

MAINE STATE LEGISLATURE

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STATE OF MAINE

OFFICE
OF THE
SECRETARY OF STATE
February 1, 2020

MATTHEW DUNLAP
SECRETARY OF STATE

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 2019.

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 2019, there were 271 rule adoption filings. Following is a list of the agencies with the number of adopted rule filings:

Umbrella number	Agency	Total Adopt	Routine Technical	Major Substantive	Emergency	Non Emergency
01	Department of Agriculture, Conservation and Forestry	30	29	1	12	18
02	Department of Professional and Financial Regulation	19	19	0	0	19
03	Department of Corrections	1	1	0	0	1
05	Department of Education	4	1	3	1	3
06	Department of Environmental Protection	7	6	1	0	7
09	Department of Inland Fisheries and Wildlife	24	24	0	2	22
10, 14	Department of Health and Human Services	57	52	5	11	46
12	Department of Labor	4	4	0	0	4
13	Department of Marine Resources	32	32	0	12	20
15	Department of Defense, Veterans and Emergency Management	2	2	0	0	2
16	Department of Public Safety	11	11	0	1	10
17	Department of Transportation	2	2	0	0	2

Umbrella number	Agency	Total Adopt	Routine Technical	Major Substantive	Emergency	Non Emergency
18	Department of Administrative and Financial Services	12	12	0	2	10
19	Department of Economic and Community Development	1	1	0	0	1
29	Secretary of State	1	1	0	0	1
65	Public Utilities Commission	12	11	1	2	10
90-590	Maine Health Data Organization	3	2	1	0	3
94-270	Commission on Governmental Ethics and Election Practices	2	1	1	0	2
94-293	Baxter State Park Authority	1	1	0	0	1
94-335	Wells National Estuarine Research Reserve Management Authority	1	1	0	0	1
94-376	Maine Municipal Bond Bank	1	1	0	0	1
94-411	Maine Public Employees Retirement System	6	6	0	1	5
94-412	Saco River Corridor Commission	2	2	0	0	2
94-457	Finance Authority of Maine	4	4	0	0	4
99-346	Maine State Housing Authority	7	7	0	0	7
99-639	ConnectME Authority	2	1	1	0	2
99-650	Combat Sports Authority of Maine	23	23	0	0	23
	Totals for 2019	271	257	14	44	227

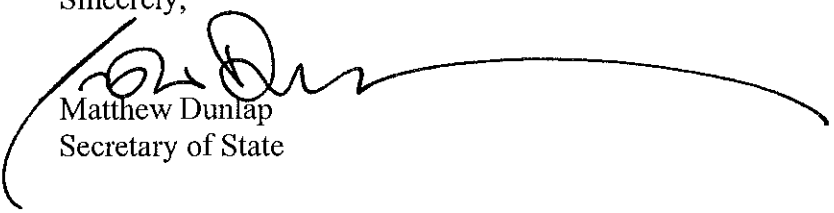
The report is presented in multiple files:

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

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

Sincerely,



Matthew Dunlap
Secretary of State

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Rules Adopted 1/1/2019 to 12/31/2019
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Log #	Umbrella / unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2019-062	01-001	Department of Agriculture, Conservation and Forestry	Ch. 275	Emerald Ash Borer Quarantine	7 MRS §§ 2301-2303	Routine Technical	No	4/10/2019
2019-077	01-001	Department of Agriculture, Conservation and Forestry	Ch. 271	Gypsy Moth Quarantine	7 MRS §§ 2301-2303	Routine Technical	No	5/20/2019
2019-102	01-001	Department of Agriculture, Conservation and Forestry	Ch. 270	Maine Apiary Rules and Regulations	7 MRS §§ 2701-2872	Routine Technical	No	6/24/2019
2019-008	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 29	Dealer Margins	7 MRS §2954	Routine Technical	No	1/15/2019
2019-020	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #02-19	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	2/3/2019
2019-043	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #03-19	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	3/3/2019
2019-054	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #04-19	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	3/31/2019
2019-067	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #05-19	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	4/28/2019
2019-087	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #06-19	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	6/2/2019
2019-104	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #07-19	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	6/30/2019
2019-137	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #08-19	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	8/4/2019

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2019-157	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #09-19	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	9/1/2019
2019-171	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #10-19	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	9/29/2019
2019-184	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #11-19	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	11/3/2019
2019-211	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #12-19	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	12/1/2019
2019-255	01-015	Department of Agriculture, Conservation and Forestry, Maine Milk Commission	Ch. 3	Schedule of Minimum Prices, Order #01-20	5 MRS §8054; 7 MRS §2954	Routine Technical	Yes	12/29/2019
2019-011	01-017	Department of Agriculture, Conservation and Forestry, Maine State Harness Racing Commission	Ch. 5	Tracks	8 MRS §§ 263-A, 263-C, 264, 267-A, 268, 272-B, 272-C, 279, 279-A, 279-E, 281, 298	Routine Technical	No	1/22/2019
2019-012	01-017	Department of Agriculture, Conservation and Forestry, Maine State Harness Racing Commission	Ch. 7	Racing	8 MRS §§ 263-A, 263-C, 264, 267-A, 268, 272-B, 272-C, 279, 279-A, 279-E, 281, 298	Routine Technical	No	1/22/2019

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Log #	Umbrella / unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2019-013	01-017	Department of Agriculture, Conservation and Forestry, Maine State Harness Racing Commission	Ch. 9	Sire Stakes	8 MRS §§ 263-A, 263-C, 264, 267-A, 268, 272-B, 272-C, 279, 279-A, 279-E, 281, 298	Routine Technical	No	1/22/2019
2019-014	01-017	Department of Agriculture, Conservation and Forestry, Maine State Harness Racing Commission	Ch. 11	Medication and Testing	8 MRS §§ 263-A, 263-C, 264, 267-A, 268, 272-B, 272-C, 279, 279-A, 279-E, 281, 298	Routine Technical	No	1/2/2019
2019-130	01-026	Department of Agriculture, Conservation and Forestry, Board of Pesticides Control	Ch. 10	Definitions and Terms	22 MRS §1471A X	Routine Technical	No	7/23/2019
2019-131	01-026	Department of Agriculture, Conservation and Forestry, Board of Pesticides Control	Ch. 31	Certification and Licensing Provisions / Commercial Applicators	22 MRS §§ 1471-D and S	Routine Technical	No	7/23/2019
2019-132	01-026	Department of Agriculture, Conservation and Forestry, Board of Pesticides Control	Ch. 32	Certification and Licensing Provisions for Private Applicators	22 MRS §§ 1471-D and S	Routine Technical	No	7/23/2019
2019-133	01-026	Department of Agriculture, Conservation and Forestry, Board of Pesticides Control	Ch. 50	Record Keeping & Reporting Requirements	22 MRS §§ 1471-G and M	Routine Technical	No	7/23/2019
2019-134	01-026	Department of Agriculture, Conservation and Forestry, Board of Pesticides Control	Ch. 36	Certification and Licensing Provisions for Monitors and Spotters for Forest Insect Aerial Spray Program <i>(Repeal)</i>	22 MRS §§ 1471-D and S	Routine Technical	No	7/23/2019

