against meningitis have been introduced to the routine immunization schedule for adolescents and young adults, recommended for youths aged 11 to 12 years, with a booster dose for older adolescents, due to evidence of waning immunity. Meningococcal disease is spread from person to person through the exchange of respiratory and throat secretions, saliva, spit or kissing, for example. Young adults are at a greater risk of acquiring meningitis, due to close contact during sports and the large group setting of a school house environment. Meningitis is a viral or bacterial infection of the fluid surrounding the brain and spinal cord. Viral meningitis is not as severe as bacterial meningitis and is usually resolved without specific treatment. Bacterial meningitis, a serious illness caused by meningococcal disease, may be contained through antibiotics or prevented through immunization. According to the federal CDC, 1,000 to 2,600 people contract meningococcal disease each year in the United States. One in 10 of these cases results in death. Bacterial meningitis infections may also cause serious health problems in 11 to 19 percent of survivors, such as loss of limbs, deafness, nervous system problems, mental retardation, seizures and strokes. The majority of states have adopted a meningococcal vaccine requirement, based on the severity of the disease.

The DHHS Maine CDC's Immunization Program currently supplies meningococcal vaccines to all adolescents in the State of Maine free of charge through pediatricians, family practice physicians and school-based health centers. Additionally, health education currently focuses on this availability of free vaccines, to increase immunization rates for this adolescent demographic. This Program provides education through a variety of avenues, including printed

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

materials, regional trainings and site visits to offices receiving State-supplied vaccines. States with a mandatory MCV4 school entry requirement experience much higher vaccine rates amongst their adolescent population.

Changes to this joint rule include updating the definition of "Disease" to include meningococcal meningitis, updating the list of medical contraindications to MCV 4 that can serve as a medical exemption, and updating the vaccine dosage requirements to include one dose of quadrivalent meningococcal conjugate vaccine for entry into 7th grade and, if the first dose is not administered on or after the 16th birthday, a second dose prior to entry into grade 12. These changes will align with the CDC and ACIP current recommendations.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 §§ 261, 5205(7)
Chapter number/title: Ch. 14, Education of Homeless Students
Filing number: 2018-074
Effective date: 5/9/2018
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This is a revision of the existing rule which defines a homeless student, outlines procedures for identifying and enrolling homeless students and for resolving disputes over their identification and educational placement, and assures access to appropriate educational services for homeless students consistent with the *McKinney-Vento Homeless Assistance Act*.

Fiscal impact of rule:
N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 §13706
Chapter number/title: Ch. 180, Performance Evaluation and Professional Growth Systems
Filing number: 2018-075
Effective date: 6/3/2018
Type of rule: Major Substantive
Emergency rule: No

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

Basis statement:

This amendment revises Section 11 which involves educator involvement in developing, implementing and reviewing PEPG systems. Specifically, the peer review and collaboration piece has been enhanced to reflect peer support and feedback to include formative peer mentoring and coaching component for all educators new to the SAU and for conditionally certified educators. Secondly for all educators the peer support and feedback is intended for formative purposes only.

Fiscal impact of rule:
N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 §13011(1)
Chapter number/title: Ch. 115, Credentialing of Education Personnel, **Part I:**
Standards and Procedures for Credentialing
Filing number: 2018-108
Effective date: 7/14/2018
Type of rule: Major Substantive
Emergency rule: No

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

Basis statement:

The Department is working to streamline and update the rules to comport them to recent statutory changes and to remove redundancy and unnecessary language. The format is being refined to be clear and concise. In brief, the following are some of the more significant changes:

- Consolidates the number of credentials available to three: a clearance, a certificate, and a conditional certificate.
- As the Department is simultaneously moving to repeal Ch. 118, *Education Personnel Support Systems*, transfers some aspects of Ch. 118 into rule Ch. 115.
- Creates a pathway to become a teacher based on work experience. A person will be able to use work experience to address knowledge areas that are required for an endorsement.
- Refines and reformats the rule to be more logical and sequential. There has been confusion about sections of the rule and this should help to make it more clear and efficient.
- Part I is repealed and replaced; Part II is revised in legislative format

Fiscal impact of rule:
N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 §13038
Chapter number/title: **Ch. 13**, Qualifying Examinations for Teachers, Educational Specialists, and Administrators
Filing number: **2018-148**
Effective date: 8/20/2018
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:
Update the passing scores on the Praxis exams and revise the text of the rule to align with the revisions made to Chapter 115 Part I.

Fiscal impact of rule:
N/A

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Agency name: Efficiency Maine Trust
Umbrella-Unit: 95-648
Statutory authority: 35-A MRS §§ 10110, 10104
Chapter number/title: Ch. 3, Electric Efficiency and Conservation Programs
(formerly Ch. 380)
Filing number: 2018-197
Effective date: 9/22/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose for proposing this rule is to amend the existing rule so that it accurately reflects changes that have been made by the Maine Legislature to the statute. The principal sections of statute that have been changed appear at 35-A MRS §10104(4) and §10110. These sections of statute have shifted the duty of planning and administering electric efficiency and conservation programs from the Maine Public Utilities Commission to the Efficiency Maine Trust, and they have changed the funding level from a fixed rate to a level sufficient to save all energy efficiency that is cost-effective, reliable and achievable which must be modeled by the Trust and then reviewed and approved by the Commission.

Basis statement:

I. Summary

This presents the factual and policy basis for the amendments to Ch. 3 - the rule for *Electric Efficiency and Conservation Programs of the Efficiency Maine Trust*. The rule was approved by vote of the Board of Trustees on August 22, 2018.

II. Background

Through Title 35-A MRS §10110, the Maine Legislature directs the Efficiency Maine Trust (the Trust) to plan and implement energy conservation programs to help reduce energy costs for electricity consumers in the State by the maximum amount possible. The statute directs the Trust to ensure that the conservation programs are cost effective and that program budgets are apportioned in a manner that allows consumers to have a reasonable opportunity to participate in one or more conservation programs. The statute requires that a portion of program budgets be directed to programs targeting low-income consumers and small business consumers, and that the Trust identify in a three-year plan all electricity conservation opportunities that are cost-effective, achievable and reliable and to develop in the plan a budget sufficient to capture those opportunities. The Trust must also submit that plan for approval to the Efficiency Maine Trust Board of Trustees (the Board) and subsequently to the Maine Public Utilities Commission (PUC). The costs for the approved budgets, net of other revenue streams that the Board dedicates to the electricity conservation budgets, will be included in rates of Maine's transmission and distribution utilities. The rules that the Trust must adopt to implement the Act are routine technical rules under the *Administrative Procedure Act* (APA). See 5 MRS §8071.

The electric efficiency and conservation programs pre-date the establishment of the Trust. Prior to these programs being assigned to the Trust through the enactment of the Efficiency Maine Trust Act in 2009, the programs were planned and implemented by the PUC. Using its statutory authority, the PUC completed a rulemaking proceeding in 1987 to adopt an earlier version of this rule, under the title *Demand Side Energy Management Programs By Electric Utilities*. Substantive revisions were made by the PUC to the rule in 1989, 1999 and 2002.

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The Trust's staff (Staff) discussed proposed amendments to the existing *Electric Efficiency and Conservation Programs Rule* with the Program Committee of the Trust Board on June 20, 2018. Staff then submitted an official rulemaking proposal package to the Secretary of State on July 3, 2018. The Public Notice of Rulemaking Proposal was published on the Trust's website on July 9, 2018 and was emailed, with a link to the proposed rule amendments, to the Trust's contact list that receives notices of all official Board meetings. It was subsequently published in local newspapers on July 11, 2018. The Trust held a public hearing at its Augusta office on July 31, 2018 and accepted written comments through August 10, 2018.

The general purpose of the amendments proposed through this rulemaking is to update the rule to reflect changes made by the Legislature to Title 35-A MRS §10104 and §10110. These statutory changes pertain to shifting the planning and implementation functions of the program to the Trust and requiring the Trust to develop program plans and budgets in a "Triennial Plan" for review and approval by the Board and subsequently by the PUC. The amendments retain the overall structure of the existing rule as well as the discretion and flexibility that the Commission originally established to enable programs to make timely changes reflecting market realities.

The amendments also provide clarifications to the definitions that will be used for low-income residential customers and small business customers seeking to participate in the programs, and the share of total program budgets that will be allocated to these customer classes. The amendments also modify language regarding the discount rate for utility ratepayer procurement funds.

Fiscal impact of rule:

No change.

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Agency name: Efficiency Maine Trust
Umbrella-Unit: 95-648
Statutory authority: 35-A MRS §§ 10111, 10104
Chapter number/title: Ch. 4, Natural Gas Energy Conservation Programs (*formerly Ch. 480*)
Filing number: 2018-198
Effective date: 9/22/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose for proposing this rule is to amend the existing rule so that it accurately reflects changes that have been made by the Maine Legislature to the statute. The principal sections of statute that have been changed appear at 35-A MRSA §10104(4) and §10111. These sections of statute have shifted the duty of planning and administering natural gas conservation programs from the gas utilities to the Efficiency Maine Trust, and they have changed the funding level from a fixed percentage of utility revenues to an amount sufficient to meet a standard that must be reviewed and approved by the Public Utilities Commission.

Basis statement:

I. Summary

This presents the factual and policy basis for the amendments to Ch. 4 (formerly Ch. 480) - the rule for *Natural Gas Energy Conservation Programs of the Efficiency Maine Trust*.

II. Background

Pursuant to 35-A MRS §10111, the Legislature directs the Efficiency Maine Trust (the Trust) to plan and implement energy conservation programs for customers of natural gas utilities that operate in Maine. The statute directs the Trust to ensure that the conservation programs are cost effective and that program budgets are apportioned in a manner that allows consumers to have a reasonable opportunity to participate in one or more conservation programs. The statute requires that a reasonable portion of program budgets be directed to programs targeting low-income consumers and small business consumers. The statute further directs the Trust to identify in a three-year plan all natural gas conservation opportunities that are cost-effective, achievable and reliable and to develop in the plan a budget sufficient to capture those opportunities. The Trust must also submit that plan for approval to the Efficiency Maine Trust Board of Trustees (the Board) and subsequently to the Maine Public Utilities Commission (PUC). The costs for the approved budgets will be included in rates of the natural gas utilities. The rules that the Trust must adopt to implement the Act are routine technical rules under the Administrative Procedure Act (APA). See 5 MRS §8071.

The natural gas energy conservation programs pre-date the establishment of the Trust. Prior to these programs being assigned to the Trust through the enactment of the *Efficiency Maine Trust Act* in 2009, the programs were overseen by the PUC and implemented by participating natural gas utilities. Using its statutory authority, the PUC conducted a rulemaking proceeding in 2005-2006 and adopted Ch. 480, *Natural Gas Energy Conservation Programs Rule*.

The Trust's staff (Staff) discussed proposed amendments to the existing *Natural Gas Energy Conservation Programs Rule* with the Program Committee of the Trust Board on June 20, 2018. Staff then submitted an official rulemaking proposal package to the Secretary of State on July 3, 2018. The Public Notice of Rulemaking Proposal was published the Trust's website on July 9, 2018 and was emailed, with a link to the proposed rule amendments, to the Trust's contact list that receives notices of all official Board meetings. It was subsequently

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published in local newspapers on July 11, 2018. The Trust held a public hearing at its Augusta office on July 31, 2018 and accepted written comments through August 10, 2018.

The general purpose of the amendments adopted through this rulemaking is to update the rule to reflect changes made by the Legislature to Title 35-A MRS §10104 and §10111. These statutory changes pertain to shifting the planning and implementation functions of the program to the Trust and requiring the Trust to develop program plans and budgets in a "Triennial Plan" for review and approval by the Board and subsequently by the PUC. The amendments retain the overall structure of the existing rule, as well as the discretion and flexibility that the PUC originally established to enable programs to make timely changes reflecting market realities.

The amendments also provide clarifications to the definition that will be used for low-income residential customers seeking to participate in the programs, and the share of total program budgets that will be allocated to the low-income and small business customer classes. The amendments also modify language regarding the discount rate for utility ratepayer procurement funds.

Fiscal impact of rule:

No change.

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Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 12 MRS §§ 685-A(7-A), 689
Chapter number/title: Ch. 502, Direct Watersheds of Lakes Most at Risk from Development, Urban Impaired Streams
Filing number: 2018-064
Effective date: 5/23/2018
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

Stormwater is water that accumulates on land as a result of rain and other precipitation events. Impervious and developed areas like parking lots, streets, and roofs prevent stormwater from naturally soaking into the ground, thereby creating faster and greater volumes of surface flows. This surface runoff also collects contaminants that are typical to developed areas, such as excess nutrients, sediments, pathogens, toxic contaminants, and chloride. In Maine, as in many other areas, unmanaged stormwater runoff has caused serious damage to property, lakes, streams and wetlands.

Stormwater is addressed through the *Site Location of Development Act* and Maine's *Stormwater Management Law* along with several implementing regulations. For example, projects disturbing one or more acres require approval from the Department, and must comply with stormwater quality and quantity standards established by the Department's Ch. 500 *Stormwater Management Regulations*, and the ancillary Ch. 501, *Stormwater Management Compensation Fees and Mitigation Credit*, and Ch. 502, *Direct Watersheds of Lakes Most at Risk from New Development, and Urban Impaired Streams* rules.

The Department's Ch. 502, *Direct Watersheds of Lakes Most at Risk from New Development, and Urban Impaired Streams*, rule was initially promulgated in 1997, and describes the criteria used to identify the direct watersheds of lakes most at risk from new development and urban impaired streams, and lists those waterbodies¹. In 2015, the Department amended its Ch. 500 and Ch. 501 rules to provide greater flexibility while encouraging the use of innovative stormwater designs that accommodate measures for addressing climate change, resiliency, and adaptation in our infrastructure. The Department is now updating Ch. 502 to reflect current water quality, and identify those lakes that are now most at risk from development activities and urban impaired streams.

Basis statement:

The Department's Ch. 502, *Direct Watersheds of Lakes Most at Risk from New Development, and Urban Impaired Streams* rule was initially promulgated in 1997. It describes the criteria used to identify the direct watersheds of lakes most at risk from new development and urban impaired streams, and lists those waterbodies². The Department is now updating Ch. 502 to reflect current water quality conditions in the waterbodies, and identify those lakes that are now most at risk from development activities and urban impaired streams.

The Department of Environmental Protection held a public hearing on the proposed amendments on June 15, 2017, and the comment period closed on June 26, 2017. The

¹ Ch. 500 establishes specific stormwater control standards for the watersheds of lakes most at risk and urban impaired streams identified by Ch. 502.

² In 2015, the Department amended its Chapter 500 and Chapter 501 rules to provide greater flexibility while encouraging the use of innovative stormwater designs that accommodate measures for addressing climate change, resiliency, and adaptation in our infrastructure.

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Department received one comment on the proposed amendments at the June 15, 2017 public hearing, and no changes were made to the proposed amendments in response to this comment. No written comments were received. The Board of Environmental Protection provisionally adopted the Department's proposal on September 7, 2017.

As a major substantive rule, Ch. 502 is subject to legislative review pursuant to 5 MRS §8072. The final adoption of the proposed amendments to this major substantive rule was authorized by Resolve 2018, Chapter 30, which authorized adoption of the provisionally adopted Ch. 502 that was submitted to the Legislature for review.

Fiscal impact of rule:

All projects requiring a Stormwater or Site permit must meet the Basic Standards which require good erosion and sedimentation control and good housekeeping practices during construction. Most projects with 1.0 or more acres of impervious area are required to meet the General or Phosphorus Standards which require post construction management and treatment of the stormwater. However, if the project is in the direct watershed of a "lake most at risk from new development" or an "urban impaired stream" the threshold requiring post construction management and treatment is 20,000 sq. ft. Stormwater projects in lake watersheds have the option of meeting either the General Standard or the Phosphorus Standard. Site projects in the direct watershed of a lake most at risk from development must meet the Phosphorus Standard, as must any projects in the direct watershed of a "severely blooming" lake. Site projects in the watershed of an urban impaired stream, in addition to meeting the General Standards, must also meet the Urban Impaired Stream Standard. The additional requirements for lakes most at risk from development and urban impaired streams will increase the costs of development projects affecting these resources. Since these costs are site-specific, the Department is unable to provide an average or estimated fiscal impact for this proposal.

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Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: PL 2007 ch. 661 §E-2
Chapter number/title: Ch. 382 (New), Wind Energy Act Standards
Filing number: 2018-069
Effective date: 4/30/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The principal purpose of the rulemaking is to provide clarity to the review process for wind energy projects under the **Wind Energy Act** (WEA).

Basis statement:

The principal purpose of the rulemaking is to provide clarity in the review process for permit applications for wind energy projects under the *Wind Energy Act* (WEA). This rule provides further guidance by explaining the current review process and elaborating on the licensing standards for wind energy projects under the WEA.

Since the implementation of the WEA in 2008 the Department has gained valuable experience in the processing of applications under the law. The rule seeks to capture some of the lessons learned from that experience and provide formal guidance to participants in the Department's decision making process.

The rule is based on the statutory language of the WEA and Department experience in applying the WEA. The Department released two pre-rulemaking drafts of this rule, in July 2016 and January 2017. The Department also held two public workshops on the draft rule: in Bangor on September 21, 2016; and in Farmington on January 27, 2017. Many stakeholders commented on the drafts and/or attended the workshops. The Department did not attempt to reach consensus; however, the Department did revise the draft rule based on the comments received.

Fiscal impact of rule:

Ch. 382 largely incorporates existing department practice in the review of wind energy projects and so is not anticipated to have a substantial fiscal impact to small businesses or others. The rule may have an indeterminate, but potentially negative fiscal impact on a developer of wind energy projects as they will no longer be able to credit the potential future salvage value of project components against the costs of decommissioning. However, the WEA requires developers to provide a "demonstration of current and future financial capacity that would be unaffected by the applicant's future financial condition." The speculative nature of salvage values twenty years in the future makes it problematic to account for these in the financial assurance equation. The potential fiscal impact would also be partially offset by the fact that the applicant or their assignee would still ultimately be the recipient of any future salvage value realized. The rule would also increase the required minimum safety setback for wind turbines. This may require a developer to reconfigure a project, reduce the size, or to acquire title or easements over additional land.

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Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 5 MRS §8051; 38 MRS §341-H
Chapter number/title: Ch. 2, Rules Concerning the Processing of Applications and Other Administrative Matters
Filing number: 2018-092
Effective date: 6/9/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The proposed amendments to Ch. 2 incorporate the statutory changes to the Department's right of inspection and entry enacted in PL 2017 ch. 137 §A-5, which repealed and replaced the corresponding language in Title 38 §347-C, to amend the process for revocation or suspension of a license in accordance with PL 2017 ch. 137 §A-4, which modified the corresponding language in Title 38 §342 sub-§11-B, and make other minor changes as identified by staff.

Basis statement:

Ch. 2 is being amended to incorporate two statutory changes and to make other minor changes to clarify and improve various procedural matters. The two statutory changes are to the Department's right of inspection and entry and to the process for revocation or suspension of a license. The Department's right of inspection and entry was amended by PL 2017 ch. 137 §A-5, which repealed and replaced the corresponding language in Title 38 §347-C. The process for revocation or suspension of a license was amended by PL 2017 ch. 137 §A-4, which modified the corresponding language in Title 38 §342 sub-§11-B.

Fiscal impact of rule:

None anticipated. The amendments do not impose new regulatory requirements and in some instances, simplify procedures.

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Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 1301 *et seq.*, 1319-O, 1319-R
Chapter number/title: **Ch. 850**, Identification of Hazardous Waste
Ch. 851, Standards for Generators of Hazardous Waste
Ch. 852, Land Disposal Restrictions
Ch. 858, Universal Waste Rules
Filing number: 2018-098 *thru* 101
Effective date: 6/11/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The principal reason for this rulemaking is to update the rules through incorporation of revised and new regulations promulgated by U.S. EPA under *The Solid Waste Disposal Act*, as amended by the *Resource Conservation and Recovery Act of 1976* (RCRA), as amended, 42 USCA 6901, *et seq.* These regulations include 40 CFR 172, 40 CFR 173, 40 CFR 178, 40 CFR 179, 40 CFR 260 to 273, 40 CFR 279, and 40 CFR 761.

Basis statement:

After consultation with U.S. EPA, these amendments were determined to be necessary in order for the State of Maine to receive additional authorization and to maintain current authorization to administer the *Resource Conservation and Recovery Act of 1976* (RCRA). Federal authorization allows the Maine Department of Environmental Protection (“Department”) to retain its delegated authority to administer the RCRA hazardous waste program in Maine, including the issuance of licenses for hazardous waste facilities.

The changes include additional exclusions from materials identified as hazardous waste, including a new Maine-specific exclusion related to the handling of used cutting oils; updates to the criteria for identifying hazardous waste by characteristics; aligning listed wastes with federal hazardous waste and hazardous constituents listings; updating testing methodologies; updating standards related to land disposal restrictions; and, minor changes to facilitate alignments between the two sets of regulations. These changes also necessitate minor corrections, such as updated cross-citations, throughout the rules.

In addition to aligning state regulations with current federal RCRA regulations, the Department is also undertaking to update formatting, reflect changes in the Maine Hazardous Waste Statutes and 2011 PL 304, Part F, and improve the general organization of the rules.

Fiscal impact of rule:

Federal rules that are being incorporated into Maine’s hazardous waste rules are already in effect. For this reason, no additional fiscal impact is anticipated.

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Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 341-D(1-B), 1304 (1,1-B & 13)
Chapter number/title: Ch. 418, Solid Waste Management Rules: Beneficial Use of Solid Wastes
Filing number: 2018-102
Effective date: 7/8/2018
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

Amendments to Ch. 418 update, clarify and correct certain provisions of the rule. The Department's experience in administering Section 6 (Fuel Substitution) of this rule over past years has highlighted the need to make particular substantive changes to improve its operation, and to reorganize and make language changes for clarity and readability. The Department is updating citations and references throughout Ch. 418.

Basis statement:

The revisions to the *Maine Solid Waste Management Rules: Beneficial Use of Solid Wastes*, 06-096 CMR ch. 418, update, clarify and correct certain provisions of the rule. The Department's experience in administering this rule over past years has highlighted the need to make particular substantive changes to improve its operation, and to reorganize and make language changes for clarity and readability. The Department is updating citations and references throughout Ch. 418.

Fiscal impact of rule:

A minor cost increase which would affect processors and users of boiler fuel derived from construction and demolition debris wood may result from proposed increases in the number of samples required to characterize that fuel substitute. On the other hand, a change in the rule allowing the use of data gathered by a construction and demolition debris (CDD) wood processor to demonstrate a licensee's compliance with fuel quality standards, represents a potential savings.

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Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 341-H, 1304(1, 1-B)
Chapter number/title: Ch. 410, Maine Solid Waste Management Rules:
Composting Facilities
Filing number: 2018-113
Effective date: 6/30/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rulemaking proposes no new language or substantive changes to Ch. 410, with the exception of a minor change to section 1(B)(1) to clarify that section so that it more accurately reflects the Department's existing interpretation and practice. All of the highlighted language in this version, with the exception of changes to section 1(B)(1) and other minor formatting changes, was already the subject of prior Department notice and comment, and was properly adopted by the Department in those prior rulemaking proceedings. However, a footnote in a recent Maine Supreme Court decision, *State of Maine v. Dubois, Inc.*, 2017 ME 223, ¶3 n.1, 174 A.3d 308, raises questions regarding the Department's notice with respect to those prior adoptions, including whether all of the highlighted language was included on a single draft at the time of the Department's prior public notice and comment. Accordingly, in an abundance of caution, and to alleviate any possible concerns regarding the adequacy of the Department's notice, the Department is undertaking these current proceedings to allow for additional notice and public comment on the highlighted language, as set forth in a single draft version of Ch. 410.

Basis statement:

In addition to the above, the Department made several other minor changes. Those changes include:

- correcting citations to other Solid Waste and Hazardous Waste Rules to reflect amendments made in other rulemakings;
- correcting formatting and citation form for consistency throughout the Department's rules;
- removing repetitive or reallocated language; and
- clarification of existing requirements.

Fiscal impact of rule:

No significant fiscal impact is anticipated.

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Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 341-D(1-C), 1610(5)(D)(1)
Chapter number/title: **Ch. 415**, Reasonable Costs for Handling, Transportation, and Recycling of Electronic Wastes
Filing number: **2018-149**
Effective date: 8/20/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The changes to Ch. 415 are in response to changes in statute resulting from the enactment of LD 1847 as PL 2018 ch. 391.

Basis statement:

The purpose of the amendments is to:

- Make the regulations consistent with recent legislation, PL 2018 ch. 39;
- Update the regulations to reflect current practices and certifications in the electronic waste management system; and
- Correct minor grammatical errors and clarify the rule's conformance with statute.

Fiscal impact of rule:

None.

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Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §585-A
Chapter number/title: Ch. 166 (New), Industrial Cleaning Solvents
Filing number: 2018-150
Effective date: 8/22/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Section 184 of the *Clean Air Act* requires states to implement or update reasonably available control technology “RACT” controls on all major VOC and NOx emission sources and on source categories covered by a Control Technique Guideline “CTG” document. EPA defines RACT as the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. In 2006 EPA published a CTG recommending VOC controls for industrial cleaning solvents; the Department is proposing to incorporate this CTG into a new rule.

Basis statement:

This rule limits the emissions of volatile organic compounds (VOC) from industrial solvent cleaning activities and is being adopted pursuant to Section 184 of the *Clean Air Act*, which requires states to implement or update reasonably available control technology (RACT) controls on all major VOC and NOx emission sources and on source categories covered by a Control Techniques Guideline (CTG) document. The U.S. Environmental Protection Agency (EPA) defines RACT as the lowest emission limit a source is capable of meeting through the application of control technology that is reasonably available considering technological and economic feasibility. In 2006, EPA published a CTG recommending VOC control options for this source category. Maine’s rule is based on these recommendations and reduces VOC emissions from industrial solvent cleaning activities with 6,000 pounds (3 tons) or greater per year emissions by using low vapor pressure solvent, low VOC solvents, and/or add-on controls. Sources subject to this rule are also required to implement basic work practices to reduce and limit VOC emissions.

Fiscal impact of rule:

There may be minor costs for facilities to convert to low VOC coatings or install add-on control technology and to comply with the required record keeping.

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Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 561 - 570-M
Chapter number/title: Ch. 691, Rules for Underground Oil Storage Facilities
Filing number: 2018-205
Effective date: 9/26/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department is updating its Ch. 691 and 693 underground oil storage rules to include requirements under federal regulations that were passed in 2015. This will allow the Department to seek reauthorization for Maine's underground oil storage tank program. The proposal also removes outdated aspects of the rule and other minor language improvements.

Most of the changes to Ch. 691 are in accordance with the EPA's regulatory changes in 2015. States with delegated authority such as Maine are required to achieve regulatory consistency by October 13, 2018. The major changes within this rule, which are needed to gain consistency with federal regulations, include:

- Sump testing every 3 years, unless the sump is double walled, to ensure sumps are liquid tight;
- Changing the annual statistical inventory analysis leak detection method to monthly statistical inventory reconciliation. Currently 7 facilities would need to make this change and DEP staff has met with each facility (the last of these tanks are scheduled to be removed by August 1, 2019);
- Facilities may remain temporarily out of service for up to 12 months, a reduction from the current 24 months; however, approval to remain out of service for longer periods of time may be obtained from the Commissioner;
- Discharge investigation, response and corrective action is required for aboveground tanks associated with field constructed tanks or airport hydrant systems and wastewater treatment tank systems not regulated by the federal NPDES or pretreatment programs;
- Aligning discharge investigation and corrective actions to federal rules for protection of surface waters and consistency between the state and federal rules; and
- Installation of double walled spill buckets for new or replacement construction, eliminating the need for the 3-year sump testing.

Basis statement:

The principal purpose of this rulemaking is to incorporate the Environmental Protection Agency's (EPA) 2015 Federal Underground Storage Tank rule amendments under 40 U.S.C. part 280 into the Maine rules, align Maine's rules to achieve consistency with federal provisions, update outdated sections, and make other clarifications and minor language improvements. During the second session for the 128th Maine Legislature, the Department introduced LD 1784 to align the state and federal statutes and allow for this rulemaking. By adopting changes to this rule, the EPA can allow the Department to remain federally authorized for the administration of the Underground Oil Storage Tank Program. In developing this rule, the Department consulted the federal rules and associated guidance, industry standards as outlined in Appendix R of the rule, national and state studies of sources of releases and results from sump testing, and agency professional judgement.

The rule was initially developed in 1986. It has been revised 13 previous times, the last in 2016. The 2018 rule was developed over the course of several years. The Federal EPA has reviewed the rule as have members of the business community with an interest in this

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rulemaking. The Department conducted outreach to interested parties through numerous phone calls and emails as well as meetings. The Department also provided an overview of the proposed changes at the annual training for Maine's Certified Tank Installers and Inspectors in 2017. A draft version of the rule was sent to members of the industry for their comments. These commenters represented a range of interests. Some changes were made in response to these comments and incorporated into the rule posted for formal public comments.

Fiscal impact of rule:

None.

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Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 561 - 570-M
Chapter number/title: Ch. 693,
Filing number: 2018-206
Effective date: 9/26/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department is updating its Ch. 691 and 693 underground oil storage rules to include requirements under federal regulations that were passed in 2015. This will allow the Department to seek reauthorization for Maine's underground oil storage tank program. The proposal also removes outdated aspects of the rule and other minor language improvements.

Most of the changes to Ch. 691 are in accordance with the EPA's regulatory changes in 2015. States with delegated authority such as Maine are required to achieve regulatory consistency by October 13, 2018. The major changes within this rule, which are needed to gain consistency with federal regulations, include:

- Sump testing every 3 years, unless the sump is double walled, to ensure sumps are liquid tight;
- Changing the annual statistical inventory analysis leak detection method to monthly statistical inventory reconciliation. Currently 7 facilities would need to make this change and DEP staff has met with each facility (the last of these tanks are scheduled to be removed by August 1, 2019);
- Facilities may remain temporarily out of service for up to 12 months, a reduction from the current 24 months; however, approval to remain out of service for longer periods of time may be obtained from the Commissioner;
- Discharge investigation, response and corrective action is required for aboveground tanks associated with field constructed tanks or airport hydrant systems and wastewater treatment tank systems not regulated by the federal NPDES or pretreatment programs;
- Aligning discharge investigation and corrective actions to federal rules for protection of surface waters and consistency between the state and federal rules; and
- Installation of double walled spill buckets for new or replacement construction, eliminating the need for the 3-year sump testing.

Basis statement:

The principal purpose of this rulemaking is to incorporate the Environmental Protection Agency's (EPA) 2015 Federal Underground Storage Tank rule amendments under 40 U.S.C. part 280 into the Maine rules and make other minor language improvements. By adopting changes to this rule, the EPA can allow the Department to remain federally authorized for the Underground Oil Storage Tank Program. In developing this rule, the Department consulted the federal EPA rules and associated guidance, Federal DOT pipeline standards, Federal EPA online Airport Hydrant System training, and agency professional judgement. The changes made to Ch. 693 are consistent with the federal requirements. Therefore, no sections are identified as more stringent than federal requirements.

The rule was revised once before in 2012. Before the current proposed rule was posted for public comment, outreach to the two interested parties affected by this rulemaking was conducted. Changes were made in response to comments received during the outreach and were incorporated into the proposed rule posted for formal public comments. Minor citation and grammatical corrections also were made to the rule.

Fiscal impact of rule:

None.

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Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §341-H
Chapter number/title: Ch. 310, Wetlands and Waterbodies Protection
Filing number: 2018-235
Effective date: 11/11/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rulemaking was initiated in response to a petition from the Maine Association of Wetland Scientists (MAWS) requesting changes to clarify the definition of “Wetland of Special Significance” (WOSS). The petition attempted to address the issue of extending WOSS protections to all wetlands connected to the protected resource that created the WOSS. In some cases, this resulted in WOSS protections being applied to low value wetlands a great distance from the protected resource that created the WOSS designation. The Department denied the petition due to the lack of discretion the proposed language afforded the Department to protect potentially significant wetlands. However, the Department recognized the issue the petition was attempting to address and agreed to work with MAWS on developing new language for rulemaking.

The Department hosted a stakeholder discussion in November to review the MAWS’s proposal and develop alternative language. The changes will give the regulated community more defined, consistent parameters in delineating a WOSS while allowing the Department to maintain discretion over special cases. The Ch. 310 proposal does the following:

1. Clarifies the definitions of “Emergent Marsh Vegetation” and “Peatland”
2. Defines the WOSS to include connected wetlands within a 250-foot radius unless the Department determines that the activity may unreasonably adversely affect the protected resource that created the WOSS designation.
3. Allows for shoreline stabilization as an activity that can be done in, on or over WOSS with an alternatives analysis, aligning with current practice.

Basis statement:

The Department proposed amending Ch. 310 to accomplish three objectives: clarify the definitions of "Emergent Marsh Vegetation" and "Peatland" in Section 3; amend the definition of a Wetland of Special Significance ("WOSS") to include only connected wetlands within a 250-foot radius of the feature that triggered the WOSS designation unless the Department determines that the activity may unreasonably adversely affect the feature of the protected resource that triggered the WOSS designation in Section 4; and, allow for shoreline stabilization as an activity that can be done in, on or over WOSS with an alternatives analysis in Section 5. Based on the comments received, the Department has withdrawn the second proposal for further study and is adopting the other two proposals.

Fiscal impact of rule:

The changes may reduce the expenses of application preparation for some applicants. No other fiscal impacts are anticipated.

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Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 22 MRS §567
Chapter number/title: Ch. 263, Maine Comprehensive and Limited Environmental Laboratory Accreditation Rule
Filing number: 2018-266
Effective date: 12/19/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The *Maine Comprehensive and Limited Environmental Laboratory Accreditation Rule* repeals and replaces the current lab certification rule. This rule establishes revised standards for the accreditation of the operations, performance and administration of laboratories, including industrial, commercial, academic and governmental, that analyze samples under specific DHHS and/or DEP programs. This rule is necessary in order to administer the most recent updates to the 40 CFR Parts 136, 141 and 261 related to methods test categories. The rule adds "provisional" as a status for laboratory accreditation, establishes an adjusted fee schedule, amends terms and definitions, and establishes an all-encompassing quality system to provide a straightforward reference for laboratory personnel.

Basis statement:

Maine Comprehensive and Limited Environmental Laboratory Accreditation Rule repeals and replaces the existing laboratory certification rules, Ch. 263. The purpose of this rule is to establish quality guidelines for laboratory data received by the Department of Health and Human Services (DHHS or Department) and the Department of Environmental Protection (DEP). The rule establishes procedures for accrediting laboratories for drinking water, non-potable water, air, and solid and chemical materials, including tissues and septage, to ensure that laboratories analyzing samples for the following regulations: *Safe Drinking Water Act*; *Clean Water Act*; *Resource Conservation and Recovery Act*; and Leaking Underground Storage Tanks (LUST) Program, produce legally defensible data by meeting quality control and quality assurance objectives.

This rule is necessary in order to administer the updates to the 40 CFR Parts 136, 141 and 261 and to allow laboratories to use updated methods contained in the 22nd Edition of *Standard Methods*. This rule describes an all-encompassing quality systems section for easy reference; provides for "provisional status" as an additional accreditation option; and specifies reporting requirements for laboratories when samples, including private well samples, are not analyzed according to accredited methods. This rule uses the term "accreditation" in place of "certification," keeping with national and international standards and nomenclature. Additionally, this rule establishes a fee structure that is consistent with adjusted charges that were implemented by program policy change in 2012.

Fiscal impact of rule:

Under the rule, laboratories will be required to pay charges that are consistent with the programs' interim adjusted fee schedule implemented by the program in 2012. The proposed fee schedule will result in the Department collecting an estimated 60% of the total operating costs and will require funding from other sources, including General Funds, to support the program. The program anticipates an increase in costs due to recent legislation that requires the Department to expand lab certification rules to include the certification and monitoring of an additional testing laboratory service. The program, currently at 1.25 FTEs, is projected to

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continue as underfunded by an estimated 40% based on the adjusted fee schedule, notwithstanding any increase in the number of businesses or in testing methods. The modified fee collection proposed in rule is anticipated to create a shortfall that is estimated to be \$57,000 and projected to increase annually.

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

Agency name: Finance Authority of Maine
Umbrella-Unit: 94-457
Statutory authority: 10 MRS §969-A; 20-A MRS §11485
Chapter number/title: Ch. 611, Maine College Savings Program, *Amendment 16*
Filing number: 2018-022
Effective date: 2/12/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule amendment is necessary to conform to PL 2017 ch. 200, “An Act to Amend the Laws Governing the Membership of the Advisory Committee on College Savings”.

Basis statement:

The rule amendment is necessary to conform the rule to PL 2017 ch. 200, “An Act to Amend the Laws Governing the Membership of the Advisory Committee on College Savings”. The rule amendment deletes the provision that the Treasurer of State serves as the chair of the committee and provides that the chair of the committee will be appointed annually by the chair of the board of directors of the Finance Authority of Maine. No comments were received during the public comment period.

Fiscal impact of rule:

None.

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Agency name: Finance Authority of Maine
Umbrella-Unit: 94-457
Statutory authority: 10 MRS §969-A(6),(14),(16)
Chapter number/title: Ch. 1, Bylaws and Administration of the Finance Authority of Maine, *Amendment 6*
Filing number: 2018-181
Effective date: 9/5/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The amendment amends the Gift Policy portion of the Authority's *Code of Ethics*, to clarify that compensation for services rendered by an employee or board member may be accepted without violation of the policy, provided however that such compensation will likely form the basis of a conflict of interest.

Basis statement:

The amendment amends the Gift Policy within the Authority's *Code of Ethics*. These changes clarify the limited circumstances when gifts or compensation to an employee or board member may be accepted without violation of the policy, and the effect of the receipt of such gifts or compensation. The amendment also makes other, non-substantive changes to the *Code of Ethics*.

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 Health and Human Services, **Maine Center for Disease Control and Prevention**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 7702-B(111), 7703(6), 7704, 7707(3), 7802(7), 8301(8), 8302-A(2), 8303-A(l)

Chapter number/title: **Ch. 33**, Family Child Care Provider Licensing Rule (*New; replaces 10-148 Ch. 33, Rules for the Certification of Family Childcare Providers, filing 2018-104*)

Filing number: **2018-105**

Effective date: 7/5/2018

Type of rule: Major Substantive

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's rulemaking advertised the repeal of 10-148 CMR Ch. 33, *Rules for the Certification of Family Child Care Providers* and replacement of 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 the comment period ended on through May 18, 2017. Ch. 33 contains both routine technical and major substantive provisions. Routine technical provisions were adopted and became effective on September 20, 2017. The provisionally adopted major substantive provisions, pursuant to 5 MRS §8072, were submitted to the Legislature for review on September 25, 2017.

This rule achieves 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.

The Department adopted all major substantive portions of the rule, with additional changes directed by the 128th Legislature's *Resolve, Regarding Legislative Review of Portions of Chapter 33: Rule Relating to the Licensing of Family Child Care Providers*, a Major Substantive Rule of the Department of Health and Human Services, Maine Center for Disease Control and Prevention (*Resolves 2017 Ch. 48*), which became law on April 15, 2018.

Fiscal impact of rule:

These rule changes pose no fiscal impact to counties or municipalities.

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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 §8102

Chapter number/title: **Ch. 36**, Children’s Residential Care Facilities Licensing Rule
(New chapter; replaces 10-148 Ch. 18 and 18-A, 14-118 Ch. 18, 14-193 Ch. 18.

Filing number: **2018-214 thru 218**

Effective date: 10/10/2018

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, Maine CDC, Children’s Licensing and Investigation Services (Department) advertised rulemaking changes on May 2, 2018, to repeal four existing children’s residential care licensing rules and replace them with a single rule: 10-144 CMR Ch. 36, *Children’s Residential Care Facilities Licensing Rule*. The rules advertised for repeal and replacement included: *Rules for the Licensure of Residential Child Care Facilities*, 14-118 CMR Ch. 18; *Rules for the Licensure of Residential Child Care Facilities*, 14-193 CMR Ch. 18; *Rules for the Licensure of Residential Child Care Facilities*, 10-148 CMR Ch. 18; and *Rules for the Licensure of Private-Non-Medical Institutions-Residential Child Care Facilities*, 10-148 CMR Ch.18-A. A public hearing was held on May 21, 2018. The Department accepted written comments through May 31, 2018.

The Department is charged with licensing children’s residential care facilities, in accordance with 22 MRS §8102. This adopted rule includes the health and safety licensing standards required to operate a children’s residential treatment facility, as well as the enforcement mechanisms necessary to ensure that facilities are meeting those standards. This new rule creates a comprehensive licensing rule for all children’s residential care facilities in Maine. Additionally, this rule updates and clarifies language to reflect current practice in application and licensing requirements, due to the repealed rules not being updated for many years. The rule is also structured to clarify requirements for staff training, policies, reporting, maintaining records and caring for residents.

A new service is added: children’s residential care facility with secure capacity and psychiatric treatment (Level 2 Facility), which allows residents to receive psychiatric and intensive mental health services in a secure facility that is not in a hospital. Expanding children’s residential facilities to this service meets a need for Maine children to be able to receive treatment in a facility that matches their level of need within Maine. Currently, many Maine children requiring this specific level of care are either treated in a less appropriate setting in the State, or those children must be sent outside of Maine, requiring parents, families and other supports to travel long distances to visit these children.

New notification requirements were added for personnel-related criminal activity that occurs at a facility. Requirements were included for a facility’s annual program evaluation, to report on the frequency of a facility’s use of isolation, restraints and resident elopement. The rule also contains the addition of a close of business plan to the license application. Further detail was provided to the components necessary for full license application for children’s residential facilities.

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Core licensing standards were created for all children's residential facilities to be licensed in good standing. These core standards include the clarification for waiver requests, the information listed on a license, the specific process for a Department complaint investigation and behavior management requirements, including the use of restraints. The core licensing standards also articulates the Department's right to enter and inspect a facility unannounced.

All policies and records required by the facility for inspection by the Department are identified in this rule, including additional policies for closure, infectious disease, smoking, reportable events, and record management. The Department has updated the rights section, to include the right to freedom from unreasonable search, the right to discharge planning, the right to communication, and notification of these rights. If the Department identifies a violation of resident rights by a facility, then it may cite the facility with a violation.

A requirement is added that all persons at a facility administering medications must demonstrate a minimal qualification of a certified residential medication aide (CRMA). One CRMA certified staff person is now required per shift. Updated and clarified requirements are also added for medication administration and storage, including psychotropic medications and diversion control of schedule II controlled substances. These new requirements are intended to decrease and hopefully eliminate the incidence of medication errors at licensed children's residential care facilities.

Secured capacity facilities are required to be locked at all times, to ensure resident safety by preventing residents and others from harm, if these residents attempt to elope from the facility. Level 2 Secured Capacity Facilities requirements are added to assure that children receive appropriate psychiatric and intensive mental health treatment residential treatment in a setting where a stay may be longer than a hospital can offer.

Compliance and enforcement measures are clarified in response to facilities violating previous rules and to help facilities understand what will happen if they are in violation of the statute and rule.