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Log #	Umbrella / unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2019-019	01-672	Department of Agriculture, Conservation and Forestry, Land Use Planning Commission	Ch. 10	Land Use Guidance Maps (Amended Zoning Maps): Zoning Petitions: ZP 774 (Chesuncook Twp. — Piscataquis County) (David and Luisa Surprenant)	12 MRS §§ 685-A(7-A), 689	Routine Technical	No	1/21/2019
2019-092	01-672	Department of Agriculture, Conservation and Forestry, Maine Land Use Planning Commission	Ch. 10	Land Use Districts and Standards: 10.27, Activity-Specific Standards: D., Roads and Water Crossings	12 MRS §685-A(3),(7-A)	Routine Technical	No	6/17/2019
2019-093	01-672	Department of Agriculture, Conservation and Forestry, Maine Land Use Planning Commission	Ch. 10	Land Use Districts and Standards: Appendix D, Lakes and Rivers on which the Use of Personal Watercraft is Prohibited: Upper Wilson Pond (Lake 30410), Piscataquis County	12 MRS §§ 685-A(3),(7-A), 685-C(10)((D)	Routine Technical	No	6/17/2019
2019-094	01-672	Department of Agriculture, Conservation and Forestry, Maine Land Use Planning Commission	Ch. 10	Land Use Districts and Standards (relating to the Adjacency Principle)	12 MRS §685-A(1),(3),(7-A)	Routine Technical	No	6/17/2019
2019-175	01-672	Department of Agriculture, Conservation and Forestry, Land Use Planning Commission	Ch. 10	Land Use Guidance Maps (Amended Zoning Maps): Zoning Petitions: ZP 776 (Unity Twp. — Kennebec County) (Three Corners Solar, LLC). ZP 768 (Sinclair Twp., T15 R5 WELS, T16 R5 WELS, T17 R3 WELS - Aroostook County)(Allagash Timberlands, LLC, Aroostook Timberlands, LP, Maine Woodlands Realty Company)	12 MRS §§ 685-A(7-A), 689	Routine Technical	No	9/30/2019

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Log #	Umbrella / unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2019-152	02-029	Department of Professional and Financial Regulation, Bureau of Financial Institutions	Ch. 134	Credit Union Service Corporations	9-B MRS §§ 111, 131(37), 215, 828, 864	Routine Technical	No	8/25/2019

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2019-164	02-031	Department of Professional and Financial Regulation, Bureau of Insurance	Ch. 135	Employee Benefit Excess Insurance	24 MRS §§ 212, 707(3)	Routine Technical	No	9/18/2019
2019-192	02-031	Department of Professional and Financial Regulation, Bureau of Insurance	Ch. 235	Annual Audited Financial Reports	24 MRS §2317(2); 24-A §§ 212, 221-A(5), 4218	Routine Technical	No	11/6/2019
2019-193	02-031	Department of Professional and Financial Regulation, Bureau of Insurance	Ch. 705	Corporate Governance Annual Disclosure	24-A §§ 212, 423-G(6)	Routine Technical	No	11/6/2019

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2019-221	02-032	Department of Professional and Financial Regulation, Office of Securities	Ch. 504	Broker-Dealer and Agent Licensing	32 MRS §§ 16406, 16411, 16412, 16605	Routine Technical	No	12/14/2019
2019-222	02-032	Department of Professional and Financial Regulation, Office of Securities	Ch. 515	Investment Advisor Licensing	32 MRS §§ 16403, 16404, 16405, 16406, 16408, 16409, 16411, 16412, 16605	Routine Technical	No	12/14/2019

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2019-270	02-041	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation	Ch. 10	Establishment of License Fees	10 MRS §8003(2-A)(D); 32 MRS (<i>many sections</i>)	Routine Technical	No	12/20/2019

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2019-247	02-280	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Accountancy	Ch. 1	Definitions	32 MRS §12214(4)	Routine Technical	No	12/22/2019
2019-248	02-280	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Accountancy	Ch. 2	Advisory Rulings	5 MRS §§ 8051, 9001(4)	Routine Technical	No	12/22/2019
2019-249	02-280	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Accountancy	Ch. 3	Examination Requirements	32 MRS §§ 12214(4), 12228(4), 12240(4)	Routine Technical	No	12/22/2019
2019-250	02-280	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Accountancy	Ch. 5	Certified Public Accountant Licensure Requirements	32 MRS §12214(4),(4)(A),(5) (<i>repealed by PL 2009</i>), §§ 12228(3)(B),(4),(10), 12231(2)(D)(2), 12233; 10 MRS §8003(4)	Routine Technical	No	12/22/2019
2019-251	02-280	Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Accountancy	Ch. 6	Accounting Firm Licensure Requirements	32 MRS §§ 12214(4), §12252, §12252(8); 10 MRS §8003(4)	Routine Technical	No	12/22/2019

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2019-109	02-313	Maine Board of Dental Practice (Affiliated with the Department of Professional and Financial Regulation)	Ch. 7	Establishment of Fees	32 MRS §§ 18323(3), 18324	Routine Technical	No	7/3/2019

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Log #	Umbrella / unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2019-160	02-322	State Board of Licensure for Professional Engineers (affiliated with the Department of Professional and Financial Regulation)	Ch. 5	Application and Licensure Fees	32 MRS §§ 1306(2), 1353	Routine Technical	No	9/8/2019

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Log #	Umbrella / unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2019-146	02-373	Department of Professional and Financial Regulation, Board of Licensure in Medicine	Ch. 10	Sexual Misconduct <i>(a joint rule with 02-383)</i>	32 MRS §§ 3269(3),(7)	Routine Technical	No	8/17/2019

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Log #	Umbrella / unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2019-017	02-380	Maine State Board of Nursing (affiliated with the Department of Professional and Financial Regulation)	Ch. 5	Regulations Relating to Training and Delegation by Registered Professional Nurses of Selected Nursing Tasks to Certified Nursing Assistants	32 MRS §2153-A	Routine Technical	No	1/30/2019
2019-085	02-380	Maine State Board of Nursing (affiliated with the Department of Professional and Financial Regulation)	Ch. 7	Regulations for Approval of Prelicensure Nursing Education Programs	32 MRS §§ 2153-1, 2104(1)(B)	Routine Technical	No	5/29/2019
2019-153	02-380	Maine State Board of Nursing (affiliated with the Department of Professional and Financial Regulation)	Ch. 11	Regulations Relating to the Nurse Licensure Compact (<i>Repeal</i>)	32 MRS ch. 31 sub-ch. 2-A §A-1	Routine Technical	No	8/26/2019

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Log #	Umbrella / unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2019-147	02-383	Department of Professional and Financial Regulation, Board of Osteopathic Licensure	Ch. 10	Sexual Misconduct <i>(a joint rule with 02-373)</i>	32 MRS §2562	Routine Technical	No	8/17/2019

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Log #	Umbrella / unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2019-178	03-201	Department of Corrections	Ch. 10	Policy and Procedures Manual: Subsection 20.1, Prisoner Discipline	34-A MRS §§ 1402, 1403, 3032	Routine Technical	No	11/6/2019

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Log #	Umbrella / unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2019-064	05-071	Department of Education	Ch. 122	Grant Application and Award Procedure: Fund for the Efficient Delivery of Educational Services	20-A §2651(5)	Major Substantive	No	5/12/2019
2019-086	05-071	Department of Education	Ch. 132	Learning Results: Parameters for Essential Instruction and State Accountability	20-A §6211	Major Substantive	No	6/23/2019
2019-095	05-071	Department of Education	Ch. 38	Suicide Awareness and Prevention in Maine Schools	20-A §4502 sub-§5-B	Major Substantive	No	7/5/2019
2019-204	05-071	Department of Education	Ch. 115 Part II	The Credentialing of Education Personnel: Requirements for Specific Certificates and Endorsements	20-A §13011(1)	Major Substantive	Yes	11/19/2019

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2019-006	06-096	Department of Environmental Protection	Ch. 100	Definitions Regulation	38 MRS §585-A	Routine Technical	No	1/14/2019
2019-007	06-096	Department of Environmental Protection	Ch. 113	Growth Offset Regulation	38 MRS §585-A	Routine Technical	No	1/14/2019
2019-044	06-096	Department of Environmental Protection	Ch. 101	Visible Emissions Regulation	38 MRS §585-A	Routine Technical	No	3/10/2019
2019-055	06-096	Department of Environmental Protection	Ch. 110	Ambient Air Quality Standards	38 MRS §584	Routine Technical	No	3/27/2019
2019-059	06-096	Department of Environmental Protection (jointly with 94-376,Maine Municipal Bond Bank)	Ch. 595	State Revolving Fund	30-A MRS §5959	Routine Technical	No	4/3/2019
2019-116	06-096	Department of Environmental Protection	Ch. 692	Siting of Oil Storage Facilities	38 MRS §§ 1391, 341-H, 1400	Major Substantive	No	8/7/2019
2019-162	06-096	Department of Environmental Protection	Ch. 121	Emission Limitations and Emission Testing of Resource Recovery Facilities	38 MRS §§ 585, 585-B, 590	Routine Technical	No	9/14/2019

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Log #	Umbrella / unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Effective date
2019-028	09-137	Department of Inland Fisheries and Wildlife	Ch. 27	Animal Damage Control Agent Certification	12 MRS §§ 10104, 10105	Routine Technical	No	2/5/2019
2019-033	09-137	Department of Inland Fisheries and Wildlife	Ch. 4	Hunting and Trapping (<i>Repeal</i>)	12 MRS §10104	Routine Technical	No	2/12/2019
2019-034	09-137	Department of Inland Fisheries and Wildlife	Ch. 4	Falconry	12 MRS §10104	Routine Technical	No	2/12/2019
2019-035	09-137	Department of Inland Fisheries and Wildlife	Ch. 16	Hunting	12 MRS §10104	Routine Technical	No	2/12/2019
2019-036	09-137	Department of Inland Fisheries and Wildlife	Ch. 17	Trapping	12 MRS §10104	Routine Technical	No	2/12/2019
2019-056	09-137	Department of Inland Fisheries and Wildlife	Ch. 1	Open Water and Ice Fishing Regulations (Ice Fishing Season Extension)	12 MRS §10104; PL 2019 ch. 9	Routine Technical	Yes	4/1/2019
2019-058	09-137	Department of Inland Fisheries and Wildlife	Ch. 14	Commercial Whitewater Rafting	12 MRS §§ 12909, 12910, 12913	Routine Technical	No	4/2/2019
2019-073	09-137	Department of Inland Fisheries and Wildlife	Ch. 16	Hunting: 16.11, Migratory Game Bird Hunting	12 MRS §§ 10104, 11855	Routine Technical	No	5/12/2019
2019-074	09-137	Department of Inland Fisheries and Wildlife	Ch. 17	Trapping: 17.03(7), Definitions; 17.06(1), Bear Trapping	12 MRS §§ 10104, 12260	Routine Technical	No	5/12/2019
2019-088	09-137	Department of Inland Fisheries and Wildlife	Ch. 16	Hunting: 16.08, Moose Hunting	12 MRS §§ 11551, 11552	Routine Technical	No	6/3/2019
2019-089	09-137	Department of Inland Fisheries and Wildlife	Ch. 16	Hunting: 16.10, Wild Turkey Hunting	12 MRS §11701	Routine Technical	No	6/3/2019
2019-090	09-137	Department of Inland Fisheries and Wildlife	Ch. 20	Taxidermy License	12 MRS §12952	Routine Technical	No	6/3/2019
2019-128	09-137	Department of Inland Fisheries and Wildlife	Ch. 16	Hunting (16.06, 16.12, 16.13)	12 MRS §§ 10104, 10954, 12301-A	Routine Technical	No	7/23/2019
2019-129	09-137	Department of Inland Fisheries and Wildlife	Ch. 17	Trapping	12 MRS §§ 10104, 12251	Routine Technical	No	7/23/2019