Fiscal impact of rule:

The Department has determined that there is no expected adverse impact on small business resulting from these rule changes. It is anticipated that there will be no fiscal impact to the Department

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Agency name: Department of Health and Human Services, **Division of Licensing and Certification**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §9056(1)
Chapter number/title: **Ch. 60**, Maine Background Check Center Rule
Filing number: **2018-224**
Effective date: 10/17/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This proposed rule is intended to comply with the Maine Background Check Center Act (22 MRS ch. 1691), passed in 2015. This proposed rule would govern the use and operation of the Maine Background Check Center, which operates an Internet-based system that employers will use to access criminal records and other background information. These employers review the background checks to determine the eligibility of individuals to work in long-term care, home and community-based care, as well as child care.

Basis statement:

The Department is adopting this new rule, 10-144 CMR ch. 60, *Maine Background Check Center Rule*, in order to comply with the requirements of 22 MRS ch. 1691, the *Maine Background Check Center Act*, enacted by PL 2015 ch. 299, effective October 15, 2015. This rule governs the use and operation of the MBCC, which operates the Internet-based system that employers use to access criminal records and other background information. These employers review the background checks to determine the eligibility of individuals to work in long-term care, home and community-based care, as well as child care.

The Department has developed the Maine Background Check Center (MBCC) website to meet the statutory obligation to "operate an Internet-based system that employers use to access criminal records and other background information to determine the eligibility of individuals to work in direct access positions with vulnerable Maine citizens including children, elderly persons, dependent adults and persons with disabilities." (22 MRS §9052). The online system is maintained by the MBCC in coordination with the Department of Public Safety, the State Bureau of Investigation and with other state and federal agencies, including the Federal Bureau of Investigation (FBI).

The Maine Background Check Center became operational for the first identified group of employers in February 2017. Since then, the implementation process required by 22 MRS §9058 has engaged all mandated employer and provider categories, with the exception of child care providers (centers, family child care providers, and nursery schools). Enrolling this group of employer/providers has been delayed by the passage of PL 2017 ch. 457 on July 9, 2018, which mandated that this group of employers/providers undergo fingerprint-based background checks. The Maine Background Check Center does not currently have this capacity.

The rule requires employers to comply with enrollment, administrator, and user requirements of the MBCC. Employers must obtain written authorization and releases from prospective employees before obtaining background checks, and keep background check records confidential. This rule establishes a list of disqualifying offenses, which is included in this rule. If an individual believes that his or her background check contains an error, then he or she may challenge the accuracy of the information believed to be in error. If employers wish to employ an individual with a disqualifying offense on his or her background check report,

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the employer and individual may request a waiver. The rule also outlines the appeal process for employers and applicants.

The rule also authorizes the continued utilization of "approved alternate vendors," rather than the MBCC, for employers who were using an alternate vendor prior to the initiation of the MBCC, and if certain regulatory standards are met.

The rule provides, in Section 3(1) that the MBCC or approved alternate vendors will become operational for employers who are subject to the rule, in a staged and orderly process based on the type of employer and the number of direct access workers employed. Employers will have 14 business days from the date of written notification by the Department to begin use of the MBCC or approved alternate vendors.

The Department made several changes to the final rule from the proposed rule, in response to comments and on the advice of the Office of the Attorney General.

Fiscal impact of rule:

The user fee charges of \$56 per background check is intended to fully fund the operation of the new Background Check Center Program

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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, part MMMMMMM-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: **2018-004**
Effective date: 1/10/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of proposing this rule is to permanently adopt rate increases ordered by the legislature and minor technical coding changes. 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 for 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 section ZZZZZZ-2.

The Department increased rates via emergency rule and this rule will permanently adopt the increased rates for the period 7/1/17 through 6/30/18. The codes for home-based and community-based personal care and related services proposed to receive the rates increase are as follows:

S5125 U7-Attendant Care Services (Personal Care Services, Participant Directed Option)
S5125 U7 UN-Attendant Care Services (Personal Care Services, Participant Directed Option)-
2 members served
S5125 U7 UP-Attendant Care Services (Personal Care Services, Participant Directed Option)-
3 members served

T1019 U7 (0589)-Personal Care Services (Agency PSS)
T1019 U7 UN-Personal Care Services (Agency PSS)-2 members served
T1019 U7 UP-Personal Care Services (Agency PSS)-3 members served

T1005 Respite Care Services, in the home
T1005 UN- Respite Care Services, in the home-2 members served
T1005 UP-Respite Care Services, in the home-3 members served

T1005 U7-Respite Care Services, in the home-Participant Directed Option
T1005 UN-Respite Care Services, in the home-Participant Directed Option-2 members served
T1005 UP-Respite Care Services, in the home-Participant Directed Option-3 members served

T1005 (0669) Respite Care, in the home by CNA/Home Health Aide

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T1005 UN (0669) Respite Care, in the home by CNA/Home Health Aide-2 members served
T1005 UP (0669) Respite Care, in the home by CNA/Home Health Aide-3 members served

G0299 (0551) Skilled Nursing Visit (R.N.) (Non-Medicare Certified Home Health Agency)-Home Health Services

G0299 U7 UN (0551) Skilled Nursing Visit (R.N.) (Non-Medicare Certified Home Health Agency)-Home Health Services-2 members served

G0299 U7 UP (0551) Skilled Nursing Visit (R.N.) (Non-Medicare Certified Home Health Agency)-Home Health Services-3 member served

G0300 (0559) Nursing Visit (LPN) (Non-Medicare Certified Home Health Agency)-Home Health Services

G0300 U7 UN (0559) Nursing Visit (LPN) (Non-Medicare Certified Home Health Agency)-Home Health Services-2 members served

G0300 U7 UP (0559) Nursing Visit (LPN) (Non-Medicare Certified Home Health Agency)-Home Health Services-3 members served

T1004 (0581) Certified Nurse's Aide-Home Health Services

T1004 U7 UN (0581) Certified Nurse's Aide-Home Health Services-2 members served

T1004 U7 UP (0581) Certified Nurse's Aide-Home Health Services-3 members served

G0156 (0571) Home Health Aide- Home Health Services

G0156 (0571) Home Health Aide- Home Health Services-2 members served

G0156 (0571) Home Health Aide- Home Health Services-3 members served

G0299 Skilled Nursing Visit (R.N.) – Home Health Services

G0299 UN Skilled Nursing Visit (R.N.) – Home Health Services-2 members served

G0299 UP Skilled Nursing Visit (R.N.) – Home Health Services-3 members served

Additionally, the Department is proposing to add a U7 on all procedure codes in Section 19 to identify Section 19 claims from other sections of policy. The Department is also proposing to add revenue codes to PSS services that bill on a UB-04 billing form, Lastly, the Department is proposing to delete an erroneous procedure code T1005 from Skilled Nursing Visit, other Nursing visit (LPN), Physical Therapy and Occupational Therapy visits.

Basis statement:

On November 1, 2017, the Department adopted an emergency Ch. III Section 19 rule to increase some home-based and community-based personal care and related services in Section 19 rates as required by PL 2017 ch. 284 §§ MMMMMM-1. Those increased rates were made effective retroactive to July 1, 2017, in accord with 22 MRS §42(8), since there was no adverse financial impact on any MaineCare member or provider. The Department determined that a retroactive increase to the start of the state fiscal year was appropriate, since the appropriation was intended for the entire fiscal year.

This final rule will permanently adopt the emergency rule changes, with the retroactive effective date of July 1, 2017. Additionally, some procedure, modifier and revenue code changes are being adopted at the same time for the system to correctly pay and track the new rates. The additional modifiers will be effective September 29, 2017. This retroactive effective date also comports with 22 MRS §42(8), since there was no adverse financial impact on any MaineCare member or provider. The Legislature did not appropriate additional funding for the

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rate increases beyond June 30, 2018; therefore, rates will revert to their pre-July 1, 2017 levels on July 1, 2018. PL 2017 ch. 284 §ZZZZZZ-9.

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(8), 3173; 5 MRS §8054; PL 2017 ch. 284 (128th Legis. 2017) part MMMMMMM-1

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

Filing number: **2018-015**

Effective date: 1/30/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The purpose of this rule is to comply with 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 the home-based and community-based personal care and related services 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.

Basis statement:

The Department of Health and Human Services (Department) adopts this rule change to Ch. III Section 12, "Allowances for Consumer-Directed Attendant Services" to increase reimbursement rates for personal care services to comply with PL 2017 ch. 284 parts MMMMMMM-1 and ZZZZZZ-9, *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*.

These changes are consistent with PL 2017 ch. 284 part MMMMMMM-1, which requires the Department to amend its rules to increase reimbursement rates for home-based and community-based personal care and related 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., which includes Section 12 services.

On November 14, 2017, the Department adopted an emergency rule to effectuate the increased Section 12 reimbursement rates with a retroactive effective date of July 1, 2017. This rulemaking makes permanent the emergency rule changes.

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 eight calendar quarters and will sunset on June 30, 2018, as the rate increases were funded by a single year appropriation. PL 2017 ch. 284 part ZZZZZZ-9. On July 1, 2018, rates will revert back to the June 30, 2017 rate.

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 1, 2017. In addition, in

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September 2015, July 2016, and August 2017, the Department proposed separate reimbursement rate changes to CMS; those changes are pending approval. As such, there are different effective dates for various rate changes, as set forth more specifically in Ch. III.

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

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.

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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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(8), 3173; 5 MRS §8054, PL 2017 ch. 284 (128th Legis. 2017), part MMMMMMMM-1

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

Filing number: **2018-021**

Effective date: 2/12/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

These rulemakings increase reimbursement rates and level of care limits to comply with 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 the home-based and community-based personal care and related services 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. Ch. 284 provides funding to increase rates. See part ZZZZZZ section ZZZZZZ-2. In addition, part MMMMMMMM-1 directs the Department to ensure caps and limitations on home-based and community-based personal care and related services are increased to reflect the increases in reimbursement rates that result from this section.

The Legislature did not appropriate additional funding for these reimbursement 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.

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 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.*

These changes are consistent with PL 2017 ch. 284 part MMMMMMMM-1, which requires the Department to amend its rules to increase reimbursement rates for the home-based and community-based personal care services 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., which includes Section 96 services, and also increases level of care caps. Part MMMMMMMM-1 directs the Department that the increase in rates of reimbursement must be applied in equal proportion to all home-based and

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community-based personal care and related services referenced in the Burns & Associates, Inc. report using the funding provided for that purpose in Ch. 284. See part ZZZZZZ section ZZZZZZ-9. In addition, part MMMMMMM-1 directs the Department to ensure caps and limitations on home-based and community-based personal care and related services are increased to reflect the increases in reimbursement rates that result from this section.

On November 14, 2017, the Department adopted emergency rules to effectuate the increased reimbursement rates to Ch. III, with a retroactive application date of July 1, 2017, and also adopted increases to the level of care caps in Chapter II, also with a retroactive application date of July 1, 2017. These rulemakings make permanent the emergency rule changes for increased reimbursement rates and level of care caps.

Upon further review, the Department has determined it is necessary to make formatting changes from the proposed rulemakings to Ch. II Appendix 2 and Ch. III. These changes clearly identify various retroactive dates and the sunset date for increased level of care limits and reimbursement rates, pending approval from the federal Centers for Medicare and Medicaid Services ("CMS"). There are no substantive changes to the rates or level of care limits made to these adopted rules.

The Department determined that retroactive application dates for both the reimbursement rate increases and the increases to the level of care caps was appropriate, since the appropriation was intended for the entire fiscal year. The retroactive application of these rules comports with 22 MRS §42(8) which authorizes the Department to adopt rules with a retroactive application for a period not to exceed eight calendar quarters and if there is no adverse financial impact on any MaineCare member or provider. The increased reimbursement rates, and increased level of care caps will sunset on June 30, 2018, as the rate increases were funded by a single year appropriation. PL 2017 ch. 284 part ZZZZZZ-9. On July 1, 2018, rates and level of care caps will revert back to the June 30, 2017, rates and caps.

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 1, 2017. In addition, in September 2015, July 2016, and September 2017, the Department proposed separate reimbursement rate and level of care changes to CMS; those changes are pending approval. As such, there are different effective dates for level of care limits and various rates, as set forth more specifically in Ch. II Appendix 2, and in Ch. III. The Department finds that formatting changes were required in Ch. II Appendix 2 as well as in Ch. III to make this clear for the regulated community.

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

Fiscal impact of rule:

The Department expects these rulemakings will cost the Department 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, 3173
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. VII Section 5**, Estate Recovery
Filing number: **2018-033**
Effective date: 3/7/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this rule is to assure that there are no gaps in the policy allowing personal representatives to avoid liability or responsibility.

Basis statement:

The Department is adopting various rule changes in its MaineCare estate recovery program, including:

- Adds language to the definition of “Disability” in Section 5.02-4, to clarify that persons are qualified as “disabled” under the Estate Recovery rule if they are considered disabled by the Maine Public Employee Retirement System. In addition, in the Recovery Procedures section (5.04), the Department added language to require that any disabled child must have already been determined disabled at the time of the MaineCare member’s death. This language provides a clear standard for the Third Party Liability unit to enforce.
- Rewrites Section 5.07, “General Requirements for All Waivers”, to strengthen the standards applied by the Third Party Liability unit in making determinations regarding waiver requests. For example, this rule adds language regarding the timing of when information must be received by the Department and when determinations on waiver requests must be made, as well as clarifying the process for appeals.
- As a result of review by the Office of Attorney General, the Department finds that the hardship waiver provisions of the final rule required reorganization in order to clarify the intent of the rule. As such, there is now one section, 5.07, which sets forth generally applicable requirements for both types of Hardship Waivers, and a separate section 5.08 that reflect the specific requirements applicable to the two different types of Hardship Waivers.
- In order to clarify policy and preserve state and federal Medicaid funding, the Department is adding a limitation that only one type of hardship waiver will be granted per estate. Additionally, this rulemaking implements numerous changes in the undue hardship waiver provisions (Sec. 5.08) to further strengthen the eligibility and other standards by which determinations are made regarding waiver requests.
- Under Section 5.08(B), “Hardship Waiver Based on Care Given Exemption”, added a limitation that the waiver request shall not be granted if the applicant created the undue hardship by various methods to divert assets for the purposes of defeating estate recovery.
- Changes the timing requirement under Section 5.10, “Claim Reduction”, from “during the member’s lifetime” to “last two years that the member was institutionalized if the Member executed a Department approved Intent to Return Home form and delivered that signed form to the eligibility office.” This change limits personal representatives from including reductions from the distant past.

The Department is seeking and expects to receive approval from the Centers for Medicare and Medicaid Services for changes to its Estate Recovery State Plan Amendment consistent with these rule changes.

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Fiscal impact of rule:

The Department anticipates that this rulemaking will result in a cost savings for the Department, but the magnitude of that savings cannot be determined at this time.

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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. 307
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. I Section 4**, Telehealth Services
Filing number: **2018-055**
Effective date: 4/9/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department is adding clarifying language in Ch. I Section 4, “Telehealth Services”, Section 4.07-2, Paragraph B. 5 to allow Telehealth Services to be included in a Federally Qualified Health Center (FQHC), Rural Health Clinic (RHC), or Indian Health Center (IHC) scope of practice, as approved by HRSA and the State. If approved, these facilities would be able to serve as the provider site and bill under the encounter rate. The Department will also be removing the telemonitoring requirement that members have had two or more hospitalizations or Emergency Department visits in the past year, and replacing it with a documentation requirement pursuant to PL 2017 ch. 307.

Basis statement:

The Department is adopting the following changes to Ch. I Section 4, “Telehealth Services”. First, in Section 4.07-2, Paragraph B(5), the Department formally changed the provision in order to allow Telehealth Services to be included in the scope of practice of a Federally Qualified Health Center (FQHC), Rural Health Clinic (RHC), or Indian Health Center (IHC), as approved by Health Resources and Services Administration (HRSA) and the State. These facilities will now be able to serve as the provider site and bill under their encounter rate. The Department is adopting this change retroactive to April, 16, 2016. Second, pursuant to PL 2017 ch. 307, which enacted 22 MRS §3173-H, the Department removed the telemonitoring requirement that members have had two or more hospitalizations or Emergency Department visits in the past year; instead, for telemonitoring services, a member’s record must only reflect a risk of hospitalization or admission to an emergency room.

Finally, as a result of public comments and further review by the Department and the Office of the Attorney General, there were two terms removed and replaced in the rule for clarity. Also, there were additional technical changes, formatting updates, and changes to language in the rule.

Fiscal impact of rule:

The Department anticipates that this rulemaking will be cost neutral.

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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 2012 ch. 542 §B-5; PL 111-148
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 92**, Behavioral Health Services
Filing number: **2018-061**
Effective date: 4/21/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule contains numerous changes primarily to increase the reimbursement rate for BHHOs and implement value based purchasing through pay-for-performance. This rule also amends requirements for reimbursement, aligns the rule with the approved Maine State Plan, improves Department administrative flexibility, strengthens the use of assessment tools in care planning, and clarifies and strengthens provider requirements.

Basis statement:

This rule is being adopted to institute pay-for-performance in the Behavioral Health Home program by making one percent of Behavioral Health Home Organization (BHHO) total Per Member Per Month (PMPM) payments subject to recoupment if the BHHO does not achieve a minimum level of quality, as defined by performance on Department-defined performance measures related to chronic disease management. In addition, this rule promulgates the increase in BHHO reimbursement, effective retroactively to January 1, 2016.

Fiscal impact of rule:

This rulemaking is estimated to save \$19,736 in SFY 2018, which includes \$7,038 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; PL 2017 ch. 284
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: **2018-062**
Effective date: 5/13/2018
Type of rule: Major Substantive
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 is finally adopting this 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* (the “Act”). The Act provides funding to increase reimbursement rates for 16 procedure codes in Ch. III Section 29. See Part ZZZZZZ, Sec. 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 MMMMMM, Sec. MMMMMM-2(2) through -2(4).

In accordance with Part III, Sec. TTTT-1 of the Act and 5 MRS §§ 8054, 8073, the Department adopted an emergency major substantive rule effective October 1, 2017, also retroactive to July 1, 2017. The Department then engaged in proposed rulemaking for Ch. III, Section 29, pursuant to 5 MRS §8072(1), provisionally adopting a rule on January 12, 2018, to make the emergency changes permanent. The Department submitted the provisionally-adopted rule to the Legislature, which authorized adoption of the rule pursuant to Resolves 2017, ch. 33. This emergency legislation was approved by Governor LePage and took effect on March 7, 2018. The October 1, 2017 Emergency Major Substantive Rule will expire upon the effective date of this rule – May 13, 2018.

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). 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.

These increased rates will be retroactive to July 1, 2017. The Department has determined that increases retroactive to the beginning of the state fiscal year (“SFY”) are appropriate, since the appropriation in the Act is intended for the entire fiscal year. The retroactive application also 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 has added two procedure codes for Shared Living services (S5140 and S5140 UN). The Department has adopted changes to Chapter II, Section 29, effective on an emergency basis on October 1, 2017, and finally on December 28, 2017, to add this benefit to available covered services for members. The Department is seeking and anticipates approval from the Centers for Medicare and Medicaid Services for this change. The

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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 P.L. 2017, ch. 284, Part MMMMMMMM, Sec. MMMMMMMM-2(1).

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.

The adopted 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 for SFY 2018:
 - 2 Members in Group: rate increased to \$3.83 per quarter hour
 - 3 Members in Group: rate increased to \$2.54 per quarter hour
 - 4 Members in Group: rate increased to \$1.91 per quarter hour
 - 5 Members in Group: rate increased to \$1.53 per quarter hour
 - 6 Members in Group: rate increased to \$1.27 per quarter hour
- In Appendix I, reimbursement rates for services have been increased for SFY 2018:
 - S5140 Shared Living (Foster Care, adult) has been added at \$140.89 per diem
 - S5140 UN Shared Living (Foster Care, adult)-Shared Living Model-Two members has been added at \$70.46 per diem
 - T2017 Home Support-Quarter Hour has been increased to \$7.00 per quarter hour
 - T2017 GT Home Support-Remote Support-Interactive Support has been increased to \$7.00 per quarter hour
 - T2017 QC Home Support-Remote Support-Monitor only has been increased to \$1.80 per quarter hour
 - T2021 Community Support (Day Habilitation) has been increased to \$5.89 per quarter hour
 - T2021 SC Community Support (Day Habilitation) with Medical Add-On has been increased to \$7.27 per quarter hour
 - T2019 Employment Specialist Services (Habilitation, Supported Employment waiver) has been increased to \$8.21 per quarter hour
 - T2019 SC Employment Specialist Services (Habilitation, Supported Employment waiver) with Medical Add-On has been increased to \$9.49 per quarter hour
 - H2023 Work Support (Supported Employment)-Individual has been increased to \$7.64 per quarter hour
 - H2023 SC Work Support (Supported Employment)-Individual with Medical Add-On has been increased to \$8.94 per quarter hour
 - H2023 UN Work Support (Supported Employment)-Group 2 members served has been increased to \$3.83 per quarter hour
 - H2023 UP Work Support (Supported Employment)-Group 3 members served has been increased to \$2.54 per quarter hour
 - H2023 UQ Work Support (Supported Employment)-Group 4 members served has been increased to \$1.91 per quarter hour
 - H2023 UR Work Support (Supported Employment)-Group 5 members served has been increased to \$1.53 per quarter hour
 - H2023 US Work Support (Supported Employment)-Group 6 members served has been increased to \$1.27 per quarter hour

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- T2015 Career Planning (Habilitation, prevocational) has been increased to \$30.97 per hour
- S5150 Respite Services-1/4 hour has been increased to \$2.99 per quarter hour
- S5151 Respite Services-Per Diem has been increased to \$99.54 per diem

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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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 §MMMMMMM-2

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: **2018-071**

Effective date: 6/1/2018

Type of rule: Major Substantive

Emergency rule: No

Principal reason or purpose for rule:

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

Basis statement:

The Department is finally adopting this major substantive rule in accordance with PL 2017 ch. 284 §MMMMMMM-2. 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.

On September 29, 2017, the Department adopted an emergency major substantive rule which increased reimbursement rates with a retroactive application date of July 1, 2017. The Department then engaged in proposed rulemaking for Ch. III Section 21, pursuant to 5 MRS §8072(1). On January 12, 2018 the Department provisionally adopted the rule. Subsequently, the Department submitted the provisionally adopted rule to the Maine State Legislature for its review, in accordance with 5 MRS §8072.

The Maine State Legislature authorized final adoption of the January 12, 2018 provisionally adopted rule “only if in Section 2000 of the rule, relating to audit of services provided, the documentation requirement for staffing schedules per member is removed and replaced with a requirement that the documentation show the hours and the name of the direct care staff scheduled to work at the facility.” Resolves 2017, ch. 35, was approved by Governor LePage on March 26, 2018.

The final adopted rule makes the following changes to rates for the period July 1, 2017 to June 30, 2018:

- In Section 1910, the group rates for Work Support have been increased for SFY 2018 only:
 - 2 Members in Group: rate increased to \$3.83 per quarter hour
 - 3 Members in Group: rate increased to \$2.54 per quarter hour
 - 4 Members in Group: rate increased to \$1.91 per quarter hour
 - 5 Members in Group: rate increased to \$1.53 per quarter hour
 - 6 Members in Group: rate increased to \$1.27 per quarter hour
- In Appendix I, reimbursement rates for services have been increased for SFY 2018 only:
 - T2017 home support has been increased to \$7.00 per quarter hour
 - T2017 SC home support with medical add-on has been increased to \$8.37 per quarter hour
 - T2017 GT home support – remote support has been increased to \$7.00 per quarter hour
 - T2017 QC home support – remote support-monitor only has been increased to \$1.80 per quarter hour, to ensure that all the T2017 home support rates were increased.

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- T2016 agency home support has been increased to \$25.04
- T2016 agency home support over 168 hours has been increased to \$21.81
- T2016 SC agency home support with medical add-on has been increased to \$30.32
- S5140 shared living foster care, adult, one member has been increased to \$140.89 per diem
- S5140 TG shared living foster care, adult, one member, increased level of support has been increased to \$204.91 per diem
- S5140 UN shared living foster care, adult, 2 members has been increased to \$70.46 per diem
- S5140 UN TG shared living foster care, adult, 2 members, increased level of support has been increased to \$134.46 per diem
- T2021 community support has been increased to \$5.89 per quarter hour
- T2021 SC community support with medical add-on has been increased to \$7.27 per quarter hour
- T2015 career planning has been increased to \$30.97 per hour
- T2019 employment specialist services has been increased to \$8.21 per quarter hour
- T2019 SC employment specialist services with medical add-on has been increased to \$9.49 per quarter hour
- H2023 work support, individual has been increased to \$7.64 per quarter hour
- H2023 SC work support with medical add-on has been increased to \$8.94 per quarter hour
- H2023 UN work support, group, 2 members has been increased to \$3.83 per quarter hour
- H2023 UP work support, group, 3 members has been increased to \$2.54 per quarter hour
- H2023 UQ work support, group, 4 members has been increased to \$1.91 per quarter hour
- H2023 UR work support, group, 5 members has been increased to \$1.53 per quarter hour
- H2023 US work support, group, 6 members has been increased to \$1.27 per quarter hour
- T2034 crisis intervention services has been increased to \$7.02 per quarter hour

This rulemaking also increased the rate for a 24th procedure code – T2017 QC (Home Support, Habilitation, residential, waiver – Remote Support – Monitor only). Increasing the rate for this procedure code creates consistency with the other codes, in line with the Section 21 service and reimbursement structure.

The Legislature did not appropriate additional funding for these rate increases beyond June 30, 2018 (P.L. 2017, ch. 284, § ZZZZZZ-9); therefore, all the increased rates (including the T2017 QC code) will revert to their pre-July 1, 2017 rate levels on July 1, 2018, as adopted and approved by the Legislature in this major substantive rulemaking.

The final adopted major substantive rule makes the permanent change to Section 2000 as required by the Legislature.

Fiscal impact of rule:

This rulemaking is estimated to cost approximately \$33,422,308 in SFY 18, which includes \$9,909,714 in state dollars and \$21,507,255 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; 42 CFR §440.70; 42 USC §1396b
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 60**, Medical Supplies and Durable Medical Equipment
Filing number: **2018-106**
Effective date: 6/13/2018
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 this rule, as set forth below. The changes include the following:

- a) The Department updates the definition of Durable Medical Equipment (DME) to align with 42 CFR §440.70 (b)(3)(ii).
- b) The Department adds a storefront exclusion and reimbursement methodology for manufacturers of specialty modified low protein foods and formulas. The purpose of adding the storefront exclusion is to allow these manufacturers to bill the Department as the supplier of prescription metabolic foods as there are no current suppliers within the state.
- c) The Department removes language implying absolute exclusions of DME items as this is no longer allowable per 42 CFR §440.70.
- d) The Department also adds repair/replacement language for APAP, CPAP and BiPAP devices greater than or equal to five (5) years old to clarify when a repair or replacement of these types of devices is needed, in addition to the steps required to determine whether a repair or replacement is more appropriate.
- e) The Department also removes the list of items considered to be MaineCare-covered for members residing within a Nursing Facility (NF) or Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF-IID). The purpose of removing the list is to eliminate confusion surrounding covered and non-covered items for members residing within a NF or ICF-IID;
- f) The Department further defines limitations for orthopedic shoes and other supportive devices for members twenty-one (21) years of age and older to provide clarity of covered services and to better align with current correct coding guidelines.
- g) The Department also updates documentation requirements, effective January 1, 2019, for disposable non-sterile gloves when supplied in conjunction with incontinence supplies to cost-effectively manage this covered service and ensure members are appropriately receiving these items. The implementation date of January 1, 2019 is to allow ordering providers necessary time to acclimate to the documentation requirements.
- h) The department increases the allowance of supplies per dispense to ninety-days (90) for items MaineCare considers to be disposable DME to more closely align with other payors.
- i) The Department also updates reimbursement methodology to align with Medicare for Medicare covered DME impacted by the *21st Century Cures Act*, and further clarify the methodology by which other rates are set, including non-Medicare covered codes,

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Medicare covered codes not impacted by the *21st Century Cures Act*, specialty modified low protein foods and incontinence supplies.

- j) Following public comments on this rule, the Department is electing to add language surrounding guidelines, requirements and quality measures for incontinence supplies provided to MaineCare members.
- k) The Department is removing parenteral solutions from section 60.05-13 due to occurring access issues as a result of the solutions being inclusive in the rate of reimbursement. The Department aims to expeditiously ameliorate any additional issues.
- l) The Department updates the “>” symbol in sections 60.12(Y)(1)(e)(vi) and 60.12(Y)(2)(f)(vi) to “<” to accurately reflect the guidelines for hgbA1c levels to obtain tighter glucose control when related to hypoglycemia.
- m) Corrects and/or deletes outdated references and website addresses and,
- n) Edits, minor language and punctuation updates for clarification purposes.

Fiscal impact of rule:

The Department anticipates that this rulemaking will save approximately \$411,053 in SFY 2018, which includes \$146,581 in state dollars and \$264,472 in federal dollars, and \$762,106 in SFY 2019, which includes \$270,196 in state dollars and \$491,910 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; Resolves 2017 ch. 41
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 45**, Hospital Services
Filing number: **2018-121**
Effective date: 7/10/2018
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Maine 128th Legislature passed legislation, Resolves 2017 ch. 41, *Resolve, Regarding Medicaid Reimbursement for Rehabilitation Hospitals*, directing the Department of Health and Human Services to amend Ch. 101, *MaineCare Benefits Manual*, Section 45, Ch. III, to increase the Medicaid per discharge reimbursement rate provided to rehabilitation hospitals to fifteen-thousand, one-hundred, sixty-one dollars and forty-three cents (\$15,161.43), and reduce the hospital supplemental pool by four-hundred thousand dollars (\$400,000).

Basis statement:

The Department adopts this emergency rule pursuant to Resolves 2017 ch. 41, *Resolve, Regarding Medicaid Reimbursement for Rehabilitation Hospitals*, directing the Department of Health and Human Services to amend Ch. 101, *MaineCare Benefits Manual*, Section 45, Ch. III, to increase the Medicaid per discharge reimbursement rate provided to rehabilitation hospitals and reduce the total hospital supplement pool by four-hundred thousand dollars (\$400,000).

The Legislature adjudged that immediate adoption is necessary for the preservation of the public peace, health, and safety under 5 MRS §8054. As such, no additional findings by the Department are required in support of this emergency rulemaking.

The rule amends Section 45.06, to increase the Medicaid per discharge reimbursement rate provided to rehabilitation hospitals to fifteen-thousand, one-hundred, sixty-one dollars and forty-three cents (\$15,161.43) and reduces the total hospital supplemental pool as described in Section 45.07, by four-hundred thousand dollars (\$400,000). The existing resources already allocated to providers remains the same; they are just being distributed differently. The changes are therefore cost neutral.

The Department shall seek and anticipates receiving approval from the Centers for Medicare and Medicaid Services (“CMS”) for these changes. Pending approval of the State Plan Amendment (“SPA”), these changes will be effective.

Fiscal impact of rule:

The Department anticipates that this rulemaking will be cost neutral.

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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. 459 part A

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: **2018-183**

Effective date: 9/11/2018

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. 459 part A.

Basis statement:

This emergency major substantive rule is adopted in accordance with PL 2017 ch. 459, *An Act Making Certain Supplemental Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (“Act”). The Act gave notice that the Legislature determined that “these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety....” Pursuant to this Legislative determination, the requirements of 5 MRS §8054(1) are satisfied.

The Act provides funding to increase reimbursement rates for specific procedure codes in Ch. III Section 21. The legislation directed the Department to increase the rates by rulemaking for the specific procedure codes in equal proportion to the funding provided for that purpose.

In addition to the 33 rate increases required by PL 2017 ch. 459, the Department has also increased the rate for a 34th 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. 459 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, 2018, as directed by the Act. 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. In addition, the Department sought, and obtained, approval by the Center for Medicare and Medicaid Services (“CMS”) to be able to submit a waiver amendment that will make the rate increases for these Medicaid waiver services retroactive to July 1, 2018.

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.

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This emergency major substantive rule increases the following rates:

- 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, the following rates have been increased:
 - T2017 home support
 - T2017 SC home support with medical add-on
 - T2017 QC home support—remote support—monitor only
 - T2017 GT home support – remote support—interactive support
 - 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
 - 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
 - T2016 U5 home support, family-centered support, one member
 - T2016 TG U5 home support, family-centered support, one member, increased level of support
 - T2016 UN U5 home support, family-centered support, 2 members
 - T2016 UN TG U5 home support, family-centered support, 2 members
 - T2016 UP U5 home support, family-centered support, 3 members
 - T2016 UP TG U5 home support, family-centered support, 3 members, increased level of support
 - T2016 UQ U5 home support, family-centered support, 4 members
 - T2016 UQ TG U5 home support, family-centered support, 4 members, increased level of support
 - T2016 UR U5 home support, family-centered support, 5 or more members
 - T2016 UR TG U5 home support, family-centered support, 5 or more members, increased level of support

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

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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:

The Department anticipates that this rulemaking will cost approximately \$68,182,336 in SFY19, which includes \$24,218,366 in state dollars and \$43,963,970 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, 8073; PL 2017 ch. 459 part A
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: **2018-184**
Effective date: 9/12/2018
Type of rule: Major Substantive
Emergency rule: Yes

Principal reason or purpose for rule:

This emergency rule implements rate increases enacted by the Legislature in PL 2017 ch. 459 §3195, retroactive to July 1, 2018.

Basis statement:

The Department is adopting this emergency major substantive rule in accordance with PL 2017, ch. 459, *An Act Making Certain Supplemental Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (“Act”). This Act provides funding to increase reimbursement rates for eighteen (18) procedure codes in Ch. III Section 29. 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. The Act gave notice that the Legislature determined that “these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety...” Pursuant to this Legislative determination, the requirements of 5 MRS §8054(1) are satisfied.

These increased rates will be effective retroactive to July 1, 2018. 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. In addition, the Department sought, and obtained approval, by the Centers for Medicare and Medicaid Services (“CMS”) to submit a waiver amendment making the rate changes retroactive to July 1, 2018.

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 Appendix I, the following rates have been increased:
 - S5140 Shared Living (Foster Care, adult)-Shared Living Model-One member served
 - S5140 UN Shared Living (Foster Care, adult)-Shared Living Model-Two members served
 - T2017 Home Support-Quarter Hour
 - T2017 GT Home Support-Remote Support-Interactive Support
 - T2021 Community Support (Day Habilitation)
 - T2021 SC Community Support (Day Habilitation) with Medical Add-On
 - T2019 Employment Specialist Services (Habilitation, Supported Employment waiver)
 - T2019 SC Employment Specialist Services (Habilitation, Supported Employment waiver) with Medical Add-On
 - H2023 Work Support (Supported Employment)-Individual

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- H2023 SC Work Support (Supported Employment)-Individual with Medical Add-On
- 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
- T2015 Career Planning (Habilitation, prevocational)
- S5150 Respite Services-1/4 hour
- S5151 Respite Services-Per Diem
- In Section 1400, the maximum amount that can be billed in a single day for Respite has been increased (to reflect the rate increases made in Appendix I).
- In Section 1810, the group rates for Work Support have been increased (to reflect the rate increases made in Appendix I).

Pursuant to 5 M.R.S. §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:

The Department anticipates that this rulemaking will cost approximately \$9,221,642 in SFY19, which includes \$3,275,527 in state dollars and \$5,946,115 in federal dollars.

The Department does not anticipate there will be adverse or economic impacts on small businesses, counties, or municipalities.

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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. I Section 1**, General Administrative Policies and Procedures
Filing number: **2018-185**
Effective date: 9/17/2018
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The Department of Health and Human Services (“the Department”) adopts this rule pursuant to P.L. 2017, ch. 442, *An Act To Clarify Liability Pertaining to the Collection of Debts of MaineCare Providers by the Department of Health and Human Services*.

This rulemaking removes the following language from Section 1.12-2:

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. Personal liability against an officer, director, or member of the Provider described in this section shall be limited to debts owed to the Department occurring or arising during that person’s employment or affiliation with the Provider or to any debts which become known to such a person and not voluntarily disclosed by that person to the Department. Individuals or entities with an ownership or control interest in the provider include: 1) Those with an ownership interest, meaning those in possession of equity in the capital, the stock, or the profits of the provider. 2) Those with an indirect interest, meaning those with an ownership interest in an entity that has an ownership interest in the provider.

The Department has determined to not adopt the proposed change of adding an Appendix #3 (“Duplication Table”) to this rule. Concerns and questions about this Duplication Table were raised in written comments to the rulemaking, as well as from the Office of the Attorney General during its review of the rule.

Fiscal impact of rule:

A fiscal impact count not be determined at this time.

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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; Resolves 2017 ch. 41
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 45**, Principles of Reimbursement for Hospital Services
Filing number: **2018-212**
Effective date: 10/1/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Maine 128th Legislature passed legislation, Resolves 2017 ch. 41, *Resolve, Regarding Medicaid Reimbursement for Rehabilitation Hospitals*, directing the Department of Health and Human Services to amend Ch. 101, *MaineCare Benefits Manual*, CH. III Section 45, to increase the Medicaid per discharge reimbursement rate provided to rehabilitation hospitals to fifteen-thousand, one-hundred, sixty-one dollars and forty-three cents (\$15,161.43), and reduce the hospital supplemental pool by four-hundred thousand dollars (\$400,000).

Basis statement:

The Department adopts this rule pursuant to Resolves 2017 ch. 41, *Resolve, Regarding Medicaid Reimbursement for Rehabilitation Hospitals*, directing the Department of Health and Human Services to amend Ch. 101, *MaineCare Benefits Manual*, Ch. III Section 45, to increase the Medicaid per discharge reimbursement rate provided to rehabilitation hospitals and reduce the total hospital supplemental pool by four-hundred thousand dollars (\$400,000).

The rule amends Section 45.06 to increase the Medicaid per discharge reimbursement rate provided to rehabilitation hospitals to fifteen-thousand, one-hundred, sixty-one dollars and forty-three cents (\$15,161.43) and reduces the total hospital supplemental pool as described in Section 45.07, by four-hundred thousand dollars (\$400,000). The existing resources already allocated to providers remains the same; they are just being distributed differently. The changes are therefore cost neutral.

This rule also amends Section 45.13-2, Additional Eligibility Requirements for Acute Care Hospitals, reverting to the use of Interim Cost Reports, rather than Final Cost Reports, for purposes of determining whether a hospital is a Disproportionate Share Hospital in a payment year.

The changes to Sections 45.06 and 45.13-2, described herein, were implemented via emergency rulemaking, effective July 10, 2018. These finally adopted rule changes shall become effective prior to the expiration of the 90-day emergency rule changes, pursuant to 5 MRS §§ 8052(6) and 8054(3). The Department shall seek and anticipates receiving approval from the Centers for Medicare and Medicaid Services ("CMS") for each of these changes, effective July 10, 2018. Pending approval of the State Plan Amendment ("SPA"), these changes will be effective.

The Department made two additional changes to the rule from what was proposed: first, it made a technical change to remove reference to the definition of "payment window rule" in the table of contents (because there was never such a definition); and second, the Department altered Section 45.13-2 to refer to Interim (not Final) Cost Reports for purposes of determining whether a hospital is a Disproportionate Share Hospital. CMS rejected the Department's request to utilize Final Cost Reports for this purpose, and thus the Department finds that it must update its rule immediately to comport with federal Medicaid law.

Fiscal impact of rule:

The Department anticipates that this rulemaking will be cost neutral.

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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
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 107**, Psychiatric Residential Treatment Facilities Services
Filing number: **2018-220**
Effective date: 10/3/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rulemaking intends to create a new section of policy describing Psychiatric Residential Treatment Facilities (PRTF). The rule addresses the PRTFs' covered services, policy and procedures, standards, and reimbursement methodology. This service is intended to address a current gap in Maine's offering of behavioral health services to youth under the age of 21. The PRTF is being created to specifically address a high need to support Maine's most vulnerable youth, including: youth in out of state placement, youth stranded in psychiatric hospitalization with no safe discharge option, youth stranded in emergency rooms with no safe placement, and incarcerated youth in need of mental health treatment. PRTFs are federally regulated facilities by the Centers for Medicare and Medicaid Services (CMS) via 42 CFR 441 Subpart D and 42 CFR 483 Subpart G.

Basis statement:

This rulemaking adopts a new section of policy describing Psychiatric Residential Treatment Facilities (PRTF) services and reimbursement for such services. PRTFs are Medicaid services authorized and governed under: 42 USC §1396d(a)(16) and (h) and 42 CFR 441 Subpart D and 42 CFR483 Subpart G. The services are offered only to members under the age of 21.

NOTE: The Department will seek approval from CMS for the PRTF service. The service will not be offered, and this rule will not become effective, until CMS has approved. Upon CMS approval, the Department will issue notice to the Secretary of State and Interested Parties informing of CMS approval pursuant to Title 5 §8052(6).

The rule describes the PRTFs' covered services, policies and procedures, standards, and reimbursement methodology. This service is intended to address a current gap in Maine's offering of behavioral health services to youth under the age of 21. The PRTF is being created to specifically support Maine's most vulnerable youth, including: youth in out of state placement, youth stranded in psychiatric hospitalization with no safe discharge option, youth stranded in emergency rooms with no safe placement, and incarcerated youth in need of mental health treatment. This rule was developed by a multidisciplinary team including members from the Office of Child and Family Services, the Department of Education, the Department of Corrections, Maine Centers for Disease Control and Prevention, and the Office of MaineCare services. The development of this policy included stakeholder input. A public hearing was held on May 21, 2018, and, in addition, public comments were received.

This service will be reimbursed using a statewide per diem rate for medical, clinical and direct care costs (direct care services) and using a facility-specific rate for routine and fixed costs (room and board costs). The routine and fixed costs facility rate is informed by annual cost reporting performed by providers using a state-developed cost report form. The

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medical, clinical and direct care per diem rate is not cost settled. The routine and fixed cost rate is cost settled by the Department based on allowable fixed and routine costs.

The Department has issued notice to the Legislature prior to rulemaking adoption and complies with 34-B MRS §15002 (Children's Mental Health Services).

As a result of public comments and review by the Office of the Attorney General, the Department has deleted the utilization of chemical restraints in this service. The Department added language for Medication Pro Re Nata (PRN), which clarifies that PRN medication may not be utilized as a chemical restraint.

The Department added language to clarify that this rulemaking complies with the following regulations: the *Rights of Recipients of Mental Health Services who are Children in Need of Treatment by a Provider*, 14-172 CMR ch. 1, and also the *Rights of Recipients of Mental Health Services*, 14-193 CMR ch. 1. These changes were adapted to ensure compliance with all state and federal regulation and to ensure members are afforded the highest level of protections.

At the same time it is adopting this rulemaking, the Department is also adopting new licensing rules, which will govern the licensing of PRTFs. Those rules are the Children's Residential Care Facilities Licensing Rule, 10-144 CMR ch. 36.

Fiscal impact of rule:

The fiscal impact is unable to be determined at this time due to the complexity of the rule and inability to accurately determine how many members will seek to access PRTF programs from incarceration, hospitalization, and out of state placement.

The Department does not anticipate any additional costs (to small businesses).