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2019-135	09-137	Department of Inland Fisheries and Wildlife	Ch. 16	Hunting: 16.07, Deer Hunting	12 MRS §§ 11152, 11401	Routine Technical	No	7/24/2019
2019-138	09-137	Department of Inland Fisheries and Wildlife	Ch. 13	Watercraft Rules	12 MRS §§ 10104, 13051, 13068-A	Routine Technical	No	7/31/2019
2019-139	09-137	Department of Inland Fisheries and Wildlife	Ch. 13	Watercraft Rules	12 MRS §§ 10104, 13051	Routine Technical	Yes	7/26/2019
2019-155	09-137	Department of Inland Fisheries and Wildlife	Ch. 1	Open Water and Fishing Regulations (North Zone General Law)	12 MRS §§ 10104, 12453, 12454	Routine Technical	No	1/1/2020
2019-156	09-137	Department of Inland Fisheries and Wildlife	Ch. 1	Open Water and Fishing Regulations (Conroy Lake Petition)	12 MRS §10104	Routine Technical	No	1/1/2020
2019-177	09-137	Department of Inland Fisheries and Wildlife	Ch. 13	Watercraft Rules	12 MRS §§ 10104, 13051, 13068-A	Routine Technical	No	10/12/2019
2019-179	09-137	Department of Inland Fisheries and Wildlife	Ch. 1	Open Water and Ice Fishing Regulations	12 MRS §§ 10104, 12452, 12461	Routine Technical	No	1/1/2020
2019-180	09-137	Department of Inland Fisheries and Wildlife	Ch. 1-A	State Heritage Fish Waters	12 MRS §§ 10104, 12452, 12461	Routine Technical	No	1/1/2020
2019-242	09-137	Department of Inland Fisheries and Wildlife	Ch. 5	State Owned Wildlife Management Areas, Shooting Ranges and Boat Launch Facilities	12 MRS §§ 10104, 12701	Routine Technical	No	12/22/2019
2019-214	09-585	Department of Inland Fisheries and Wildlife, Maine Outdoor Heritage Fund Board	Ch. 25	Maine Outdoor Heritage Fund - Strategic Plan	12 MRS §10308	Routine Technical	No	12/2/2019

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2019-001	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; PL 2017 ch. 459	Routine Technical	No	1/7/2019
2019-002	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. 459 part B	Routine Technical	No	1/7/2019
2019-021	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II & III Section 2 , Adult Family Care Services	22 MRS §§ 42, 3173; PL 2017 ch. 460	Routine Technical	No	2/4/2019
2019-023	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 Clinic Services	22 MRS §§ 42, 3173; 5 MRS §8054; PL 2017 ch. 460	Routine Technical	No	2/3/2019
2019-024	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; PL 2017 ch. 460 part B-2	Routine Technical	No	2/12/2019
2019-025	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; PL 2017 ch. 459 parts A & B	Routine Technical	No	2/4/2019
2019-030	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II & III Section 12 , Consumer-Directed Attendant Services, and Allowances for Consumer-Directed Attendant Services	22 MRS §§ 42, 3173; PL 2017 ch. 459 part B	Routine Technical	No	2/11/2019
2019-031	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II & III Section 65 , Behavioral Health Services	22 MRS §§ 42, 3173; PL 2017 ch. 460 parts D, E, I	Routine Technical	No	2/11/2019

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2019-032	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; 42 USC §1396b(1)(1); PL 2017 ch. 459 part B	Routine Technical	No	2/11/2019
2019-037	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; PL 2017 ch. 460 part D	Routine Technical	No	2/14/2019
2019-038	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; PL 2017 ch. 460 part D	Routine Technical	No	2/14/2019
2019-042	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, 1708(3); PL 2017 ch. 460 §§ B-1, B-3; PL 2013 ch. 594 §3	Routine Technical	No	3/5/2019
2019-052	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II & III Section 93 , Opioid Health Home Services	22 MRS §§ 42, 3173; PL 2017 ch. 460 part G	Routine Technical	No	3/16/2019
2019-061	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II & III Section 15 , Chiropractic Services	22 MRS §§ 42, 3173	Routine Technical	No	4/12/2019
2019-076	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II & III Section 109 , Speech and Hearing Services	22 MRS §§ 42, 3173	Routine Technical	No	5/19/2019

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2019-099	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II Section 90 , Physician Services	22 MRS §§ 42, 3173; 5 MRS §8054; PL 111-148, Title I Sec. 1557	Routine Technical	Yes	6/18/2019
2019-103	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 459 §3195	Major Substantive	No	6/20/2019
2019-105	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II Section 28 , Rehabilitation and Community Support Services for Children with Cognitive Impairments and Functional Limitations	22 MRS §§ 3173; 5 MRS §8054; PL 2017 ch. 460	Routine Technical	Yes	6/25/2019
2019-108	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 459 §3195	Major Substantive	No	7/28/2019
2019-122	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II & III Section 40 , Home Health Services	22 MRS §§ 42, 3173, 7863; 5 MRS §§ 8054, 8072; Resolve 2017 ch. 61; 42 CFR §440.70	Major Substantive	No	8/11/2019
2019-123	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. III Section 97 , Private Non-Medical Institution Services	22 MRS §§ 42, 3173; PL 2017 ch. 304, 460	Major Substantive	No	8/11/2019

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2019-143	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 and 8073; PL 2017 ch. 460 parts C and D	Major Substantive	No	8/29/2019
2019-163	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II Section 90 , Physician Services	22 MRS §§ 42, 3173; 81 FR 5169; Pub. L. 111-148, Title I, Sec. 1557	Routine Technical	No	9/16/2019
2019-167	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II Section 28 , Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations	22 MRS §§ 42, 3173; PL 2017 ch. 460	Routine Technical	No	9/23/2019
2019-183	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. II & III Section 45 , Hospital Services	22 MRS §§ 42, 3173; PL 2019 ch. 454	Routine Technical	No	10/28/2019
2019-252	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: Ch. III Section 2 , Adult Family Care Services	22 MRS §§ 42, 3173; PL 2017 ch. 460 part B-2(3)	Routine Technical	No	12/24/2019
2019-169	10-144	Department of Health and Human Services	Ch. 104	Maine State Services Manual, Section 7 : Abortion Services for MaineCare Members	PL 2019 ch. 274; 22 MRS §§ 42, 3173; 5 MRS §8054	Routine Technical	Yes	9/19/2019
2019-228	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 104	Maine State Services Manual: Section 7 , Abortion Services for MaineCare Members	22 MRS §§ 42, 3173; PL 2019 ch. 274	Routine Technical	No	12/17/2019