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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. 459
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 19**, Home and Community Benefits for the Elderly and Adults with Disabilities
Filing number: **2018-225**
Effective date: 10/9/2018
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 in accordance with PL 2017 ch. 459, *An Act Making Certain Supplemental Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (“Act”). This Act provides funding to increase personal care and related services provided under Section 19. The Act further directs the Department to “ensure that caps and limitations on home-based and community-based services are increased to reflect increases in reimbursement rates that result from this Part,” and that “A recipient of services may not experience a reduction in hours solely as a result of increased reimbursement.” Act, Sec. B-3.

The Act gave notice that the Legislature determined that “these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety...” Pursuant to this Legislative determination, the requirements of 5 MRS §8054(1) are satisfied.

The Department is adopting emergency rules for Sec. 19, Ch. III, as directed in the Act, and increasing personal care and related rates, simultaneously with the adoption of these emergency Ch. II rules. In accordance with the Act, therefore, this Ch. II rulemaking raises the program cap to \$5,425.00 per member per month (Section 19.06.A).

The increased cap will be effective retroactive to July 1, 2018. 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 calendar quarters and there is no adverse financial impact on any MaineCare member or provider. In addition, the Department sought, and obtained approval, from the Centers for Medicare and Medicaid Services (“CMS”) to submit a waiver amendment making the rate changes retroactive to July 1, 2018.

Pursuant to 5 MRS §8054(3), this emergency rule will be effective for 90 days. The Department will be pursuing routine technical rulemaking for Chapter II, Section 19 to avoid any lapse.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$3,935,357 in SFY19 which includes \$1,397,839 in state dollars and \$2,537,518 in federal dollars.

The Department does not anticipate there will be adverse or economic impacts on small businesses, counties, 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 of MaineCare Services - Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173; 5 MRS §8054; PL 2017 ch. 459 part B
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: **2018-226**
Effective date: 10/9/2018
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 in accordance with PL 2017, ch. 459, Part B, *An Act Making Certain Supplemental Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (“Act”). The Act 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, Chapter III, Section 19, Home and Community Benefits for the Elderly and for 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. These increased rates will be effective retroactive to July 1, 2018.

The Act gave notice that the Legislature determined that “these facts create an emergency within the meaning of the Constitution of Maine, and require the following legislation as immediately necessary for the preservation of the public peace, health and safety...” Pursuant to this Legislative determination, the requirements of 5 MRS § 8054(1) are satisfied.

The emergency rule increases the following rates:

- S5125 U7-Attendant Care Services (Personal Care Services, Participant Directed Option)
- S5125 U7 UN-Attendant Care Services (Personal Care Services, Participant Directed Option)-2 members served
- S5125 U7 UP-Attendant Care Services (Personal Care Services, Participant Directed Option)-3 members served

- T1019 U7 (0589)-Personal Care Services (Agency PSS)
- T1019 U7 UN-Personal Care Services (Agency PSS)-2 members served
- T1019 U7 UP-Personal Care Services (Agency PSS)-3 members served

- T1005 U7 Respite Care Services, in the home
- T1005 U7 UN- Respite Care Services, in the home-2 members served
- T1005 U7 UP-Respite Care Services, in the home-3 members served

- T1005 U7-Respite Care Services, in the home-Participant Directed Option
- T1005 U7 UN-Respite Care Services, in the home-Participant Directed Option-2 members served

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- T1005 U7 UP-Respite Care Services, in the home-Participant Directed Option-3 members served

- T1005 U7 (0669) Respite Care, in the home by CNA/Home Health Aide
- T1005 U7 UN (0669) Respite Care, in the home by CNA/Home Health Aide-2 members served
- T1005 U7 UP (0669) Respite Care, in the home by CNA/Home Health Aide-3 members served
- G0299 U7 (0551) Skilled Nursing Visit (R.N.) (Non-Medicare Certified Home Health Agency)-Home Health Services

- G0299 U7 UN (0551) Skilled Nursing Visit (R.N.) (Non-Medicare Certified Home Health Agency)-Home Health Services-2 members served
- G0299 U7 UP (0551) Skilled Nursing Visit (R.N.) (Non-Medicare Certified Home Health Agency)-Home Health Services-3 member served
- G0300 U7 (0559) Nursing Visit (LPN) (Non-Medicare Certified Home Health Agency)-Home Health Services
- G0300 U7 UN (0559) Nursing Visit (LPN) (Non-Medicare Certified Home Health Agency)-Home Health Services-2 members served
- G0300 U7 UP (0559) Nursing Visit (LPN) (Non-Medicare Certified Home Health Agency)-Home Health Services-3 members served

- T1004 U7 (0581) Certified Nurse's Aide-Home Health Services
- T1004 U7 UN (0581) Certified Nurse's Aide-Home Health Services-2 members served
- T1004 U7 UP (0581) Certified Nurse's Aide-Home Health Services-3 members served

- G0156 (0571) Home Health Aide- Home Health Services
- G0156 (0571) Home Health Aide- Home Health Services-2 members served
- G0156 (0571) Home Health Aide- Home Health Services-3 members served

- G0299 U7 Skilled Nursing Visit (R.N.) – Home Health Services
- G0299 U7 UN Skilled Nursing Visit (R.N.) – Home Health Services-2 members served
- G0299 U7 UP Skilled Nursing Visit (R.N.) – Home Health Services-3 members served

In addition, this emergency rule adds in the following code and rate, which was inadvertently deleted during final adoption of this rule in January 2018:

- G0156 U7 TF (0571) Home Health Aide Visit – Home Health Services at \$22.91 per visit.

Pursuant to 5 MRS §8054 (3), 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.

These increased rates will be effective retroactive to July 1, 2018. 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) which authorizes the Department to adopt rules with a retroactive application for a period not to exceed eight calendar quarters and there is no adverse financial impact on any MaineCare member or provider. In addition, the Department sought, and obtained approval, by the Centers for Medicare and Medicaid Services (“CMS”) to submit a waiver amendment making the rate changes retroactive to July 1, 2018.

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In addition to this emergency rulemaking, the Department is simultaneously adopting emergency rules for Sec. 19, Ch. II, which rulemaking raises the program cap, in accordance with the Act.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$3,935,357 in SFY19 which includes \$1,397,839 in state dollars and \$2,537,518 in federal dollars.

The Department does not anticipate there will be adverse or economic impacts on small businesses, counties, or municipalities.

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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. 460 Part D
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 23**, Developmental and Behavioral Evaluation Clinic Services
Filing number: **2018-231**
Effective date: 11/6/2018
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 pursuant to PL 2017 ch. 460, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government*. Part D-1 requires the Department increase the rates of reimbursement for Section 23, *Development and Behavioral Clinic Services*, to ensure a net increase in funding from fiscal year 2008-2009 to fiscal year 2018-2019 of two (2) % as long as no rates for a service is lower than the rate reimbursed as of January 1, 2018.

This rulemaking requires that the increase in reimbursement rates must be applied to wages and benefits for employees who provide direct services as required by Part D-2 of PL 2017 ch. 460. In compliance with the law, providers must ensure that the increase in reimbursement rates effective August 1, 2018, is applied in full to wages and benefits to employees who provide direct services. Providers must document compliance with this requirement in their financial records and provide such documentation to the Department upon request.

Through the Act, the Legislature determined that “these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety.” As such, the Act requires the Department to implement “immediate rate increases,” effective July 1, 2018. However, the Act did not become law until July 9, 2018, following a Legislative override of the Governor’s veto.

Because the Act involves MaineCare reimbursement, these rule changes are also governed by federal Medicaid law. 42 CFR §447.205(d) requires that public notice of changes in reimbursement for state plan services must “be published **before** the proposed effective date of the change.” (emphasis added). The Department published its notice of reimbursement methodology change for the Section 23 rates on July 31, 2018. Upon the advice of the Office of the Attorney General, the increased rates will be effective August 1, 2018, which effective date comports with the federal law requirement. Pending approval of the proposed changes to the Section 23 state plan amendment that were submitted to the Centers for Medicare and Medicaid Services, the increased rates will be implemented with an August 1, 2018 effective date.

Pursuant to the Legislative determination regarding the urgent need for these reimbursement increases, the requirements of 5 MRS §8054(1) are satisfied and emergency rulemaking is appropriate. Similarly, an August 1, 2018 retroactive effective date is necessary to implement these changes as soon as possible. The retroactive application comports with 22 MRS §42(8), which authorizes the Department to adopt rules with a retroactive application

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(where there is no adverse impact on providers or members) for a period not to exceed (8) calendar quarters.

To remedy the difference between the July 1, 2018 effective date set forth in the Act, versus the August 1, 2018 date that is permissible pursuant to federal Medicaid law, the Department has recalculated the annual appropriation of funds for this service into a temporary eleven month rate. As such, providers will, over the course of eleven months, receive equivalent aggregate payments as would have been received under a twelve month rate. Beginning on July 1, 2019, rates will be annualized (based upon a twelve month appropriation). This is not an effective rate decrease, but rather a redistribution of the annual appropriation over twelve months, rather than eleven months.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$13,951 in SFY 2019, which includes \$4,950 in state dollars and \$9,001 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. 460
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 2**, Adult Family Care Services
Filing number: **2018-232**
Effective date: 11/6/2018
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 pursuant to PL 2017 ch. 460, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (the “Act”), Part B-2. The Act requires the Department to amend its rules to increase reimbursement rates for adult family services, adult day services, and homemaker services for the fiscal year ending June 30, 2019, by ten percent (10%); and directs that MaineCare payment rates for state fiscal year ending June 30, 2020 be increased by an inflation adjustment cost-of-living percentage in accordance with the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index from the prior December for professional services, nursing home and adult day care services. These cost of living increases shall continue annually until the Department has completed a rate study for adult family care services and the rates in the rate study have been implemented.

This rulemaking increases the rates for Adult Family Care Homes and Adult Family Care Homes “Remote Island”. The Act requires that the increased rates must be attributed directly to the wages and salaries of the professional staff delivering the personal care and related services to members. The Act also clarifies that the increased reimbursement rates shall not negatively affect members’ caps on services. As such, the Department implements changes in Ch. II Section 2, Sections 2.05-2 and 2.05-3 to clarify that the increased reimbursement provided herein shall not be counted towards members’ financial caps for services under Section 96 or under the waiver programs.

Through the Act, the Legislature determined that “these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety.” As such, the Act requires the Department to implement “immediate rate increases,” effective July 1, 2018. However, the Act did not become law until July 9, 2018, following a Legislative override of the Governor’s veto.

Because the Act involves MaineCare reimbursement, these rule changes are also governed by federal Medicaid law. 42 CFR §447.205(d) requires that public notice of changes in reimbursement for state plan services must “be published **before** the proposed effective date of the change.” (emphasis added). The Department published its notice of reimbursement methodology change for the Section 2 rates on July 31, 2018. Upon the advice of the Office of the Attorney General, the increased rates will be effective August 1, 2018, which effective date comports with the federal law requirement. Pending approval of the proposed changes to the

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Section 2 state plan amendment that were submitted to the Centers for Medicare and Medicaid Services, the increased rates will be implemented with an August 1, 2018 effective date.

Pursuant to the Legislative determination regarding the urgent need for these reimbursement increases, the requirements of 5 MRS §8054(1) are satisfied and emergency rulemaking is appropriate. Similarly, an August 1, 2018 retroactive effective date is necessary to implement these changes as soon as possible. The retroactive application comports with 22 MRS §42(8), which authorizes the Department to adopt rules with a retroactive application (where there is no adverse impact on providers or members) for a period not to exceed (8) calendar quarters.

To remedy the difference between the July 1, 2018 effective date set forth in the Act, versus the August 1, 2018 date that is permissible pursuant to federal Medicaid law, the Department has recalculated the annual appropriation of funds for this service into a temporary eleven-month rate. As such, providers will, over the course of eleven months, receive equivalent aggregate payments as would have been received under a twelve-month rate. Beginning on July 1, 2019, rates will be annualized (based upon a twelve-month appropriation). This is not an effective rate decrease, but rather a redistribution of the annual appropriation over twelve months, rather than eleven months.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$315,108 in SFY 2019, which includes \$112,336 in state dollars and \$202,772 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. 459 parts A, B
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: **2018-238**
Effective date: 11/7/2018
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 in accordance with PL 2017 ch. 459, *An Act Making Certain Supplemental Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (“Act”). This Act provides funding to increase rates for specific procedure codes in Ch. III Section 29. Part B of the Act provided that the Department ensure that caps and limitations on services “are increased to reflect increases in reimbursement rates that result from this Part.”

The Act gave notice that the Legislature determined that “these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety...” Pursuant to this Legislative determination, the requirements of 5 MRS §8054(1) are satisfied.

On September 12, 2018, the Department adopted an emergency major substantive rule for Section 29 Ch. III, as directed in the Act, to increase reimbursement rates for eighteen (18) procedure codes, with a retroactive effective date of July 1, 2018. In accordance with Part B of the Act, therefore, this Ch. II rulemaking raises the caps to reflect those rate increases.

The emergency rule adopts the following changes:

- Raises the combined limit for members who receive Home Support (Remote or ¼ hour), Community Support, or Shared Living to \$58,168.50;
- Raises the annual limit on Respite Services to \$1,224.60;
- Raises the per diem limit for quarter hour (1/4) billing for Respite to \$110.21.

The increased caps will be effective retroactive to July 1, 2018. 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 calendar quarters, and there is no adverse financial impact on any MaineCare member or provider. In addition, the Department sought, and obtained approval, from the Centers for Medicare and Medicaid Services (“CMS”) to submit a waiver amendment making the rate changes retroactive to July 1, 2018.

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

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$9,221,642 in SFY19, which includes \$3,275,527 in state dollars and \$5,946,115 in federal dollars.

The Department does not anticipate there will be adverse or economic impacts on small businesses, counties, or municipalities.

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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, 8073; PL 2017 ch. 460 parts C, D
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 28**, Allowances for Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations
Filing number: **2018-241**
Effective date: 11/8/2018
Type of rule: Major Substantive
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 major substantive emergency rule to increase the rates of reimbursement for rehabilitative and community support services pursuant to PL 2017 ch. 460, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (the “Act”).

The Act requires the Department to amend its rules for reimbursement rates for rehabilitative and community support services provided under the provisions of 10-144 CMR ch. 101, *MaineCare Benefits Manual*, Ch. III of Section 28, “Allowances for Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations”. Specific changes are as follows:

- Part C of the Act directs the Department to amend the rates of reimbursement to providers of Section 28 services to reflect the final rates modeled in the April 24, 2017 report: “Rate Study for Behavioral Health and Targeted Case Management Services: Final Proposed Rates for Formal Rulemaking” prepared for the Department by Burns & Associates, Inc. Those rate changes were made.
- Part D of the Act directs the Department to increase the rate of reimbursement for all services by two percent. Sec. D-1 and D-2 specifically require the increase in reimbursement to be applied to the wages and benefits of employees providing direct services. The two percent rate increase was made to the rates as changed by the Burns study.

Through the Act, the Legislature determined that “these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety.” As such, the Act requires the Department to implement “immediate rate increases,” effective July 1, 2018. However, the Act did not become law until July 9, 2018, following a Legislative override of the Governor’s veto.

Because the Act involves MaineCare reimbursement, these rule changes are also governed by federal Medicaid law. 42 CFR §447.205(d) requires that public notice of changes in reimbursement for State Plan services must “be published **before** the proposed effective date of the change.” The Department published its notice of reimbursement methodology change for the Section 28 rates on July 31, 2018. Upon the advice of the Office of the Attorney General, the increased rates will be effective August 1, 2018; this effective date comports with the federal law requirement. Pending approval of the proposed changes to the Section 28 State

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Plan Amendment that were submitted to the Centers for Medicare and Medicaid Services, the increased rates will be implemented with an August 1, 2018 effective date.

Pursuant to the Legislative determination regarding the urgent need for these reimbursement increases, the requirements of 5 MRS §8054(1) are satisfied and emergency rulemaking is appropriate. Similarly, an August 1, 2018 retroactive effective date is necessary to implement these changes as soon as possible. The retroactive application comports with 22 MRS §42(8), which authorizes the Department to adopt rules with a retroactive application (where there is no adverse impact on providers or members) for a period not to exceed eight calendar quarters.

To remedy the difference between the July 1, 2018 effective date set forth in the Act, and the August 1, 2018 date that is permissible pursuant to federal Medicaid law, the Department has recalculated the annual appropriation of funds for this service into a temporary eleven month rate. As such, providers will, over the course of eleven months, receive equivalent aggregate payments as would have been received under a twelve month rate. Beginning on July 1, 2019, rates will be annualized (based upon a twelve month appropriation). This is not an effective rate decrease, but rather a redistribution of the annual appropriation over twelve months, rather than eleven months.

PL 2017 ch. 460 part C sec. C-1 directed that rulemaking authorized by the sec. C-1 law would be a “major substantive” rule. Sec. C-1 provided for certain rate increases, and rulemaking, for Section 28 services. Therefore, for purposes of this November 8, 2018 rulemaking only, the rule is major substantive. Thereafter, unless otherwise directed by the Legislature, the rule will revert back to routine technical rulemaking status.

Fiscal impact of rule:

The Department anticipates that the Ch. III rulemaking will cost approximately \$11,429,718 in SFY 2019, which includes \$4,059,836 in state dollars and \$7,369,882 in federal dollars, and \$11,429,718 in SFY 2020, which includes \$4,055,264 in state dollars and \$7,374,454 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. 459 Part B
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 12**, Allowances for Consumer-Directed Attendant Services
Filing number: **2018-245**
Effective date: 11/13/2018
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 personal care and related services pursuant to PL 2017 ch. 459 part B, *An Act Making Certain Supplemental Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (the “Act”).

The Act requires the Department to amend its rules for reimbursement rates for 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” (“Section 12”), to reflect 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.

These rule changes increase the following rates in Section 12:

- * S5125, Attendant Care Services
- * S5125 U2 UN, Attendant Care Services - 2 person
- * S5125 U2 UP, Attendant Care Services - 3 person

Through the Act, the Legislature determined that “these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety.” As such, the Act requires the Department to implement “immediate rate increases,” effective July 1, 2018. However, the Act did not become law until July 9, 2018, following a Legislative override of the Governor’s veto.

Because the Act involves MaineCare reimbursement, these rule changes are also governed by federal Medicaid law. 42 CFR §447.205(d) requires that public notice of changes in reimbursement for State Plan services must “be published **before** the proposed effective date of the change.” The Department published its notice of reimbursement methodology change for the Section 12 rates on July 31, 2018. Upon the advice of the Office of the Attorney General, the increased rates will be effective August 1, 2018, this effective date comports with the federal law requirement. Pending approval of the proposed changes to the Section 12 State Plan Amendment that were submitted to the Centers for Medicare and Medicaid Services, the increased rates will be implemented with an August 1, 2018 effective date.

There are four separate proposed rate changes pending before CMS, one submitted in September 2015 (effective 10/1/15 to 7/28/16), one submitted in July 2016 (effective 7/29/16 to 2/21/17), one submitted in August 2017 (effective 7/1/17 to 6/30/18 and 7/1/18 to 7/31/18), and one submitted in July 2018 (effective 8/1/18-6/30/19); thus, there are four retroactive effective dates applicable for these rates included in Ch. III.

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Pursuant to the Legislative determination regarding the urgent need for these reimbursement increases, the requirements of 5 MRS §8054(1) are satisfied and emergency rulemaking is appropriate. Similarly, an August 1, 2018 retroactive effective date is necessary to implement these changes as soon as possible. The retroactive application comports with 22 MRS §42(8), which authorizes the Department to adopt rules with a retroactive application (where there is no adverse impact on providers or members) for a period not to exceed eight calendar quarters.

To remedy the difference between the July 1, 2018 effective date set forth in the Act, and the August 1, 2018 date that is permissible pursuant to federal Medicaid law, the Department has recalculated the annual appropriation of funds for this service into a temporary eleven month rate. As such, providers will, over the course of eleven months, receive equivalent aggregate payments as would have been received under a twelve month rate. Beginning on July 1, 2019, rates will be annualized (based upon a twelve month appropriation). This is not a rate decrease, but rather a redistribution of the annual appropriation over twelve months, rather than eleven months.

Fiscal impact of rule:

The Department expects this rulemaking will cost the Department approximately \$608,879 in SFY 2019, which includes \$216,274 in state dollars and \$392,605 in federal dollars. This rulemaking is estimated to cost the Department \$608,879 in SFY 2020, which includes \$216,030 in state dollars and \$392,605 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. 460 Parts D, E, I
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 65**, Behavioral Health Services
Filing number: **2018-246**
Effective date: 11/13/2018
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 rule changes in 10-144 CMR Ch. 101, *MaineCare Benefits Manual*, Ch. II and III Section 65, “Behavioral Health Services” to: (a) ensure broader access to crisis services for adults with intellectual disabilities; and (b) increase the rates of reimbursement for services pursuant to PL 2017 ch. 460, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (the “Act”), Parts D, E and I.

Specific changes are as follows:

- Part D of the Act directs the Department to increase the rate of reimbursement for all Section 65 services to ensure a net increase in funding from fiscal year 2008-09 to fiscal year 2018-2019 of two percent as long as no rate for a service is lower than the rate reimbursed as of January 1, 2018. The Legislature required this increase in reimbursement to be applied to the wages and benefits of employees providing direct services to MaineCare members, and not to administrators or managers. Section 65 providers must document compliance with this requirement in their financial records and provide such documentation to the Department upon request.
- Part E of the Act directs the Department to increase the reimbursement rate for Section 65 Medication Management services by fifteen percent. This increase is in addition to the two percent increase required by Part D of the Act.
- Part I of the Act directs the Department to increase the reimbursement rates for Multi-Systemic Therapy (MST), Multi-Systemic Therapy for Problem Sexualized Behaviors (MST-PSB), and Functional Family Therapy (FFT) by twenty percent. This twenty percent increase, which is in addition to the two percent increase, is effective until June 30, 2019. The Department shall publish a separate notice of change in reimbursement methodology, and seek approval from the Centers of Medicare and Medicaid Services (CMS) for the Multi-Systemic Therapy and Functional Family Therapy rate changes that go into effect in 2019.

Through the Act, the Legislature determined that “these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety.” As such, the Act requires the Department to implement “immediate rate increases,” effective July 1, 2018. However, the Act did not become law until July 9, 2018, following a Legislative override of the Governor’s veto.

Because the Act involves MaineCare reimbursement, these rule changes are also governed by federal Medicaid law. 42 CFR §447.205(d) requires that public notice of changes

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in reimbursement for state plan services must “be published **before** the proposed effective date of the change.” The Department published its notice of reimbursement methodology change for the Section 65 rates on July 31, 2018. Upon the advice of the Office of the Attorney General, the increased rates will be effective August 1, 2018; this date comports with the federal law requirement. Pending approval of the proposed changes to the Section 65 State Plan Amendment that were submitted to the Centers for Medicare and Medicaid Services, the increased rates will be implemented with an August 1, 2018 effective date.

Pursuant to the Legislative determination regarding the urgent need for these reimbursement increases, the requirements of 5 MRS §8054(1) are satisfied and emergency rulemaking is appropriate. Similarly, an August 1, 2018 retroactive effective date is necessary to implement these changes as soon as possible. The retroactive application comports with 22 MRS §42(8), which authorizes the Department to adopt rules with a retroactive application (where there is no adverse impact on providers or members) for a period not to exceed eight calendar quarters.

To remedy the difference between the July 1, 2018 effective date set forth in the Act and the August 1, 2018 date that is permissible pursuant to federal Medicaid law, the Department has recalculated the annual appropriation of funds for this service into a temporary eleven month rate. As such, providers will, over the course of eleven months, receive equivalent aggregate payments as would have been received under a twelve month rate. Beginning on July 1, 2019, rates will be annualized (based upon a twelve month appropriation).

Additionally, the Department finds that emergency rule changes are required to add certain diagnoses to Crisis Services in Ch. II. The crisis services system for adult developmental services is stressed, as the agency that previously contracted for state funded beds has declined to renew their contract with the Department. The state offers a small amount of crisis beds, but the demand outweighs the supply. Current policy language does not support serving individuals with developmental disabilities. The Department finds that it must broaden the language in Ch. II Sections 65.06-1, 65.06-2, to extend eligibility to members with developmental disabilities. Without emergency rulemaking, the health, safety, and well-being of these members may be compromised. These rule changes allow any willing and qualified provider of crisis services under Section 65 to offer crisis beds to adult members with developmental disabilities. Additionally, the Department finds that it must add allowable staff (Direct Support Professionals) to treat this population, as those currently available under Section 65 (MHRT) do not have the education or expertise to effectively treat this population.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$9,284,638 in SFY 2019, which includes \$3,297,903 in state dollars and \$ 5,986,735 in federal dollars, and \$8,687,014 in SFY 2020, which includes \$3,082,152 in state dollars and \$5,604,862 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. 459 Part B
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 96**, Private Duty Nursing and Personal Care Services
Filing number: **2018-247**
Effective date: 11/13/2018
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 on personal care and other related services pursuant to PL 2017 ch. 459, *An Act Making Certain Supplemental Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (the “Act”), Part B.

The Act requires the Department to amend its rules for reimbursement rates for 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* (“Section 96”), to reflect 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. Further, Part B-3 directs the Department to ensure that caps and limitations are increased to reflect the increases in reimbursement rates such that a recipient of services may not experience a reduction in hours solely as a result of the increased reimbursement rates authorized by the Act.

This Ch. III emergency rule increases the following rates:

- G0299 TD (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)
- 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)

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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 Ch. II emergency rule increases the following level of care limits:

Level I
Level II
Level III
Level IV
Level V
Level VIII
Level IX

Through the Act, the Legislature determined that “these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety.” As such, the Act requires the Department to implement “immediate rate increases,” effective July 1, 2018. However, the Act did not become law until July 9, 2018, following a Legislative override of the Governor’s veto.

Because the Act involves MaineCare reimbursement, these rule changes are also governed by federal Medicaid law. 42 CFR §447.205(d) requires that public notice of changes in reimbursement for State Plan services must “be published **before** the proposed effective date of the change.” The Department published its notice of reimbursement methodology change for the Section 96 rates on July 31, 2018. Upon the advice of the Office of the Attorney General, the increased rates will be effective August 1, 2018, which effective date comports with the federal law requirement. Pending approval of the proposed changes to the Section 96 State Plan Amendment that were submitted to the Centers for Medicare and Medicaid Services, the increased rates will be implemented with an August 1, 2018 effective date. There are four separate proposed rate changes and increased level of care limits pending before CMS, one submitted in September 2015 (effective July 1, 2015), one submitted in September 2016 (effective July 29, 2016), one submitted in September 2017 (effective September 6, 2017), and one submitted in July 2018 (effective August 1, 2018); thus, there are four retroactive effective dates applicable for these rates included in Ch. III.

Pursuant to the Legislative determination regarding the urgent need for these reimbursement increases, the requirements of 5 MRS §8054(1) are satisfied and emergency rulemaking is appropriate. Similarly, an August 1, 2018 retroactive effective date is necessary to implement these changes as soon as possible. The retroactive application comports with 22 MRS §42(8), this authorizes the Department to adopt rules with a retroactive application (where there is no adverse impact on providers or members) for a period not to exceed eight calendar quarters.

To remedy the difference between the July 1, 2018 effective date set forth in the Act, and the August 1, 2018 date that is permissible pursuant to federal Medicaid law, the Department has recalculated the annual appropriation of funds for this service into a temporary eleven month rate. As such, providers will, over the course of eleven months, receive equivalent aggregate payments as would have been received under a twelve month rate. Beginning on July 1, 2019, rates will be annualized (based upon a twelve month appropriation). This is not a rate decrease, but rather a redistribution of the annual appropriation over twelve months, rather than eleven months.

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.

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Fiscal impact of rule:

The Department expects these rulemakings will cost approximately \$3,239,154 in SFY 2019, which includes \$1,150,548 in state dollars and \$2,088,606 in federal dollars. The Department expects these rulemakings will cost approximately \$3,239,154 in SFY 2020, which includes \$1,149,252 in state dollars and \$2,089,902 in federal dollars.

The Department does not anticipate there will be adverse or economic impacts on small businesses, counties, 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 of MaineCare Services - Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(8), 3173, 5 MRS §8054; PL 2017 ch. 460 Part D
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 13**, Allowances for Targeted Case Management
Filing number: **2018-248**
Effective date: 11/16/2018
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 targeted case management services pursuant to PL 2017 ch. 460, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (the “Act”), Part D.

The Act requires the Department to amend its rules for reimbursement rates for targeted case management services provided under the provisions of 10-144 CMR Ch. 101, *MaineCare Benefits Manual*, Ch. III Section 13, “Allowances for Targeted Case Management”.

Specific changes are as follows:

- Part D of P.L. 2017, ch. 460 directs the Department to increase the rate of reimbursement for all services by two percent. Sec. D-1 and D-2 specifically require the increase in reimbursement to be applied to the wages and benefits of employees who provide direct services and not to administrators or managers.

Through the Act, the Legislature determined that “these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety.” As such, the Act requires the Department to implement “immediate rate increases,” effective July 1, 2018. However, the Act did not become law until July 9, 2018, following a Legislative override of the Governor’s veto.

Because the Act involves MaineCare reimbursement, these rule changes are also governed by federal Medicaid law. 42 CFR §447.205(d) requires that public notice of changes in reimbursement for State Plan services must “be published **before** the proposed effective date of the change.” The Department published its notice of reimbursement methodology change for the Section 13 rates on July 31, 2018. Upon the advice of the Office of the Attorney General, the increased rates will be effective August 1, 2018; this date comports with the federal law requirement. Pending approval of the proposed changes to the Section 13 State Plan Amendment that were submitted to the Centers for Medicare and Medicaid Services, the increased rates will be implemented with an August 1, 2018 effective date.

Pursuant to the Legislative determination regarding the urgent need for these reimbursement increases, the requirements of 5 MRS §8054(1) are satisfied and emergency rulemaking is appropriate. Similarly, an August 1, 2018 retroactive effective date is necessary to implement these changes as soon as possible. The retroactive application comports with 22 MRS §42(8), which authorizes the Department to adopt rules with a retroactive application (where there is no adverse impact on providers or members) for a period not to exceed eight calendar quarters.

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

To remedy the difference between the July 1, 2018 effective date set forth in the Act and the August 1, 2018 date that is permissible pursuant to federal Medicaid law, the Department has recalculated the annual appropriation of funds for this service into a temporary eleven month rate. As such, providers will, over the course of eleven months, receive equivalent aggregate payments as would have been received under a twelve month rate. Beginning on July 1, 2019, rates will be annualized (based upon a twelve month appropriation). This is not an effective rate decrease, but rather a redistribution of the annual appropriation over twelve months, rather than eleven months.

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

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$901,645 in SFY 2019, which includes \$319,904 in state dollars and \$581,741 in federal dollars, and \$901,645 in SFY 2020, which includes \$321,527 in state dollars and \$580,118 in federal dollars.

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Rules Adopted January 1, 2018 to December 31, 2018
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(8), 3173, 5 MRS §8054; PL 2017 ch. 460 Part D
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 17**, Allowances for Community Support Services
Filing number: **2018-249**
Effective date: 11/16/2018
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 Community Support Services pursuant to PL 2017 ch. 460, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (the “Act”), Part D.

The Act requires the Department to amend its rules for reimbursement rates for Community Support Services provided under the provisions of 10-144 CMR ch. 101, *MaineCare Benefits Manual*, Ch. III, Section 17, “Allowances for Community Support Services”.

Specific changes are as follows:

- Part D of PL 2017 ch. 460 directs the Department to increase the rate of reimbursement for all services by two percent. Sec. D-1 and D-2 specifically require the increase in reimbursement to be applied to the wages and benefits of employees who provide direct services and not to administrators or managers.

Through the Act, the Legislature determined that “these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety.” As such, the Act requires the Department to implement “immediate rate increases,” effective July 1, 2018. However, the Act did not become law until July 9, 2018, following a Legislative override of the Governor’s veto.

Because the Act involves MaineCare reimbursement, these rule changes are also governed by federal Medicaid law. 42 CFR §447.205(d) requires that public notice of changes in reimbursement for State Plan services must “be published **before** the proposed effective date of the change.” The Department published its notice of reimbursement methodology change for the Section 17 rates on July 31, 2018. Upon the advice of the Office of the Attorney General, the increased rates will be effective August 1, 2018; this date comports with the federal law requirement. Pending approval of the proposed changes to the Section 17 State Plan Amendment that were submitted to the Centers for Medicare and Medicaid Services, the increased rates will be implemented with an August 1, 2018 effective date.

Pursuant to the Legislative determination regarding the urgent need for these reimbursement increases, the requirements of 5 MRS §8054(1) are satisfied and emergency rulemaking is appropriate. Similarly, an August 1, 2018 retroactive effective date is necessary to implement these changes as soon as possible. The retroactive application comports with 22 MRS §42(8), which authorizes the Department to adopt rules with a retroactive application (where there is no adverse impact on providers or members) for a period not to exceed eight calendar quarters.

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To remedy the difference between the July 1, 2018 effective date set forth in the Act and the August 1, 2018 date that is permissible pursuant to federal Medicaid law, the Department has recalculated the annual appropriation of funds for this service into a temporary eleven month rate. As such, providers will, over the course of eleven months, receive equivalent aggregate payments as would have been received under a twelve month rate. Beginning on July 1, 2019, rates will be annualized (based upon a twelve month appropriation). This is not an effective rate decrease, but rather a redistribution of the annual appropriation over twelve months, rather than eleven months.

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

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$1,923,526 in SFY 2019, which includes \$682,467 in state dollars and \$1,241,059 in federal dollars, and \$1,923,526 in SFY 2020, which includes \$685,929 in state dollars and \$1,237,597 in federal dollars.

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Rules Adopted January 1, 2018 to December 31, 2018
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. 460 Part B-2
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 26**, Day Health Services
Filing number: **2018-250**
Effective date: 11/19/2018
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 pursuant to PL 2017 ch. 460 part B-2, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government*. Part B-2 requires the Department to amend its rules to increase reimbursement rates for adult family services, adult day services, and homemaker services for the fiscal year ending June 30, 2019, by ten percent (10%). Part B-2 further requires that effective July 1, 2019, payment rates attributable to wages and salaries for personal care and related services will be increased annually by an inflation adjustment cost-of-living percentage in accordance with the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index, Medical care services (professional services, nursing home and adult day care services) from the prior December. These cost of living increases shall continue annually until the Department has completed a rate study for adult family care services, adult day services or homemaker services and the rates in the rate study have been implemented.

This emergency rule increases the rate for S5100 HC, Day Care Services.

Through the Act, the Legislature determined that “these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety.” As such, the Act requires the Department to implement “immediate rate increases,” effective July 1, 2018. However, the Act did not become law until July 9, 2018, following a Legislative override of the Governor’s veto.

Because the Act involves MaineCare reimbursement, these rule changes are also governed by federal Medicaid law. 42 CFR §447.205(d) requires that public notice of changes in reimbursement for state plan services must “be published **before** the proposed effective date of the change.” (emphasis added). The Department published its notice of reimbursement methodology change for the Section 26 rates on July 31, 2018. Upon the advice of the Office of the Attorney General, the increased rates will be effective August 1, 2018, which effective date comports with the federal law requirement. Pending approval of the proposed changes to the Section 26 state plan amendment that were submitted to the Centers for Medicare and Medicaid Services, the increased rates will be implemented with an August 1, 2018 effective date.

Pursuant to the Legislative determination regarding the urgent need for these reimbursement increases, the requirements of 5 MRS §8054(1) are satisfied and emergency rulemaking is appropriate. Similarly, an August 1, 2018 retroactive effective date is necessary to implement these changes as soon as possible. The retroactive application comports with 22 MRS §42(8), which authorizes the Department to adopt rules with a retroactive application

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(where there is no adverse impact on providers or members) for a period not to exceed (8) calendar quarters.

To remedy the difference between the July 1, 2018 effective date set forth in the Act, versus the August 1, 2018 date that is permissible pursuant to federal Medicaid law, the Department has recalculated the annual appropriation of funds for this service into a temporary eleven-month rate. As such, providers will, over the course of eleven months, receive equivalent aggregate payments as would have been received under a twelve-month rate. Beginning on July 1, 2019, rates will be annualized (based upon a twelve-month appropriation). This is not an effective rate decrease, but rather a redistribution of the annual appropriation over twelve months, rather than eleven months.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$15,618 in SFY 2019, which includes \$5,568 in state dollars and \$10,050 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(8), 3173, 7863; 5 MRS §§ 8054, 8072; PL 2017 ch. 304, 460
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 97**, Private Non-Medical Institution Services (PNMI)
Filing number: **2018-251**
Effective date: 11/20/2018
Type of rule: Major Substantive
Emergency rule: Yes

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

Basis statement:

The Department of Health and Human Services (“Department”) adopts these emergency major substantive rules to implement the requirements of two recently enacted laws: (1) PL 2017 ch. 304, *An Act to Amend Principles of Reimbursement for Residential Care Facilities* (“The First Act”); and (2) PL 2017 ch. 460, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (“The Second Act”). The First Act defines the process by which an eligible Private Non-Medical Institution (PNMI) Services provider may request an Extraordinary Circumstances Allowance (ECA) and allows for certain regulatory compliance costs incurred by PNMI providers to be considered reasonable and necessary; these changes are implemented in Appendices C and F. The Second Act increases reimbursement for Appendices B, C, and E PNMI. The Department also adopts various other changes to the Section 97 rules, including Appendix D, as described more specifically in the third section, below.

Pursuant to 5 MRS §8073, these emergency major substantive rule changes will remain in effect for up to one (1) year or until the Legislature reviews the provisionally adopted rules, followed by the Department’s final adoption of the major substantive rule changes.

I. The First Act

The First Act requires Extraordinary Circumstance Allowance (ECA), regulatory compliance cost, and other changes in Ch. III Section 97 (the “Main Rule”), and Appendices C, D and F. The Department finds that these changes must be implemented immediately through emergency major substantive rulemaking. Separately, the Department is implementing changes required by the First Act in 10-144 CMR ch. 115, “Residential Care Facilities – Room and Board Costs” (the “State Rule”); those changes are routine technical. Pursuant to 5 MRS §8072, “regular” major substantive rule changes are not legally effective until they are approved by the Legislature and finally adopted by an agency, which can take over a year; as such, because the Department seeks to implement the Section 97 changes simultaneously with the State Rule changes (in order to treat similar providers equitably), it must do so through emergency major substantive rulemaking. These changes will improve the financial condition of Section 97 providers, and s protect against a threat to public health and safety posed by instances of providers closing. The changes are a benefit to PNMI providers, and otherwise have no adverse impact on either MaineCare providers or members.

The emergency adoption under 5 MRS §8074 will enable the rule changes required by the First Act to take effect immediately, and pursuant to 22 MRS §42(8), retroactively. The Change in Reimbursement Methodology Notice required by 42 CFR §447.205 relating to the ECA and regulatory compliance costs was published on October 19, 2017. The Department is

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seeking, and anticipates receiving, approval from the federal Centers for Medicare and Medicaid Services (CMS) for these changes. Pending approval, the ECA and regulatory compliance cost changes in the Main Rule, Appendices C, and F, will be effective retroactive to November 1, 2017.

II. The Second Act

The Second Act, Section B-4, requires the Department to amend the main rule and Appendix C to provide a special supplemental allowance (as more specifically set forth in the rules) for the fiscal year ending June 30, 2019. This allowance must be provided for increases in wages and wage-related benefits for direct care and personal care services cost components. The Second Act also directs that, for fiscal year ending June 30, 2020 and thereafter, the Appendix C MaineCare payment rates attributable to wages and salaries in each cost component must be increased by an inflation factor in accordance with the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index from the prior December for professional services, nursing home and adult day care services. In addition, the Department added a provision to Appendix C, Sec. 2400.3 to make it clear that the increases in reimbursement required by the Second Act shall not be included in the PNMI facility's personal care services costs cap.

The Second Act, Part D, requires the Department to amend the main rule, and Appendices B and E, to increase reimbursement rates to ensure a net increase in funding of two percent (as specifically set forth in the rules), which reimbursement must be applied to wages and benefits for employees who provide direct services and not to administrators or managers. The Second Act further requires that Section 97 providers must demonstrate to the Department that the increase in wages and benefits has been granted to direct care workers; as stated in the rules, providers must retain documents reflecting compliance with this requirement in their financial records and provide such documentation to the Department upon request.

Through the Second Act, the Legislature determined that “these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety.” As such, the Act requires the Department to implement “immediate rate increases,” effective July 1, 2018. However, the Act did not become law until July 9, 2018, following a Legislative override of the Governor's veto.

Because the Second Act involves MaineCare reimbursement, these rule changes are also governed by federal Medicaid law. 42 CFR §447.205(d) requires that public notice of changes in reimbursement for state plan services must “be published **before** the proposed effective date of the change.” The Department published its notice of reimbursement methodology change for the Section 97 rates on July 31, 2018. Upon the advice of the Office of the Attorney General, the increased rates in Appendices B, C, and E will be effective August 1, 2018, which effective date comports with the federal law requirement. Pending approval of the proposed changes to the Section 97 State Plan Amendment that were submitted to the Centers for Medicare and Medicaid Services, the increased rates in Appendices B, C, and E will be implemented with an August 1, 2018 effective date.

Pursuant to the Legislative determination regarding the urgent need for these reimbursement increases in Appendices B, C, and E, the requirements of 5 MRS §§ 8073 and 8054(1) are satisfied and emergency major substantive rulemaking is appropriate. Similarly, an August 1, 2018 retroactive effective date is necessary to implement these changes as soon as possible. The retroactive application comports with 22 MRS §42(8), which authorizes the Department to adopt rules with a retroactive application (where there is no adverse impact on providers or members) for a period not to exceed eight calendar quarters.

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To remedy the difference between the July 1, 2018 effective date set forth in the Second Act, and the August 1, 2018 date that is permissible pursuant to federal Medicaid law, the Department has recalculated the annual appropriation of funds for these services into a temporary eleven month rate. As such, providers will, over the course of eleven months, receive equivalent aggregate payments as would have been received under a twelve month rate. Beginning on July 1, 2019, rates will be annualized (based upon a twelve month appropriation). This is not a rate decrease, but rather a redistribution of the annual appropriation over twelve months, rather than eleven months.

III. Other Changes

In addition to the changes required by the First and Second Acts, other changes include but are not limited to:

- Procedure codes: S9484 and corresponding modifiers HA, HE, and HI for Temporary High Intensity Services, per report per hours, are added to Appendices D, E, and F to more effectively align with the current prior authorization process.
- Temporary High Intensity Staffing Services are reimbursed based on individual member's direct care price. This direct care is not subject to audit. The Temporary High Intensity Staffing Services remittances received will be removed from the total Direct Services Staff costs in determining the allowable cost for the PNMI rehabilitation and personal care direct service staff cost.
- The Department will calculate each Appendix C PNMI's rate setting case mix index using the number of MaineCare residents in each case mix classification group in the facility as of March 1st for the July rate and September 1st for the January rate. The changes are adopted in order to issue rate letters to providers in a timely manner.
- The Department will send a roster of Appendix C residents and source of payment as of March 1st and September 1st to facilities for verification prior to rate setting.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost the Department approximately \$8,595,617 in SFY 2019, which includes \$3,053,163 in state dollars and \$5,542,454 in federal dollars, and \$8,595,617 in SFY 2020, which includes \$3,049,725 in state dollars and \$5,545,892 in federal dollars.