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2019-040	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, 3173, 7861(4); PL 2017 ch. 304; PL 2017 ch. 460	Routine Technical	No	2/18/2019
2019-079	10-144	Department of Health and Human Services, Division of Licensing and Certification	Ch. 128	Certified Nursing Assistant and Direct Care Worker Registry Rule	22 MRS §1812-G(18)	Routine Technical	No	6/15/2019
2019-080	10-144	Department of Health and Human Services, Maine Center for Disease Control and Prevention (Mine CDC)	Ch. 220	Radiation Protection Rule	22 MRS ch. 160	Routine Technical	No	5/20/2019
2019-212	10-144	Department of Health and Human Services, Maine Center for Disease Control and Prevention	Ch. 259	Rules Establishing Blind Seroprevalence Surveys for Occurrence of HIV in Newborns <i>(Repeal)</i>	22 MRS §42	Routine Technical	No	12/4/2019
2019-213	10-144	Department of Health and Human Services, Maine Center for Disease Control and Prevention	Ch. 273	Rules for the SSI Children's Program of Services <i>(Repeal)</i>	22 MRS §§ 42,1951, 3173	Routine Technical	No	12/4/2019
2019-220	10-144	Department of Health and Human Services, Maine Center for Disease Control and Prevention	Ch. 282	Prenatal Care Program <i>(Repeal)</i>	22 MRS §§ 42,1951, 3173	Routine Technical	No	12/11/2019
2019-219	10-144	Department of Health and Human Services, Maine Center for Disease Control and Prevention	Ch. 287	Rules for Family Planning Funding <i>(Repeal)</i>	22 MRS §1904	Routine Technical	Yes	12/4/2019
2019-115	10-144	Department of Health and Human Services, Maine Center for Disease Control and Prevention (Mine CDC)	Ch. 288	Parenting Education Scholarship Program <i>(Repeal)</i>	22 MRS §§ 42, 1951, 3173	Routine Technical	No	7/29/2019
2019-082	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 301	Food Supplement Program, FS Rule #203A (State Funded Non-Citizen Hardship), Section FS-111-2	22 MRS §§ 42(1), 3104-A	Routine Technical	No	5/28/2019

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2019-083	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 301	Food Supplement Program, FS Rule #206A (Simplified Reporting): Introduction, Sections FS-666-6, 999-1	5 MRS §8054; 22 MRS §§ 42(1)	Routine Technical	No	6/1/2019
2019-159	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 301	Food Supplement Program, FS Rule #207A (Homeless Shelter Deduction), Section FS-555-5	22 MRS §§ 42(1), 3104; 7 CFR §273.9(d)(6)(i); PL 115-334	Routine Technical	No	9/3/2019
2019-172	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 301	Food Supplement Program, FS Rule #210E: ABAWD Geographic Exemption	5 MRS §8054; 22 MRS §42(1); 7 CFR 273.24(f)	Routine Technical	Yes	9/30/2019
2019-173	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 301	Food Supplement Program, FS Rule #209E: COLA SUA FFY 2020	5 MRS §8054; 22 MRS §42; 7 CFR 273.9(d)	Routine Technical	Yes	10/1/2019
2019-253	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 301	Food Supplement Program, FS Rule #210A: ABAWD Geographic Waiver	22 MRS §42(1); 7 CFR 273.24(f)	Routine Technical	No	9/30/2019
2019-254	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 301	Food Supplement Program, FS Rule #208A: Removal of the Elderly Disabled Asset Limit	22 MRS §§ 42(1), 3104; 7 CFR 273.8	Routine Technical	No	12/24/2019
2019-257	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 301	Food Supplement Program, FS Rule #209A: COLA SUA FFY 2020	22 MRS §42(1); 7 CFR 273.89(d)	Routine Technical	No	12/29/2019
2019-124	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 323	Maine General Assistance Manual: GA 22E, Access for Certain Non-Citizens	22 MRS §42(1); 5 MRS §8054	Routine Technical	Yes	7/18/2019
2019-176	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 323	Maine General Assistance Manual, GA 22: Access for Certain Non-Citizens	22 MRS §42(1)	Routine Technical	No	10/16/2019

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2019-256	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 330	Higher Opportunity for Pathways to Employment (HOPE) Program Rules	22 MRS §3790-A	Routine Technical	No	1/1/2020
2019-084	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 331	Maine Public Assistance Manual (TANF), Rule #110A (State Funded Non-Citizen Hardship)	22 MRS §3762(3)(B)(d)	Routine Technical	No	6/1/2019
2019-174	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 331	Maine Public Assistance Manual (TANF), Rule #113E (TANF Max Benefit 2019)	5 MRS §8054; 22 MRS §§ 42(1), 3769-C	Routine Technical	Yes	10/1/2019
2019-243	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 331	Maine Public Assistance Manual (TANF), Rule #113A (TANF Max Benefit 2019)	5 MRS §8054; 22 MRS §§ 42(1), 3769-C	Routine Technical	No	12/30/2019
2019-015	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 332	MaineCare Eligibility Manual, MC Rule #290E (Medicaid Expansion): Part 3 , Eligibility Groups Requirements; Part 4 , Budgeting - MAGI	22 MRS §§ 42, 42(8), 3174-G(1)(H); 42 CFR §435.119	Routine Technical	Yes	1/18/2019
2019-063	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 332	Ch. 332, MaineCare Eligibility Manual, MC Rule #290A (Medicaid Expansion): Part 3 , Eligibility Groups Requirements; Part 4 , Budgeting – MAGI; Part 18 , Presumptive Eligibility Determined by Hospitals	22 MRS §§ 42, 42(8), 3174-G(1)(H); 42 CFR §435.119	Routine Technical	No	4/17/2019
2019-229	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 332	Ch. 332, MaineCare Eligibility Manual, MC Rule #291A (SBW Premium Rule)	22 MRS §§ 42, 3173; 42 USC §1396a <i>et seq.</i>	Routine Technical	No	1/1/2020

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2019-170	10-146	Department of Health and Human Services, Maine Center for Disease Control and Prevention	Ch. 15	Death with Dignity Act Reporting Rule	22 MRS ch. 418 §2140; 5 MRS §§ 8054, 8073	Major Substantive	Yes	9/19/2019
2019-206	10-148	Department of Health and Human Services, Office of Child and Family Services	Ch. 6	Child Care Subsidy Program Rules	22 MRS §42	Routine Technical	No	11/26/2019
2019-078	14-118	Department of Health and Human Services, Office of Substance Abuse and Mental Health Services	Ch. 19	Rules Governing Community-Based Drug Overdose Prevention Programs	22 MRS §§ 42, 2353; 5 MRS §8054	Routine Technical	Yes	5/16/2019
2019-144	14-118	Department of Health and Human Services, Office of Substance Abuse and Mental Health Services	Ch. 19	Rules Governing Community-Based Drug Overdose Prevention Programs	22 MRS §§ 42, 2353; 5 MRS §8054	Routine Technical	No	8/13/2019