The Department does not anticipate that this rulemaking will result in any additional costs to municipalities, counties, or small businesses.

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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, 3104; 5 MRS §8054; PL 2017 ch. 460 part G
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 93**, Opioid Health Home Services
Filing number: **2018-260**
Effective date: 11/27/2018
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 (“Department”) adopts changes to Ch. II and III Section 93, “Opioid Health Home Services” of the *MaineCare Benefits Manual* on an emergency basis pursuant to PL 2017 ch. 460 part G, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (emergency, effective July 9, 2018) (the “Act”) and pursuant to the Department’s emergency rulemaking authority under 5 MRS §8054.

Part G of the Act amends the Maine Substance Abuse and Treatment Act, 5 MRS §§ 20001-20078-A, by implementing new definitions and creating a “hub-and-spoke” model of treatment. The Act provides funding to hubs and spokes to cover costs of intensive, intermediate and long-term treatment, including, but not limited to the cost of medication, screening, behavioral health treatment, urine drug screens, office visits and recovery support services for individuals with opioid use disorder, including those who are uninsured. Among other directives, the Act requires the Department by October 1, 2018 to “ensure a continuum of evidence-based treatment and recovery support services for opioid use disorder is accessible to all people in the State through contracts with hubs and spokes.” The Department is also tasked with assessing federal funding opportunities, developing grant funding for education, providing treatment to uninsured individuals seeking treatment, developing assessment measures for the performance evaluation of the hub-and-spoke model, developing a plan to create a statewide resource and referral center for substance use disorder treatment and recovery resources, and reporting back to the Legislature on its progress by February 1, 2019. The Act became law on an emergency basis on July 9, 2018, following findings by the Legislature that it was “immediately necessary for the preservation of public peace, health and safety.”

As a result of the Act, the Department is reviewing all of its programs that provide substance use disorder treatment options for both MaineCare members and uninsured individuals. This includes Opioid Health Homes (OHH). OHH services were established by the Legislature in 2017 to provide an integrated care delivery model focused on whole-person treatment of opioid use disorder for the uninsured, MaineCare members, and the uninsured but MaineCare-eligible populations. See PL 2017 ch. 2 part P (emergency, effective March 15, 2017). The Department currently provides OHH services to members through Section 93 of the *MaineCare Benefits Manual* and to the uninsured through OHH contracts that mirror these rules.

The Department believes this current service-delivery OHH model largely abides by the hub-and-spoke model envisioned under the Act. Many current OHH providers function as hubs or spokes by providing treatment to individuals, some of whom carry multiple diagnoses, and by referring individuals to different levels of care depending on clinical need. However, to

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more closely align with the Legislature's directive, the Department is implementing the following emergency rule changes: adding a definition of Integrated Medication Assisted Treatment (IMAT) to describe OHH service expectations; adding urine drug screening as an integral part of IMAT services; establishing levels of care (intensive, intermediate/stabilization, and maintenance) that correspond to the member's needs; and creating a tiered reimbursement rate structure corresponding to these levels of care. Given the emergency nature of the Act, the Department does not need to make additional emergency findings to support these portions of the emergency rulemaking.

In conjunction with these changes, the Department believes additional changes are needed on an emergency basis pursuant to 5 MRS §8054 to improve the Section 93 rules by making it easier for current and new providers to deliver IMAT services through the OHH model. In turn, this will increase accessibility to services for all individuals with opioid use disorder as envisioned under the Act. The State is currently in the midst of an opioid epidemic which claimed approximately one life per day in 2017. Funding and service-delivery requirements supporting IMAT are critical to providing MaineCare members and uninsured individuals high-quality treatment options. The Department is therefore making emergency changes to Section 93 that: alter the current staffing requirements and add a new patient navigator to the OHH team to ensure flexibility for provider organizations and expertise to meet members' needs; create an allowance for members who meet eligibility for *MaineCare Benefits Manual*, Section 92, "Behavioral Health Home Services", Section 91, "Health Home Services", certain Section 13, "Targeted Case Management Services", or Section 17, "Community Support Services" to receive these services in coordination with OHH services; ease requirements regarding the Electronic Health Record to allow provider flexibility in meeting OHH program requirements; provide clarification to covered services; and make minor and technical changes to the operation of OHH. These emergency changes are the result of Departmental review and stakeholder feedback. Both providers and members alike will benefit from these changes.

With the emergency adoption of the above changes, the reimbursement of OHH services at a Per Member Per Month (PMPM) rate will now be based on the level of care of services provided to the member and whether the OHH provides coordinated case management to the member. Urine drug screening will be part of the OHH bundled reimbursement. Medication costs will be excluded from the PMPM bundle and billed separately. This change in reimbursement structure allows for provider organizations to receive reimbursement commensurate with the needs of their patient population(s) and with the organization's service delivery model. Providers will benefit as these rate changes are all reimbursement increases from the current structure.

Additionally, in order to continue to ensure that all individuals with opioid use disorder have access to OHH services, the Department will make the majority of the appropriation included in Part G of the Act available to providers through contracts to deliver these services to uninsured individuals. The Department will align both current and new contracts, when possible, with the Section 93 rules to maintain service expectations regardless of funding source and to avoid any administrative burden that would arise from operating two different models of service delivery.

These emergency rule changes will be contingent upon approval from the Centers for Medicare and Medicaid Services (CMS). CMS approved the State Plan on October 13, 2017, for the original OHH model with the effective date of October 1, 2017. The methodology notice for the current changes was published on September 27, 2018, and the Department will be submitting the State Plan to CMS for approval by December 31, 2018.

These emergency rule changes will take effect upon adoption and will be in effect for ninety days. 5 MRS §8054. To prevent a lapse in the Section 93 rules and these services

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following the expiration of the emergency period, the Department is concurrently engaging in the routine technical rulemaking process for Section 93.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$2,519,842 in SFY 2019, which includes \$143,787 in state dollars and \$2,376,055 in federal dollars, and \$6,880,534 in SFY 2020, which includes \$1,749,958 in state dollars and \$5,130,576 in federal dollars. The Department also anticipates reduced expenditures under fee-for-service billing under MBM, Section 65, Section 90, and Section 55.

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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(8), 3173; 22 MRS §1708(3); 5 MRS §8054; PL 2017 ch. 460 sec. B-1, B-3; PL 2013 ch. 594 sec. 3

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 67**, Principles of Reimbursement for Nursing Facilities

Filing number: **2018-264**

Effective date: 12/4/2018

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 (Department) adopts these emergency rule changes to Ch. III Section 67, “Principles of Reimbursement for Nursing Facility Services”, pursuant to PL 2017 ch. 460, LD 925, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (“the Act”), Section B-1 and B-3.

This rulemaking makes a number of changes to the reimbursement methodology for Nursing Facilities pursuant to “the Act”. These changes include a change in the Occupancy Adjustment to allow for reduced occupancy percentages, an increase in the utilization payment, and the adoption of a special supplemental allowance to account for wage increases. The Legislature further required that, for state fiscal year beginning July 1, 2018, the base year for each facility is its fiscal year that ended in calendar year 2016; for state fiscal years beginning on or after July 1, 2019, subsequent rebasing must be based on the most recent cost report filings available. Further, for the state fiscal year beginning July 1, 2018, the rates for each rebasing year must include an inflation adjustment for a cost-of-living percentage change in nursing facility reimbursement each year in accordance with the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index – medical care services index from the prior December for professional services, nursing home, and adult day care services. Finally, the Department added an aggregate hold harmless provision to reflect that the revised method of rebasing a nursing facility’s base year may not result in a rate of reimbursement for direct and routine costs that is lower than the rate in effect June 30, 2018.

Because the Act involves MaineCare reimbursement, these rule changes are also governed by federal Medicaid law. 42 CFR §447.205(d) requires that public notice of changes in reimbursement for state plan services must “be published **before** the proposed effective date of the change.” The Department published its notice of reimbursement methodology change for the Section 67 rates on August 1, 2018. Upon the advice of the Office of the Attorney General, the changes in reimbursement methodology will be effective August 2, 2018, this effective date comports with the federal law requirement. Pending approval of the proposed changes to the Section 67 State Plan Amendment that were submitted to the Centers for Medicare and Medicaid Services, the reimbursement methodology changes will be implemented with an August 2, 2018 effective date.

Pursuant to the Legislative determination regarding the urgent need for these reimbursement methodology changes, the requirements of 5 MRS §8054(1) are satisfied and emergency rulemaking is appropriate. Similarly, an August 2, 2018 retroactive effective date is necessary to implement these changes as soon as possible. The retroactive application

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comports with 22 MRS §42(8), which authorizes the Department to adopt rules with a retroactive application (where there is no adverse impact on providers or members) for a period not to exceed (8) calendar quarters.

Fiscal impact of rule:

The Department estimates this rulemaking will cost the Department approximately \$18,467,741 in SFY 2019, which includes \$6,559,742 in state dollars and \$11,907,999 in federal dollars and \$18,467,741 in SFY 2020 which includes \$6,552,355 in state dollars and \$11,915,386 in federal dollars.

The Department does not anticipate that this rulemaking will create any additional cost to municipalities, counties, or small businesses. The Department does not anticipate that this rulemaking will create any additional cost to other offices or departments.

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Agency name: Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §42(8), §3173; PL 2017 ch. 304; PL 2017 ch. 460
Chapter number/title: **Ch. 115**, Principles of Reimbursement for Residential Care Facilities – Room and Board Costs
Filing number: **2018-252**
Effective date: 11/20/2018
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 rule changes in 10-144 CMR ch. 115, *Principles of Reimbursement for Residential Care Facilities – Room and Board Costs* to comply with (1) Public Law 2017 ch. 304 (“The First Act”); and (2) Public Law 2017 ch. 460, *An Act To Amend Principles of Reimbursement for Residential Care Facilities and An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (“The Second Act”).

The First Act requires the following changes:

- A residential care facility that experiences an unforeseen and uncontrollable event during a year which results in unforeseen or uncontrollable increases in expenses may request an adjustment to a prospective rate in the form of an extraordinary circumstance allowance.
- Section 20.5 - New Construction, Acquisitions, and Renovations involving capital expenditures is updated to \$500,000 from \$350,000.
- Costs incurred by residential care facilities to comply with changes in federal or state laws, regulations and rules or local ordinances and not otherwise specified in rules adopted by the Department are considered reasonable and necessary. Reimbursement for additional regulatory costs shall be paid via a supplemental payment that is added to the per diem rate until the Department adjusts the routine limit, as applicable, to fairly and properly reimburse facilities for these costs.

These changes shall have a retroactive effective date of November 1, 2017.

The Second Act requires the following changes:

- For the state fiscal year ending June 30, 2020 and each year thereafter, the MaineCare payment rates attributable to wages and salaries in routine services costs for Section 97, Private Non-Medical Institution Appendix C providers must be increased by an inflation factor in accordance with the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index – medical care services index from the prior December for professional services, nursing home, and adult day care services.
- Effective August 1, 2018, for the state fiscal year ending June 30, 2019, a special supplemental allowance must be made to Appendix C PNMI to provide for increases in wages and wage-related benefits in the routine cost component. An amount equal to ten percent (10%) of wages and associated benefits and taxes in the routine cost component as reported on each facility’s as-filed cost report for its fiscal year ending in calendar year 2016 must be added to the cost per resident day in calculating each facility’s prospective rate, notwithstanding any otherwise applicable caps or limits on reimbursement. This supplemental allowance must also be allowed and paid at final audit to the full extent that it does not cause

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reimbursement to exceed the facility's allowable cost per day in the routine cost component in that fiscal year.

These changes shall have a retroactive effective date of August 1, 2018.

The First and Second Acts require ECA, regulatory compliance costs, inflation factor, and special wage allowance changes for Residential Care Facilities and MaineCare Section 97, "Private Non-Medical Institution (PNMI) Services" - Appendix C providers. The Department finds that these changes must be implemented immediately through emergency rulemaking. Separately, the Department is implementing changes required in the First and Second Acts in 10-144 CMR ch. 101, *MaineCare Benefits Manual*, Ch. III Section 97, and those changes are major substantive. Pursuant to 5 MRS §8072 "regular" major substantive rule changes are not legally effective until they are approved by the Legislature and finally adopted by an agency, which can take over a year. As such, because the Department seeks to implement the Section 97 changes simultaneously with these State Rule changes (in order to treat providers equitably), it must do so through emergency rulemaking. These changes will improve the financial condition of Residential Care Facility providers, and protect against a threat to public health and safety posed by instances of providers closing. The changes are a benefit to providers and otherwise have no adverse impact on either MaineCare providers or members. The emergency adoption under 5 MRS §8054 will enable the rule changes to take effect immediately, and pursuant to 22 MRS §42(8), retroactively.

Fiscal impact of rule:

The Department is unable to anticipate whether there is a fiscal impact from this rulemaking.

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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 ch. 423
Chapter number/title: **Ch. 130** (*New*), Epinephrine Auto-Injector Training and Certification Rule
Filing number: **2018-001**
Effective date: 1/10/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rulemaking establishes the classes of licensed healthcare professionals approved by the Department to conduct training specific to the use of epinephrine auto-injectors and asserts the minimum training requirements to certify individuals trained.

Basis statement:

The Department of Health and Human Services, Maine Center for Disease Control and Prevention adopted the Epinephrine Auto-Injector Training and Certification rule to comply with 22 MRS ch. 423 in order to expand public access to epinephrine auto-injectors. This rule is intended to ensure the safety and wellness of a person experiencing anaphylaxis.

This rule prescribes training requirements for entities, organizations and businesses; establishes which healthcare professionals may train nonprofessionals in the use of epinephrine autoinjectors; and specifies the training certification requirements for nonprofessionals to use epinephrine auto-injectors in the treatment of anaphylaxis.

Anaphylaxis can develop and progress quickly, and children and adolescents are among the most at risk. Auto-injectors are for the emergency treatment of anaphylaxis as a first-line treatment. This rule permits entities, organizations and businesses (other than schools) to stock epinephrine auto-injectors and authorizes physicians, advanced registered nurse practitioners, physician assistants, registered nurses, emergency medical technicians, paramedics, and pharmacists to train nonprofessionals in the use and administration of epinephrine auto-injectors to people they believe in good faith to be experiencing anaphylaxis.

Fiscal impact of rule:

None anticipated.

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

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 2496, 1551-A; 32 MRS §§ 1242, 4251, 4313, 4326

Chapter number/title: **Ch. 201**, Administration and Enforcement of Establishments Regulated by the Health Inspection Program

Filing number: **2018-223**

Effective date: 10/10/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

Several areas of the rule need updating and clarification, to ensure clearer guidance for license applicants and licensees. The Department is proposing a number of changes necessary to continue to effectively and efficiently operate the Health Inspection Program.

Basis statement:

The Department of Health and Human Services, (Department) advertised rulemaking changes to partially amend its *Rules Relating to the Administration and Enforcement of Establishments Regulated by the Health Inspection Program* on May 2, 2018. A public hearing was held on the amended rule, (renamed *Administration and Enforcement of Establishments Regulated by the Health Inspection Program*), on May 22, 2018. The Department accepted written comments through June 1, 2018.

The Department added and clarified specific application and licensing requirements for all licensees under this rule, so that applicants and licensees would more clearly understand how to become and stay licensed in good standing.

The Department added a guest body artist license fee category, to accommodate body artists from another state who practice their art in Maine for a limited time or single event. By offering the guest body artist license, this artist may participate in such events without having to pay for a full Maine body artist license required for those who reside and practice in the State of Maine.

Additionally, public pool and spa license categories were added, to comply with Maine statute, which required the Department to license public pools and spas in 2011. (See 22 MRS §§ 2492(G) and (H)). Although the Department was already performing regular inspections of public pools and spas, this rule change will enable the Department to meet its legal requirement to also license them.

The event camping license type and corresponding requirements replaced the temporary campground license, to comply with the *Resolve to Exempt Certain Businesses from Being Considered Campgrounds*, passed on June 15, 2013. This Resolve directed the Department to review the regulation of camping on premises where the owner is hosting an event and offers camping to participants and spectators of the event. The January 29, 2014 report to the Joint Standing Committee on Health and Human Services recommended event camping as a new camping license for this type of camping, as a less rigorous licensing option than the full campground license, but with more oversight than no licensure at all.

The Department's changes to this rule added a requirement for eating establishment applicants to submit proof of a certified food protection manager (CFPM) certificate to the Department at the time of their application. This change assures that food workers demonstrate an adequate level of food safety knowledge at the start of licensure, rather than the current 90-day window.

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The Department also adopted changes to clarify requirements for delegated municipalities, to reflect recent updates to the Memorandum of Understanding between the Department and its delegated municipalities that conduct food, lodging and public pool and spa inspections. These delegated municipalities include Portland, South Portland, Lewiston and Auburn.

Although Maine's menu labeling law at 22 MRS §2500-A authorizes Health Inspection Program inspectors to ensure that chain restaurants post caloric information on items such as food display menus or menu boards, any reference to enforcing menu labeling requirements for chain restaurants has been removed because the FDA has promulgated regulations that address these issues."

Enforcement processes were changed to streamline and simplify the Department's response to any licensee failing to comply with regulatory standards. In place of past penalty schedules that proved confusing, the Department adopted a simpler, more straightforward penalty schedule that complies with statutory caps but deters licensees from continuing to violate laws and rules.

Fiscal impact of rule:

The Department should receive \$35,000 in additional revenue from the new public pool and spa licenses required by 22 MRS §2492(G) and (H), due to the estimated 700 public pools and spas in the State of Maine.

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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: 20-A MRS §§ 6352-6359
Chapter number/title: **Ch. 261**, Immunization Requirements for School Children
Filing number: **2018-059**
Effective date: 5/10/2018
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

The addition of a Meningococcal vaccine to the required school entry for children entering 7th grade is intended to protect Maine students from Meningococcal disease. Meningitis is more commonly spread amongst adolescents and young adults in a community setting. Adding one dose of Meningococcal vaccine will align with the U.S. Centers for Disease Control and Prevention and the Advisory Committee on Immunization Practices recommendation of receiving the vaccine between the ages of 11 to 12 years.

Basis statement:

This joint rule is established to ensure a safe and healthful school environment for all Maine students by requiring all children attending public or private schools in the State of Maine to receive the required vaccines recommended by the federal Centers for Disease Control (CDC) and the Advisory Committee on Immunization Practices (ACIP). Changes to this joint rule include the addition of meningococcal meningitis to diseases for which immunization is required for Maine's school children and prescribed dosage for quadrivalent meningococcal conjugate vaccines (MCV4). These changes are subject to major substantive rulemaking, pursuant to 20-A MRS §6358. The Legislature has reviewed the provisionally adopted joint rule and has authorized the Department of Health and Human Services and Department of Education to adopt the final joint rule pursuant to Resolves 2017 ch. 32, meaning the new immunization requirement will be in place prior to the start of the 2018 school year.

In recent years, new vaccines against meningitis have been introduced to the routine immunization schedule for adolescents and young adults, recommended for youths aged 11 to 12 years, with a booster dose for older adolescents, due to evidence of waning immunity. Meningococcal disease is spread from person to person through the exchange of respiratory and throat secretions, saliva, spit or kissing, for example. Young adults are at a greater risk of acquiring meningitis, due to close contact during sports and the large group setting of a school house environment. Meningitis is a viral or bacterial infection of the fluid surrounding the brain and spinal cord. Viral meningitis is not as severe as bacterial meningitis and is usually resolved without specific treatment. Bacterial meningitis, a serious illness caused by meningococcal disease, may be contained through antibiotics or prevented through immunization. According to the federal CDC, 1,000 to 2,600 people contract meningococcal disease each year in the United States. One in 10 of these cases results in death. Bacterial meningitis infections may also cause serious health problems in 11 to 19 percent of survivors, such as loss of limbs, deafness, nervous system problems, mental retardation, seizures and strokes. The majority of states have adopted a meningococcal vaccine requirement, based on the severity of the disease.

The DHHS Maine CDC's Immunization Program currently supplies meningococcal vaccines to all adolescents in the State of Maine free of charge through pediatricians, family practice physicians and school-based health centers. Additionally, health education currently focuses on this availability of free vaccines, to increase immunization rates for this adolescent

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demographic. This Program provides education through a variety of avenues, including printed materials, regional trainings and site visits to offices receiving State-supplied vaccines. States with a mandatory MCV4 school entry requirement experience much higher vaccine rates amongst their adolescent population.

Changes to this joint rule include updating the definition of "Disease" to include meningococcal meningitis, updating the list of medical contraindications to MCV 4 that can serve as a medical exemption, and updating the vaccine dosage requirements to include one dose of quadrivalent meningococcal conjugate vaccine for entry into 7th grade and, if the first dose is not administered on or after the 16th birthday, a second dose prior to entry into grade 12. These changes will align with the CDC and ACIP current recommendations.

Fiscal impact of rule:

None.

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Agency name: Department of Health and Human Services (jointly with Department of Environmental Protection (DEP))
Umbrella-Unit: 10-144
Statutory authority: 22 MRS §567
Chapter number/title: Ch. 263, Maine Comprehensive and Limited Environmental Laboratory Accreditation Rule
Filing number: 2018-265
Effective date: 12/19/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The *Maine Comprehensive and Limited Environmental Laboratory Accreditation Rule* repeals and replaces the current lab certification rule. This rule establishes revised standards for the accreditation of the operations, performance and administration of laboratories, including industrial, commercial, academic and governmental, that analyze samples under specific DHHS and/or DEP programs. This rule is necessary in order to administer the most recent updates to the 40 CFR Parts 136, 141 and 261 related to methods test categories. The rule adds "provisional" as a status for laboratory accreditation, establishes an adjusted fee schedule, amends terms and definitions, and establishes an all-encompassing quality system to provide a straightforward reference for laboratory personnel.

Basis statement:

Maine Comprehensive and Limited Environmental Laboratory Accreditation Rule repeals and replaces the existing laboratory certification rules, Ch. 263. The purpose of this rule is to establish quality guidelines for laboratory data received by the Department of Health and Human Services (DHHS or Department) and the Department of Environmental Protection (DEP). The rule establishes procedures for accrediting laboratories for drinking water, non-potable water, air, and solid and chemical materials, including tissues and septage, to ensure that laboratories analyzing samples for the following regulations: *Safe Drinking Water Act*; *Clean Water Act*; *Resource Conservation and Recovery Act*; and Leaking Underground Storage Tanks (LUST) Program, produce legally defensible data by meeting quality control and quality assurance objectives.

This rule is necessary in order to administer the updates to the 40 CFR Parts 136, 141 and 261 and to allow laboratories to use updated methods contained in the 22nd Edition of *Standard Methods*. This rule describes an all-encompassing quality systems section for easy reference; provides for "provisional status" as an additional accreditation option; and specifies reporting requirements for laboratories when samples, including private well samples, are not analyzed according to accredited methods. This rule uses the term "accreditation" in place of "certification," keeping with national and international standards and nomenclature. Additionally, this rule establishes a fee structure that is consistent with adjusted charges that were implemented by program policy change in 2012.

Fiscal impact of rule:

Under the rule, laboratories will be required to pay charges that are consistent with the programs' interim adjusted fee schedule implemented by the program in 2012. The proposed fee schedule will result in the Department collecting an estimated 60% of the total operating costs and will require funding from other sources, including General Funds, to support the program. The program anticipates an increase in costs due to recent legislation that requires the Department to expand lab certification rules to include the certification and monitoring of

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an additional testing laboratory service. The program, currently at 1.25 FTEs, is projected to continue as underfunded by an estimated 40% based on the adjusted fee schedule, notwithstanding any increase in the number of businesses or in testing methods. The modified fee collection proposed in rule is anticipated to create a shortfall that is estimated to be \$57,000 and projected to increase annually.

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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: 12 MRS §§ 1532, 1533
Chapter number/title: Ch. 283, Newborn Bloodspot Screening Rule
Filing number: 2018-236
Effective date: 1/14/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The adopted rule implements 22 MRS §1532 and updates requirements related to newborn bloodspot screening for certain congenital genetic disorders which can cause intellectual and developmental disability, serious illness or death, if left untreated. The proposed changes include: (1) additional conditions for specimen screening; (2) revised protocols for timely bloodspot specimen collection; (3) protocols for reporting out-of-range-test results; (4) specimen storage requirements; and (5) revisions regarding the release of samples for research purposes. Changes are in conformity with the U.S. DHHS recommendations for newborn screening. The rule includes additional terms and definitions and a revised construction for improved readability and consistency in rule formatting.

Basis statement:

Pursuant to 22 MRS §1532, the DHHS *Newborn Bloodspot Screening Rule* implements requirements for hospitals, birthing centers, physician, midwives or other health care providers, and principal birthing attendants responsible for newborn bloodspot specimen screening relating to testing and reporting for certain congenital genetic disorders which, if left untreated, can cause intellectual and developmental disability, serious illness or death. This rule contains updated requirements consistent with U.S. DHHS recommendations to ensure better handling of samples, timely detection of birth defects and conditions, and the most appropriate screenings and testing methods. Four conditions which have been recommended by the U.S. DHHS, but not yet fully reviewed by the Maine CDC's Joint Advisory Committee for the Maine Newborn Screening Program are not included in this rulemaking.

Early detection and timely diagnosis of certain congenital genetic disorders impact health outcomes for newborns. Improper storage or usage of the residual filter paper specimens could impact test results, causing a delay in the diagnosis of conditions, or potentially cause inaccurate testing or missing information which may lead to delayed treatments and poorer newborn health outcomes.

Beginning July 1, 2001, Maine began mandatory newborn testing to include nine disorders and, because of the importance of screening, early detection and treatment, and coordination of services for long-term care, the Maine Center for Disease Control and Prevention Newborn Bloodspot Screening Program (NBSP) has since expanded the panel of disorders and revised requirements for screenings for certain conditions. This rule includes new and revised definitions; additions to the list of conditions to screen; revised protocols for timely bloodspot specimen collection and reporting out-of-range-test results; and updated requirements regarding filter paper storage and usage, and sample release. Additionally, this rule provides the protocol for hospitals and healthcare providers regarding parental/guardian refusal; and specifies that the fee for the filter paper used for each newborn tested applies to healthcare providers, including midwives, and hospitals, and that parents may be responsible for additional tests not required by rule.

Fiscal impact of rule:

The Department does not anticipate additional fiscal impact on regulators, medical communities, or small businesses.

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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; 7 CFR §273.9(d)
Chapter number/title: **Ch. 301**, Food Supplement Program, **FS Rule #205E**: COLA SUA FFY 2019: **FS-000-1**, Basis of Issuance; **FS 555-5**, Income and Deductions
Filing number: **2018-221**
Effective date: 10/1/2018
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

A rule change is necessary to remain in compliance with Federal regulation 7 CFR 273.9(d), which requires annual review and adjustment to federal poverty levels, the standard deduction, and an adjustment to standard utility allowances (SUAs).

Basis statement:

Federal rule 7 CFR §273.9 requires that income allowances, standard and excess shelter deductions, minimum and maximum benefit limits, standard heating/cooling, non-heat, and phone allowances be updated each year, effective October 1st. USDA Food and Nutrition Services (FNS) provides updated income allowances, standard and excess shelter deductions, minimum and maximum benefit standards to states and territories, annually. FNS annually approves utility allowances calculated by states. The calculations are based on the change in the Consumer Price Index for fuel and utilities, between June 2017 and June 2018.

The final income allowance, standard and excess shelter deductions, minimum and maximum benefit levels were not distributed by FNS until July 30th, 2018. The final values for Maine's Standard/heating cooling, non-heat and phone allowances were not approved by the USDA Food and Nutrition Service until August 3, 2018. These approvals did not allow the Department to comply with the non-emergency rulemaking process and implement the changes by the required date of October 1, 2018.

This emergency rulemaking is necessary for the health, safety, and general welfare in order to ensure that Food Supplement benefits are issued appropriately and accurately.

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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Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(1), 3104
Chapter number/title: **Ch. 301**, Food Supplement Program, **FS Rule #204A: FS-777**, Administrative Procedures (EBT Card Replacement)
Filing number: **2018-242**
Effective date: 11/14/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this rule is to set a threshold of card replacements in a twelve-month period that better ensures recipient integrity while still meeting the definition of excessive. This rule will reduce the potential for fraud and trafficking by noticing and educating recipients earlier in the process and holding them accountable for excessive card replacements.

Basis statement:

The purpose of this rule is to set a threshold of card replacements in a twelve-month period that better ensures recipient integrity while still meeting the definition of excessive. This rule will reduce the potential for fraud and trafficking by noticing and educating recipients earlier in the process and holding them accountable for excessive card replacements.

The current rule requires a recipient household to contact OFI upon their 5th Electronic Benefit Transfer (EBT) card replacement within twelve months to provide an explanation for the excessive replacements. This rule lowers that number, requiring the recipient household to contact OFI to receive their third EBT card replacement over a twelve-month period. This rule also clarifies the card replacement process and removes outdated wording including processes regarding paper coupons.

Fiscal impact of rule:

Undetermined. Benefits recouped due to trafficking cases and convictions will be tracked.

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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; 7 CFR §273.9(d)
Chapter number/title: **Ch. 301**, Food Supplement Program, **FS Rule #205A** (COLA SUA FFY 2019); **FS-000-1**, Basis of Issuance; **FS 555-5**, Income and Deductions
Filing number: **2018-263**
Effective date: 12/12/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule change is necessary to remain in compliance with Federal regulation 7 CFR 273.9(d), which requires annual review and adjustment to federal poverty levels, the standard deduction, and an adjustment to standard utility allowances (SUAs).

Basis statement:

Federal rule 7 CFR §273.9 requires that income allowances, the maximum shelter deduction, minimum and maximum benefit amounts, standard heating/cooling, non-heat, and phone allowances be updated each federal fiscal year, effective October 1st. USDA Food and Nutrition Services (FNS) provides the updated income allowances, the maximum shelter deduction and the minimum and maximum benefit amounts to states and territories, annually. FNS annually approves utility allowances calculated by the states. Maine's utility allowance calculations are based on the change in the Consumer Price Index for fuel and utilities, between June 2017 and June 2018.

The final income allowances, maximum shelter deduction and minimum and maximum benefit amounts were not distributed by FNS until July 30th, 2018. The final values for Maine's standard/heating cooling, non-heat and phone allowances were not approved by the USDA Food and Nutrition Service until August 3, 2018. These approvals did not allow the Department to comply with the non-emergency rulemaking process and implement the changes by the required date of October 1, 2018.

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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Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §42(1)
Chapter number/title: **Ch. 323**, Maine General Assistance Manual, **Rule #20A**
Filing number: **2018-187**
Effective date: 9/13/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this rule is to update the manual and to align it with statute, and reorganize it to make it more usable for DHHS representatives, Municipal Administrators and General Assistance clients.

Basis statement:

The purpose of rule #20A is to update the *General Assistance Manual* and align it with statute, as well as to reorganize it to make it more usable for DHHS representatives, Municipal Administrators and General Assistance clients. The majority of the content is the same, with changes primarily to its structure and organization as well as the removal of provisions that had no legal effect, such as training examples and certain rules and definitions that were duplicative of statute.

Legislation not previously incorporated into rule (but already applied in practice by the Department and Municipal Administrators) is also included in the adopted rule. Specifically: The penalties for false representation were amended as per LD 722, and they have been updated in this rule. Additionally, effective July 1, 2015 the General Assistance reimbursement rate was changed in statute to 70% of direct costs. Previous rates were tied to a spending threshold based on the valuation of the municipality. All policy related to previous rates and valuation was removed. The reimbursement reporting schedule had been tied to the valuation threshold. The rule now requires a municipality to receive approval from the Department to change their reporting schedule.

The revised manual clarifies several pieces of policy that had previously been, or potentially could be, misinterpreted. Specifically: “Presumptive eligibility” was clarified to allow shelters to provide (only) one night of stay prior to a client applying for General Assistance; the manual makes more clear that administrative costs are not reimbursable; and the manual defines a “new applicant” as one that has not applied for assistance in the last 12 months. The definition of “new applicant” now matches the Maine Municipal Association (MMA) Model Ordinance.

Rule #20A also made a policy change designed to improve the administration of the program and to ensure program integrity. Specifically, it updates the section regarding Department-imposed penalties on municipalities to align with statute and provide a clear road map and set of guidelines for the Department to follow in determining whether and in what amount to impose statutory penalties for municipal non-compliance with GA statute or regulation.

Finally, the rule makes changes to fill in gaps or address issues that had arisen from the previous version of the manual. Specifically: Court-ordered alimony was added as an allowable expense; the manual now clarifies the difference between and defines “available” and “potential” resources; and the manual added MaineCare copays as an acceptable expenditure if deemed necessary by the municipal General Assistance Administrator.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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), 3769-C
Chapter number/title: **Ch. 331**, Maine Public Assistance Manual, **TANF #111E**: Annual Increase to the TANF Maximum Benefit
Filing number: **2018-222**
Effective date: 10/1/2018
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

An emergency rule change is necessary to comply with 22 MRS §3769-C(D).

Basis statement:

This rule is promulgated to comply with Maine statute that requires the Department to increase the TANF maximum benefit on an annual basis by the amount of the cost of living allowance as determined by the Social Security Administration, provided the funds are available.

Fiscal impact of rule:

\$532,632.77 in federal TANF block grant funds.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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), 3769-C
Chapter number/title: **Ch. 331**, Maine Public Assistance Manual, **TANF #111A**: Annual Increase to the TANF Maximum Benefit
Filing number: **2018-244**
Effective date: 11/14/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To comply with 22 MRS §3769-C(D).

Basis statement:

This rule is promulgated to comply with Maine statute that requires the Department to increase the TANF maximum benefit on an annual basis by the amount of the cost of living allowance as determined by the Social Security Administration, provided the funds are available.

Fiscal impact of rule:

\$532,632.77 in federal TANF block grant funds.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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); PL 2017 ch. 284 part TTTT §1
Chapter number/title: **Ch. 332**, MaineCare Eligibility Manual, **MC Rule #288E** (Cub Care): **Part 5**, Children’s Health Insurance (CHIP) Program – Cub Care, **Section 3**, Basic Eligibility Requirements
Filing number: **2018-042**
Effective date: 3/20/2018
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

This emergency rule change aligns the *MaineCare Eligibility Manual* with the adopted State budget for fiscal year 2018. The budget went into effect on July 1, 2017, and provides the Department with statutory authority to proceed with this emergency rulemaking. Children of State employees are now eligible to apply for Cub Care, where they were previously excluded from eligibility. This rule was delayed due to the need to submit a state plan amendment to CMS.

Fiscal impact of rule:

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

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Rules Adopted January 1, 2018 to December 31, 2018
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
Chapter number/title: **Ch. 332**, MaineCare Eligibility Manual, **MC Rule #288A: Part 5**, Children's Health Insurance (CHIP) Program – Cub Care
Filing number: **2018-110**
Effective date: 6/25/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule change aligns the *MaineCare Eligibility Manual* with the adopted State budget for fiscal year 2018. Children of State employees are now eligible to apply for Cub Care, where they were previously excluded from eligibility. There are also grammar and format changes throughout Part 5 to improve clarity in this proposed rule, but not in the emergency rule. This rule was delayed due to the need to submit a state plan amendment to CMS.

Basis statement:

This rule change aligns with an emergency rule change to the MaineCare Eligibility Manual, which is due to the adopted State budget for fiscal year 2018. The budget went into effect on July 1, 2017, and provides the Department with statutory authority to proceed with an emergency rulemaking. Children of State employees are now eligible to apply for Cub Care, where they were previously excluded from eligibility. This rule change aligns with that eligibility change. There are also several formatting and grammatical changes throughout the entirety of the rule.

Fiscal impact of rule:

The bill includes General Fund appropriations to the State Employee Health Plan of \$784,935 in fiscal year 2017-18 and \$1,046,580 in fiscal year 2018-19 and Highway fund deallocations of \$23,684 in fiscal year 2017-18 and \$31,578 in fiscal year 2018-19 as children of state employees who are eligible for the State Children's Health Insurance Program will no longer be part of the State Employee Health Plan, if they meet other eligibility requirements.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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
Chapter number/title: **Ch. 332**, MaineCare Eligibility Manual, **MC Rule #287A:**
FPL Based Changes
Filing number: **2018-182**
Effective date: 9/9/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The reason for removing FPL figures from the manual is to avoid the need for annual FPL rule changes, conserving the Department's resources. The changes remove references to the charts throughout the manual, and replace figures in the charts with formulas.

Basis statement:

This rulemaking removes federal-poverty-level-based charts and references from the manual and replaces figures with percentages and formulas. The rule also makes formatting changes within the charts. The reason for removing specific dollar values from the manual is to avoid the need for annual rule changes to conform with federal updates, conserving the Department's resources. The rule also removes references to the charts throughout the manual. Clients or others who are affected will not find federal poverty level amounts in the MaineCare Eligibility manual, but they are widely available online.

The rulemaking also makes three policy corrections. In Part 3 Section 2.2(C)(1) Maintenance of a Home, "and that child is also covered by Medicaid" is removed. This condition is not supported by federal law. In Part 17 Section 3.4.42 Nazi Persecution Payments, these payments are excluded as required by federal law. In Part 7 Section 3.1 Budget for SSI or State Supplement Payment, Roman numeral IX, living arrangement type "H" is corrected to "I."

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 §§ 2701, 2706

Chapter number/title: **Ch. 4**, Disclosure of Vital Statistics Data, Reports and Records (*formerly* Public Access to Vital Records)
Ch. 8, Release of Restricted Vital Statistics Data (*Repeal; subject matter integrated into Ch. 4*)

Filing number: **2018-209, 210**

Effective date: 10/3/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The Department of Health and Human Services repeals Ch. 4 (*Public Access to Vital Records*) and Ch. 8 (*Release of Restricted Vital Statistics Data*) and replaces the two chapters with a new consolidated Ch. 4, *Disclosure of Vital Statistics Data, Reports and Vital Records*.

Changes to the Department's rule are needed to be consistent with changes to Maine statute regarding access to specific records maintained by the Department. The rule incorporates definitions and clarifies the disclosure of, and access to, public and restricted vital statistics data, reports and vital records. This rule describes what documentary evidence is needed from an individual or agency requesting vital statistics data, reports and vital records and clarifies the procedures for purchasing and receiving copies. Requirements for researchers engaged in genealogical research are adopted to clarify the registration requirements, which include obtaining a genealogical researcher identification card to request access to and inspect restricted vital statistics data, reports and vital records.

Basis statement:

This rulemaking repeals and replaces 10-146 CMR ch. 4 and 8 with a new rule, 10-146 CMR ch. 4, to consolidate, update, and establish or clarify requirements concerning public access to and standards for the release of vital statistics data, reports and records registered with the State Registrar. This rule also conforms with multiple statutory and practices changes after the replaced rules were last amended in 1982 and 1991, respectfully. This rule implements the record disclosure limitations and requirements contained in 22 MRS §2706 and other statutes. This rule restricts parties' access to records registered with the State Registrar, as appropriate, to only those who are authorized by statute to obtain the information and limits excessive handling of paper records and indexes to protect privacy and the preservation of the integrity of original vital records and indexes. The rule is intended to better serve the public and researchers, and custodians and municipal clerks who issue vital and other records, by providing guidelines for accessing and disclosing restricted and non-restricted records and information.

Pursuant to 22 MRS §2706, custodians of certificates and records of birth, marriage and death shall permit inspection of these vital records by only those having a direct and legitimate interest in the record, protecting records from loss or damage, ensuring the proper release of vital statistics data, reports and vital records.

The Department considered input from stakeholders in the development of the proposed rule. The Department considered comments received during the comment period.

This adopted rule incorporates new definitions and clarifies procedures and standards for release, including eligibility; genealogical researcher identification card registration requirements; purchase of copies, researchers' privileged access; and fees

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

related to the Department's vital statistics data, reports and records. Rule updates are necessary to be consistent with changes to statute regarding access to specific records maintained by the Department.

Fiscal impact of rule:

The Department does not anticipate any fiscal impact.

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Rules Adopted January 1, 2018 to December 31, 2018
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 §§ 7702-B(111), 7703(6), 7704, 7707(3), 7802(7), 8301(8), 8302-A(2), 8303-A(l)
Chapter number/title: **Ch. 33**, Rules for the Certification of Family Childcare Providers (*repeal; replaced by 10-144 Ch. 33, Family Child Care Provider Licensing Rule, filing 2018-105*)
Filing number: **2018-104**
Effective date: 7/5/2018
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

(See 10-144 Ch. 33, above)

Basis statement:

(See 10-144 Ch. 33, above)

Fiscal impact of rule:

These rule changes pose no fiscal impact to counties or municipalities.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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**

Chapter number/title: **Ch. 18**, Rules for the Licensure of Residential Child Care Facilities

Filing number: **2018-215**

Effective date: 10/10/2018

Repealed and Replaced by 10-144 Ch. 36, *Children's Residential Care Facilities Licensing Rule; see above.*

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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**

Chapter number/title: **Ch. 18-A**, Rules for the Licensure of Private Non-medical Institutions-Residential Child Care Facilities

Filing number: **2018-216**

Effective date: 10/10/2018

Repealed and Replaced by 10-144 Ch. 36, Children's Residential Care Facilities Licensing Rule; **see above.**

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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: **10-148**
Statutory authority: 5 MRS §19205; 22 MRS §42
Chapter number/title: **Ch. 101**, AIDS Case Management Program Standards
Filing number: **2018-048**
Effective date: 4/11/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule has not been recently updated and it has become outdated. The rule contains only the standards for the provision of services by agencies under contract. There are no enforcement mechanisms within the rule. Program requirements and deliverables are currently included in the Rider A of provider contracts. The Department has determined the rule is not necessary and is proposing that it be repealed. Services will continue in the same manner, program standards and requirements will continue to exist within the provider contracts.

Basis statement:

The Department of Health and Human Services, Maine CDC, published notice of its proposal to repeal this rule on December 20, 2017. No public hearing was held, but a comment period was held until January 19, 2018. During this comment period, the Department did not receive any comments regarding the repeal of this rule.

Fiscal impact of rule:

The repeal of this rule should not result in any costs or savings to the Department. There will be no fiscal impact to counties, municipalities or small businesses.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of Aging and Disability Services (OADS)** (*in part*)
Umbrella-Unit: **10-149**
Statutory authority: 22 MRS §§ 42, 3493; 34-B MRS §5604-A
Chapter number/title: **Ch. 1** (*New*), Adult Protective Services System;
Ch. 5 (*Amend*), **Policy Manual** (*deletes Sections 11, 12, 14*)
Filing numbers: **2018-085, 086**
Effective date: 5/28/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The adoption of this rule eliminates inconsistencies between two prior rules related to Adult Protective Services and creates consistency with the *Adult Protective Services Act*, 22 MRS §§ 3470 – 3493. This rule consolidates the two earlier rules' provisions and provides clarification to ensure a uniform Adult Protective Services system for all incapacitated and dependent adults. This rule addresses Adult Protective Services reporting requirements, the Central Intake (referral) process, the investigation process, Adult Protective Services casework functions, investigation findings requirements, and the related substantiation process.

Basis statement:

The Department of Health and Human Services (the "Department") is adopting these two rules, in part, to consolidate and eliminate inconsistencies between two prior rules governing investigations of abuse, neglect, and exploitation of incapacitated or dependent adults, including persons with intellectual or developmental disabilities or autism spectrum disorder ("IDD/A").

The 10-149 CMR ch. 1 rule (the "APS Rule") is an entirely new rule. 10-149 CMR ch. 5 (the "Ch. 5 rule") is amended by deleting several sections, as explained below.

The adoption of the new APS rule and the amended Ch. 5 rule corresponds with the adoption of a repealed and replaced rule codified in 14-197 CMR ch. 12 (*Reportable Events System*) (the "Ch. 12 rule"). Parts of the Ch. 12 rule are included, in whole or in part, in the APS rule.

Fiscal impact of rule:

The Department does not anticipate any General Fund impact as a result of this rulemaking. This rulemaking will not impose any costs on municipal or county governments or on small businesses employing fewer than twenty employees.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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**

Chapter number/title: **Ch. 18-A**, Rules for Licensure of Residential Child Care Facilities

Filing number: **2018-217**

Effective date: 10/10/2018

Repealed and Replaced by 10-144 Ch. 36, Children's Residential Care Facilities Licensing Rule; **see above.**

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of Adult Mental Health**

Umbrella-Unit: **14-193**

Chapter number/title: **Ch. 18**, Rules for Licensure of Residential Child Care Facilities

Filing number: **2018-218**

Effective date: 10/10/2018

Repealed and Replaced by 10-144 Ch. 36, Children's Residential Care Facilities Licensing Rule; **see above.**

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of Aging and Disability Services (OADS)** (*in part*)
Umbrella-Unit: **14-197**
Statutory authority: 34-B MRS §5604-A
Chapter number/title: **Ch. 12**, Reportable Events System (*formerly* Critical Incident System)
Filing numbers: **2018-087**
Effective date: 5/28/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

In this rule adoption, the Department repeals 14-197 CMR ch. 12 (*Regulations Governing Reportable Events, Adult Protective Investigations and Substantiation Hearings Regarding Persons with Mental Retardation or Autism*), and replaces it with the adopted 14-197 CMR ch. 12 (*Reportable Events System*) (the “Reportable Events Rule”). The Department is adopting this rule to outline requirements for providers in reporting and responding to Reportable Events affecting the safety or welfare of adults with intellectual or developmental disabilities or Autism Spectrum Disorder (“IDD/A”) or Acquired Brain Injury (“ABI”) who have been determined to be eligible for and who are receiving services from a provider of services licensed, funded, or regulated in whole or in part by the Department (“Individuals Receiving Services”).

Basis statement:

In this rule adoption, the Department repeals 14-197 CMR ch. 12 (*Regulations Governing Reportable Events, Adult Protective Investigations and Substantiation Hearings Regarding Persons with Mental Retardation or Autism*), and replaces it with the adopted 14-197 CMR ch. 12 (*Reportable Events System*) (the “Reportable Events Rule”). The Department is adopting this rule to outline requirements for providers in reporting and responding to Reportable Events affecting the safety or welfare of adults with intellectual or developmental disabilities or Autism Spectrum Disorder (“IDD/A”) or Acquired Brain Injury (“ABI”) who have been determined to be eligible for and who are receiving services from a provider of services licensed, funded, or regulated in whole or in part by the Department (“Individuals Receiving Services”).

Under 34-B MRS §5604-A, the Department is required to establish and maintain a reporting system for reportable events. The reporting system is designed to ensure that appropriate parties are made aware of certain types of incidents and that necessary follow up occurs. The Department notes that reports of abuse, neglect, and exploitation of incapacitated and dependent adults, including Individuals Receiving Services, are required to be reported directly to Adult Protective Services (“APS”) under a separate rule, 10-149 CMR ch. 1.

This Reportable Events Rule outlines the categories of Reportable Events that providers serving any Individual(s) Receiving Services are required to report to the Department to ensure the health and safety of members they serve and to outline the process by which providers make and follow up on such reports. The rule also outlines the Department’s oversight of the Reportable Events System.

The adoption of the Reportable Events rule corresponds with the adoption of a new rule consolidating adult protective services regulations previously codified in both 10-149 CMR ch. 5, Sections 11, 12, and 14, and in 14-197 CMR ch. 12, Sections 6.04 and 6.05. The Reportable Events rule omits the provisions for investigating and substantiating abuse, neglect, and exploitation of adults with IDD/A which were in the repealed ch. 12 rule. The Reportable Events Rule is limited to outlining the reportable events system protecting this

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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vulnerable population and persons with ABI. Investigations of the abuse, neglect, and exploitation of adults with IDD/A and ABI will be regulated under 10-149 CMR ch. 1.

The Department made several changes to the final rule from the proposed rule, in response to comments and on the advice of the Office of the Attorney General.

Fiscal impact of rule:

The Department does not anticipate any General Fund impact as a result of this rulemaking. This rulemaking will not impose any costs on municipal or county governments or on small businesses employing fewer than twenty employees.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: **Board of Licensure of Water System Operators** (*affiliated with the Department of Health and Human Services, Maine Center for Disease Control and Prevention*)

Umbrella-Unit: **90-429**

Statutory authority: 22 MRS ch. 601 §2628

Chapter number/title: **Ch. 1**, Water System Operators Licensing Rule

Filing number: **2018-080**

Effective date: 7/1/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

This amendment eliminates the requirement for applications to be notarized before submission, establishes a process for assessing operator penalties for specific offenses, and eliminates the "grace period" for license renewal.

Basis statement:

These changes eliminate the requirement for applications to be notarized before submission, establish a mechanism for the Board to address rule violations that do not rise to the level of license suspension or revocation, and eliminate the 60-day "grace period" for license renewal.

Eliminating the requirement to notarize applications helps reduce the administrative burden on applicants. The removal of the requirement for notarization will result in creating a cost savings for licensees.

A process to address rule violations is necessary to ensure compliance with the rule in a manner that is less punitive than license suspension or revocation. Revised enforcement measures should improve compliance with the rule by establishing clear factors in the Board's decisions for licensure.

Elimination of the 60-day "grace period" for license renewal is necessary to bring the rule into compliance with the statutory requirement that all licenses expire on December 31 (see 22 MRS §2625-A).

Fiscal impact of rule:

No fiscal impact is expected for the Department or municipalities.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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. 7, Rules for Importation, Possession, Propagation, Rehabilitation and Exhibition of Wildlife
Filing number: 2018-003
Effective date: 1/8/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

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). Title 12 was modified to remove references to propagation permits for domesticated fowl and pheasants, so the corresponding sections of Ch. 7 need to be updated.

In addition to changes required by statute, the Department has been working with the captive wildlife technical committee over the past year to conduct a thorough review of various species and classify them as Category 1 Restricted Species (high-risk permitted species), Category 2 Restricted Species (medium-risk permitted species), Prohibited Species (cannot be possessed with minor exceptions for research purposes), or Unrestricted (listed outside of rule, can be bought in a pet store). These new recommendations need to be incorporated into Chapter 7 in order to take effect.

Basis statement:

This rule change is required to reflect statutory changes that were made to 12 MRS §12152 during the 1st session of the 127th Legislature (2017). Title 12 was modified to remove references to propagation permits for domesticated fowl and pheasants, so the corresponding sections of Ch. 7 have been updated. In addition to changes required by statute, the Department has been working with the captive wildlife technical committee over the past year to conduct a thorough review of various species and classify them as Category I Restricted Species (high-risk permitted species), Category 2 Restricted Species (medium-risk permitted species), Prohibited Species (cannot be possessed with minor exceptions for research purposes), or Unrestricted (listed outside of rule, can possess without a permit or purchase in a pet store).

The rule also clearly identifies species which can be possessed by research institutions, wildlife exhibitors, and members of the public that have a background in caring for captive wildlife. The changes also provide clearer direction for staff on the permitting of captive wildlife and allows the public to determine which requirements must be met in order to be eligible to obtain a permit for a particular species.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 Birds
Filing number: 2018-070
Effective date: 5/5/2018
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 rule makes a change to the regular goose season going from a 70-day season to a 60-day season based on the status of the North American Population (NAP) of Canada geese. The NAP are those that breed north of the 49th parallel and not considered part of the resident goose population. Breeding pair counts were below what would be allowed for a 70-day season. The last time we had a 60-day season was 2013. The daily bag limit for the regular goose season was reduced from 3 to 2 and a reduced possession limit from 9 to 6. Also of note, the USFWS service is now allowing states with no hunting on Sundays to be allowed compensatory days for woodcock hunting. This means states do not have to count Sundays as part of the 45 days allowed for the woodcock hunting season. This will extend the end date by a week compared to previous years. Based on woodcock telemetry studies, the majority of woodcock breeding in Maine have migrated by mid-November and the additional week in November is not expected to increase harvest significantly.

Fiscal impact of rule:

No fiscal impact anticipated.

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Rules Adopted January 1, 2018 to December 31, 2018
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 §§ 11551, 11552
Chapter number/title: Ch. 4, Hunting and Trapping: 4.05, Moose Hunting Season
Filing number: 2018-088
Effective date: 5/29/2018
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 2018 season. The Department advertised a proposal on March 21, 2018 with a recommended total of 2,500 permits be issued in order to meet moose harvest objectives. This is an increase of 420 permits from 2017. Permits may be valid for either antlered moose, antlerless moose, or a moose of either sex, depending on the WMD and specific season in which the permit authorizes hunting. New for the 2018 moose season the Department will also open WMDs 10, 18, 27 and 28 to the September season. The number of bull only permits will be split evenly between the September and October season in those WMDs. In those districts in particular, there is not as much access for hunting and this was believed to be a good way to accommodate additional hunter satisfaction and ability to access land. The Department will also allow those selected in WMDs 27 or 28 to hunt in either WMD during the designated open season. The increase in permit allocation was largely due to good survivorship from the winter and anticipated good survivorship over the next year. Low tick loads coming into the season on moose both during the October hunting season as well as during the capture crews review had been reported. Staff felt these were appropriate changes.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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, 11251, 11401, 11701
Chapter number/title: Ch. 4, Hunting and Trapping;
4.03, Deer Hunting Seasons;
4.04, Bear Hunting/Trapping Season;
4.06, Wild Turkey
Filing number: 2018-178
Effective date: 9/2/2018
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 2018 deer hunting season. Any-deer permits (ADPs) are adjusted by MDIFW on an annual basis in response to deer population estimates and population goals in each WMD. The winter of 2017-18 was mild to moderate in central and southern Maine and severe in northern Maine. This resulted in increased permit numbers in southern WMDs and continued moderate to no permits being issued in northern WMDs. Also, a language clarification for youth hunting days will address adult supervisors carrying handguns while accompanying youth on those days.

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 permits (ADPs) are adjusted by MDIFW on an annual basis in response to deer population estimates and population goals in each WMD. The winter of 2017-18 was mild to moderate in central and southern Maine and severe in northern Maine. This resulted in increased permit numbers in southern WMDs and continued moderate to no permits being issued in northern WMDs. A total of 84,745 permits will be issued to meet our harvest objective of 8,909 does. This is an increase in permits of 28% from 2017 (66,050 permits). The rule also addresses an issue that was discussed during the 1281h Legislative session (Public Law 2018 ch. 357) and the ability for adult supervisors to carry a handgun while accompanying youth hunters on any of the youth hunting days as outlined in 25 MRS §2001-A. Language was modified in the rules for youth hunting days for deer, bear and spring turkey season to clarify that the adult supervisor may carry a handgun, but not for the purpose of hunting while accompanying youth hunters.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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, 12260
Chapter number/title: Ch. 4, Hunting and Trapping;
4.04, Bear Hunting/Trapping Season;
(B), Bear Trapping
Filing number: 2018-179 (Emergency)
Effective date: 8/29/2018
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The purpose of this rule is to limit bear traps and bear trapping methods that may accidentally capture the federally threatened Canada Lynx. This rule is being promulgated to comply with Incidental Take Permit Number TE48539B-0 issued by the United States Fish and Wildlife Service on November 4, 2014 with an effective date of November 17, 2014 which requires the Department to take measures to limit the “lethal take” of Canada Lynx as described in the Department’s “2014 Final Incidental Take Plan for Maine’s Trapping Program” when take reaches the levels described in the Changed Circumstances Section of this plan.

Basis statement:

This emergency rule is being promulgated in order to implement regulatory measures to prevent further lynx fatalities as outlined in the Changed Circumstances Section of the Department’s “2014 Final Incidental Take Plan for Maine’s Trapping Program”. This plan was accepted by the USFWS and “Native Threatened Species Habitat Conservation Plan – T Wildlife” permit number TE48539B-0, also known as the Incidental Take Permit (ITP) was issued on November 4, 2014, with an effective date of November 17, 2014. In Changed Circumstance #3 Trigger 2 the Department stated it would immediately implement regulatory measures to prevent further lynx fatalities when two lynx are killed in legally set traps or cannot be released after treatment of severe injuries. Because this level has been reached, the Department is obligated to prohibit trapping methods and trap designs that could result in the lethal take of lynx. Department staff recently became aware of a bear trap design that is legal under current rules but poses a risk to lynx. Prohibiting this type of trap is essential to ensure no lynx are lethally taken during the upcoming bear trapping season, which begins on September 1st. It is necessary to adopt this rule as an emergency in order to comply with the permit and to reduce the risk of the imminent threat of the take of an endangered species – notification of these changes will be made to licensed trappers upon filing.

The purpose of this rule is to limit bear traps and bear trapping methods that may accidentally capture the federally threatened Canada Lynx. More specifically, the rule prohibits placing bait and/or lure below ground level or within the loop of the snare; and will prohibit cable traps that are designed to capture a bear when it reaches into the device to obtain bait or lure.

Traditional methods of bear trapping that use trail sets, cubby sets, or cage-type traps will continue to be allowed.

Fiscal impact of rule:

None anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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, 11551
Chapter number/title: Ch. 4, Hunting and Trapping:
4.02, Migratory Birds: H., Special Falconry Season;
4.05, Moose Hunting Season: K.. Open and Closed Season
Filing number: 2018-180
Effective date: 9/3/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule will remove geese from the species allowed for hunting during the special falconry season and expand hunting opportunity for disabled veterans by increasing the number of permits issued for the special hunt from 25 to 30. The purpose of the controlled moose hunt is to reduce moose numbers in areas where they are causing damage to crops, particularly broccoli fields.

Basis statement:

The rule will remove geese from the species allowed for hunting during the special falconry season. To comply with Federal guidelines, geese must be removed from the species of migratory game birds open to hunting during the special falconry season. The number of days allowed by USFWS for hunting geese in 2018-19 is 107 days. Geese are not a species pursued by falconers and was an oversight when added in prior rulemaking.

In response to interest from Governor LePage to expand hunting opportunity for disabled veterans, the number of permits issued for the controlled moose hunt has been increased from 25 to 30. The purpose of the controlled moose hunt is to reduce moose numbers in areas where they are causing damage to crops, particularly broccoli fields. The Bureau of Veterans Services, working with IFW will select 30 disabled veterans to participate in the hunt. The current training program for selected hunters will remain in place. Permit holders will be hunting in specified areas in Aroostook Count to assist landowners with removing moose that are causing damage to crops.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 (Striped Bass Length and Bag Limits)
Filing number: 2018-200
Effective date: 9/25/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

The Commissioner of Inland Fisheries and Wildlife is authorized to set rules for open and closed waters for fishing, and length and bag limits for fish caught in inland waters (above head of tide). It has come to the Department's attention that appropriate rules need to be adopted regarding the striped bass fishery above head of tide. The Department is adopting a rule to mirror that of the Department of Marine Resources (DMR) which manages the striped bass fishery statewide below head of tide and reports to the Atlantic States Marine Fisheries Commission (ASMFC).

The Department will make a notation in the general law listing for striped bass length and bag limits of 1-fish, 28" minimum length.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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: 2018-201, 202
Effective date: 1/1/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These adoptions are designed to provide for the effective conservation of game fish throughout the state, and provide for a variety of fishing opportunities. They 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 2019 ice fishing and open water seasons. The State Heritage Fish Waters list has also been amended with the addition and removal of certain waters. These rules are necessary for the sound management and proper utilization of the State's inland fishery resource; this is, to provide for the fullest level of use of the resource without adversely affecting species distribution and abundance, thus ensuring that all benefits are retained.

Over the last two years the Department has gone through some substantial changes reformatting the lawbook, and also developing electronic tools to help support people in navigating through the lawbook. The goal for this year was to limit the number of proposals while still maintaining our commitments in advancing heritage waters to the heritage fish list. Regional proposals were limited to those that were urgent in nature. There were six (6) waters we proposed to add to the heritage fish waters list, and four (4) waters we were proposing to remove from the heritage waters list. Eleven management initiated proposals were put forth to address needed management changes. The proposed changes were advertised with one public hearing held in Bangor (minutes attached) with 9 citizens in attendance. The Department also received 23 comments in writing both for and against various proposals. Written comments were acknowledged and forwarded to the Commissioner's Advisory Council as well as appropriate staff for consideration.

Of the four (4) waters we were proposing to remove from the State Heritage Fish Waters list, Crescent Pond and Outlet to Mud Pond would become effective October 1, 2018 and the remaining waters in the packet would have an effective date of January 1, 2019. A transfer of lake trout occurred in Crescent Pond in 2000 and therefore it did not meet the criteria of a heritage water and should not have been placed on the Heritage Waters list. With the removal of the water from the list the Department could initiate a stocking proposal for lake trout there to combat an increased smelt population. This was an effort to conserve lake whitefish which are designated as a species of special concern. The Department intended to initiate the stocking proposal in October 2018.

Several bodies of water received written comments. The Commissioner did put forth two (2) amendments to State Heritage Fish Waters proposals based on public comment and review for the following bodies of water: Cold Water Brook Pond and Henderson Pond. Both proposals were removed from the packet he put forward for the Advisory Council's consent. The two waters would remain on the State Heritage Waters list.

Fiscal impact of rule:

No fiscal impact anticipated as a result of this rule.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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;
G., Open Seasons for the Hunting and Trapping of Furbearing Animals;
1., Beaver Trapping;
1.b. Open and Closed Areas for Beaver Trapping;
3-A. Fisher Limit, Restrictions and Season Exceptions
Filing number: 2018-203
Effective date: 8/25/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To establish fisher trapping season dates and individual township openings and closings for the beaver trapping season. At the request of the town, the closure for trapping of beaver in WMD 25 for Alna has been removed.

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. In 2015, the trapping regulations for several species were altered to reduce the chance of accidentally capturing lynx, which are listed as a threatened species by the federal government. Unfortunately, these changes resulted in reduced trapper participation, and caused a significant decline in harvest for fisher. Therefore, we proposed to extend the fisher trapper season by 2 weeks in southern and central Maine to allow more opportunity for trappers to sustainably harvest this species. A statewide annual bag limit of 10 fisher per trapper will remain in effect to prevent high harvest levels by individual trappers. Townships or portions thereof are opened and closed on an individual basis to manage local beaver populations within the general season framework in response to the amount of habitat, past harvests, and complaints of beaver damage to public property. At the request of the town, the closure for trapping of beaver in WMD 25 for Alna was removed.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 Season – Eastport)
Filing number: 2018-204
Effective date: 8/25/2018
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 IFW authorize, for a third and final year, a special hunt to facilitate the removal of antlerless deer. Deer-human conflicts, including residential property damage and vehicle accidents, have been steadily increasing in Eastport for more than a decade. A no-discharge of firearms ordinance within the city, coupled with the limitations of archery hunting, and posted private property have contributed to an increase in deer numbers over time. Eastport has also been subject to bucks-only hunting for 11 of the past 13 years due to Wildlife Management District boundary changes in 2005 when Eastport became part of WMD 27. The third-year plan proposes to build on the successes of the first two years by giving lottery preference to past successful hunters that apply, and allow the use of crossbows for qualified applicants.

WMD 27 was allocated 50 permits as part of the 2018 annual deer permit lottery which will again make Eastport accessible to the taking of does by archery and youth day deer hunters. 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, 2018 to December 31, 2018
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, 10105
Chapter number/title: Ch. 4, Hunting and Trapping:
4.09, Transportation of Certain Wildlife and Fish into Maine from
Outside of the State
Filing number: 2018-227 (Emergency)
Effective date: 10/11/2018
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The purpose of this rule is to prohibit the importation of cervid carcasses and certain cervid parts from all jurisdictions except New Hampshire to prevent the introduction of Chronic Wasting Disease (CWD) into Maine. CWD is a fatal neurological disease that affects members of the deer family (including white-tailed deer, moose, elk and caribou) and is thought to be spread through the movement of live animals, the transportation of carcasses, and the use of cervid products such as urine. CWD is always fatal, persists in the environment for several years, and is virtually impossible to eradicate once established in the wild. It is widely viewed as one of the most significant challenges in the history of modern wildlife conservation. In September 2018, CWD was detected in a captive red deer in Quebec, which is the first time the disease has been recorded in eastern Canada or in a jurisdiction adjacent to Maine. If established in Maine, CWD may have devastating impacts on the state's deer herd and hunting heritage, including the rural economy.

Basis statement:

This emergency rule is being promulgated to implement regulatory measures to prevent the establishment of chronic wasting disease (CWD) in Maine. CWD is a fatal neurological disease that affects members of the deer family (including white-tailed deer, moose, elk and caribou) and is thought to be spread through the movement of live animals, the transportation of infected carcasses, and the use of cervid products such as urine. CWD is always fatal, persists in the environment for several years, and is virtually impossible to eradicate once established in the wild. It is widely viewed as one of the most significant challenges in the history of modern wildlife conservation. In September 2018, CWD was detected in a captive red deer in Quebec, which is the first time the disease has been recorded in eastern Canada or in a jurisdiction adjacent to Maine. If established in Maine, CWD may have devastating impacts on the state's deer herd and hunting heritage, including the rural economy.

The rule will prohibit the importation of cervid carcasses and certain cervid parts from all jurisdictions except New Hampshire. The rule will also remove the exemption that allowed temporary importation of cervid carcasses when in-transit to another jurisdiction. Importation of cervid parts with a low risk of containing CWD material, such as boned-out meat, hardened antlers, and finished taxidermy mounts, will still be allowed.

Fiscal impact of rule:

None anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Labor, **Division for the Blind and Visually Impaired**
Umbrella-Unit: **12-150**
Statutory authority: 26 MRS §1418-C
Chapter number/title: **Ch. 101**, Rules Governing Vocational Rehabilitation Services for Individuals who are Blind or Visually Impaired
Filing number: **2018-269**
Effective date: 12/13/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rules govern the delivery of vocational rehabilitation services for persons who are blind or visually impaired in achieving an employment outcome. Modifications reflect changes required as a result of the federal *Workforce Innovation and Opportunity Act*, as well as clarifications in the appeals process and post-secondary services.

Basis statement:

(See Principal Reason...)

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Labor, **Division of Vocational Rehabilitation**
Umbrella-Unit: **12-152**
Statutory authority: 26 MRS ch. 19 §1411 A-E
Chapter number/title: **Ch. 1**, Division of Vocational Rehabilitation Services Rules
Filing number: **2018-270**
Effective date: 9/1/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These rules govern the delivery of vocational rehabilitation services for persons who have a physical or mental disability in achieving an employment outcome. Modifications would reflect changes required as a result of the *Workforce Innovation and Opportunity Act*, as well as clarifications in the appeals process, post-secondary services, and transportation assistance.

Basis statement:

(See Principal Reason...)

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 §772
Chapter number/title: **Ch. 11**, Rules Governing Hazardous Occupations for Minors under the Age of Eighteen in Non-Agricultural Employment
Filing number: **2018-147**
Effective date: 8/19/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this chapter is to prevent the exploitation of minors through hazardous working conditions in non-agricultural employment. These rules do not supersede Sections 771 and 773 of 26 MRS which set minimum wages for employment in specific industries. Sec. 772 of 26 MRS was amended to allow the Bureau of Labor Standards to adopt rules to develop and maintain a list of occupations not suitable for employment of minors. The rules must conform as far as practicable to the child labor provisions of the federal *Fair Labor Standards Act of 1938*, 29 *United States Code*, Section 212 and any associated regulations.

Basis statement:

Modification of Ch. 11 is sought to align state rules governing hazardous occupations for minors under the age of eighteen with federal standards, such as driving restrictions that will allow 17 year olds to drive for work related businesses under specific circumstances and conditions. Minors that are at least 16 years of age will no longer be prohibited from working alone in a cash based business and they will be allowed to perform soldering and welding duties in accordance with federal standards. We've expanded cooking occupations for minors that are between 14 and 15 years of age to include venues allowed by federal standards.

A new restriction is being added in accordance with 26 MRS §772(2) which prohibits all minors under the age of 18 from working in any occupation in a registered marijuana dispensary, any establishment that cultivates, produces, or sells marijuana or products that contain marijuana, and any recreational marijuana social clubs.

Fiscal impact of rule:

(No response)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Labor, **Unemployment Insurance Commission**
Umbrella-Unit: **12-172**
Statutory authority: 26 MRS §§ 1043(19), 1082, 1221
Chapter number/title: **Ch. 2**, Employer Notices, Records, Contribution and Reimbursement Payments and Reports
Filing number: **2018-119**
Effective date: 7/2/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

Modification of Ch. 2 is sought to clarify procedures for employers in filing notices, records, contributions, payment in lieu of contributions, and maintenance of reports with the Bureau; to bring the rule into compliance with the statutes, clarifying successorship and proprietorship/partnership income, assessment of responsible individual and make explicit the necessity of the employer maintaining their contact information current with the Bureau. Most of the updates were made to bring the rule in compliance with the statutes or to bring the rule up to date with current practice.

Fiscal impact of rule:

(No response)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Labor, **Board of Occupational Safety and Health**
Umbrella-Unit: **12-179**
Statutory authority: 26 MRS §565
Chapter number/title: **Ch. 4**, Occupational Safety and Health Standards for Firefighting in the Public Sector
Filing number: **2018-095**
Effective date: 6/10/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this chapter is to incorporate by reference rules governing the recording of occupational injuries and illnesses as promulgated by the Federal Occupational Safety and Health Administration at 9 CFR Part 1904, most recently amended on March 1, 2018.

Basis statement:

The purpose of this chapter is to provide clarification and identify the minimum Occupational Safety and Health Standards for Firefighting in the Public Sector.

Fiscal impact of rule:

(No response)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Labor, **Board of Occupational Safety and Health**
Umbrella-Unit: **12-179**
Statutory authority: 26 MRS §565
Chapter number/title: **Ch. 6**, Recording Occupational Injuries and Illnesses in the Public Sector
Filing number: **2018-096**
Effective date: 6/10/2018
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The purpose of this chapter is to incorporate by reference rules governing the recording of occupational injuries and illnesses as promulgated by the Federal Occupational Safety and Health Administration at 9 CFR Part 1904, most recently amended on March 1, 2018.

Fiscal impact of rule:
(No response)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Labor, **Board of Occupational Safety and Health**
Umbrella-Unit: **12-179**
Statutory authority: 26 MRS §565
Chapter number/title: **Ch. 7**, Minimum Driver Training Requirements for Fire Apparatus
Filing number: **2018-097**
Effective date: 6/10/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This standard identifies the minimum job performance requirements for career and volunteer fire fighters who drive fire apparatus in order to reduce accidents, injuries and loss of fire equipment.

Basis statement:

The purpose of this chapter is to incorporate by reference rules governing the recording of occupational injuries and illnesses as promulgated by the Federal Occupational Safety and Health Administration at 9 CFR Part 1904, most recently amended on March 1, 2018.

Fiscal impact of rule:

(No response)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: **Kim Wallace Adaptive Equipment Loan Program Fund Board**
(administered by the Department of Labor)
Umbrella-Unit: **94-178**
Statutory authority: 10 MRS §371
Chapter number/title: **Ch. 501**, Kim Wallace Adaptive Equipment Loan Program Rule
Filing number: **2018-103**
Effective date: 6/12/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule repeals and replaces the existing Ch. 501, which sets the operating procedures for the Adaptive Equipment Loan Program (AELP). The proposed changes will streamline AELP operations; direct the AELP Board to adopt procedures, guidelines for applications and underwriting, and interest rates; and delete from the rule most details of such procedures, guidelines, and interest rates. Also, the changes will allow the AELP Board to deposit the AELP Fund with a fund administrator other than the Finance Authority of Maine.

Basis statement:

The rule repeals and replaces the rule 94-178 ch. 501, which regulates the operation of the Adaptive Equipment Loan Program (AELP). The changes help implement the 2016 amendments to 10 MRS §§ 372-377 pursuant to LD 1549. The current rule 94-178 ch. 501 is available at <http://www.maine.gov/sos/cec/rules/90/94/178/178c501.doc> .

In Section 1, Definitions, defined terms are rearranged into alphabetical order and renumbered. Definitions of some common terms are deleted.

Current paragraph 1.F., where the term "authority" is defined to mean the Finance Authority of Maine, is deleted. A new paragraph (1.J.) adds a definition for "fund administrator," the state agency where the AELP Fund is deposited.

Paragraph 4.C. is changed to reduce the maximum aggregate amount for individual outstanding loans from \$250,000 to \$100,000.

Current paragraph 8.B., which sets the interest rate for loans, is replaced by a new paragraph (6.B.), which says the AELP Board will set the interest rate annually.

Current Sections 5, 6, 7, 7-A, 9, 10 and 13, which describe detailed operational procedures, are largely deleted or replaced. New Section 5 says the AELP Board can delegate to a financial service provider the loan approval, denial, and commitment based on underwriting guidelines approved and reviewed annually by the AELP Board.

Current Section 15, Request for Reconsideration, is replaced by a new Section 10, which provides for appeals of loan denials made by the financial services provider.

Fiscal impact of rule:

(no response)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: **Maine Arts Commission**
Umbrella-Unit: **94-088**
Statutory authority: 27 MRS §409
Chapter number/title: **Ch. 2**, Rules for Awarding Grants and Providing Services
Filing number: **2018-037**
Effective date: 3/14/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These rule amendments make technical changes to update existing rules governing the grant-making procedures and programs by the Maine Arts Commission. Ch. 2 provides definitions for how the Maine Arts Commission awards grants and provides services, including conflict of interest definitions.

Basis statement:

The Commission is updating the language in Ch. 2 to coincide with current procedures related to the Commission's conflict of interest definitions and procedures as they related to the eligibility and criteria for awarding grants and providing services to constituents based on current practices voted into place by the Maine Arts Commission since the last rulemaking adoption process.

Fiscal impact of rule:

No fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: **Maine Arts Commission**
Umbrella-Unit: **94-088**
Statutory authority: 27 MRS §458
Chapter number/title: **Ch. 3**, Rules to Carry Out the Percent for Art Act
Filing number: **2018-038**
Effective date: 3/14/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These rule amendments make technical changes to update existing rules governing the grant-making procedures and programs by the Maine Arts Commission. Ch. 3 defines the process for carrying out the *Percent for Art Act*.

Basis statement:

The Commission is updating the language in Ch. 3 to coincide with current procedures related to carrying out the *Percent for Art Act* based on current practices voted into place by the Maine Arts Commission since the last rulemaking adoption process.

Fiscal impact of rule:

No fiscal impact.

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Rules Adopted January 1, 2018 to December 31, 2018
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: **2018-111**
Effective date: 6/27/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule change adds subscriber and member fields in order to improve the MHDO's patient index and to prepare for the Centers for Medicare and Medicaid Services (CMS) transition from Health Insurance Claim Number (HICN) to Medicare Beneficiary Identifier (MBI). Other minor technical changes are also being made to conform to industry standards.

Basis statement:

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 subscriber and member fields in order to improve the MHDO's patient index and to prepare for the Centers for Medicare and Medicaid Services (CMS) transition from Health Insurance Claim Number (HICN) to Medicare Beneficiary Identifier (MBI). Other minor technical changes are also being made to conform to industry standards.

These changes are intended to give providers direction and time to implement modifications to their reporting systems. It is anticipated that these changes will allow for more useful analyses of the data by MHDO data users.

Fiscal impact of rule:

There is no fiscal impact on state municipalities, counties or businesses.

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Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: **Maine Public Employee Retirement System**
Umbrella-Unit: **94-411**
Statutory authority: 5 MRS §§ 17103(4), 18200 *et seq.*, 18801 *et seq.*
Chapter number/title: **Ch. 803**, Participating Local District Consolidated Retirement Plan
Filing number: **2018-082**
Effective date: 5/26/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule governs the Consolidated Plan for Participating Local Districts. The amendments to the rule are the recommendations of the Participating Local District Advisory Committee to further modernize the plan and improve future funding levels of the Plan.

Basis statement:

The Participating Local District ("PLO") Advisory Committee and MainePERS staff proposed several substantive changes to Ch. 803 to enhance the PLD Consolidated Retirement Plan's ability to protect the basic retirement benefit and improve the long term financial health of the Plan. The impetus for these changes was a decline in the Plan's funding level from 109% before the 2009 financial crisis to 86% as of the end of fiscal year 2016 following two-years of flat investment market performance.

The PLD Advisory Committee, established by 5 MRS §18802-A, is composed equally of members who represent PLD employers and employees. The Committee and staff worked for 18-months studying the Plan and various options for improvement before proposing these changes. As part of that process, the MainePERS Executive Director conducted 28 informational sessions around the State regarding the options under consideration during the fall of 2017. Notice of these sessions was provided by email to PLO employers, who were asked to share the information with their employees who are MainePERS members. Notice was provided to retiree's by mail. Information about the sessions also was posted on the MainePERS website. More than 500 employers, employees, and retirees attended these sessions. Feedback from these sessions was considered by the Committee and staff and incorporated into the final proposals.

Substantive proposals include:

- Withdrawal Liability
- Unused Accrued Time
- Risk Sharing
- Early Retirement
- COLA Cap and Waiting Period
- Retirees Returning to Work

In addition to these substantive changes, the amendment also makes non-substantive language corrections and deletes historic references no longer needed.

Fiscal impact of rule:

None.

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Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Maine Public Employee Retirement System
Umbrella-Unit: 94-411
Statutory authority: 5 MRS §§ 17103(4), 18200 *et seq.*, 18801 *et seq.*
Chapter number/title: Ch. 803, Participating Local District Consolidated Retirement Plan
Filing number: 2018-188
Effective date: 9/19/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule governs the Consolidated Plan for Participating Local Districts. The amendments to the rule are the recommendations of the Participating Local District Advisory Committee to further modernize the plan and improve future funding levels of the Plan.

Basis statement:

The Participating Local District (“PLD”) Advisory Committee and MainePERS staff proposed several substantive changes to Ch. 803 to enhance the PLD Consolidated Retirement Plan’s ability to protect the basic retirement benefit and improve the long-term financial health of the Plan. The majority of the recommended changes were adopted by the Board of Trustees at its May 10, 2018 meeting.

The Board of Trustees did not adopt the recommended changes to the retire-rehire provisions at that time and requested the System conduct further outreach on the topic of retire-rehire for possible reconsideration at a later date. MainePERS held eleven informational meetings across the state during the month of June on the proposed changes to the retire-rehire provisions. Notice of these sessions was provided to members and rehired retirees by mail and to PLD employers and member and employer organizations by email. Information about the sessions was also posted on the MainePERS website. More than 160 employers, employees, and retirees attended these sessions. Feedback from these sessions was considered by the Committee and staff and incorporated into the final proposals noticed for a new round of rulemaking.

Notice of this proposed amendment and public hearing was published in accordance with 5 MRS §8053 on July 18, 2018. Additionally, a notice of public hearing was mailed to PLD employers for distribution to employee/members on July 26, 2018; an email with the notice and copy of the proposed amendments was sent to PLD employers on July 27, 2018. This notice included information about the public hearing as well as the deadline for written comments.

The proposed amended rule includes substantive proposals as it relates to retirees returning to work. When a retiree under the Plan returns to work in a position covered by the Plan, at the election of the employer, either: (1) contributions would be paid to the Plan for that position at a contribution rate of 5% of the person’s earnable compensation; or (2) the retiree would re-enter the plan, meaning benefit payments would stop and the service credit would resume accruing. This change would not apply to retirees who already have returned to work in a covered position on October 1, 2018, until the earlier of termination of employment or June 30, 2021.

When a covered position is filled by a retiree, under the current rule the Plan loses the contributions that would be paid if the position were filled by an active member. The employer thus is not paying its full share of the Plan’s UAL. If this practice were to become widespread, it could have a significant impact on plan funding. The proposal corrects this problem.

The proposed amended rule also includes two clarifying changes not related to retirees returning to work:

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Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

1. **Withdrawal Liability.** The Board of Trustees adopted a recommended change to the withdrawal liability provision at its meeting on May 10, 2018. Subsequent to that meeting, MainePERS received an inquiry from a PLD employer considering withdrawal pertaining to the manner in which the liability was calculated. Specifically, a concern was raised that the methodology adopted by the Board of Trustees did not expressly give credit to the withdrawing PLD for unfunded actuarial liability payments (“UAL”) made by the PLD since the last actuarial valuation had been completed. The proposed amended rule clarifies that those payments are to be considered in the calculation of the withdrawal liability.

2. **Plan Elections.** The existing provisions of the rule permit a PLD that is re-entering the Plan or that is making a change in the service retirement plan or plans by which its employees are covered to elect a plan with a lower level of benefits only for new employees. The proposed amended rule clarifies that a PLD that changes from a plan that provides a cost-of-living adjustment to a plan that does not provide a cost-of-living adjustment may likewise only do so for new employees.

A public hearing on the proposed amended rule was held on August 9, 2018, before the MainePERS Board of Trustees. Thirteen members of the public attended the hearing. Comments were made at the hearing by two individuals, one of whom represented both himself as a retiree and his PLD employer as a hiring agent.¹ The second commenter represented a PLD employer.² Written comments were received by one PLD employer³ by the comment deadline of August 24, 2018.

All of the comments received concerned the retirees returning to work provision. One commenter asserted that it would be unfair to change the rules on retire/rehire after retirees had made professional and personal financial decisions based on the existing rules. The Board was asked to consider a sunset provision or some other form of grandfathering for those retirees who had made certain decisions under the existing rules. The same commenter, speaking on behalf of his PLD employer, expressed concern over the impact that the proposed change would have on the ability for employers to fill vacant positions.

One PLD employer expressed concern that the proposed language suggests that responsibility for the 5% payment must be negotiated between the employer and employee. This commenter suggested more neutral language that would permit each PLD to address this based on its particular situation.

One PLD employer proposed an alternative model for treatment of rehired retirees as it pertains to suspension or continued payment of retirement benefits. The same commenter also expressed concern that the flat 5% UAL contribution rate for rehired retirees would result in costs to employers that do not hire retirees.

The PLD Advisory Committee met on August 27, 2018, considered the comments and potential impacts of the proposed changes, and recommended that the Board adopt the proposed changes, with modifications as described below.

After considering the comments, the Board adopts the proposed changes, with the modifications recommended by the Advisory Committee, as follows: (1) PLD employers who rehire a retiree are required to communicate to MainePERS whether the person will continue to receive a retirement benefit or will terminate the benefit and re-enter the Plan. This modification allows PLD employers and employees the ability to decide the arrangement that best meets their needs without implying how they should do that. (2) The ability for a rehired retiree to re-enter the Plan is delayed until July 1, 2019. This modification allows MainePERS sufficient time to examine the potential impacts of allowing retirees to re-enter the plan and to

¹ Kevin Schofield, Police Chief, Town of Windham

² Carrie Margrave, Human Resources Director, Maine Maritime Academy

³ John J. Jansen, Superintendent, Waterville Sewage District

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ensure that adequate rules are in place to prevent costs to the plan from resulting from this practice. (3) The unfunded actuarial liability contribution that must be remitted by PLD employers on the earnable compensation of rehired retirees is changed to the greater of 5% or the equivalent of the employer and employee unfunded actuarial liability aggregate contribution rate. This modification ensures that that a PLD employer that rehires a retiree is paying its full share of the Plan's UAL. The modesty of these rates and the three-year grandfathering provision should mitigate the potential adverse consequences identified by the first commenter.

In conclusion, the Board adopts the proposed amended rule as it pertains to the withdrawal liability payment and the employer election of retirement plans provisions. The Board adopts the proposed amended rule as it pertains to retire-rehire with the modifications as outlined above. These modifications do not substantially change the amended rule as proposed.

Fiscal impact of rule:

None.

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Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: **Maine Rural Development Authority**
Umbrella-Unit: **99-626**
Statutory authority: 5 MRS §§ 13120-L, 13120-R
Chapter number/title: **Ch. 3**, Rural Manufacturing and Industrial Site
Redevelopment Program
Filing number: **2018-078**
Effective date: 5/9/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule implements PL 2017 ch. 174.

Basis statement:

This rule implements PL 2017 ch. 174, including the application and award process for the Rural Manufacturing and Industrial Site Redevelopment Program established in 5 MRS §13120-R(1).

Several comments were received during the public comment period. The comments were submitted by representatives of the municipalities of Madison, Bucksport, East Millinocket, Lincoln, Old Town, Ashland, Rumford, Millinocket, and Jay, Maine (collectively, the “Municipalities”). Each municipality submitted its own copy of a duplicate letter with identical comments as the letters from the other municipalities.

The Municipalities first commented that maximum population of a municipality that should be considered rural, and therefore a location in which an eligible project could be located, should be reduced from 50,000 to 10,000.

The Trustees considered the comment, but determined that municipalities with populations over 10,000, but under 50,000 (the maximum allowed by the draft rule) in Maine, despite their greater population, have rural attributes and suffer from the same types of impacts from mill closures as smaller municipalities. In addition, the Trustees found that other governmental programs, including programs administered by the US Department of Rural Development, define rural areas as those under 50,000 in population. Accordingly, the Trustees declined to make changes in response to this comment.

The Municipalities also commented, with respect to both planning and implementation grants, that the rule should require grant solicitations at least once per year. They further suggested that applications should be allowed to be considered at special meetings, rather than only at regular meetings. The Municipalities also recommended that scoring weights for consideration of grant applications be set before soliciting applications and included in the solicitation, rather than being determined before Authority review of applications.

The Trustees considered the comment and determined that the existing language gave the Authority needed flexibility to solicit grants as often as the Authority deemed prudent, without fixing a particular time frame. In addition, since the Authority meets monthly, the Trustees believed that reviewing grant applications at a regular meeting would be sufficient without the need for special meetings. As for scoring weights, The Trustees found that the existing language allowed the Authority to set and advertise scoring weights as part of the solicitation process, but also provided important flexibility to allow it to set weighting after solicitation, but before review, if it deemed that approach more desirable in a given grant solicitation round. The Trustees thus declined to make changes in response to this comment.

The Municipalities identified a typographical error in section numbering, namely the absence of section 4, which the Trustees corrected by renumbering the sections following section 3.

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The Municipalities next commented that the language that permitted, but did not require the Authority to charge fees to grant applicants should be eliminated to avoid discouraging applications. The Trustees determined that effect on applications would be likely be a consideration when it decided whether and to what extent to impose applications fees, but did not believe that it was appropriate to eliminate the option to charge fees. Accordingly, the Trustees declined to make changes in response to this comment.

Finally, the Municipalities commented that the rule should not limit the aggregate amount of grants awarded under the Program. Because grants awarded under the Program would deplete funds available to be used by the Authority to provide loans under the Authority's other important programs, the Trustees believed that it was prudent to set an overall grant limit by rule to ensure sufficient funds would be available for the loan programs. Thus Trustees also determined that the limit could be changed in a later rule amendment should circumstances warrant. The Trustees thus declined to make changes in response to this comment.