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2019-110	12-179	Department of Labor, Bureau of Labor Standards, Board of Occupational Safety and Health	Ch. 8	Occupational Safety and Health Standards for Whistleblowers / Discrimination in the Public Sector	26 MRS §570	Routine Technical	No	7/7/2019
2019-111	12-179	Department of Labor, Bureau of Labor Standards, Board of Occupational Safety and Health	Ch. 9	Occupational Safety and Health Standards for Issuing Variances in the Public Sector	26 MRS §571	Routine Technical	No	7/7/2019
2019-112	12-179	Department of Labor, Bureau of Labor Standards, Board of Occupational Safety and Health	Ch. 10	Occupational Safety and Health Standards for Section 108 Consultation Guidelines in the Public Sector	26 MRS §565	Routine Technical	No	7/7/2019
2019-225	12-179	Department of Labor, Bureau of Labor Standards, Board of Occupational Safety and Health	Ch. 6	Recording Occupational Injuries and Illnesses in the Public Sector	26 MRS §565	Routine Technical	No	12/15/2019

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2019-005	13-188	Department of Marine Resources	Ch. 11	Scallops: Targeted Scallop Conservation Closures: West Vinalhaven	12 MRS §6171(3)	Routine Technical	Yes	1/6/2019
2019-022	13-188	Department of Marine Resources	Ch. 11	Scallops: Targeted Scallop Conservation Closures: Wohoa Bay within the Wohoa/ Western Bay Rotational Area; Cobscook Bay including Whiting and Denny's Bay	12 MRS §6171(3)	Routine Technical	Yes	1/27/2019
2019-039	13-188	Department of Marine Resources	Ch. 11	Scallops: Targeted Scallop Conservation Closures: Gouldsboro / Dyers Bays Rotational Area; Upper Machias Bay Rotational Area; Vinalhaven Islands in the Lower Penobscot Bay Rotational Area	12 MRS §6171(3)	Routine Technical	Yes	2/10/2019
2019-041	13-188	Department of Marine Resources	Ch. 11	Scallops: Targeted Scallop Conservation Closures: Cobscook Bay including Whiting and Denny's Bays and St. Croix River; Blue Hill Bay / Union River Rotational Area; West Lower Jericho Bay; Upper Damariscotta River	12 MRS §6171(3)	Routine Technical	Yes	2/24/2019
2019-045	13-188	Department of Marine Resources	Ch. 8	Landings Program	12 MRS §6173	Routine Technical	No	3/13/2019
2019-046	13-188	Department of Marine Resources	Ch. 25	Lobster and Crab: 25.04, Lobster Trawl Limits	12 MRS §6171-A	Routine Technical	No	3/13/2019
2019-047	13-188	Department of Marine Resources	Ch. 32	Eels (Elver Quota System for the 2019 Season)	12 MRS §6505-A	Routine Technical	No	3/13/2019
2019-048	13-188	Department of Marine Resources	Ch. 34	Groundfish Regulations: 34.07, Atlantic Halibut (<i>Hippoglossus hippoglossus</i>) (Atlantic Halibut Size Limit)	12 MRS §6171	Routine Technical	No	3/13/2019

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2019-049	13-188	Department of Marine Resources	Ch. 36	Atlantic Herring (2019 Season)	12 MRS §6171	Routine Technical	No	3/13/2019
2019-050	13-188	Department of Marine Resources	Ch. 41	Menhaden (2019 Menhaden Fishery Program)	12 MRS §6171	Routine Technical	No	3/13/2019
2019-051	13-188	Department of Marine Resources	Ch. 115	<i>Vibrio parahaemolyticus</i> Control Plan	12 MRS §6171-A	Routine Technical	No	3/13/2019
2019-053	13-188	Department of Marine Resources	Ch. 11	Scallops: 11.08, Targeted Scallop Conservation Closures; (14) Damariscotta River	12 MRS §6171(3)	Routine Technical	Yes	3/17/2019
2019-057	13-188	Department of Marine Resources	Ch. 2	Aquaculture Lease Regulations	12 MRS §§ 6072, 6072-A, 6072-B	Routine Technical	No	4/1/2019
2019-117	13-188	Department of Marine Resources	Ch. 25	Lobster and Crab: 25.02, Definitions	12 MRS §6171; Resolves 2019 ch. 23	Routine Technical	No	7/17/2019
2019-118	13-188	Department of Marine Resources	Ch. 26	Sea Urchins (Sea Urchin 2019-2020 Season)	12 MRS §6749	Routine Technical	No	7/17/2019
2019-119	13-188	Department of Marine Resources	Ch. 34	Groundfish Regulations	12 MRS §6171	Routine Technical	No	7/17/2019
2019-120	13-188	Department of Marine Resources	Ch. 36	Atlantic Herring	12 MRS §6171	Routine Technical	No	7/17/2019
2019-121	13-188	Department of Marine Resources	Ch. 41	Menhaden; 41.30, Menhaden Fishery Management Program	12 MRS §6171(3)(B)	Routine Technical	Yes	7/14/2019
2019-136	13-188	Department of Marine Resources	Ch. 41	Menhaden: 41.30, Menhaden Fishery Management Program	12 MRS §6171(3)(B)	Routine Technical	Yes	7/21/2019
2019-151	13-188	Department of Marine Resources	Ch. 36	Atlantic Herring (Period 2 Closes; Open Date Period 3)	12 MRS §6171	Routine Technical	Yes	8/17/2019
2019-166	13-188	Department of Marine Resources	Ch. 36	Atlantic Herring (Period 3 closes)	12 MRS §6171	Routine Technical	Yes	8/17/2019
2019-191	13-188	Department of Marine Resources	Ch. 36	Atlantic Herring (Period 3 Closes; Open Date Period 4)	12 MRS §6171	Routine Technical	Yes	10/31/2019