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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
Chapter number/title: **Ch. 2**, Cooperation with Local *Governments (Repeal)*
Ch. 13, Allocation of State Ceiling for Housing-Related Bonds *(Repeal)*
Ch. 17, Natural Disaster Home Assistance Program *(Repeal)*
Ch. 21, Land Acquisition/Improvement and Housing Opportunity
Zones Program *(Repeal)*
Filing number: **2018-050 thru 053**
Effective date: 4/8/2018
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

Ch. 2, 17, 21: Recent changes to the *Maine Housing Authorities Act* eliminated the requirements and programs which these rules addressed and rendered the rules obsolete.

Ch. 13: Repeal of rule, which is unnecessary and obsolete since the state ceiling for issuing tax exempt bonds is plentiful and Maine State Housing Authority has not been asked to allocate bond cap to a local issuer since the 1980's.

Fiscal impact of rule:
None.

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Rules Adopted January 1, 2018 to December 31, 2018
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
Chapter number/title: Ch. 1, Home Mortgage Program Rule
Filing number: 2018-077
Effective date: 5/9/2018
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This replacement rule repeals and replaces in its entirety the current *Home Mortgage Program Rule*. The replacement rule does the following: (i) MSHA references are changed to MaineHousing; (ii) the new mortgage requirement is clarified to state that a homebuyer may not currently have a mortgage on the residence; (iii) mobile home security requirements are updated to comply with current law; (iv) the requirement for fidelity insurance on condominiums is changed from condominiums with greater than 30 units to condominiums with greater than 20 units; (v) language allowing MaineHousing to limit mortgage insurers by type of mortgage insurer is added; (vi) the section on application requirements for lenders to participate in our single family requirements is expanded; (vii) the Servicing Agreement is referenced in the section requiring indemnification from a Qualified Servicer.

Fiscal impact of rule:
None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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); Section 42 of the *Internal Revenue Code of 1986*, as amended
Chapter number/title: **Ch. 16**, Low Income Housing Tax Credit Rule
Filing number: **2018-116**
Effective date: 7/4/2018
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 2019, 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:

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 sections of the *Maine Housing Authorities Act*.

This rule replaces the prior rule and includes the following changes:

- Overhaul and reformatting to make the rule more concise, clearer, and easier to use.
- Total development cost per unit cap is changed to an index based on per unit and per bedroom cost.
- Adjustment to upper and lower limits in new construction cost containment scoring category.
- Telemed requirement allows for a plan rather than a separate room.
- High Opportunity Area category takes into account quality education, healthcare, services, and economic activity.
- Monitoring fee increased from \$800 to \$1,000 per credit unit.
- Removal of self-scoring from scoring process.
- Acceptance of HUD Section 811 Project Rental Assistance is a threshold requirement.
- Points adjusted to accommodate removal of criteria and slightly greater/lessor focus in specific areas.
- Service center communities list updated.
- Allows for two consecutive years of submitting required reports past the deadline before loss of points.

Fiscal impact of rule:

The State's housing credit ceiling for calendar year 2019 is expected to generate approximately \$35,500,000 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, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: **Maine State Housing Authority**
Umbrella-Unit: **99-346**
Statutory authority: 30-A MRS §§ 4722(1)(W), 4741(15), 4991 *et seq.*; 42 USCA §§ 8621 *et seq.*
Chapter number/title: **Ch. 24**, Home Energy Assistance Program Rule
Filing number: **2018-174**
Effective date: 9/1/2018
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This replacement rule repeals and replaces in its entirety the current *Home Energy Assistance Program Rule*. The rule establishes standards for administering fuel assistance, emergency fuel assistance, Supplemental Benefits funded by TANF funds, weatherization, and heating system repair and replacement funds to low income households in the State of Maine. The replacement rule: (i) describes the TANF Supplemental Benefits program; (ii) extends the Application period to July 15 for all Applicants; (iii) eliminates the necessity of an Applicant having to provide proof of SSN if his/her SSN can be verified electronically; (iv) includes Social Security card as an acceptable form of documentation for any Household member that is not a U.S. citizen; (v) allows Primary Applicant to include or exclude dependents who are full-time college students as Household members; (vi) disallows the deduction of business expenses if self-employment income cannot be documented through a filed tax return for the current or previous year; (vii) excludes certain types of income in order to increase the pool of eligible Applicants, increase the amount of a Household's Benefits, and achieve greater alignment with other MaineHousing administered programs: exclusions include assets drawn down from financial institutions, foster care payments, adoption assistance, in-kind payments received in lieu of payment for work, and capital gains; (viii) allows court ordered child support to be deducted from Applicant income provided the amount paid during the income verification can be documented; (ix) removes the clause restricting Applicant eligibility for ECIP if the Applicant has the ability to receive credit from the vendor; (x) allows the Subgrantee to issue the maximum ECIP benefit amount in a single delivery (removes "An Eligible Household will receive an ECIP benefit equal to the maximum ECIP benefit or the cost of a standard minimum delivery of Home Energy, whichever is less"); and (xi) increases the income limits for weatherization so as to be consistent with the Department of Energy income threshold of 200% of federal poverty.

Fiscal impact of rule:
None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Maine State Housing Authority
Umbrella-Unit: 99-346
Statutory authority: 30-A MRS §4741(1); 36 MRS §5219-PP
Chapter number/title: Ch. 33, AccessAble Home Tax Credit Rule
Filing number: 2018-175
Effective date: 9/1/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This replacement rule repeals and replaces the current *Home Modification Tax Credit Rule* with the *AccessAble Home Tax Credit Rule*. The replacement rule: (1) changes the name to *AccessAble Home Tax Credit Rule*; and (2) corrects the statutory reference in paragraph 1.d. and paragraph 5; and (3) provides that the credit will be taken in the year MaineHousing issues a certificate rather than in the year the modification expenses are incurred.

Basis statement:

Under a new law individual taxpayers whose income does not exceed \$55,000 may receive an income tax credit up to \$9,000 for expenses incurred for modifications to make their home accessible to an individual with a disability who lives or will live in the home. This rule sets forth the types of home modification expenditures that qualify for the credit, the building standards applicable to the modifications, and the process MaineHousing will use to determine that a taxpayer's expenditures qualify for the credit.

Fiscal impact of rule:

None.

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Rules Adopted January 1, 2018 to December 31, 2018
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: Targeted Scallop Conservation Closures (Hussey Sound, Roque Island Harbor (Sand Bay)); Open and Closed Scallop Fishing Days (Zone 2 State Waters Season)
Filing number: 2018-002
Effective date: 1/1/2018
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking for the implementation of targeted conservation closures located in Hussey Sound as well as in Rogue Island Harbor (Sand Bay) of the Lower Kennebec/Englishman Bay Rotational Area to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion. The Department is concerned that continued harvesting for the duration of the 2017-18 fishing season in these areas will remove any remaining broodstock as well as negatively impact seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource in these areas. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in both the Hussey Sound and Rogue Island Harbor (Sand Bay) areas.

Basis statement:

Justification

The Department is taking emergency rulemaking action to implement targeted closures in the following areas: Hussey Sound in Casco Bay (Zone 1) and Rogue Island Harbor (Sand Bay) in Little Kennebec/ Englishman Bay Rotational Area (Zone 2). The rule also permits harvesting in the territorial waters around Machias Seal Island on any day that is open for Zone 2 draggers and divers. As targeted closures are implemented, the opportunity around Machias Seal Island may relieve fishing pressure on other inshore areas.

Hussey Sound

Monitoring of fishing effort and resulting resource removals from known fishing areas was completed through one-on-one interviews with scallop harvesters in the area and ongoing observations by Marine Patrol officers through routine boardings and site visits.

An estimated 6-8 boats have been steadily working within the Hussey Sound area and Marine Patrol reports the majority of boats in the first two weeks of the fishery were reaching their daily harvest limit by noon. However, as the fishery progressed, the length of time to reach a daily limit was increasing to late afternoon. In addition, there have been a lot of empty shells coming up in the drags, resulting in a reduced amount of bushels of commercial grade product per tow.

Through phone interviews with participating industry members, there has been consensus that the area has been a primary focus of harvesting with upwards of 10 boats observed some days. The input from industry has indicated that effort has greatly increased to attain the daily limit and there is little legal product remaining in the area.

Based on this information, it is necessary to protect the remaining legal scallop resource as broodstock for subsequent fishing years.

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

Rogue Island Harbor (Sand Bay)

Marine Patrol observed 52 boats harvesting the Rogue Island Harbor/Sand Bay area on opening day of the 2017-18 scallop fishing season. Effort remained strong for the first 5-day fishing week, with desirable average meat counts.

Continued reports from Marine Patrol indicated that the fishing fleet began to disperse during the second and third weeks of December, while a few boats remained in the area. Those harvesters that remained required greater effort (time) to reach their daily limit and have been persistent in harvesting this area.

Comments from participating harvesters in the area detailed the abundance of legal product in the rotational area, however, not to the extent of the 2014-15 fishery season. Additionally, there has been consensus from several participating harvesters in the area that the remaining resource is no longer able to be efficiently harvested without causing damage to the remaining resource and the habitat.

During the spring and pre-season science survey, observations of seed or sublegal product was low, especially in the Sand Bay area. While there was higher than expected growth of the sublegal product observed during the spring survey to legal size, it is necessary to ensure a healthy amount of broodstock remains within good habitat to ensure the longevity and sustainability of scallops within this area.

The Department is concerned that continued harvesting for the duration of the 2017-18 fishing season in the above listed areas will reduce any remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource in these areas. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in both the Hussey Sound and Rogue Island Harbor (Sand Bay) areas. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by 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.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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: Targeted Scallop Conservation Closures
(Casco Passage within Swan's Island Rotational Area, Johnson Bay & Eastport Breakwater (Cobscook Bay))
Filing number: 2018-014
Effective date: 1/21/2018
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking for the implementation of targeted conservation closures located in Johnson Bay, inside Cobscook Bay area and Casco Passage of the Swan's Island Rotational Area to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion. The Department is concerned that continued harvesting for the duration of the 2017-18 fishing season in these areas will remove any remaining broodstock as well as negatively impact seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource in these areas. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in both the Johnson Bay and Casco Passage areas.

Basis statement:

Justification

The Department is taking emergency rulemaking action to implement targeted closures in the following areas: Casco Passage in Swan's Island Rotational Area (Zone 2) and Johnson Bay and Eastport Breakwater within Cobscook Bay (Zone 3).

Casco Passage within Swan's Island Rotational Area

At the opening of the scallop season, on December 5, 2017, 15 active scallop drag vessels were observed harvesting within the Casco Passage area by Marine Patrol. The number of total vessels harvesting within this area was reported to have reached upwards of 30 vessels as determined by individual harvester interviews during the first 5-day week of the season. Meats were large in this area, with a meat count ranging from 10 to 14 scallops per pound. Daily harvest limits were reached as quickly as four 20 minute tows but increased to twelve tows during the end of the first five days of harvesting.

By the third week of scallop season, updated reports by industry and marine patrol indicated most vessels had moved on to other more productive areas, as weather permitted.

However, recent information indicated that on poor weather days, 1-3 boats still harvest within Casco Passage but have been unable to reach their daily limit in the area. At best, they were able to harvest 8 gallons of the available 15 gallon daily limit.

Data from the spring scallop survey conducted by DMR science staff indicated presence of seed stock within the Casco Passage area. Available legal product has been extracted from this area and continued harvest will cause unnecessary damage to the habitat, and the scallop resource. It is necessary to protect the seed scallop resource and the remaining legal scallop resource as broodstock for subsequent fishing years.

Johnson Bay & Eastport Breakwater (Cobscook Bay)

At the opening of the scallop season, on December 4, 2017, 75-85 active scallop drag vessels were observed harvesting within Cobscook Bay (Zone 3) with most effort taking place in the lower area of Johnson Bay and along Eastport shore. Initial reports of harvest rates indicated vessels were reaching their daily limit by noon, with landings being comprised of

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medium sized (15-20 count per pound) scallops. It was noted that this size range was smaller than usual during the beginning the season for Johnson Bay.

By the third week of the scallop season, Marine Patrol were observing lower catch rates and vessels were taking longer to reach their daily limit. This was considered atypical for this area so early in the season. Vessels were working more into the late afternoon to reach daily limit of 10 gallons.

ME DMR science staff completed a 68 station survey of Cobscook between January 11-14, 2018 which focused on 12 stations within Johnson Bay and 4 stations around Eastport Breakwater. Results from this in-season survey indicated a stark decrease in harvestable biomass for both these areas (Table 1). Harvestable biomass in Johnson Bay dropped from 8.06 g/m² observed during the fall survey to 2.74 g/m². Eastport Breakwater had a harvestable biomass of 9.17 g/m² prior to the season opening and it is now observed at 1.97 g/m². These data points far exceed the 30% target removal threshold.

During pre-season science survey, observations of seed or sublegal product was present around Treat Island in Johnson Bay. Available legal product has been extracted from this area and it is necessary to protect the seed scallop resource and the remaining legal scallop resource as broodstock for subsequent fishing years.

In summary, the Department is concerned that continued harvesting for the duration of the 2017-18 fishing season in the above listed areas will reduce any remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource in these areas. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in both the Casco Passage and Johnson Bay & Eastport Breakwater areas. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by 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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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)
Chapter number/title: Ch. 11, Scallops: Targeted Scallop Conservation Closures (Machias and Sand Bays within Lower Englishman Bay Rotational Area; Whiting, Denny's and Cobscook Bays)
Filing number: 2018-020
Effective date: 2/4/2018
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to implement the expansion of targeted conservation closures within the Englishman Bay Rotational Area to include Sand Bay over to Machias Bay within the inner portion of the Englishmen Bay and a closure of Cobscook Bay including Whiting & Denny's Bay Limited Access Area to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion. The Department is concerned that continued harvesting for the duration of the 2017-18 fishing season in these areas will remove any remaining broodstock as well as negatively impact seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource in these areas. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource within the inner portion of the Englishman Bay as well as Cobscook Bay including Whiting & Denny's Bay.

Basis statement:

Justification

The Department is taking emergency rulemaking action to implement targeted closures in the following areas: Sand Bay and Machias Bay within the Lower Englishman's Bay Rotational Area (Zone 2) and Cobscook Bay including the Whiting & Denny's Bay Limited Access Area (Zone 3).

Machias & Sand Bay within Lower Englishman Bay Rotational Area

This is an expansion of an existing targeted closure within the Little Kennebec/Englishman Bay Rotational Area. The initial closure targeted Roque Island Harbor (Sand Bay) which had received the most amount of effort at the beginning of the season; and, considered to be premier grounds for legal scallops. Prior to the closure, there was some mobility of the fleet spreading to other shoal areas along the inside shores of The Brothers Island and Libby Island. Upwards of 25 boats continued to harvest within the area during the 2nd week of December. This effort was maintained throughout December, with weather being a limiting factor.

By the third week of January, harvest rates were slowing down, and the remaining boats, estimated at 15 total by Marine Patrol, were exploring areas further offshore from the other side of the lower islands within the rotational area. Scallop product has been readily available, but the meat counts smaller in deeper waters.

Data from the pre-season scallop survey conducted by DMR science staff on December 1, 2017 indicated high levels of harvestable resource. However, a follow up survey, conducted on January 19, 2018 indicate harvestable biomass has been depleted at areas surveyed. There were also observations of additional seed stock present northeast of Libby Island at two survey stations.

Available legal product has been extracted from this area and continued harvest will cause unnecessary damage to the habitat and the scallop resource. It is necessary to protect

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the seed scallop resource and the remaining legal scallop resource as broodstock for subsequent fishing years.

Cobscook Bay

This is an expansion of an existing targeted closure within Cobscook Bay. At the opening of the scallop season, on December 4, 2017, 75-85 active scallop drag vessels were observed harvesting within Cobscook Bay (Zone 3) with most effort taking place in the lower area of Johnson Bay and along Eastport shore. During the last two weeks, observed vessels as counted by marine patrol ranged from 100 to 110 boats harvesting daily.

Two follow-up in-season surveys have been completed within the Cobscook and Whiting/Denny's Bay areas to monitor resource removals levels, occurring first on January 11-14, 2018 and second survey on January 27-28, 2018. Results from the first survey promulgated an emergency action for the Johnson Bay and Eastport Breakwater areas due to removals exceeding target levels. This closure was effective January 21, 2018.

The most recent survey indicates the removal target has been exceeded in Whiting/Denny's Bay with a 45% decrease in harvestable biomass (from 6.29 g/m² to 3.44 g/m²). Additionally, 31 stations were sampled in the East and South Bays and the removal rate was calculated at 27% (4.19 g/m² to 3.06 g/m²). These two areas outside of Whiting/Denny's Bay experienced three additional days of harvest post-survey with 100-110 active vessels removing an estimated 9,900 lbs from the area. While this small portion of Cobscook Bay has not exceeded its target, it would still require a closure; the survey observed over two thirds of the sampling stations have seed and sublegal presence of resource, and the area cannot sustain the additional impact of 100 plus boats harvesting. These center bays have high proportions of both seed and sublegal product that would incur damage if harvest continued.

Qualitative information from both marine patrol and active harvesters in the area concur that rate of catch has decreased, and vessels are now expanding their search into areas not normally fished. General anecdotes from harvesters suggest that last season was extended too long and had possible negative impact to the size and quantity of scallops available for this 2017-18 season. Their collective insight indicated a closure would result in positive benefits next year rather than prolong harm.

In summary, the Department is concerned that continued harvesting for the duration of the 2017-18 fishing season in the inside portion of Englishman Bay area will reduce any remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource in these areas. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in both Sand Bay and Machias Bays within the Little Kennebec/Englishman Bay Rotational Area. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by 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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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)
Chapter number/title: Ch. 11, Scallops: Targeted Scallop Conservation Closures (Harrington & Pleasant Rivers within Addison Rotational Area, Upper Frenchman Bay Rotational Area)
Filing number: 2018-023
Effective date: 2/18/2018
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to implement conservation closures in the Harrington and Pleasant Rivers, Addison Rotational Area and the upper portion of Frenchman Bay Rotational Area to protect Maine's scallop resources from the risk of unusual damage and imminent depletion. The Department is concerned that continued harvesting for the duration of the 2017-18 fishing season in these areas will remove any remaining broodstock as well as negatively impact seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource in these areas. Immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource within the Harrington and Pleasant Rivers and the upper portion of Frenchman Bay.

Basis statement:

Justification

The Department is taking emergency rulemaking action to implement targeted conservation closures in the following areas: Harrington & Pleasant Rivers within Addison Rotational Area (Zone 2) and Upper Frenchman Bay Rotational Area (Zone 2).

Harrington & Pleasant Rivers within Addison Rotational Area

This area has been open to harvest for 46 days. Effort in both the Harrington and Pleasant Rivers was most notable during the month of December with upwards of ten vessels harvesting in the area. Boats were actively avoiding the seed spots and began spreading out in this rotational area by the third week of December and as weather allowed, harvesters would tow further outside of the Bay. By January, less than 5 boats were harvesting in the lower port of this Rotational Area. Several industry reports confirmed the already suspected levels of seed scallops observed during the DMR Spring Scallop survey.

During the June 2017 Scallop Advisory Council (SAC) meeting, DMR Science staff provided the results of the Scallop Spring Survey (conducted April 2017 and highlighted the abundance of seed scallop resources observed in the Harrington River. DMR Management staff proposed this area as a limited access zone to allow for reduced effort to protect ongoing recruitment during the SAC June meeting. However, industry input to the SAC highlighted the desire to harvest the legal biomass quickly and then move on to other areas. This was exactly how effort was observed in this area by Marine Patrol at the beginning of the season. However, with closures occurring during the 2017-18 scallop season prompting mobility within the fleet, this area cannot withstand new effort covering areas that have already been harvested.

Available legal product has been extracted from this area and continued harvest will cause unnecessary damage to the habitat and the scallop resource. It is necessary to protect the seed scallop resource and the remaining legal scallop resource as broodstock for subsequent fishing years.

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Upper Frenchman Bay Rotational Area

This area has been open to harvest for 46 days. Effort in both the Skillings River and adjacent areas was most notable during the month of December and into January with upwards of five vessels harvesting in the area with the primary focus on the Skillings River. Boats that did harvest in the Skillings River also found seed as predicted by the DMR Spring Scallop survey and actively avoided seed spots until spreading out in this rotational area. Resource was patchily distributed in the area with average to high meat counts being reported by industry.

As mentioned above, during the June 2017 Scallop Advisory Council (SAC) meeting, DMR Science staff provided the results of the Scallop Spring Survey (conducted April 2017; and highlighted the abundance of seed scallop resources observed in the Skillings River. DMR Management staff proposed this area as a limited access zone to allow for reduced effort to protect ongoing recruitment during the SAC June meeting. However, industry input to the SAC highlighted the desire to harvest the legal biomass quickly and then move on to other areas. Harvest in this area lasted into the middle of January, as bad weather made it difficult to access other areas. However, with closures occurring during the 2017-18 scallop season prompting mobility within the fleet, this area cannot withstand new effort covering areas that have already been harvested.

Available legal product has been extracted from this area and continued harvest will cause unnecessary damage to the habitat and the scallop resource. It is necessary to protect the seed scallop resource and the remaining legal scallop resource as broodstock for subsequent fishing years.

In summary, the Department is concerned that continued harvesting for the duration of the 2017-18 fishing season in the upper portions of both Addison and Frenchman Bay will reduce any remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource in these areas. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in both Harrington and Pleasant Rivers within the Addison Rotational Area and upper Frenchman Bay which includes the Skillings River and Taunton Bay. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by 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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Rules Adopted January 1, 2018 to December 31, 2018
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: Targeted Scallop Conservation Closures
(St. Croix River, Addison Rotational Area, Fox Islands Thorofare within East Vinalhaven Rotational Area)
Filing number: 2018-034
Effective date: 3/4/2018
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to implement conservation closures in the St. Croix River, Addison Rotational Area and the Fox Islands Thorofare within the E. Vinalhaven Rotational Area to protect Maine's scallop resources from the risk of unusual damage and imminent depletion. The Department is concerned that continued harvesting for the duration of the 2017-18 fishing season in these areas will remove remaining broodstock as well as negatively impact seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource in these areas. Immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource within the St. Croix River, Addison and Fox Island Thorofare.

Basis statement:

The Department is taking emergency rulemaking action to implement targeted conservation closures in the following areas: Fox Islands Thorofare in E. Vinalhaven Rotational area (Zone 2); Addison Rotational Area (Zone 2); and, St. Croix River (Zone 3).

St. Croix River

This area has been open to harvest for 43 days, within Zone 3, but the primary focus of effort has been in the most recent 12 days of the calendar after Cobscook Bay closed. Beginning February 4, 2018, upwards of 40 scallop fishing vessels were actively harvesting within the St. Croix River, from Kendall Head northward. Most reports from participants observed large meat counts and moderate densities of scallops over variable depth ranges. In the previous season, this area was targeted for 8 days after Cobscook closed. Observations this year indicated harvest rates were not as great as the year prior, but meat size of harvested product meant less animals were needed to reach the daily limit. Initially, daily limits were being reached between 9 and 10, with tide cycles impacting harvesting behavior. In the last 2 open weeks, individual harvesters were taking longer to reach limits, if at all. There were reports of seed near St. Croix Island, as well. So, based on lower catch per unit effort as conveyed by both harvesters in the area and Marine Patrol, and potential for sublegal growth for the following season, it was recommended to close the fishery to reduce repeated effort.

Addison Rotational Area

This area has been open to harvest for 54 days. A partial closure of this area affecting both the Harrington and Pleasant Rivers including Pleasant Bay was implemented on February 18, 2018 due to reports of seed scallops in the rivers, along with both harvester and marine patrol reports observing new effort in areas that were already harvested in the early part of the season. Now that effort has shifted to the outer islands, catch rates remain low. Additional reports by harvesters in the area as well as Marine Patrol indicate that it is no longer possible to reach daily limits within this rotational area. Additionally, separate from the DMR Science Survey, harvesters indicate there are sublegal scallop resources in deeper water around Big Nash Island.

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Available legal product has been extracted from this area and continued harvest will cause unnecessary damage to the habitat and the scallop resource. It is necessary to protect the seed scallop resource and the remaining legal scallop resource as broodstock for subsequent fishing years.

Fox Islands Thorofare within E. Vinalhaven Rotational Area

This area has been open to harvest for 54 days. During the opening of the scallop season, an estimated 30 boats were harvesting in the upper portion of the zone, and focusing on the large meat counts found within the Fox Islands Thorofare area. Effort wavered between 10 to 20 boats during the latter half of December and into January. Also, due to poor weather throughout the season, this area maintained effort sporadically, as a sheltered area to harvest throughout the months of December and January. By the second week of January, harvesters were indicating it took longer to reach daily limits. Both harvesters and marine patrol observations indicate minimal effort by approximately 5 vessel during the month of February on poor weather days.

DMR science staff has completed three surveys in the area, covering the same 22 stations each time. Overall biomass has decreased slightly in the area; however, results indicate that the 5 stations associated with the Fox Islands Thorofare have seed and sublegal scallop resources in greater proportion than harvestable biomass. Direct observations from both industry participants in the area as well as marine patrol also confirm the presence of sublegal resources, with the station near Goose Rocks having the highest concentrations.

In summary, the Department is concerned that continued harvesting for the duration of the 2017-18 fishing season in these areas will reduce any remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource in these areas. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in the St. Croix River, the Addison Rotational Area and Fox Islands Thorofare within E. Vinalhaven Rotational Area. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by 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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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6072-C
Chapter number/title: **Ch. 2**, Aquaculture Lease Regulations; **2.90**, Limited-purpose Aquaculture (LPA) License; **2.95**, Water Quality Classifications and Shellfish Aquaculture
Filing number: **2018-039**
Effective date: 3/19/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rulemaking adopts a number of changes to the Limited Purpose Aquaculture License (LPA). These changes are intended to reduce risks to public health, implement statutory changes, and improve the overall administration of the LPA program.

Basis statement:

This rulemaking implements a number of changes to the Limited Purpose Aquaculture License (LPA). It deletes a number of references to other chapters of regulation to reduce redundancy. It includes several changes to reduce risk to public health, including prohibiting siting LPAs for shellfish in prohibited, restricted and conditionally restricted areas, with certain exceptions. It prohibits siting of marine algae or shellfish seed LPAs within the 300:1 dilution zone around wastewater treatment outfalls and prohibits the use of MOU or biotoxin monitoring protocols for LPAs. It limits the dimensions of LPAs to no longer than 1x400 ft., square or rectangular. It requires LPA license holders to complete an educational program prior to renewal of their license in 2019 and future years. It amends gear marking requirements, so that each individual piece no longer needs to be marked and requires buoys to be marked with the LPA identification number. It limits an individual to being listed on no more than eight additional LPAs other than their own. The rule also clarifies numerous provisions including allowable amendments mid-year, notice to municipalities, site identification on the application, and who must sign the application.

Based on the comments received during the rulemaking process, the Department has made the following changes:

- **Dimensions:** As originally proposed, the rule would have limited the dimensions of LPAs to no longer than 4x100 feet, square or rectangular. The Department concurs with the comments received that this change would negatively impact many existing operations, and inhibit the use of LPAs for scallop and seaweed aquaculture. However, the Department does feel that it is necessary to create some parameters for the allowable dimensions of LPAs. Rather than create dimensions that are species specific, the final rule limits dimensions for any LPA to 1'x400'.
- **Assistants:** The proposed rule would have limited an individual to being listed on no more than four LPAs as an assistant. Several comments were received that indicated existing operations rely on being able to be listed on more than four LPAs as assistants and that limiting it to that number would have negative impacts on the operation. In consideration of those comments, the Department has amended the rule to allow an individual to be listed as an assistant on up to eight other LPAs. Individuals who are currently listed on more than eight other LPAs will be allowed to continue to be listed on those same LPAs until 2021.

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- **Riparian Landowner Density:** Based on a comment that requested further clarification, the final rule specifies that the riparian landowner density exemption does not restrict either the riparian or non-riparian density.
- **Siting Prohibitions:** The rule prohibits siting LPAs for shellfish in prohibited, restricted and conditionally restricted areas with certain exceptions. Based on comments received, the Department amended the rule to allow for a one-year license renewal to provide an opportunity to identify a new site should an area's classification be downgraded and require the termination of the LPA due to water quality classification.

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 §6505-A
Chapter number/title: Ch. 32, Eel Regulations: 32.05, Area Closures – Eel Fishing;
32.35, Elver Quota System for 2018 Season
Filing number: 2018-040
Effective date: 3/19/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

This rule establishes the elver quota allocations for the 2018 season for individuals licensed under §§ 6505-A and 6302-A, and the method of calculating individual elver quota allocations for individuals licensed under §6505-A. The 2018 allocations for individuals who held a license in 2017 are the same as their 2017 allocations, less any quota that was associated with licenses suspended for the 2017 season, plus any quota associated with licenses not renewed in 2017, or licenses suspended for the duration of the 2018 season, which are distributed evenly to all license holders. Individuals who are eligible to purchase an elver license in the 2018 elver license lottery are allocated a quota of 4 lbs. The rule also deletes language that was moved to Ch. 55.

Based on the comments received during the rulemaking process, the Department has made the following changes:

- Removed the proposed limitation on additional allocation for elver license holders that had a quota of 50 lbs. or more in 2017. This limitation had been suggested by representatives of the Maine Elver Harvesters Association, but based on the comments received it was agreed that every license holder should be eligible for any redistribution of quota, regardless of the amount of their existing allocation.
- Clarified the allocation formula to deduct quota that allocated in 2017 that is associated with licenses that were suspended in 2017, but which will be returning to the fishery in 2018. This is necessary to ensure that Maine does not exceed the quota that is allocated through the Atlantic States Marine Fisheries Commission.

Fiscal impact of rule:

Enforcement of this rule will not require additional activity in this agency.

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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: 2018-065
Effective date: 4/23/2018
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

In recent years, state waters catch of Atlantic halibut has been steadily increasing. Federal waters catch has also been increasing, but the overall Allowable Biological Catch (ABC) has remained relatively static. Maine exceeded its State Waters Sub-Annual Catch Limit (ACL) in 2015 and 2016, and in 2016, total catch nearly exceeded the ABC, which would have triggered implementation of restrictive Accountability Measures for the federal groundfish fishery. As a result, new Accountability Measures have been imposed that would restrict all federal permit holders from possessing halibut (in the year subsequent) should the ABC be exceeded. In 2017, the halibut stock assessment was also updated, and resulted in a lower ACL of 104 mt, or 21.8 mt for the State Waters Sub-ACL (a reduction from 25 mt in 2017). The new ACL will be effective at the start of the federal fishing year and state waters season on May 1, 2018. In order to remain within the State Waters Sub-ACL, and to prevent the ABC from being exceeded and Accountability Measures being triggered, Maine is taking this emergency action to reduce catch in the state waters fishery by the following measures: 1) reducing the length of the state waters halibut season by ten days at each end of the season; 2) reducing the number of hooks to 250; and 3) imposing a prohibition on possession of halibut by those license holders who have been issued state commercial halibut tags when operating seaward of the territorial waters boundary. This action is intended to protect and conserve the halibut resource in accordance with the federal management plan. For these reasons, the Commissioner has determined that it is necessary to take this emergency action under 12 MRS §6171(3)(C).

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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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. 41, Menhaden
Filing number: 2018-066
Effective date: 4/28/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule is intended to align State of Maine menhaden fishing regulations with those set forth in the Amendment 3 to the Atlantic Menhaden Interstate Fisheries Management Plan. Amendment 3 was adopted by the ASFMC Atlantic Menhaden Management Board on November 14, 2017.

Basis statement:

This rule-making establishes the management framework for the Atlantic menhaden fishery in territorial waters, including the state allocated fishery, the episodic event fishery, and an incidental catch/small scale fishery. The state allocated fishery will operate under the quota assigned to Maine by the Atlantic Menhaden Management Board of the Atlantic States Marine Fisheries Commission (ASMFC) until such time that the quota is near to or is achieved. Notification will be then given that this fishery is closed. The episodic event fishery may be subsequently opened by notice to license holders, provided there is sufficient evidence of substantial resource remaining in territorial waters. Both the state allocation fishery and the episodic event fishery will operate under a daily landing limit of 120,000 lbs. and a weekly landing limit of 160,000 lbs. with one landing per day allowed for both catcher and carrier vessels. Additionally, for both state allocation and episodic event fisheries, vessels may only fish for and land menhaden from territorial waters Monday through Thursday. Daily reporting of Atlantic menhaden landings will be required for both the state allocated and the episodic event fisheries. An incidental catch and small scale fishery will commence after the closure the state allocated fishery, or a subsequent episodic event fishery, with a daily landing limit of 6,000 lbs. under gear restrictions. For both the state allocation and episodic event fisheries, a transfer at sea to a vessel utilizing menhaden as bait is considered a landing event. No transfer of fish at sea will be allowed under the incidental catch and small scale fishery.

Based on the comments received during the rulemaking process, the Department has made the following changes:

- A definition of a dory, which has been a traditional method of transporting an individual harvester vessel's daily catch has been included in 41.30(1).
- A clarification has been provided that should the State of Maine receive an adjustment to its state allocation quota via an annual quota update or a quota transfer as outlined in the Atlantic States Marine Fisheries Commission Interstate Fisheries Management Plan for Atlantic Menhaden, the Commissioner has the ability to extend or re-open the State Allocation Fishery program through notice (per 41.30(2)(A)).
- Harvest limits, daily (120,000 lbs.) and weekly (160,000 lbs.), for the state allocated fishery have been made consistent with limits within the episodic event fishery to simplify the monitoring and enforcement of these two distinct fisheries, as noted in 41.30(2)(B).

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- During the incidental catch and small scale fishery, harvesters are required to store fish in either barrels or totes, so that the 6000 lb. daily limit may be monitored and enforced both at sea and upon landing.

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(3)
Chapter number/title: Ch. 32, Eel Regulations: 32.65, Closure of the 2018 Elver Season
Filing number: 2018-083
Effective date: 5/24/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

An investigation by Maine Marine Patrol has revealed that there have been significant illegal sales of elvers for cash that have not been recorded through the swipe card system. Based on the extent of this activity, it is very likely that the 2018 quota has already been met or exceeded. For this reason, an immediate closure of the fishery is necessary to prevent unusual damage and imminent depletion of the elver resource, caused by further exceeding the 2018 elver fishing quota.

Basis statement:

The sustainable management of Maine's elver fishery relies on adherence to the overall annual quota established by the Atlantic States Marine Fisheries Commission (ASMFC). For 2018, the overall quota was 9,688 lbs. Because the fishery is managed under this quota, other management measures have been eliminated in recent years, including weekly closed periods to allow passage, and limitations on gear type. As of 6:00 p.m. May 21, 2018, DMR was aware of 9,030.81 lbs. of elvers that had been legally reported through the swipe card system. However, an investigation by Maine Marine Patrol has revealed that there have been significant illegal sales of elvers for cash that have not been recorded through the swipe card system. Based on the extent of this activity, it is very likely that the 2018 quota has already been met or exceeded. For this reason, an immediate closure of the fishery is necessary to prevent unusual damage and imminent depletion of the elver resource, caused by further exceeding the 2018 elver fishing quota.

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 §6706(3)
Chapter number/title: Ch. 11, Scallops: 11.14, Atlantic Sea Scallop Limited Entry Program
Filing number: 2018-089
Effective date: 6/24/2018
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

The statute requires the Department to develop a limited entry system for the issuance of scallop licenses.

Basis statement:

This regulation creates a limited entry system for the issuance of new scallop licenses, as required by 12 MRS §6706(3). It establishes two annual lotteries (one for drag licenses, one for dive licenses). The number of new licenses available is calculated by applying an exit ratio to the number of licenses retired by each gear sector in the previous calendar year. The regulation also establishes the eligibility criteria to enter the lottery and factors that would give an individual additional chances in the lottery. In developing the limited entry system, the Department consulted with the Scallop Advisory Council. The Council recommended that eligibility for the lottery be limited to individuals 18 years of age or older. The purpose of this requirement is to ensure that new licenses are awarded to individuals that have a good probability of being able to use the license. The scallop fishery occurs over the winter and spring, so would present a conflict for individuals still in high school. The SAC also felt that the fishery is a dangerous one, and that individuals should be a minimum of 18 years of age in order to safely participate as a captain in the fishery. Finally, the SAC recommended designing the lottery for drag licenses to ensure that there is opportunity for both younger (18-31 years of age) and older (31 years of age and older) fishermen.

Based on the comments received during the rulemaking process, the Department made the following changes:

- Amended the eligibility criteria pertaining to fishing violations to clarify that an individual is not eligible for the lottery if they have been convicted or adjudicated of a marine resource violation that resulted in the suspension of their license within the past seven years.
- Reduced the number of weighting criteria for extra draws in the drag lottery to being a primary crew member onboard an active commercial scallop drag vessel and/or having previously held a Maine commercial scallop drag license.
- Reduced the number of weighting criteria for extra draws in the dive lottery to being a primary crew tender for an active commercial scallop diver and/or having previously held a Maine commercial scallop dive license.

This regulation was submitted to the Legislature for review, pursuant to 5 MRS ch. 375, sub-ch. 2-A as LD 1767 during the second session of the 128th Legislature. The Legislature authorized the adoption of the rule only if the Department removed the additional weighting criteria that were provided for past participation as a license holder or crew member in the fishery. Instead, the Legislature required the inclusion of a method to increase the number of draws an applicant would receive based on the applicant's unsuccessful attempts in the lottery in consecutive years immediately preceding the lottery in which the applicant has submitted a lottery application. See Resolve 2017 ch. 43.

Fiscal impact of rule:

Enforcement of this rule will not require additional activity in this agency.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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. 36, Herring Regulations: 36.01, Herring Management Plan
Filing number: 2018-093
Effective date: 6/2/2018
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 April 25, 2018.

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 the Days Out meeting on April 25, 2018, 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, Trimester 2 (June 1 - September 30) may be four consecutive days, beginning on 6:00 p.m. Sunday to 6:00 p.m. Thursday and vessels are limited to landing 480,000 lbs. (12 trucks) weekly; and, may transfer to one carrier vessel per week up to 80,000 lbs. (2 trucks). All vessels issued a Federal Limited Access Atlantic Herring Permit Category C may fish and land Atlantic herring seven days a week and may transfer no more than 120,000 lbs. weekly to a carrier. 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)(C).

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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. 36, Herring Regulations: 36.01, Herring Management Plan
Filing number: 2018-143
Effective date: 7/21/2018
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 call held July 17, 2018.

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 call on July 17, 2018, the Atlantic Herring Section determined landing days for all vessels issued a Federal Limited Access Atlantic Herring Category A Permit for Management Area 1A, Trimester 2 (June 1 - September 30) may be five consecutive days, beginning on 6:00 p.m. Sunday to 6:00 p.m. Friday and vessels are limited to landing 640,000 lbs. (16 trucks) weekly; and, may transfer to one carrier vessel per week up to 160,000 lbs. (4 trucks). All vessels issued a Federal Limited Access Atlantic Herring Permit Category C may fish and land Atlantic herring seven days a week and may transfer no more than 120,000 lbs. weekly to a carrier. 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)(C).

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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, 6447
Chapter number/title: Ch. 25, Lobster and Drab: 25.04, Lobster Trawl Limits
Filing number: 2018-145
Effective date: 10/1/2018 (*sunset December 31, 2019*)
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

12 MRS §6447 allows Lobster Zone Councils to propose to the Commissioner rules placing certain limitations on lobster and crab fishing license holders that fish in that zone. One of those limitations is the number of lobster traps allowed on a trawl. On December 20, 2017, the Zone B Council voted unanimously in favor to initiate a referendum, which would consider limiting the maximum number of traps on a trawl to five within the waters of Zone B from the six-mile line to the 25675 line. The proposal was supported by over two thirds of those Zone B license holders voting in a referendum conducted in February 2018. On April 25, 2018 the Zone B Council voted unanimously to recommend to the Commissioner to advance this proposal to rulemaking.

Basis statement:

This rule limits the number of lobster traps on a trawl to a maximum of five within the waters of Zone B from the six-mile line to the 25675 line. The rule was amended from what was originally proposed to become effective on October 1, 2018, to allow fishermen to modify their gear in compliance with the rule. The rule change was initiated by the Zone B Council, in accordance with 12 MRS §6447. A referendum of Zone B license holders was conducted in February 2018, and over two thirds of those voting in the referendum supported the proposed rule change. Following review of the referendum results at their meeting on April 25, 2018, the Zone B Council voted unanimously to recommend to the Commissioner to advance the proposal to rule-making. On May 22, 2018, the Department held a public hearing on the proposal and accepted written comment until June 1, 2018. The Commissioner reviewed the proposal and input received through the rule-making process in accordance with 12 MRS §6446, which provides that the Commissioner may adopt the rule if it is determined to be reasonable. While the rule is reasonable, based on the input received it is clear there remains a lack of consensus amongst both Zone B fishermen, as well as fishermen from other Zones who also fish the area. Therefore, a sunset of December 31, 2019 has been added to the regulation. The Department will facilitate conversations between all fishermen fishing in this area prior to the sunset to determine if the rule should be further modified based on any compromise achieved, or continued in its current form beyond the date of the sunset.

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6671
Chapter number/title: **Ch. 7**, Requirements for Municipalities Having Shellfish Conservation Programs
Filing number: **2018-151**
Effective date: 8/21/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These changes are for the purpose of achieving greater clarity and consistency in the application of these requirements.

Basis statement:

This rule-making clarifies the existing requirements for municipalities having shellfish conservation programs by reorganizing sections to be more understandable and improving the wording of the regulation throughout the chapter. It also provides greater consistency throughout the chapter with regard to the establishment of various deadlines, using “days” throughout rather than “business days.” Finally, it amends the components of municipal shellfish management plans to be consistent with what the law allows.

Fiscal impact of rule:

No fiscal impact is anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 §§
Chapter number/title: Ch. 14, Oysters
Filing number: 2018-152
Effective date: 8/21/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

At their meeting in the fall of 2017, the Shellfish Advisory Council voted unanimously to recommend to the Department to go to rule-making to establish a minimum size of 2.5 inches for wild American oysters, with a 10% tolerance. This will minimize undersize product from being brought to market and provide opportunity for individuals who wish to harvest wild product that is not on lease or license sites.

Basis statement:

This rule creates a minimum size (2.5 inches) for American oysters, with a 10% tolerance. An exception is provided for aquaculturists who take or possess undersize oysters from their lease or license sites. The rule also establishes a 10% tolerance for European oysters, which already have a minimum size of 3 inches.

Fiscal impact of rule:

No fiscal impact is anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 §6071
Chapter number/title: Ch. 24, Importation of Live Marine Organisms
Filing number: 2018-153
Effective date: 8/21/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

This rule amends Ch. 24 to make clarifying changes, including improving and creating definitions as necessary, using consistent terminology, and providing updates throughout the chapter. The rule also allows the Commissioner, in consultation with the Aquatic Animal Health Technical Committee, to issue permits to an approved quarantine facility from facilities that do not otherwise meet the regulation requirements, under certain limited circumstances. Transfer from an approved quarantine facility is permitted only if post-import testing provides satisfactory evidence of freedom from pathogens of regulatory concern for which evidence of disease freedom of the import was not satisfied at the time of import. The rule allows for consideration of evidence other than direct testing of lots to provide evidence of disease freedom from Ceratomyxosis, Whirling disease, and PKD if importation is only in the form of embryos that have been iodine disinfected before and immediately after import, prior to the time of introduction to the waters of the receiving facility.