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2019-195	13-188	Department of Marine Resources	Ch. 8	Landings Program	12 MRS §6173	Routine Technical	No	11/13/2019
2019-196	13-188	Department of Marine Resources	Ch. 36	Atlantic Herring (Herring Permit)	12 MRS §6173	Routine Technical	No	11/13/2019
2019-197	13-188	Department of Marine Resources	Ch. 41	Menhaden (2019 Menhaden Fishery Program - Menhaden Permit)	12 MRS §6171	Routine Technical	No	11/13/2019
2019-198	13-188	Department of Marine Resources	Ch. 10	Clams and Quahogs, Section 10.05: Taking of Quahogs in the Sub-Tidal Waters of the New Meadows Lakes, Brunswick and West Bath	12 MRS §6171	Routine Technical	No	11/13/2019
2019-199	13-188	Department of Marine Resources	Ch. 11	Scallops: 2019-20 Season	12 MRS §§ 6171, 6722	Routine Technical	No	11/13/2019
2019-200	13-188	Department of Marine Resources	Ch. 34	Groundfish Regulations; 34.06, Recreational Groundfish Restrictions	12 MRS §6171	Routine Technical	No	11/13/2019
2019-201	13-188	Department of Marine Resources	Ch. 75	Protected Resources	12 MRS §6171	Routine Technical	No	11/13/2019
2019-202	13-188	Department of Marine Resources	Ch. 94	Sanitary Control of Molluscan Shellfish	12 MRS §§ 6171, 6856	Routine Technical	No	11/13/2019
2019-218	13-188	Department of Marine Resources	Ch. 36	Atlantic Herring (HMA 1A Closes)	12 MRS §6171	Routine Technical	Yes	11/30/2019
2019-223	13-188	Department of Marine Resources	Ch. 11	Scallops: 11.08, Targeted Scallop Conservation Closures; (8) Moosabec Reach	12 MRS §6171(3)	Routine Technical	Yes	12/8/2019

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2019-075	15-213	Department of Defense, Veterans and Emergency Management, Military Bureau	Ch. 2	Registration of Private Educational Institutions to Participate in the Maine National Guard Education Assistance Program	37-B MRS §§ 352, 352-A, 353-B, 367	Routine Technical	No	5/13/2019
2019-165	15-215	Department of Defense, Veterans and Emergency Management, Bureau of Maine Veterans Services	Ch. 2	Administration of the Veteran's Emergency Financial Assistance Program	37-B MRS §505	Routine Technical	No	9/16/2019
2019-096	16-163	Department of Public Safety, Maine Emergency Medical Services	Ch. 19	Community Paramedicine	32 MRS §84(4)	Routine Technical	Yes	6/7/2019

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2019-158	16-163	Department of Public Safety, Maine Emergency Medical Services	Ch. 19	Community Paramedicine	32 MRS §84(4)	Routine Technical	No	8/31/2019
2019-181	16-219	Department of Public Safety, Office of State Fire Marshal	Ch. 1	Fee Schedules for Plans Examination	25 MRS §§ 2450, 2452; 32 MRS §1374	Routine Technical	No	10/28/2019
2019-207	16-219	Department of Public Safety, Office of State Fire Marshal	Ch. 3	Fire Protection Code	25 MRS §2452	Routine Technical	No	11/27/2019
2019-208	16-219	Department of Public Safety, Office of State Fire Marshal	Ch. 17	National Fire Alarm and Signaling Code. N.F.P.A. #72	25 MRS §§ 2396, 2452	Routine Technical	No	11/27/2019
2019-209	16-219	Department of Public Safety, Office of State Fire Marshal	Ch. 18	Carbon Dioxide Alarms (<i>Repeal</i>)	25 MRS §2468	Routine Technical	No	11/27/2019
2019-210	16-219	Department of Public Safety, Office of State Fire Marshal	Ch. 20	Fire Safety in Buildings and Structures	8 MRS §236; 25 MRS §2452	Routine Technical	No	11/27/2019
2019-244	16-219	Department of Public Safety, Office of the Commissioner	Ch. 70	Regulation Establishing Critical Incident Stress Management Team Training Standards	25 MRS §4201(2), (1-A), (1-B)	Routine Technical	No	12/25/2019
2019-125	16-633	Department of Public Safety, Gambling Control Board	Ch. 2	Licensure and Applications	8 MRS §1003(1)(B) & (C)	Routine Technical	No	7/22/2019
2019-126	16-633	Department of Public Safety, Gambling Control Board	Ch. 4	License Records	8 MRS §1003(1)(B) & (C)	Routine Technical	No	7/22/2019
2019-127	16-633	Department of Public Safety, Gambling Control Board	Ch. 5	Internal Controls, (<i>including</i> Appendix A, Minimum Internal Controls)	8 MRS §1003(1)(B) & (C)	Routine Technical	No	7/22/2019

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2019-168	17-229	Department of Transportation	Ch. 602	Rules Relating to Maine Ferry Service Tolls	23 MRS §§ 52, 4404; Resolves 2015 ch. 86 §2	Routine Technical	No	10/2/2019
2019-190	17-229	Department of Transportation	Ch. 308	Rules to Establish Seasonal Load Restrictions on Certain State and State Aid Highways	23 MRS §§ 52, 4206; 29-A MRS §2395	Routine Technical	No	11/5/2019

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2019-070	18-125	Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services - MRS)	Ch. 202	Tree Growth Tax Law Valuations - 2019	36 MRS §576	Routine Technical	No	5/11/2019
2019-148	18-125	Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services - MRS)	Ch. 302	Sales to Government Agencies and Exempt Organizations	36 MRS §112	Routine Technical	No	8/10/2019
2019-149	18-125	Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services - MRS)	Ch. 304	Sales Tax Returns and Payments	36 MRS §112	Routine Technical	No	8/19/2019
2019-150	18-125	Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services - MRS)	Ch. 318	Instrumentalities of Interstate or Foreign Commerce	36 MRS §112	Routine Technical	No	8/19/2019
2019-029	18-553	Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations (BABLO)	Ch. 4	Agency Liquor Store Relocation: Rules Governing the Process to Provide Input by Agency Liquor Stores in the Same Municipality of a Relocation Request	28-A MRS §453-D	Routine Technical	No	2/9/2019
2019-071	18-553	Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations (BABLO)	Ch. 20	Powerball Rules	8 MRS §§ 372 sub-§2 ¶1, 374	Routine Technical	No	5/8/2019
2019-072	18-553	Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations (BABLO)	Ch. 40	Mega Millions Rules	8 MRS §§ 372 sub-§2 ¶1, 374	Routine Technical	No	5/8/2019
2019-140	18-691	Department of Administrative and Financial Services, Office of Marijuana Policy	Ch. 4	Marijuana Manufacturing Facilities	Title 22 ch. 558-C	Routine Technical	No	8/1/2019