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this Agency. These changes will be implemented by responsible staff in their routine work.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 §6851-B
Chapter number/title: Ch. 25, Lobster and Crab: 25.70, Legal Lobster Tail (Lobster Tail Weights)
Filing number: 2018-164
Effective date: 8/21/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Maine businesses purchasing and selling whole lobster tails requested guidance from DMR regarding the range of weights for lobster tails that would ensure those tails were legal for sale within Maine.

Basis statement:

This rulemaking was initiated at the request of Maine businesses purchasing and selling whole lobster tails. These businesses requested guidance from DMR regarding the range of weights for lobster tails that would ensure those tails were legal for sale within Maine. This rulemaking provides minimum (2.7 oz.) and maximum (14 oz.) weights for legal lobster tails in the shell for sale in Maine. Previously, the only measurement provided was the legal length of tail meat that had been removed from the shell. Providing a weight for tails in the shell ensures that all retail and wholesale establishments are buying and selling only tails that are from lobsters that are of legal size in Maine.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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, 6749
Chapter number/title: Ch. 26, Sea Urchin Regulations (2018-2019 Harvesting Season)
Filing number: 2018-155
Effective date: 8/21/2018
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 2018-2019 season.

For Zone 1, 20-day seasons are proposed for divers, trappers, rakers and draggers in 2018-2019, from which harvesters may only fish up to 15 days of their choosing, the same number of days allowed during the 2017-18 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, January 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 2018-2019, from which harvesters may only fish up to 38 days of their choosing, the same number of days allowed during the 2017-18 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”); and, draggers may fish 38 days in October through January (“early season”), or December through March (“late season”).

For the Whiting & Dennys Bays Limited Access Area in Zone 2, a 15-day season is proposed for Zone 2 divers, trappers, rakers and draggers in 2018-2019, which is the same as the 2017-18 season. Zone 2 divers, rakers and trappers may fish 15 days in September, 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 October, November, December, and January (“early season”), or 15 days in December, January, February and March (“late season”). The particular days mirror days which the Sea Urchin Zone Council recommended for the Zone 2 season calendars.

This regulation also modifies the spatial closure around Cat Ledges, west of Southport Island. Recommendation from the Sea Urchin Zone Council was received to extend the closure time of this area for continued collaborative research potential. The proposed regulation clarifies the daily reporting requirement and substitutes the term “reporting device” for “transaction card” to allow for the use of more inexpensive technologies should they become available.

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 for the 2018-2019 season. For Zone 1, 20-day seasons are established for divers, trappers, rakers and draggers in 2018-2019, from which harvesters may only fish up to 15 days of their choosing, the same number of days allowed during the 2017-2018 season. For Zone 2, 45-day seasons are established for divers, trappers, rakers and draggers in 2018-2019, from which harvesters may only fish up to 38 days of their choosing, the same number of days allowed during the 2017-2018 season. For the Whiting & Dennys Bays Limited Access Area in Zone 2, a 15-day season is established for Zone 2 divers,

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

trappers, rakers and draggers in 2018-2019. This regulation also modifies the spatial closure of Cat Ledges Area and removes the sunset provision. The regulation clarifies the daily reporting requirement and substitutes the term “reporting device” for “transaction card” to allow for the use of more inexpensive technologies should they become available.

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this Agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 34, Groundfish Regulations: 34.07, Atlantic Halibut (Hippoglossus hippoglossus)
Filing number: 2018-156
Effective date: 8/21/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

In recent years, state waters catch of Atlantic halibut has been steadily increasing. Federal waters catch has also been increasing, but the overall Allowable Biological Catch (ABC) has remained relatively static. Maine exceeded its State Waters Sub-Annual Catch Limit (ACL) in 2015 and 2016, and in 2016, total catch nearly exceeded the ABC, which would have triggered implementation of restrictive Accountability Measures for the federal groundfish fishery. As a result, new Accountability Measures have been imposed that would restrict all federal permit holders from possessing halibut (in the year subsequent) should the ABC be exceeded. In 2017, the halibut stock assessment was also updated, and resulted in a lower ACL of 104 mt, or 21.8 mt for the State Waters Sub-ACL (a reduction from 25 mt in 2017). The new ACL will be effective at the start of the federal fishing year and state waters season on May 1, 2018. In order to remain within the State Waters Sub-ACL, and to prevent the ABC from being exceeded and Accountability Measures being triggered, the Department took emergency action under 12 MRS §6171(3)(C) to reduce catch in the state waters fishery by the following measures: 1) reducing the length of the state waters halibut season by ten days at each end of the season; 2) reducing the number of hooks to 250; and 3) imposing a prohibition on possession of halibut by those license holders who have been issued state commercial halibut tags when operating seaward of the territorial waters boundary. The emergency rule went into effect on April 23, 2018. Consistent with what was adopted as an emergency regulation, the Department is adopting these changes as a regular rule to ensure long-term compliance with the ACL.

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this Agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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
Filing number: 2018-157
Effective date: 8/21/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

DMR received a request from fishermen who have traditionally fished for smelt with hook and line in the fall in Zone 1. DMR has determined that the minimal level of fishing effort anticipated will not have a negative impact on the smelt resource and therefore is adopting this change to allow this activity.

Basis statement:

This rulemaking was initiated at the request of fishermen who have traditionally fished for smelt with hook and line in the fall in Zone 1. The rule allows individuals to fish for smelt by hook and line between October 1 and December 31, or by hook and line through the ice when ice is present. Prior to this rule change, the taking of smelt in Zone One (1) was allowed only by hook and line through the ice. The existing four-quart limit applies.

Fiscal impact of rule:

No fiscal impact is anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §§ 6171-A, 6856
Chapter numbers/titles: **Ch. 94** (*New*), Sanitary Control of Molluscan Shellfish
Ch. 15 (*Repeal*), General Shellfish Sanitation Requirements
Ch. 16 (*Repeal*), Uniform Physical Plant Equipment and Operation
Ch. 17 (*Repeal*), Shucker-Packer
Ch. 18 (*Repeal*), Shellstock Shipping
Ch. 19 (*Repeal*), Reshipping
Ch. 20 (*Repeal*), Depuration
Ch. 21 (*Repeal*), Shellfish Relay
Ch. 23 (*Repeal*), Standards for Closure of Contaminated or Polluted Flats
Filing number: 2018-158 thru 166
Effective date: 8/21/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The intent of this adoption and these repeals is to avoid the necessity of amending multiple regulatory chapters as the Model Ordinance is updated over time. Instead, when the Model Ordinance is updated, the Department will undertake rule-making to amend this new chapter to specify the current version.

Basis statement:

This rulemaking repeals certain existing chapters of regulation pertaining to the sanitary control of molluscan shellfish (Ch. 15, 16, 17, 18, 19, 20, 21, and 23) and replaces them with a single chapter (Ch. 94) that adopts the *National Shellfish Sanitation Program Model Ordinance* (NSSP MO) by reference. Existing Department requirements for the retail trade and various permits that are not currently included in the NSSP MO, have been incorporated in the new chapter. Some of these existing requirements have been modified to provide technical clarity.

The original proposed rule would have also repealed Ch. 9, *Harvester: Shellstock Harvesting, Handling and Sanitation*. Maine Marine Patrol provided comments that they would prefer to retain Ch. 9 to ensure clarity and enforceability of these requirements. Due to these comments, Ch. 9 is not repealed.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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. 36, Herring Regulations: 36.01, Herring Management Plan
Filing number: 2018-186
Effective date: 9/12/2018
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 as determined by a memorandum dated September 10, 2018 indicating that the assigned Trimester 2 quota for Area 1A is projected to be fully consumed by Wednesday, September 12, 2018 and thus, zero landing days would commence on Thursday, September 13, 2018.

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). ASMFC monitors the consumption of the available Trimester 2 (June 1 - September 30) quota via NOAA Fisheries Atlantic Herring Quota Monitoring site and will initiate the move to zero landing days when the Area 1A quota has reached 95% of the available quota allowance. Full utilization of the Trimester 2 quota has been projected and thus, ASMFC designates zero landing days for the Atlantic herring fishery beginning 12:01 a.m. on Thursday, September 13, 2018. Fish taken on Wednesday, September 12, 2018 may be landed on Thursday, September 13 until 12 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)(C).

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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)(B)
Chapter number/title: Ch. 41, Menhaden: 41.30, Menhaden Program
Filing number: 2018-199
Effective date: 9/15/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

For the second consecutive year, presence of Atlantic menhaden in Maine waters is ongoing throughout late summer and is expected to remain present into the fall. With sustained levels of menhaden biomass in nearshore waters, a continued harvest at a managed rate will ensure a level supply of fresh bait. Recently, Maine Department of Marine Resources (DMR) has been the recipient of additional quota via transfers of Atlantic menhaden quota from partnering states. As a result of these transfers, Maine is reopening the State Allocation fishery, as provided in 41.30(2)(A). The Commissioner has determined that it is necessary to take emergency action to implement a further reduction on the daily catch (from 120,000 lbs. to 80,000 lbs.) to prevent the depletion of the supply of Atlantic menhaden. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3)(B).

Basis statement:

The fishery for Atlantic menhaden is managed through the Atlantic States Marine Fisheries Commission (ASMFC). Maine's allocated quota share for 2018 was 2,439,114 pounds, which was fully consumed prior to commencing participation in the Episodic Events Set-Aside program on July 22, 2018. The quota for the episodic event fishery has also been fully exploited and that fishery was subsequently closed on August 11, 2018. Since that time, the fishery has been operating as an incidental and small scale fishery, with a daily limit of no more than 6,000 lbs. For the second consecutive year, presence of Atlantic menhaden in Maine waters is ongoing throughout late summer and are expected to remain present into the fall. With sustained levels of menhaden biomass in nearshore waters, a continued harvest at a managed rate will ensure a level supply of fresh bait.

Recently, Maine Department of Marine Resources (DMR) has been the recipient of additional quota via transfers of Atlantic menhaden quota from partnering states. As a result of these transfers, Maine is reopening the State Allocation fishery, as provided in 41.30(2)(A), effective September 17, 2018. As was the case under the State Allocation fishery previously, harvest may occur only between 12:01 a.m. on Monday and 11:59 p.m. Thursday each week. The daily landing limit is reduced by this emergency regulation from 120,000 lbs. to 80,000 pounds. There remains a weekly limit of 160,000 pounds. Harvesting and landings are restricted to Maine territorial waters and may occur once per 24-hour period. All landings must be reported daily via email to menhaden.dmr@maine.gov.

The Commissioner has determined that it is necessary to take emergency action upon reopening of the State Allocation fishery to implement the reduction of the daily limit from 120,000 lbs. to 80,000 lbs. to prevent the depletion of the supply of Atlantic menhaden. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3)(B).

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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. 36, Herring Regulations: 36.01, Herring Management Plan
Filing number: 2018-219
Effective date: 9/29/2018
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rule is intended to establish the open harvest days for the Atlantic herring fishery Trimester 3, October 1 - December 31. The Atlantic Herring Section held a conference call on September 18, 2018 to determine the landing days for Trimester 3 and designated five consecutive landing days for all vessels.

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). The Atlantic Herring Section held a Days Out conference call on September 18, 2018 to determine the landing days for Trimester 3 (October 1 - December 31) and designated five consecutive landings days for all vessels. Trimester 3 will open at 12:01 a.m. on Monday, October 1, 2018 and harvesters may land Atlantic herring through to 11:59 p.m. Friday, October 5. Starting October 7, 2018, landing of Atlantic herring will resume the schedule of 6 p.m. on Sundays through to 6 p.m. on Fridays. 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)(C).

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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, 6722
Chapter number/title: Ch. 11, Scallops: 2018-2019 Season
Filing number: 2018-243
Effective date: 11/14/2018
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 2018-2019 scallop fishing season. As in the 2017-2018 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 10, 2018 and the last day of the season is March 28, 2019. For Zone 1, a 60-day season for divers starts on November 20, 2018 and the last day of the season is April 20, 2019. For Zone 2, a 70-day season for draggers starts on December 3, 2018 and the last day of the season is March 28, 2019. For Zone 2, a 70-day season for divers starts on December 1, 2018 and the last day of the season is April 13, 2019. For Zone 3, a 50-day season for draggers begins on December 3, 2018 and the last day of the season is March 27, 2019. For Zone 3, a 50-day season for divers begins on December 1, 2018 and the last day of the season is March 28, 2019.

In Zone 1, Casco Bay, Sheepscot River, Damariscotta River, Muscle Ridge, and 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 all days during January 2019, in addition to open Zone 2 calendar days throughout the season.

DMR is maintaining the following targeted closures based on depletion, high concentrations of seed/sublegal scallops and/or the presence of spat-producing scallops: Lower Muscle Ridge, Eastern Casco Bay, Upper Sheepscot River, New Meadows River, Card Cove and Beals-Jonesport Bridge.

This rule removes the sunset provision that capped the vessel limit of dive harvested scallops to 30 gallons when two or more licensed scallop divers are utilizing the same platform.

This rule removes the specific drag size gear restrictions in the Kittery area (currently 5'6"), Swan's Island Conservation area (currently 8'6"), and Gouldsboro Bay (currently 4'6"). Harvesters can utilize any drag size, provided it does not exceed the State maximum of 10' 6".

In consideration of comments, the Department made the following changes:

- Zone 2 dive calendar was modified to re-distribute days from March and April into January and February, 2019.
- Section 11.10 was included and also modified to be consistent with section 11.07.

Fiscal impact of rule:

Enforcement of this rule will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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. 10, Clams and Quahogs: 10.05, Taking of Quahogs in the Sub-tidal Waters of the New Meadows, Brunswick and West Bath
Filing number: 2018-253
Effective date: 11/24/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

During the spring of 2017, the Department was made aware that harvesting of quahogs by drag was occurring in an area below the New Meadows Lakes. The Department has been monitoring the status of the quahog resource in the upper New Meadows since 2012 and has documented a decline in the population. The purpose of the proposed rule is to extend the management measures that had previously been put in place over the known extent of the quahog resource, to better manage the quahog resource to ensure the future economic viability of the fishery.

Basis statement:

The adopted regulation expands certain existing limitations on the subtidal harvest of quahogs in the New Meadows River. Under the existing regulation, the line north of which the harvest restrictions apply is the Bath/State Road in Brunswick and West Bath. The adopted regulation draws a new line north of which the limitations apply, from the northwestern tip of Indian Point, southeasterly to northern tip of Bragdon Island, continuing east to Bragdon Rock, and then continuing in a northeasterly direction to the point of land at the end of Close Reach Rd, West Bath, 43°51'21"/069°52'1". By specifying this new line, the existing restriction on the method of harvest to hand digging only, the prohibition on harvesting during the winter months (January-March), and the prohibition on harvesting on Sundays, would extend over the known subtidal quahog resource, in order to better manage the quahog fishery in this area. The rule sunsets the expanded limitations on December 31, 2020. The Department will conduct surveys to determine whether the rule should be continued beyond that date.

In consideration of the comments, the Department made the following modifications:

- Clarified that the expanded area includes those waters west of Rt. 24
- Clarified that the limitations apply only to harvest in the subtidal
- Included a sunset, so that the Department can conduct a survey of the area to determine if the limitations should be continued beyond that date.

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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, 6447
Chapter number/title: Ch. 25, Lobster and Crab: 25.04, Lobster Trawl Limits
Filing number: 2018-254
Effective date: 11/24/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

12 MRS §6447 allows Lobster Zone Councils to propose to the Commissioner rules placing certain limitations on lobster and crab fishing license holders that fish in that zone. One of those limitations is the number of lobster traps allowed on a trawl. On November 27, 2017, the Zone A Council voted unanimously to initiate a referendum, which would consider eliminating the three traps on a trawl limit maximum in Zone A and allow fishing longer trawls (more traps on a trawl). The proposal was supported by over two-thirds of the Zone A license holders voting in a referendum conducted in June 2018. On August 29, 2018, the Zone A Council voted unanimously to recommend to the Commissioner to advance this proposal to rule-making.

Basis statement:

Initiated by the Zone A Council in accordance with 12 MRS §6447, this rule eliminates the Hancock County Trawl Limit area in Zone A. This eliminates the three traps on a trawl maximum in Zone A and allows license holders to fish longer trawls (more traps on a trawl). The proposal was supported by over two-thirds of the Zone A license holders voting in a referendum conducted in June 2018. On August 29, 2018, the Zone A Council voted unanimously to recommend to the Commissioner to advance this proposal to rule-making.

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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. 36, Herring Regulations: 36.01, Herring Management Plan
Filing number: 2018-255
Effective date: 11/24/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule is intended to amend the open harvest days for the Atlantic herring fishery Trimester 3, October 1 – December 31. The Atlantic Herring Section held a conference call on November 13, 2018 to re-evaluate the landing days for Trimester 3 and designated seven landing days for all vessels.

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). The Atlantic Herring Section held a Days Out conference call on November 13, 2018 to amend the landing days for Trimester 3 (October 1 – December 31) and designated seven landings days for all vessels. 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 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)(C).

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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. 37, Freshwater Fish Regulations
Filing number: 2018-256
Effective date: 11/24/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This mirrors the 25” maximum for brown trout as established by the Maine Department of Inland Fisheries and Wildlife. The intent of the proposed rule is to provide brown trout fishermen with a consistent maximum size across waterbodies.

Basis statement:

This rule makes it unlawful to take or possess brown trout which are greater than 25 inches in total length, from the coastal waters of the State of Maine. The rule mirrors the 25” maximum for brown trout as established by the Maine Department of Inland Fisheries and Wildlife. The intent of the rule is to provide brown trout fishermen with a consistent maximum size across waterbodies.

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 §6174-A
Chapter number/title: Ch. 91 (New), Spat Collection
Filing number: 2018-257
Effective date: 11/24/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The principal reason for adopting the rule is to specify the limitations that will apply to spat collection under the spat collection license.

Basis statement:

The Department of Marine Resources has adopted a new chapter of regulation for the collection of scallop spat under the spat collection license (12 MRS §6074-A). The rules create a maximum size for the possession and sale of scallop spat of 2 inches. It limits a license holder to no more than 15 vertical lines, with a maximum of 30 spat collection bags per line. The rule limits the size of bags that may be used, and specifies marking requirements. It requires that all collection equipment is removed from the coastal waters during the month of July, and specifies the records a license holder must retain.

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 §6810-A
Chapter number/title: Ch. 110, Marine Harvesting Demonstration License
Filing number: 2018-258
Effective date: 11/24/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The intent of the rule is to provide consistency between the statute and associated rule governing the Marine Harvesting Demonstration License.

Basis statement:

Pursuant to 12 MRS §6810-A(7-A) Marine Harvesting Demonstration License holders are exempt from prohibitions on raising and hauling lobster traps during closed periods as specified in 12 MRS §6440 subsection 2. This rule removes language from the existing regulation, which did not recognize the exemption provided for in statute. This is a minor technical change intended to provide consistency between relevant statutory provisions and the regulation.

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 Closures: (7), Gouldsboro and Dyers Bays
Filing number: 2018-271
Effective date: 12/16/2018
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to implement conservation closures in the Gouldsboro and Dyers Bays within the Gouldsboro and Dyers Bay Rotational Area to protect Maine's scallop resources from the risk of unusual damage and imminent depletion. The Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in this small area will greatly reduce the abundance of the remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in the Gouldsboro and Dyers Bays within the Gouldsboro and Dyers Bay Rotational Area.

Basis statement:

The Department is taking emergency rulemaking action to implement a targeted conservation closure in the inner portions of Gouldsboro and Dyers Bays to restrict harvest and preserve the remaining legal sized scallop resource for resource rebuilding. This areal closure is within Zone 2.

Gouldsboro and Dyers Bays

This area opened for harvest on December 3rd, 2018 with approximately 40 boats concentrated within Gouldsboro Bay. Initial reports from industry indicated that rate of time to reach limits started to increase by Wednesday, December 5th – day 3 of harvesting. Boats had started to move around within Gouldsboro Bay and focus shifted towards the mouth of the Bay and also with several boats going into Dyers Bay. Marine Patrol confirmed on Friday, December 7th, 2018 that those boats working at the mouth of the bays were taking longer, into the afternoon, to reach their daily limit, with the boats harvesting inside the bays not reaching their limit at all. Reports received both from industry and Marine Patrol on Monday, December 10th, 2018 – day 6 of harvesting, indicate that many boats have moved toward the mouth of the bays, are working outside of the bays, or have left the rotational area all together. There were still a few boats remaining inside the bays on Monday (approximately 5 observed) and they were not able to reach their daily limit.

Spring survey stations were concentrated in the bays. This also represents where most the effort has taken place. This area will have been open to harvest for 10 days. This is 3 additional harvest days than was previously experienced in December 2015. There were also more active harvesters observed in the area in 2018. Denoted is a relative abundance of harvestable biomass, shown as size frequency of scallops present in the rotational area. While growth of the resource occurred during the closure period, it wasn't at a level to sustain concentrated harvesting.

The last day of harvesting for scallop draggers will be Friday, December 14, 2018. The final day of harvesting for scallop divers will be Wednesday, December 19, 2018. These specific days allow for equal harvest opportunity of ten days. This action stems from a

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

recommendation from the Scallop Advisory Council during their July 2018 meeting that requested parity of harvest opportunity when possible during emergency closures.

In summary, the Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in this small area will greatly reduce the abundance of the remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in the Gouldsboro and Dyers Bays within the Gouldsboro and Dyers Bay Rotational Area. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by 12 MRS §6171(3)(A).

Fiscal impact of rule:

Enforcement of this rule would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 Closures: (8), Machias and Little Machias Bays
Filing number: 2018-278
Effective date: 12/30/2018
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to implement a conservation closure in Machias and Little Machias Bays within the Machias Bay Rotational Area to protect Maine's scallop resources from the risk of unusual damage and imminent depletion. The Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in this small area will greatly reduce the abundance of the remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in a portion of the Machias Bay Rotational Area.

Basis statement:

The Department is taking emergency rulemaking action to implement a targeted conservation closure in Machias and Little Machias Bays to restrict harvest and preserve the remaining legal sized scallop resource for resource rebuilding. These areal closures are within Zone 2.

This area opened for harvest on December 3rd, 2018 with approximately 15 boats concentrated within Little Machias Bay. This rate of effort in Little Machias remained steady during the second week, with several boats venturing outside of the bay on good weather days. By week three, less than 5 boats remained in Little Machias. Vessels either left the rotational area or have moved outside to harvest in deeper waters as additional tows were needed to reach the daily limit inside the bay. By week four, the few boats that remain have been unable to reach the daily limit. Effort within Machias Bay was very low, a reported 3 boats were in the area within the first week of harvesting before leaving in search of better resource.

Survey stations observed in April 2018 indicated no presence of scallops during the study in Machias Bay, but healthy resource south of Little Machias Bay. However, there was sublegal and seed scallop resource observed in the Cross Island Narrows. There was an increase in available legal product during the closed years.

Most of the harvestable biomass was located outside of the Machias and Little Machias Bays. This closure would protect areas that have experienced removals of harvestable biomass.

In summary, the Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in this small area will greatly reduce the abundance of the remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in a portion of the Machias Bay Rotational Area. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by 12 MRS §6171(3)(A).

Fiscal impact of rule:

Enforcement of this rule would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 MRS §2317-B; 24-A MRS §§ 212, 2413(1)(F), 4207(9), 5002-A, 5002-B, 5005, 5010-A, 5011; Resolve 2013 ch. 19
Chapter number/title: **Ch. 275**, Medicare Supplement Insurance
Filing number: **2018-274**
Effective date: 12/26/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The primary purpose of the amendment is to comply with Section 401 of the federal *Medicare Access and CHIP Reauthorization Act of 2015* (MACRA). This act prohibits the sale of Medicare supplement insurance policies that cover Part B deductibles on or after January 1, 2020. Other changes proposed include updating a reference to the adjusted average age of Medicare supplement covered lives for all issuers in the Maine market based on rate filings, repeal of references to obsolete paper rate filing procedures, a clarification that for purposes of the rule “employee welfare benefit plan” includes COBRA and mini-COBRA coverage and a clarification that Medicare counts as creditable coverage only during a person’s 6-month open enrollment period.

Basis statement:

Ch. 275 has been amended pursuant to the Notice of Rulemaking issued August 22, 2018. The Bureau did not convene a public hearing, and the public comment period was open until 4:30 p.m. September 24, 2018.

The Bureau originally adopted Rule 275 in 1992 to standardize benefits of Medicare supplement policies pursuant to federal law and to establish standards for policy terms, disclosure, and rating. The rule was amended in 1993, 1996, 1999, 2000, 2003, 2005, 2009, and 2014.

The primary purpose of the current proposed amendments is to comply with Section 401 of the federal *Medicare Access and CHIP Reauthorization Act of 2015* (MACRA), Pub. L. No. 114-10 129 Stat. 87. MACRA prohibits the sale of Medicare supplement insurance policies that cover Part B deductibles to “newly eligible” Medicare beneficiaries on or after January 1, 2020.

The current proposed amendments also include these changes:

- updating a reference to the adjusted average age of Medicare supplement covered lives for all issuers in the Maine market based on rate filings,
- repealing references to obsolete paper rate filing procedures,
- clarifying that for purposes of the rule “employee welfare benefit plan” includes COBRA and mini-COBRA coverage, and
- clarifying that Medicare counts as creditable coverage only during a person’s 6-month open enrollment period.

Fiscal impact of rule:

No fiscal impact on state government.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation,
Office of Securities
Umbrella-Unit: **02-032**
Statutory authority: 32 MRS §§ 16302, 16605
Chapter number/title: **Ch. 527** (*New*), Federal Regulation Crowdfunding Notice Filing and Fees
Filing number: **2018-107**
Effective date: 6/16/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule is being adopted to improve the ability of the Office of Securities to fulfill its duties to protect Maine investors from fraudulent securities offerings and from other abuses. The rule would establish a notice filing and fee requirement for securities offered in Maine under federal Regulation Crowdfunding (“Reg CF”) by an issuer that either has its principal place of business in Maine or that sells 50% or greater of the aggregate amount of the offering to Maine residents. Notice filings under this rule would provide the Office of Securities basic information about these offerings and would improve the Office of Securities’ ability to protect the public from fraud, deceit, or unlawful conduct related to these offerings.

Basis statement:

Ch. 527 establishes notice filing requirements and filing fees for securities offered or sold in Maine under federal Regulation Crowdfunding (17 CFR §227) and Sections 4(a)(6) and 18(b)(4)(C) of the *Securities Act of 1933* when the issuer's principal place of business is in Maine or when 50% or more of the aggregate amount of an offering is sold to Maine residents. Under the rule, an issuer would provide notice of an offering to the Securities Administrator on a Uniform Notice of Federal Crowdfunding Offering form or by submitting copies of the offering documents filed with the Securities and Exchange Commission.

Under the *Securities Act of 1933*, each state has jurisdiction to investigate and bring enforcement actions with respect to fraud or deceit or unlawful conduct by a broker, dealer, funding portal, or an issuer in connection with Regulation Crowdfunding securities or securities transactions. The *Securities Act* also provides states with the authority to require notice filings and fees, which support states' investigative and enforcement responsibilities over regulation Crowdfunding offerings.

Fiscal impact of rule:

The fee for an initial filing under this proposed rule is \$300.00, and there is no fee proposed for amendments or renewals. The Office of Securities does not anticipate a significant number of Reg CF offerings that would require notice filings to be conducted in Maine in the near future, so a minor revenue increase to the General Fund is expected. The staff time associated with processing the additional notice filings and pursuing the Office’s oversight duties is expected to result in a minor cost increase against the Office’s Other Special Revenue Funds. Any additional revenue collected and costs incurred by the Office of Securities in the Department of Professional and Financial Regulation are expected to be minor, and the costs can be absorbed within existing budgeted resources.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation
Board of Real Estate Appraisers

Umbrella-Unit: **02-298**

Statutory authority: 32 MRS §§ 14012, 14027

Chapter number/title: **Ch. 220**, Educational Course Requirements
Ch. 240, Standards of Professional Practice

Filing number: **2018-169, 170**

Effective date: 8/29/2018

Type of rule: Routine Technical

Emergency rule: No

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

Basis statement:

The amendments to Ch. 220 provide that a continuing education credit of up to 7 hours may be granted once during a continuing education cycle for participation, other than as a student, in appraisal education processes and programs. These amendments will improve compliance with Federal standards, and were proposed in response to a Federal audit conducted in the spring of 2017.

The amendments to Ch. 240 update the Standards with which licensees must comply. Effective January 1, 2018 licensees will be expected to comply with the 2018-2019 edition of the *Uniform Standards of Professional Appraisal Practice* ("USPAP"). Title 32 MRS §14012(3) authorizes the board to establish standards of practice for licensed real estate appraisers, and 32 MRS §14028 requires licensees to comply with the *Uniform Standards of Professional Appraisal Practice* ("USPAP"), as promulgated by the Appraisal Standards Board of the Appraisal Foundation. This amendment designates the 2018-19 edition of USPAP as the standards of practice in effect beginning January 1, 2018. Changes from the 2016-17 edition are discussed in detail in the Appraisal Standards Board's "2017 Summary of Actions Related to USPAP Changes" (February 23, 2017). This document may be downloaded from the Appraisal Foundation website: www.appraisalfoundation.org.

Fiscal impact of rule:
None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 §§ 18308(4), 18324, 18350, 18351

Chapter number/title: **Ch. 13**, Continuing Education

Filing number: **2018-237**

Effective date: 11/12/2018

Type of rule: Routine Technical

Emergency rule: No

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

Basis statement:

This rule is a complete repeal and replace of the current rule for the specific purposes as follows:

- Eliminates categories of continuing education activities.
- Identifies required areas of study as a condition for dentists to prescribe opioids.
- Identifies required areas of study as a condition for dentists to hold a sedation permit.
- Clarifies requests for "Inactive status" and requirements to return to active practice.
- Clarifies eligible continuing education activities such as online courses and webinars.
- Increases the number of hours required for renewal of denturist licensure from 20 to 30 biennially.
- Requires faculty licensees to complete continuing education as a condition to renew.
- Clarifies the continuing education audit process.
- Clarifies the documentation requirements.

Fiscal impact of rule:
N/A.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation,
Office of Professional and Occupational Regulation,
Board of Licensure for Professional Land Surveyors

Umbrella-Unit: **02-360**

Statutory authority: 32 MRS ch. 141

Chapter number/title: **Ch. 10,** Definitions (*Amend.*)
Ch. 20, General Information (*Amend.*)
Ch. 40, Qualifications for Licensure as Land Surveyors-in-
Training (*Amend.*)
Ch. 50, Qualifications for Licensure as Professional Land
Surveyors (*Amend.*)
Ch. 60, Licensure by Comity (*Amend.*)
Ch. 70, Continuing Education (*Amend.*)
Ch. 90, Standards of Practice (*Amend.*)
Ch. 100, Enforcement and Disciplinary Procedures (*Repeal*)

Filing numbers: **2018-189 thru 196**

Effective date: 9/19/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To update rules to reflect current Board practices.

Basis statement:

The Board of Licensure for Professional Land Surveyors last revised their rules in 2001 and the changes update the rules to reflect current practices and changes since 2001. The amendments to Ch. 10 and Ch. 20 make minor changes to update those chapters. The amendments to Ch. 40 change the required courses but do not increase the hours required to qualify for a license, and requires that work must take place under the supervision of a licensed surveyor. Ch. 40 amendments reflect that the licensure exam is no longer administered by the Board. Ch. 50 amendments incorporate language that the required hours be under the supervision of a professional surveyor and amends the rules to reflect current Board administrative practices. Ch. 60 reflects changes to the description of the examination. Ch. 70 expands the courses that meet the requirements for continuing education to include distance learning courses. Ch. 90 reflects a minor change on page one eliminating reference to another part of the rules. Ch. 100 is repealed in its entirety as unnecessary.

Fiscal impact of rule:

None.

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Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation,
Board of Licensure in Medicine

Umbrella-Unit: **02-373**

Statutory authority: 32 MRS §§ 3269(3), (7), 3300-F

Chapter number/title: **Ch. 21**, Use of Controlled Substances for Treatment of Pain
(jointly with State Board of Nursing, and Board of Osteopathic Licensure)

Filing number: **2018-043**

Effective date: 3/24/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To update the existing rule to conform to changes in laws, rules, and standards of care, including the use of universal precautions, for the use of controlled substances for treatment of pain.

Basis statement:

This is an update to an existing joint rule regarding the use of controlled substances for the treatment of pain in Maine. The Boards first published the rule for public comment on May 3, 2017. The Boards did not receive requests for a public hearing on the proposed rule, and the comment period for the rule closed on June 2, 2017. The Boards subsequently 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 September 27, 2017. The Boards did not receive requests for a public hearing on the republished rule, and the comment period closed on October 27, 2017. The Boards received no comment(s) regarding the re-published rule.

As originally proposed, the new rule: Set out the purpose of the rule; re-organized the previous rule; established definitions of terms used throughout the rule; established principles for proper pain management, including "universal precautions" for prescribing; and required continuing medical education regarding opioid prescribing.

The rule as originally proposed was organized into the following sections:

Section 1 sets out the purpose of the joint rule.

Section 2 defines terms used throughout the rule.

Section 3 establishes principles of proper pain management, including: .

- Developing and maintaining competence
- Universal precautions
- Reportable acts
- Compliance with controlled substance laws and regulations
- Compliance with CDC guideline for prescribing opioids for chronic pain

Section 4 requires continuing education regarding opioid prescribing.

As indicated above, following review of public comments, the Boards voted to make several substantive changes to the proposed rule. The substantive changes to the proposed rule included:

1. Adding a definition of "medical emergency";
2. Adding a definition of the term "opioid use disorder";
3. Amending the definition of "serious illness" to comport with the amendment to that definition in Title 22 MRS §1726(1)(B), to include "chronic, unremitting or intractable pain such as neuropathic pain";
4. Exempting the use of "universal precautions" during a genuine "medical emergency";

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5. Amending the risk assessment to encourage the use of an appropriate risk screening tool and suggested factors to be considered;

6. Adding an exemption to the dosage limits to comport with changes in the law as follows:

"Individuals who are prescribed a second opioid after proving unable to tolerate a first opioid, thereby causing the individual to exceed the 100MME limit for active prescriptions. For this exemption to apply, each individual prescription must not exceed 100MME (Exemption Code H)";

7. Amending the prescription requirements/restrictions section to include "palliative care" and "Prescriptions for acute pain shall be limited to a 7 day supply within a 7 day period, unless the opioid product is labeled by the federal Food and Drug Administration to be dispensed only in a stock bottle that exceeds a 7-day supply as prescribed, in which case the amount dispensed may not exceed a 14-day supply";

8. Amending the periodic review of treatment efficacy to eliminate the requirement of obtaining and documenting "objective evidence" and instead requiring the collection of "collateral information" from family members and other care givers regarding pain, function and quality of life.

9. Replacing the term "addiction" with the term "opioid use disorder";

10. Amending the exceptions to the requirement that clinicians check the PMP prior to prescribing controlled drugs to include the following exception: "The controlled substance is directly ordered, prescribed or administered to a person suffering from pain associated with end-of-life or hospice care";

11. Amending the treatment agreement section to require a treatment agreement "before prescribing any controlled substances to a patient for 90 days or more for chronic non-cancer/non-hospice/non-end-of-life pain";

12. Amending the term "urine drug screens" to "toxicological drugs screens" to reflect the fact that clinicians may use other means of testing;

13. Amending the toxicological testing section to give clinicians the discretion to "use clinical judgment in deciding whether or not to initiate a trial course of treatment prior to receipt of the results of the toxicological drug screen";

14. Amending the continuing education section to require all physicians and physician assistants licensed with the Board of Licensure in Medicine to complete 3 hours of Category 1 credit Continuing Medical Education by December 31, 2018 and thereafter, every two years, on the prescribing of opioid medication regardless of whether or not they prescribe opioid medication.

Fiscal impact of rule:

Minimal.

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Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation,
State Board Nursing

Umbrella-Unit: **02-380**

Statutory authority: 32 MRS §§ 2102(2-A), 2153-A(1), 2210

Chapter number/title: **Ch. 21**, Use of Controlled Substances for Treatment of Pain
*(jointly with Board of Licensure in Medicine, and Board of
Osteopathic Licensure)*

Filing number: **2018-044**

Effective date: 3/24/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To update the existing rule to conform to changes in laws, rules, and standards of care, including the use of universal precautions, for the use of controlled substances for treatment of pain.

Basis statement:

This is an update to an existing joint rule regarding the use of controlled substances for the treatment of pain in Maine. The Boards first published the rule for public comment on May 3, 2017. The Boards did not receive requests for a public hearing on the proposed rule, and the comment period for the rule closed on June 2, 2017. The Boards subsequently 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 September 27, 2017. The Boards did not receive requests for a public hearing on the republished rule, and the comment period closed on October 27, 2017. The Boards received no comment(s) regarding the re-published rule.

As originally proposed, the new rule: Set out the purpose of the rule; re-organized the previous rule; established definitions of terms used throughout the rule; established principles for proper pain management, including "universal precautions" for prescribing; and required continuing medical education regarding opioid prescribing.

The rule as originally proposed was organized into the following sections:

Section 1 sets out the purpose of the joint rule.

Section 2 defines terms used throughout the rule.

Section 3 establishes principles of proper pain management, including: .

- Developing and maintaining competence
- Universal precautions
- Reportable acts
- Compliance with controlled substance laws and regulations
- Compliance with CDC guideline for prescribing opioids for chronic pain

Section 4 requires continuing education regarding opioid prescribing.

As indicated above, following review of public comments, the Boards voted to make several substantive changes to the proposed rule. The substantive changes to the proposed rule included:

1. Adding a definition of "medical emergency";
2. Adding a definition of the term "opioid use disorder";
3. Amending the definition of "serious illness" to comport with the amendment to that definition in Title 22 MRS §1726(1)(B), to include "chronic, unremitting or intractable pain such as neuropathic pain";
4. Exempting the use of "universal precautions" during a genuine "medical emergency";

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5. Amending the risk assessment to encourage the use of an appropriate risk screening tool and suggested factors to be considered;

6. Adding an exemption to the dosage limits to comport with changes in the law as follows:

"Individuals who are prescribed a second opioid after proving unable to tolerate a first opioid, thereby causing the individual to exceed the 100MME limit for active prescriptions. For this exemption to apply, each individual prescription must not exceed 100MME (Exemption Code H)";

7. Amending the prescription requirements/restrictions section to include "palliative care" and "Prescriptions for acute pain shall be limited to a 7 day supply within a 7 day period, unless the opioid product is labeled by the federal Food and Drug Administration to be dispensed only in a stock bottle that exceeds a 7-day supply as prescribed, in which case the amount dispensed may not exceed a 14-day supply";

8. Amending the periodic review of treatment efficacy to eliminate the requirement of obtaining and documenting "objective evidence" and instead requiring the collection of "collateral information" from family members and other care givers regarding pain, function and quality of life.

9. Replacing the term "addiction" with the term "opioid use disorder";

10. Amending the exceptions to the requirement that clinicians check the PMP prior to prescribing controlled drugs to include the following exception: "The controlled substance is directly ordered, prescribed or administered to a person suffering from pain associated with end-of-life or hospice care";

11. Amending the treatment agreement section to require a treatment agreement "before prescribing any controlled substances to a patient for 90 days or more for chronic non-cancer/non-hospice/non-end-of-life pain";

12. Amending the term "urine drug screens" to "toxicological drugs screens" to reflect the fact that clinicians may use other means of testing;

13. Amending the toxicological testing section to give clinicians the discretion to "use clinical judgment in deciding whether or not to initiate a trial course of treatment prior to receipt of the results of the toxicological drug screen";

14. Amending the continuing education section to require all physicians and physician assistants licensed with the Board of Licensure in Medicine to complete 3 hours of Category 1 credit Continuing Medical Education by December 31, 2018 and thereafter, every two years, on the prescribing of opioid medication regardless of whether or not they prescribe opioid medication.

Fiscal impact of rule:

Minimal.

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Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation,
State Board Nursing

Umbrella-Unit: **02-380**

Statutory authority: 32 MRS §2153-A

Chapter number/title: **Ch. 3**, General Requirements Relating to Licensure

Filing number: **2018-228**

Effective date: 10/24/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To update the rule to reflect current practice and increase the verification of licensure fee from \$10.00 to \$30.00.

Basis statement:

The amendment to Ch. 3, *Requirements Relating to Licensure*, was undertaken at the approval of the Board to update the language to current Board procedures. The rule had not been amended since April of 1979 and this was before current technology and the nurse licensure compact. The amendment will clarify how a licensee may receive a copy of his/her license, when a Declaration of Primary Residence is required to comply with the nurse licensure compact, and increases the fee for verification of licensure when the information cannot be verified through the NURSVS system. The fee Increase is in alignment with the NURSVS verification fee.

Fiscal impact of rule:

None.

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Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation,
Board of Osteopathic Licensure

Umbrella-Unit: **02-383**

Statutory authority: 32 MRS §§ 2562, 2600-C

Chapter number/title: **Ch. 21**, Use of Controlled Substances for Treatment of Pain
(jointly with Board of Licensure in Medicine, and State Board of Nursing)

Filing number: **2018-045**

Effective date: 3/24/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To update the existing rule to conform to changes in laws, rules, and standards of care, including the use of universal precautions, for the use of controlled substances for treatment of pain.

Basis statement:

This is an update to an existing joint rule regarding the use of controlled substances for the treatment of pain in Maine. The Boards first published the rule for public comment on May 3, 2017. The Boards did not receive requests for a public hearing on the proposed rule, and the comment period for the rule closed on June 2, 2017. The Boards subsequently 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 September 27, 2017. The Boards did not receive requests for a public hearing on the republished rule, and the comment period closed on October 27, 2017. The Boards received no comment(s) regarding the re-published rule.

As originally proposed, the new rule: Set out the purpose of the rule; re-organized the previous rule; established definitions of terms used throughout the rule; established principles for proper pain management, including "universal precautions" for prescribing; and required continuing medical education regarding opioid prescribing.

The rule as originally proposed was organized into the following sections:

Section 1 sets out the purpose of the joint rule.

Section 2 defines terms used throughout the rule.

Section 3 establishes principles of proper pain management, including: .

- Developing and maintaining competence
- Universal precautions
- Reportable acts
- Compliance with controlled substance laws and regulations
- Compliance with CDC guideline for prescribing opioids for chronic pain

Section 4 requires continuing education regarding opioid prescribing.

As indicated above, following review of public comments, the Boards voted to make several substantive changes to the proposed rule. The substantive changes to the proposed rule included:

1. Adding a definition of "medical emergency";
2. Adding a definition of the term "opioid use disorder";
3. Amending the definition of "serious illness" to comport with the amendment to that definition in Title 22 MRS §1726(1)(B), to include "chronic, unremitting or intractable pain such as neuropathic pain";
4. Exempting the use of "universal precautions" during a genuine "medical emergency";

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5. Amending the risk assessment to encourage the use of an appropriate risk screening tool and suggested factors to be considered;

6. Adding an exemption to the dosage limits to comport with changes in the law as follows:

"Individuals who are prescribed a second opioid after proving unable to tolerate a first opioid, thereby causing the individual to exceed the 100MME limit for active prescriptions. For this exemption to apply, each individual prescription must not exceed 100MME (Exemption Code H)";

7. Amending the prescription requirements/restrictions section to include "palliative care" and "Prescriptions for acute pain shall be limited to a 7 day supply within a 7 day period, unless the opioid product is labeled by the federal Food and Drug Administration to be dispensed only in a stock bottle that exceeds a 7-day supply as prescribed, in which case the amount dispensed may not exceed a 14-day supply";

8. Amending the periodic review of treatment efficacy to eliminate the requirement of obtaining and documenting "objective evidence" and instead requiring the collection of "collateral information" from family members and other care givers regarding pain, function and quality of life.

9. Replacing the term "addiction" with the term "opioid use disorder";

10. Amending the exceptions to the requirement that clinicians check the PMP prior to prescribing controlled drugs to include the following exception: "The controlled substance is directly ordered, prescribed or administered to a person suffering from pain associated with end-of-life or hospice care";

11. Amending the treatment agreement section to require a treatment agreement "before prescribing any controlled substances to a patient for 90 days or more for chronic non-cancer/non-hospice/non-end-of-life pain";

12. Amending the term "urine drug screens" to "toxicological drugs screens" to reflect the fact that clinicians may use other means of testing;

13. Amending the toxicological testing section to give clinicians the discretion to "use clinical judgment in deciding whether or not to initiate a trial course of treatment prior to receipt of the results of the toxicological drug screen";

14. Amending the continuing education section to require all physicians and physician assistants licensed with the Board of Licensure in Medicine to complete 3 hours of Category 1 credit Continuing Medical Education by December 31, 2018 and thereafter, every two years, on the prescribing of opioid medication regardless of whether or not they prescribe opioid medication.

Fiscal impact of rule:

Minimal.

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Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

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

Umbrella-Unit: **02-385**

Statutory authority: 10 MRS §§ 9001, 9005-A, 9006, 9021, 9041, 9042, 9061, 9063, 9064

Chapter number/title: **Ch. 110**, State Certification of Modular Homes

Filing number: **2018-016**

Effective date: 2/5/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

Updating rules to comply with Federal HUD regulations and industry standards by adopting national codes.

Basis statement:

The changes in Ch. 110 eliminate the requirement for sprinklers in new manufactured homes and adopt updated standards that will not increase the cost of new manufactured homes.

Fiscal impact of rule:

None.

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Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

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

Umbrella-Unit: **02-385**

Statutory authority: 10 MRS §§ 9001, 9005-A, 9006, 9021, 9041, 9042, 9061, 9063, 9064

Chapter number/title: **Ch. 380**, Licensing – Adoption of Codes and Standards

Filing number: **2018-017**

Effective date: 2/5/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

Updating rules to comply with Federal HUD regulations and industry standards by adopting national codes.

Basis statement:

Minor changes.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

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

Umbrella-Unit: **02-385**

Statutory authority: 10 MRS §§ 9001, 9005-A, 9006, 9021, 9041, 9042, 9061, 9063, 9064

Chapter number/title: **Ch. 890**, Manufactured Home Installation Standards

Filing number: **2018-018**

Effective date: 2/5/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

Updating rules to comply with Federal HUD regulations and industry standards by adopting national codes.

Basis statement:

The changes in Ch. 890 are mandated by the United States Department of Housing and Urban Development, HUD. The major change in Ch. 890 is that the manufactured housing inspectors will perform the current preoccupancy inspections in 30% of new manufactured homes installed in Maine instead of the current 20%.

Fiscal impact of rule:

None.

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Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

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

Umbrella-Unit: **02-385**

Statutory authority: 10 MRS §§ 9001, 9005-A, 9006, 9021, 9041, 9042, 9061, 9063, 9064

Chapter number/title: **Ch. 900**, Used Manufactured Home Installation Standards

Filing number: **2018-019**

Effective date: 2/5/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

Updating rules to comply with Federal HUD regulations and industry standards by adopting national codes.

Basis statement:

Ch. 900 changes modify wind and roof load zones and remove these zone requirements by county. Other changes in this chapter address crawlspace ventilation and modify certain definitions for clarity and ease of use.

Fiscal impact of rule:

None.

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Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

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

Umbrella-Unit: **02-392**

Statutory authority: 32 MRS §§ 13720, 13815

Chapter number/title: **Ch. 40** (*New*), Authorization, Training and Procedures for
Prescribing and Dispensing Naloxone Hydrochloride

Filing number: **2018-081**

Effective date: 5/23/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

This chapter establishes procedures and standards for authorizing pharmacists to prescribe and dispense naloxone hydrochloride ("Naloxone HCl"), and training requirements and protocols.

Basis statement:

This rule is in response to PL 2017 ch. 249 (*Emergency*), *An Act Regarding the Dispensing of Naloxone Hydrochloride by Pharmacists*, which directs the Maine Board of Pharmacy to establish procedures and standards for authorizing pharmacists to prescribe and dispense naloxone hydrochloride.

Ch. 40 establishes procedures and standards for authorizing pharmacists to prescribe and dispense naloxone hydrochloride ("Naloxone HCl"), and training requirements and protocols.

Fiscal impact of rule:

None.

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Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation Office of Professional and Occupational Regulation,
Board of Licensure of Podiatric Medicine

Umbrella-Unit: **02-396**

Statutory authority: 32 MRS §§ 3605-B, 3657

Chapter number/title: **Ch. 21**, Use of Controlled Substances for Treatment of Pain

Filing number: **2018-112**

Effective date: 6/30/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To update the existing rule to conform to standards of care for the use of controlled substances for treatment of pain.

Basis statement:

This revision of Ch. 21 is adopted to update an existing rule so that it better conforms to recently revised standards of care for the use of controlled substances for the treatment of pain.

The changes were initially developed as part of a consolidated rulemaking proceeding by the Board of Licensure in Medicine, the State Board of Nursing, the Board of Osteopathic Licensure and the Board of Licensure of Podiatric Medicine (hereinafter, the "Boards") to adopt joint rule revisions relating to the use of controlled substances for treatment of pain, notice of which was originally published on May 3, 2017. As originally proposed, the rule revisions set forth standards for prescribing controlled substances for treatment of pain including: defining certain terms; requiring that clinicians achieve and maintain competence in assessing and treating pain; requiring that clinicians consider the use of non-pharmacologic modalities and non-controlled drugs in treatment of pain prior to prescribing controlled substances; requiring that clinicians use and document Universal Precautions when prescribing controlled substances (i.e. evaluating the patient including conducting a risk assessment to minimize the potential for adverse effects, abuse, misuse, diversion, addiction and overdose, developing a treatment plan, obtaining informed consent, employing a treatment agreement, monitoring, and creating and maintaining medical records); requiring that clinicians report illegal acts such as the illegal acquisition and selling of drugs; requiring that clinicians comply with state and federal controlled substance laws and regulations and CDC guidelines for prescribing opioids; and requiring clinicians who prescribe controlled substances to maintain current clinical knowledge by complying with continuing education requirements.

Following receipt of written comments, the Boards decided to make substantive changes to the proposed revised rule, including adding definitions for "medical emergency" and "opioid use disorder" and changes to the section of the rule regarding risk assessment. As a result, notice of the proposed rulemaking adoption with those substantive changes was re-published by the Boards on September 27, 2017 to allow for additional public comment regarding the changes to the rule as originally proposed. After the deadline for public comment had passed, all four of the Boards finally approved and adopted identical amendments to the rule that reflected the substantive changes made in response to the comments received in response to the original May 3, 2017 notice. However, when the final adoption packets were assembled for submission to the Office of the Secretary of State for acceptance and final approval, a procedural deficiency in that of the Board of Licensure of Podiatric Medicine was discovered (no indication of approval by the Attorney General's Office on the MAPA-I form). In order to cure that procedural deficiency, a third Notice of Agency Rulemaking Proposal was published

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

on April 4, 2018 by the Board of Licensure of Pediatric Medicine alone. No public hearing was scheduled and none was requested. A May 4, 2018 deadline for public comments was established. Except for the reinstatement of references to the Board of Licensure of Podiatric Medicine and the addition of Section 4 (4), the text of the rule as Noticed on April 4, 2018 and adopted by this Board on June 7, 2018 is the same as the text of the rule as approved and adopted by the three other Boards (effective March 24, 2018, see filings 2018-043, 044, 045).

Fiscal impact of rule:

Minimal.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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: 5 MRS §3360-M; 24 MRS §2986; 25 MRS §§ 2915, 3821;
PL 2017 c. 156
Chapter number/title: **Ch. 71**, Uniform Standardized Forensic Examination Kit for Sexual
Assault Evidence Collection
Filing number: **2018-167**
Effective date: 7/17/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This chapter defines the uniform forensic examination kit to be used by licensed medical facilities and health care practitioners for evidence collection in alleged cases of sexual assault.

This rule defines the contents of the uniform standardized examination kit to be used for forensic evidence collection in alleged cases of sexual assault. The rule lists the contents of the kit, includes instructions for administering the kit, and includes a checklist for examiners to follow and enclose with the completed kit.

Basis statement (from email received re: this adoption, from Department of Public Safety Staff Attorney Christopher Parr dated July 12, 2018):

“Pursuant to Sec. 5 of PL 2017, c. 156, “An Act To Amend the Laws Governing Forensic Examination Kits” (@
http://www.mainelegislature.org/legis/bills/bills_128th/chapters/PUBLIC156.asp), with this email I am forwarding to you a copy of 16-219 CMR c. 71, *Uniform Standardized Forensic Examination Kit for Sexual Assault Evidence Collection*, that includes the changes to the rule that Sec. 5 of PL 2017, c. 156 authorized the Department of Public Safety to make without having to go through the MAPA rulemaking process.”

Fiscal impact of rule:

None provided.

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Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Public Safety, **Gambling Control Board**
Umbrella-Unit: **16-633**
Statutory authority: 8 MRS §1003(1)(B)(I),(3)(J); 8 MRS §1031(1)
Chapter number/title: **Ch. 28**, Advanced Deposit Wagering
Filing number: **2018-084**
Effective date: 6/23/2018
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

This rule is to comply with changes in state law under 8 MRS ch. 31 sub-ch. 7, *Advanced Deposit Wagering*.

Basis statement:

This is a new rule to comply with changes in the state law under 8 MRS ch. 31 sub-ch. 7, *Advanced Deposit Wagering*, under statutory authority of 8 MRS §1003(1)(B)(I), (3)(J) and 8 MRS §1031(1).

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Public Safety, **Gambling Control Board**
Umbrella-Unit: **16-633**
Statutory authority: 17 MRS §§ 317, 1843
Chapter number/title: **Ch. 30**, Rules Relating to Beano by Federally Recognized Indian Tribes (*formerly* 16-222 ch. 7)
Ch. 31, Rules Relating to Beano (*formerly* 16-222 ch. 3)
Ch. 32, Rules Relating to Games of Chance (*formerly* 16-222 ch. 2)
Filing number: **2018-140, 141, 142**
Effective date: 7/25/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These rules are to comply with changes in state law under 17 MRS ch. 62 and 13-A.

Basis statement:

This is the routine technical adoption for Non-Profit Charitable Games of Chance, beano/bingo and high stakes bingo to include the explanation of whether a license or registration is required for the charitable event, who is eligible for a license or registration, advertising and problem gambling awareness requirements and what records are required to submit or hold in possession.

These rules routine technical standard changes to comply with changes in state law under Title 17 ch. 62 and ch. 13-A with the specific statutory authority under 17 MRS ch. 62 §1843, ch. 314-A §317 & ch. 314-A.

Fiscal impact of rule:

Non-applicable.

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Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Public Safety, Office of State Fire Marshal,
Bureau of Building Codes and Standards

Umbrella-Unit: **16-642**

Statutory authority: 10 MRS §9722

Chapter number/title: **Ch. 1**, Maine Uniform Building Code and Uniform Energy Code -
Administrative Procedures

Filing number: **2018-006**

Effective date: 1/23/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To conform to the current statute that was passed in the last legislative session and to clarify the definition of a seasonal dwelling.

Basis statement:

This rule is amended to conform to a change in the statute that allows towns below 4,000 residents to adopt the building code, the energy code, or both building and energy codes. It also raises the threshold for municipal enforcement to 4,000 residents. It also clarifies a seasonal cottage to allow some seasonal structures to not comply with energy code requirements, but still comply with building and safety regulations.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Public Safety, Office of State Fire Marshal,
Bureau of Building Codes and Standards

Umbrella-Unit: **16-642**

Statutory authority: 10 MRS §9722

Chapter number/title: **Ch. 2**, Maine Uniform Building Code and Uniform Energy Code –
Third Party Inspectors (“TPI”)

Filing number: **2018-007**

Effective date: 1/23/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To conform to the current statute that was passed in the last legislative session.

Basis statement:

This rule is amended to reassign duties from the State Planning Office to the Maine Department of Economic and Community Development.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Public Safety, Office of State Fire Marshal,
Bureau of Building Codes and Standards

Umbrella-Unit: **16-642**

Statutory authority: 10 MRS §9722

Chapter number/title: **Ch. 3**, Maine Uniform Building Code – Commercial Building Code of Maine

Filing number: **2018-008**

Effective date: 1/23/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To conform to the current statute that was passed in the last legislative session.

Basis statement:

This rule adopts the 2015 version of the *International Building Code*. This rule was amended to conform to a change in the statute that allows towns below 4,000 residents to adopt the building code, the energy code, or both building and energy codes. It also raises the threshold for municipal enforcement to 4,000 residents. It also removes the requirement to sprinkler home based occupancies, and raises the required threshold to install sprinklers in restaurants. This rule also amends the requirements on daycare occupancies to match the requirements of the *Life Safety Code* as adopted by the State Fire Marshal, since this agency inspects all daycares within the State.

Fiscal impact of rule:

None: as new codes are adopted, exceptions are granted and new requirements are added. A careful review of the code changes shows no apparent increase to construction costs.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Public Safety, Office of State Fire Marshal,
Bureau of Building Codes and Standards

Umbrella-Unit: **16-642**

Statutory authority: 10 MRS §9722

Chapter number/title: **Ch. 4**, Maine Uniform Building Code – Existing Building Code

Filing number: **2018-009**

Effective date: 1/23/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To conform to the current statute that was passed in the last legislative session.

Basis statement:

This rule adopts the 2015 *International Existing Building Code*. This rule was amended to conform to a change in the statute that allows towns below 4,000 residents to adopt the building code, the energy code, or both building and energy codes. It also raises the threshold for municipal enforcement to 4,000 residents.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Public Safety, Office of State Fire Marshal,
Bureau of Building Codes and Standards

Umbrella-Unit: **16-642**

Statutory authority: 10 MRS §9722

Chapter number/title: **Ch. 5**, Maine Uniform Building and Energy Code and Maine
Uniform Building Code – Residential Building Code for One and
Two-Family Dwellings in Maine

Filing number: **2018-010**

Effective date: 1/23/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To conform to the current statute that was passed in the last legislative session, and adoption of the 2015 version of the *International Residential Code*.

Basis statement:

This rule adopts the 2015 *International Residential Code*. This rule was amended to conform to a change in the statute that allows towns below 4,000 residents to adopt the building code, the energy code, or both building and energy codes. It also raises the threshold for municipal enforcement to 4,000 residents. The rule also reduces the allowable void spaces within a home to no more than 500 square feet. This rule also defines the use of a rooming and lodging facility to bring this code into compliance with the *Life Safety Code*. This rule also expands compliance options for townhomes. This rule also includes Appendix V which defines the requirements for Tiny Homes.

Fiscal impact of rule:

None: as new codes are adopted, exceptions are granted and new requirements are added. A careful review of the code changes shows no apparent increase to construction costs.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Public Safety, Office of State Fire Marshal,
Bureau of Building Codes and Standards

Umbrella-Unit: **16-642**

Statutory authority: 10 MRS §9722

Chapter number/title: **Ch. 6**, Maine Uniform Energy Code - Energy Conservation Code
of Maine

Filing number: **2018-011**

Effective date: 1/23/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To conform to the current statute that was passed in the last legislative session.

Basis statement:

This rule adopts the 2009 *International Energy Code*. This rule was amended to conform to a change in the statute that allows towns below 4,000 residents to adopt the building code, the energy code, or both building and energy codes. It also raises the threshold for municipal enforcement to 4,000 residents.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 §§ 111, 301, 711, 7903, 8302; PL 2017 ch. 199
Chapter number/title: **Ch. 880**, Attachments to Joint-Use Utility Poles; Determination and Allocation of Costs; Procedure
Filing number: **2018-012**
Effective date: 1/24/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission (Commission) amends Ch. 880 of the Commission's rules regarding attachments to joint use utility poles.

Basis statement:

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. 2017-00247, issued on January 12, 2018. 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, 2018 to December 31, 2018
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, 7104-B
Chapter number/title: Ch. 285, Maine Telecommunications Education Access Fund
Filing number: 2018-028
Effective date: 7/1/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Pursuant to 35-A MRS §7104-B and Sections 1 and 3 of PL 2017 ch. 244, "An Act to Ensure Continued Availability of High-speed Broadband Internet at Maine's Schools and Libraries," the Public Utilities Commission amends, effective July 1, 2018, Ch. 285, *Maine Telecommunications Education Access Fund*, to conform the rule to current Maine law.

Basis statement:

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. 2017-00283, issued on February 8, 2018. 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:

Minimal fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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, 7104, 7104-B; PL 2011 ch. 600, *and* PL 2017 ch. 244
Chapter number/title: **Ch. 284**, Prepaid Wireless Fee
Filing number: **2018-035**
Effective date: 3/10/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Pursuant to 35-A MRS §§ 7104-B (2-A) and 7104-C, and Section 2 of PL 2017 ch. 244 "An Act to Ensure Continued Availability of High-speed Broadband Internet at Maine's Schools and Libraries," the Maine Public Utilities Commission adopts amendments to Ch. 284, *Prepaid Wireless Fee*, to conform Ch. 284 to current Maine law.

Basis statement:

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. 2017-00302, issued on February 23, 2018. 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:

Minimal fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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; Resolve 2007 ch. 183
Chapter number/title: **Ch. 324**, Small Generator Interconnection Procedures
Filing number: **2018-049**
Effective date: 4/8/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopts amendments to the Commission's *Small Generator Interconnection Procedures* rule (Ch. 324). The amendments include changes based on comments received in a prior, though uncompleted, Ch. 324 rulemaking (Docket 2016-00268).

Basis statement:

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. 2017-00296, issued on March 23, 2018. 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:

Minimal fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 §§ 5101-D. 5101-E
Chapter number/title: **Ch. 520**, Tour, Charter and Water Taxi Services, and
Unscheduled Freight Services in Casco Bay
Filing number: **2018-063**
Effective date: 4/25/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopts amendments to Ch. 520, the rule that governs unscheduled tour, charter, water taxi, and unscheduled freight services in Casco Bay. The revised rule amends the definition of charter service to address certain circumstances under which waivers have been granted for the provision of charter service, and promotes efficiency in the submission and review of applications through the Commission's electronic case management system (CMS).

Basis statement:

The factual and policy basis for this chapter is set forth in the Commission's Order Adopting Rule, Docket No. 2017-00327 Issued on April 5, 2018. 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, 2018 to December 31, 2018
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, 3204(11); Resolves 2017 ch. 49
Chapter number/title: **Ch. 308** (*New*), Standards of Conduct for Transmission and Distribution Utilities and Affiliated Generators
Filing number: **2018-094**
Effective date: 7/4/2018
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission finally adopts rules and standards of conduct to implement recently enacted legislation that permits an investor-owned transmission and distribution (T&D) utility to have generation affiliates subject to statutory restrictions and Commission-adopted standards of conduct.

Basis statement:

The factual and policy basis for this rule is set forth in the Commission's Order Adopting Provisional Rule and Statement of Factual and Policy Basis, Docket No. 2017-00262, issued on January 5, 2018, and Order Adopting Final Rule and Statement of Factual and Policy Basis, Docket No. 2017-00262, issued on May 24, 2018. Copies of this Statement and Order have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 18 State House Station, Augusta, Maine 04330-0018.

Fiscal impact of rule:

Minimal fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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, 3203
Chapter number/title: **Ch. 305**, Licensing Requirements, Annual Reporting, Enforcement and Consumer Protection Provisions for Competitive Provision of Electricity
Filing number: **2018-211**
Effective date: 9/30/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopts amendments to the Commission's Ch. 305, which governs licensing requirements, annual reporting, enforcement, and consumer protection provisions for competitive electricity providers (CEPs). The adopted rule conforms Ch. 305 to recent legislative changes regarding CEPs and transparency in the electricity supply market. Based on the Commission's experience in implementing the rule, the adopted rule also provides additional customer protection standards with regard to small commercial customers and improves consumer protection standards regarding the marketing practices of CEPs.

Basis statement:

The factual and policy basis for this Chapter is set forth in the Commission's Order Adopting Rule, Docket No. 2018-00056 Issued on September 13, 2018. 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, 2018 to December 31, 2018
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, 7104
Chapter number/title: Ch. 288, Maine Universal Service Fund
Filing number: 2018-272
Effective date: 12/24/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Commission amends the rule to make it compatible with the provisions of the current telecommunications regulation statutes, and because the changes will provide stability to the amounts contributed to the Fund and will integrate the collection of the MUSF with that of the Maine Telecommunications Education Access Fund (MTEAF), which itself was amended in Docket No. 2017-00283 to adopt a new contribution methodology, as required by statute.

Basis statement:

The factual and policy basis for this chapter is set forth in the Commission's Order Amending Rule and Factual and Policy Basis, Docket No. 2018-00200, issued on December 10, 2018; Order Adopting Amendments to Rules, Docket No. 2011-00069, issued on August 2, 2011; Order Adopting Amendments to Rules and Statement of Factual and Policy Basis, Docket No. 2002-00687, issued on March 17, 2003; and Order adopting Rule, Docket No. 2001-00230, issued on July 18, 2001.

Fiscal impact of rule:

Minimal.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 §2927 sub-§3-D; PL 2017 ch. 428
Chapter number/title: **Ch. 4**, Requirements for the Dispatch Center Consolidation Grant Program (*New*)
Filing number: **2018-276**
Effective date: 1/1/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopts a new rule to implement recently enacted legislation (PL 2017 ch. 428) that authorizes a grant program to assist dispatch centers consolidate into Public Safety Answering Points (PSAPs).

Basis statement:

The factual and policy basis for this rule is set forth in the Commission's Order Adopting Rule and Statement of Factual and Policy Basis, Docket No. 2018-00307, issued on December 13, 2018. Copies of the Order and Statement have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 18 State House Station, Augusta, Maine 04333-0018.

Fiscal impact of rule:

No fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Secretary of State, **Bureau of Motor Vehicles**
Umbrella-Unit: **29-250**
Statutory authority: 29-A MRS §512
Chapter number/title: **Ch. 159**, Rules Governing the Administration of the Permanent, Semipermanent Semitrailer Registration Programs
Filing number: **2018-005**
Effective date: 1/17/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The amendment corrects at title fee reference, clarifies when the reregistration process may begin, and clarifies the issuance of extended registrations.

Basis statement:

Ch. 159, *Rules Governing the Administration of the Permanent, Semipermanent Semitrailer Registration Programs*, is being amended to correct title fee references, clarify when the reregistration process may begin, and clarify the issuance of extended registrations.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Secretary of State, **Bureau of Motor Vehicles**
Umbrella-Unit: **29-250**
Statutory authority: 29-A MRS §2382
Chapter number/title: **Ch. 157**, The Administration of Over Dimension and Overweight Permits
Filing number: **2018-029**
Effective date: 2/27/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is being amended to add additional safety requirements for 5-axle cranes crossing certain restricted bridges.

Basis statement:

The purpose of this amendment is to help prolong bridge life, and to protect the public from slow-moving cranes crossing these bridges.

Fiscal impact of rule:

Unknown. There may be some fiscal impact on the operators of five-axle cranes. Implementation is necessary to protect the integrity of certain Maine bridges.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Secretary of State, **Bureau of Motor Vehicles**
Umbrella-Unit: **29-250**
Statutory authority: 29-A MRS §512
Chapter number/title: **Ch. 159**, Rules Governing the Administration of the Permanent, Semipermanent Semitrailer Registration Programs
Filing number: **2018-091**
Effective date: 6/4/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule is being amended to provide more flexibility in the renewal of expiring long term trailer registrations; specifically, to allow registrants to retain the same plate when renewing.

Basis statement:

Chapter 159, *Rules Governing the Administration of the Permanent, Semipermanent Semitrailer Registration Programs*, is being amended to provide more flexibility in the renewal process in order to preserve registration revenue.

Fiscal impact of rule:

Failure to amend the rule may result in a revenue loss. Enactment may result in additional long term trailer revenues.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Secretary of State, **Bureau of Motor Vehicles**
Umbrella-Unit: **29-250**
Statutory authority: 29-A MRS §531
Chapter number/title: **Ch. 162**, The Administration of the International Registration Plan
Filing number: **2018-239**
Effective date: 11/13/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is being amended to update the rule relative to new IRP recordkeeping, auditing, and electronic credentialing requirements. The rule also is being updated to reflect changes to the sales tax requirements for vehicles used in interstate commerce.

Basis statement:

This rule provides for the efficient administration of the International Registration Plan. The IRP is a mandatory base-state commercial vehicle registration reciprocity agreement providing for the proper collection and distribution of interstate truck registration fees.

This rule outlines the procedures and standards governing Maine's participation in the International Registration Plan pursuant to Title 29-A §531. The rule is being amended to update the rule relative to new IRP recordkeeping, auditing, and electronic credentialing requirements. The rule also is being updated to reflect changes to the sales tax requirements for vehicles used in interstate commerce.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Secretary of State, **Bureau of Motor Vehicles**
Umbrella-Unit: **29-250**
Statutory authority: 29-A MRS §525
Chapter number/title: **Ch. 165**, The Administration of the International Fuel Tax Agreement and the Intrastate Fuel Tax Program
Filing number: **2018-240**
Effective date: 11/13/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is being updated to provide for electronic credentialing and electronic recordkeeping. Specifically, the rule is being updated to define the use of electronic mileage recording devices such as GPS, and to conform to IFTA audit requirements. The rule is being revised to provide for the electronic display of the IFTA license. The rule also is being revised to clarify the best information available assessment process.

Basis statement:

This rule establishes and defines the State of Maine's participation in the International Fuel Tax Agreement (IFTA). IFTA is a base state fuel tax agreement requiring that a licensee license with its home (base) jurisdiction for fuel tax licensing and reporting for all member jurisdictions. The licensee makes one annual application; is issued one set of fuel decals per truck; and makes one quarterly fuel tax return covering travel in all IFTA jurisdictions. The base jurisdiction collects the licensee's taxes and transmits them to the appropriate member jurisdictions. The base state is responsible for all accounting and auditing. Licensee tax reporting is done on a fleet basis.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Secretary of State, **Bureau of Corporations, Elections and Commissions – Division of Elections**
Umbrella-Unit: **29-250**
Statutory authority: 21-A MRS §723-A sub-§5
Chapter number/title: **Ch. 535**, Rules Governing the Administration of Elections Determined by Ranked-Choice Voting
Filing number: **2018-079**
Effective date: 5/11/2018
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This emergency rule is being adopted to implement ranked-choice voting for the June 12, 2018 Primary Elections, pursuant to PL 2017 c. 316 and IB 2015 c. 3.

Basis statement:

Ranked-choice voting was adopted by a citizen's initiative, which was approved by the voters at the November 8, 2016 General and Referendum Election. In November, 2017, the 128th Legislature enacted Public Law 2017, Chapter 316, which would have delayed implementation of ranked-choice voting until after December 1, 2021. This law also gave the Secretary of State routine technical rulemaking authority to implement the ranked-choice voting process. A group of citizens then circulated a People's Veto petition to veto the delay provisions. On March 5, 2018, the Secretary of State confirmed that the citizens had submitted a sufficient number of valid signatures to stay the effect of those delay provisions in Public Law 2017, Chapter 316, and to send the People's Veto question to the voters at the June 12, 2018 Primary and Special Referendum Election. Consequently, as confirmed in recent rulings by the Maine Superior Court and the Maine Law Court, the Secretary of State must implement ranked-choice voting for federal and state offices at the June 12, 2018 Primary Elections. Because the statute enacted by the citizen's initiative provides only a broad outline of the requirements but does not contain sufficient detail to implement the voting process, the Secretary of State must adopt a rule that defines these implementation details. This rule is being adopted as an emergency so that it will be in effect for the June 12, 2018 Primary Election. If the voters approve the People's Veto question on June 12th, then the Secretary of State will need to follow the APA process to propose and adopt a permanent rule.

Fiscal impact of rule:

The cost to implement this rule is estimated at less than \$150,000 for the June 12, 2018 primary election.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Secretary of State, **Bureau of Corporations, Elections and Commissions – Division of Elections**
Umbrella-Unit: **29-250**
Statutory authority: 21-A MRS §723-A sub-§5-A
Chapter number/title: **Ch. 536**, Rules Establishing Procedures for Requesting and Conducting Recounts of Elections Determined by Ranked-Choice Voting
Filing number: **2018-109**
Effective date: 6/20/2018
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

Ranked-choice voting ("RCV") was enacted into law by a citizen's initiative in November 2016, and applied to elections held on or after January 1, 2018. IB 2015, c. 3. The original law did not grant any rulemaking authority to the Secretary of State. In November, 2017, the 128th Legislature enacted Chapter 316 of the Public Laws of 2017, "An Act to Implement Ranked-choice Voting in 2021" which delayed the implementation of ranked-choice voting until after December 1, 2021, and further provided that the RCV law would be repealed unless, prior to that date, the voters of the State ratified constitutional amendments authorizing the use of RCV in general elections for Governor, State Senate and State Representative. Chapter 316 also directed the Secretary of State to adopt routine technical rules for the proper and efficient administration of elections by RCV, including rules for requesting and conducting recounts in RCV contests. A group of citizens circulated a People's Veto Referendum petition to veto the provisions of Chapter 316 that would delay or repeal RCV. On March 5, 2018, the Secretary of State determined that the citizens had submitted a sufficient number of valid signatures to stay the effect of the delay and repeal provisions of Chapter 316, meaning that RCV would apply to election contests involving more than three candidates in the June 12, 2018 Primary Election. Between the end of March and the end of May, 2018, numerous lawsuits were filed challenging the ranked-choice voting law (including a challenge to the Secretary's rulemaking authority) and seeking to block its implementation. On May 11, 2018, the Secretary of State adopted rules governing the ranked-choice counting process. Chapter 502 of the Department's rules was written to apply solely to recounts of elections determined by plurality, and it is not adequate to address the unique aspects of RCV. Adoption of this rule is necessary to specify procedures applicable to an election contest determined by RCV.

Fiscal impact of rule:

The cost to implement this rule is estimated at less than \$100,000 for the June 12, 2018 primary election, and there will be no fiscal impact if the candidate requesting the recount is required to pay the actual costs pursuant to 21-A MRS §737-A(1-A)(b).

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Secretary of State, **Bureau of Corporations, Elections and Commissions – Division of Elections**
Umbrella-Unit: **29-250**
Statutory authority: 21-A MRS §723-A sub-§5-A
Chapter number/title: **Ch. 535** (*New*), Rules Governing the Administration of Elections Determined by Ranked-Choice Voting
Filing number: **2018-230**
Effective date: 11/7/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Ranked-choice voting is a new method of conducting elections that did not exist in Maine law until this year. The governing statute, 21-A MRS §723-A, does not provide sufficient detail to address how to administer elections by this method.

Basis statement:

Ranked-choice voting ("RCV") is a method of counting ballots and determining the outcome of election contests that applies when three or more candidates have qualified for the ballot and no candidate receives a majority of the first choice votes counted at the municipal level. It requires the collection of ballots or memory devices from all of the voting jurisdictions within an electoral district and processing at a central counting facility by staff of the Secretary of State's Office. The purpose of the rule is to detail procedures that are not adequately described in statute.

Fiscal impact of rule:

The cost to implement this rule is estimated at \$315,000 for any election with offices on the ballot that must be determined by ranked-choice voting, and where no candidate receives a majority of the first choice votes cast.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Secretary of State, **Bureau of Corporations, Elections and Commissions – Division of Elections**
Umbrella-Unit: **29-250**
Statutory authority: 21-A MRS §723-A sub-§12, 738
Chapter number/title: **Ch. 502**, Rules Governing the Conduct and Procedures for Election Recounts, in Election Contests Determined by Plurality
Filing number: **2018-233**
Effective date: 11/13/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Secretary of State centrally conducts any recount that is requested by a losing candidate in a county, state or federal election. The Secretary of State is authorized to adopt rules governing the conduct and procedures for a recount. Provisions of the rules include collection, security and handling of ballots, hours of the recount, personnel, supervision, disputed ballots and final sign-off at the conclusion of the recount. The rule provides procedures for conducting a recount in stages when a recount is requested for a statewide referendum or statewide or multi-county office.

Basis statement:

The Secretary of State is required by law to conduct recounts in state elections under circumstances described in Title 21-A sections 737-A and 738. This rule outlines the specific procedures to be followed in conducting recounts for elections determined by plurality. (Recount procedures in elections determined by the method of ranked-choice voting are described in Ch. 536 of the Department's rules.) This replacement version of Ch. 502 also establishes procedures for staging a recount in a statewide race, or multi-county election contest.

Fiscal impact of rule:

None. The Secretary of State is currently responsible for conducting these recounts. The rule will not significantly change the manner in which the Division of Elections conducts recounts. Adoption of this rule will not affect the number of recounts that are conducted in each election cycle.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Secretary of State, **Bureau of Corporations, Elections and Commissions – Division of Elections**

Umbrella-Unit: **29-250**

Statutory authority: 21-A MRS §723-A sub-§5-A

Chapter number/title: **Ch. 536** (*New*), Rules Establishing Procedures for Requesting and Conducting Recounts of Elections Determined by Ranked-Choice Voting

Filing number: **2018-234**

Effective date: 11/13/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The ranked-choice voting statute requires the Secretary of State to adopt rules for requesting and conducting recounts of election results that are determined by the method of ranked-choice voting.

Basis statement:

Adoption of this rule is necessary to specify procedures for a recount that are applicable to an election contest determined by ranked-choice voting ("RCV") because that process is quite different from recount methods that apply to an election determined by plurality. The RCV statute, as enacted into law by a citizen's initiative in November 2016, does not address recounts. Accordingly, a subsequent amendment, enacted as Ch. 316 of the *Public Laws of 2017*, "An Act to Implement Ranked-choice Voting in 2021," directed the Secretary of State to adopt rules for requesting and conducting recounts in RCV elections. An emergency rule was adopted for the June 12, 2018 primary elections by RCV but has since expired. This rule is a modified version of the emergency rule and establishes the procedure for such recounts in the general election of November 2018 and beyond.

Fiscal impact of rule:

The cost to implement this rule is estimated to be in the range of \$100,000 to \$150,000 in any election with offices determined by ranked-choice voting where a recount is conducted, and there will be no fiscal impact if the candidate requesting the recount is required to pay the actual costs pursuant to 21-A MRS §737-A(1-A)(B).

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Secretary of State, **Maine State Archives**
Umbrella-Unit: **29-255**
Statutory authority: 5 MRS ch. 6 §95-B; 30-A MRS §1705 (*repealed*)
Chapter number/title: **Ch. 10**, Rules for Disposition of Local Government Records
(Repealed)
Filing number: **2018-277**
Effective date: 1/2/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this filing is to repeal the Ch. 10 Rule. Statutory authority for this rule is listed as: 5 MRS ch. 6 §95-B and 30-A MRS §1705. 30-A MRS §1705 has already been repealed. Title 5 ch. 6 details the duties of the State Archivist. State and Local Government records encompass both of these duties. However, it has become increasingly more and more difficult to meet the needs and demands of our local government constituents and develop proper guidance and procedures required due to the nature of the extensive rulemaking process when there are already specific guidelines written in statute with which both state and local government agencies must comply. State agencies are allowed to submit new schedules and amendments to the Records Management office at any time and have their submissions reviewed in a timely manner. Local government agencies must wait for a very lengthy process for any changes to occur. We have found no basis for why the local schedules are handled differently than the state agency or general state schedules. We have looked at the history of both the Archives Advisory Board minutes, the prior Local Government Board and County Boards and have not found any concrete evidence as to why this was put in place other than to give towns and/or the public the opportunity for input. However, this is also accomplished by having an appointed Board made up of people from various backgrounds and having public meetings where local records are discussed.

Basis statement:

(See Principal reason...)

Fiscal impact of rule:

(No response)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: **Motor Carrier Review Board** (*administered by the Secretary of State, Bureau of Motor Vehicles*)
Umbrella-Unit: **94-591**
Statutory authority: 29-A MRS §562(4)
Chapter number/title: **Ch. 1**, Bylaws of the Maine Motor Carrier Review Board
Filing number: **2018-137**
Effective date: 7/24/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The primary purpose of this rule is to institute a more efficient and expedient process by which to review deficient motor carriers and provide for a more focused approach by the board.

Basis statement:

This rule is being repealed and replaced to institute a more efficient and expedient process by which to review deficient motor carriers and provide for a more focused approach by the board.

Changes include;

1. Redefine the Boards “Powers and Duties” with respect to hearings requested by the Bureau or motor carriers;
2. Establish meeting timelines.
3. Provide for motor carrier Due Process.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: **Motor Carrier Review Board** (*administered by the Secretary of State, Bureau of Motor Vehicles*)
Umbrella-Unit: **94-591**
Statutory authority: 29-A MRS §562(4)
Chapter number/title: **Ch. 2**, The Process for the Selection and Review of Motor Carriers with Significant and Repeated Safety Violations
Filing number: **2018-138**
Effective date: 7/24/2018
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The primary purpose of this rule amendment is to institute a more efficient and expedient process by which to review deficient motor carriers and provide for a more focused approach by the board.

Changes include:

1. Establishing a “Threshold Limit” process for selection, warning and suspension of motor carriers

Fiscal impact of rule:
None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: **Motor Carrier Review Board** (*administered by the Secretary of State, Bureau of Motor Vehicles*)
Umbrella-Unit: **94-591**
Statutory authority: 29-A MRS §562(4)
Chapter number/title: **Ch. 3**, Hearing Procedures
Filing number: **2018-139**
Effective date: 7/24/2018
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The primary purpose of this rule amendment is to institute a more efficient and expedient process by which to review deficient motor carriers and provide for a more focused approach by the board.

Changes include;

1. Redefining hearing procedures;
2. Establishing hearing notices;
3. Defining and establishing a "Presiding Officer";
4. Establishing the Order of Proceedings.

Fiscal impact of rule:
None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Transportation
Umbrella-Unit: 17-229
Statutory authority: Resolve 2015 ch. 86; 23 MRS §52
Chapter number/title: Ch. 601, Rules Relating to Maine State Ferry Service
Filing number: 2018-208
Effective date: 9/29/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This new rule will address the secure transport of medical samples by the Maine State Ferry Service (MSFS) to and from the islands that are serviced by the MSFS.

Basis statement:

This rule has been adopted on September 12, 2018 in response to the "Resolve 2015, ch. 8, To Improve the Safety of Ferries in the State" (LD 1468 127th Maine Legislature, Filing Number S-374) ("the Resolve"). The Resolve directs the Department of Transportation ("MaineDOT") to adopt routine technical rules providing for safe and secure the transport of medical diagnostic samples on Maine State Ferry Services (MSFS) Vessels.

Fiscal impact of rule:

The MaineDOT does not anticipate a negative fiscal impact by this rule.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Transportation
Umbrella-Unit: 17-229
Statutory authority: 23 MRS §52; 35-A MRS §2503(16); 23 CFR §645.211
Chapter number/title: Ch. 261, Utility Accommodation Rules
Filing number: 2018-261
Effective date: 12/1/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This is an update of an existing routine technical rule. MaineDOT updates this rule every few years to reflect changes in Highway engineering design standards and requirements, Highway permitting requirements, and changes in the types of utilities and their construction and accommodation requirements. These rules set standards for permitting and locating utility facilities within the corridors of all state and state-aid highways.

Basis statement:

The rule has been amended to provide clarifications that address the permitting and physical location of facilities for the 5G wireless deployment currently underway in the State of Maine, technical revisions for utility accommodation including material types, offsets in state and state aid highway rights-of-way, and location permitting of pole locations. Section 4, “Definitions”, has been updated to include several new definitions and clarifications to existing definitions. Section 5, “Location Permits”, includes updates regarding the requirements for location permits in Compact Areas and clarifications regarding the following sections: Facilities Around Bridges, Location Plans, Attachment to MaineDOT Highway Structures, Permit-by-Rule, Field Layout for Utility Poles and Utility Pole Structures and definitions of Private Facilities. Section 6, “Highway Opening Permits”, updates the section on Proposed Work Information required. Section 7, “Facility Maintenance Obligations”, includes updates regarding Financial Responsibility for Design Changes in Maine Department of Transportation Projects. Section 10, “Underground Installations”, includes an update to the section on materials that may be used for underground conduits. Section 11, “Aboveground Installations”, updates to this section involve clarifications to the following sections: Support Structures, Use of Existing Department Poles or Structures, Offsets, Site Specific Conditions, and Minimum Corridor Offsets for Utility Poles.

Fiscal impact of rule:

Minimal.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: **Workers' Compensation Board**
Umbrella-Unit: **90-351**
Statutory authority: 39-A MRS §§ 101 *et seq.*
Chapter number/title: **Ch. 1,** Payment of Benefits
Ch. 2, Section 213 Compensation for Partial Incapacity
Ch. 3, Form Filing
Ch. 4, Independent Medical Examiner
Ch. 5, Medical Fees; Reimbursement Levels; Reporting Requirements
Ch. 6, Rehabilitation
Ch. 7, Utilization Review, Treatment Guidelines, Permanent Impairment
Ch. 8, Procedures for Payment
Ch. 9, Procedures for Coordination of Benefits
Ch. 12, Formal Hearings
Ch. 13, Rules of Appellate Division
Ch. 14, Review by Full Board
Ch. 15, Penalties
Ch. 16, Confidentiality of Files
Ch. 18, Examinations by Impartial Physician(s)
Pursuant to 39-A MRSA Section 611
Filing number: **2018-122 thru 136**
Effective date: 9/1/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To ensure that the Act and rules are consistent and clarify procedures regarding the processing and resolution of claims arising under the Act.

Basis statement:

The changes define terms, prescribe forms and clarify procedures regarding the processing and payment of workers' compensation claims.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: **Workers' Compensation Board**
Umbrella-Unit: **90-351**
Statutory authority: 39-A MRS §§ 101, 209-A
Chapter number/title: **Ch. 5**, Medical Fees; Reimbursement Levels; Reporting Requirements
Filing number: **2018-268**
Effective date: 1/1/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Pursuant to 39-A MRS §209-A(5), every three years the Board must undertake a comprehensive review of the medical fee schedule.

Basis statement:

Pursuant to 39-A MRS §209-A(5), every three years the Board must undertake a comprehensive review of the medical fee schedule. The amendments incorporate changes designed to ensure both broad access to care and appropriate limitations on the cost of health care services.

Fiscal impact of rule:

None.