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2019-161	18-691	Department of Administrative and Financial Services, Office of Marijuana Policy	Ch. 5	Rules for the Certification of Marijuana Testing Facilities	Title 22-B ch. 1; 22 MRS §569	Routine Technical	Yes	9/4/2019
2019-194	18-691	Department of Administrative and Financial Services, Office of Marijuana Policy	Ch. 1	Adult Use Marijuana Program	Title 28-B	Major Substantive	No	12/4/2019
2019-205	18-691	Department of Administrative and Financial Services, Office of Marijuana Policy	Ch. 1	Adult Use Marijuana Program Rule and Emergency Additions Regarding the Licensure of Marijuana Testing Facilities	Title 28-B	Major Substantive	Yes	11/22/2019
2019-224	18-691	Department of Administrative and Financial Services, Office of Marijuana Policy	Ch. 5	Rules for the Certification of Marijuana Testing Facilities	Title 22-B ch. 1; 22 MRS §569	Routine Technical	No	12/16/2019

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2019-097	19-100	Department of Economic and Community Development	Ch. 100	Pine Tree Development Zone Program	PL 2009 ch. 337	Routine Technical	No	6/17/2019

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2019-003	29-250	Secretary of State, Bureau of Motor Vehicles	Ch. 110	Non-Governmental Registration Agent and Resident Agent Requirements	29-A MRS §204	Routine Technical	No	1/9/2019

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2019-018	65-407	Maine Public Utilities Commission	Ch. 395	Construction Standards, Ownership, Cost Allocation, and Customer Charges Rules for Electric Distribution Line Extensions and Service Drops	35-A MRS §§ 111, 314, 315	Routine Technical	No	2/3/2019
2019-066	65-407	Maine Public Utilities Commission	Ch. 313	Customer Net Energy Billing	35-A MRS §§ 104, 111, 1301, 3203(9), 3209-A, 3210; PL 2011 ch. 262 §2; PL 2019 ch. 16 §2	Routine Technical	Yes	4/22/2019
2019-098	65-407	Maine Public Utilities Commission	Ch. 320	Electric Transmission and Distribution Utility Service Standards	35-A §§ 104, 111, 2305-A, 3104-A	Major Substantive	No	7/14/2019
2019-141	65-407	Maine Public Utilities Commission	Ch. 285	Maine Telecommunications Education Access Fund	35-A MRS §§ 104, 111, 7104-B	Routine Technical	No	8/4/2019
2019-142	65-407	Maine Public Utilities Commission	Ch. 288	Maine Universal Service Fund	35-A MRS §§ 104, 111, 7104	Routine Technical	No	8/4/2019
2019-145	65-407	Maine Public Utilities Commission	Ch. 313	Customer Net Energy Billing	35-A MRS § 104, 111, 1301, 3203(9), 3210; PL 2019, ch. 16 §2	Routine Technical	No	8/12/2019
2019-154	65-407	Maine Public Utilities Commission	Ch. 32	Electric Utilities Service Standards <i>(Repeal)</i>	35-A MRS §§ 104, 111, 704, 1308	Routine Technical	No	8/27/2019
2019-203	65-407	Maine 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	11/23/2019

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2019-216	65-407	Maine Public Utilities Commission	Ch. 311	Portfolio Requirement	35-A MRS §§ 104, 111, 1301, 3203(9), 3210, 3210-B; PL 2019 ch. 477	Routine Technical	No	12/7/2019
2019-217	65-407	Maine Public Utilities Commission	Ch. 313	Customer Net Energy Billing	35-A MRS §§ 104, 111, 1301, 3203(9), 3209-A, 3210; PL 2019 ch. 478	Routine Technical	No	12/7/2019
2019-230	65-407	Maine Public Utilities Commission	Ch. 324	Small Generator Interconnection Procedures	35-A MRS §§ 104, 111; Resolve 2007 ch. 183; PL 2019 ch. 478	Routine Technical	Yes	12/11/2019
2019-271	65-407	Maine Public Utilities Commission	Ch. 312	Distributed Generation Procurement	35-A MRS §§ 104, 111, 1301, 3488; PL 2019 ch. 478	Routine Technical	No	12/29/2019

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2019-081	90-590	Maine Health Data Organization	Ch. 270	Uniform Reporting System for Quality Data Sets	22 MRS §§ 8704 sub-§4, 8708-A, 8712, 8761; 24-A MRS §6951(2), (3)	Major Substantive	No	6/22/2019
2019-245	90-590	Maine Health Data Organization	Ch. 241	Uniform Reporting System for Hospital Inpatient Data Sets and Hospital Outpatient Data Sets	22 MRS §§ 8704 sub-§4, 8708	Routine Technical	No	12/22/2019
2019-246	90-590	Maine Health Data Organization	Ch. 243	Uniform Reporting System for Health Care Claims Data Sets	22 MRS §§ 8704(1), 8704(4), 8708(6-A), 8712(2)	Routine Technical	No	12/22/2019

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2019-068	94-270	Commission on Governmental Ethics and Election Practices	Ch. 1	Procedures	1 MRS §§ 1003(1), 1016-G(4); 5 MRS §19(5)	Routine Technical	No	5/7/2019
2019-069	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	6/1/2019

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2019-010	94-293	Baxter State Park Authority	Ch. 1	Rule 1.3 , All Persons Entering the Park b Road or Trail... <i>(moving text from Rule 5.6 to 1.3)</i> Rule 4.11 , The Removal from, or Introduction of, Natural Objects, Materials, Plants, or Animals... Rule 4.12 , Research Studies and Commercial Media Projects within the Park... Rule 5.4 , No Persons May Operate Any Vehicle within the Park...	12 MRS §903.1	Routine Technical	No	1/19/2019

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2019-004	94-335	Wells National Estuarine Research Reserve Management Authority	Ch. 1	Rules for Public Use of Wells Reserve	P & SL 1989 Ch. 108: §2; §3 sub-§§ 1-7; §5 sub-§§ 8, 9	Routine Technical	No	1/19/2019

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2019-060	94-376	Maine Municipal Bond Bank (jointly with 06-096, Department of Environmental Protection)	Ch. 595	State Revolving Fund	30-A MRS §5959	Routine Technical	No	4/3/2019

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2019-065	94-411	Maine Public Employees Retirement System	Ch. 414	Required Minimum Distributions	5 MRS §17103(4)	Routine Technical	Yes	4/17/2019
2019-100	94-411	Maine Public Employees Retirement System	Ch. 414	Required Minimum Distributions	5 MRS §17103(4)	Routine Technical	No	6/24/2019
2019-101	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	6/24/2019
2019-187	94-411	Maine Public Employees Retirement System	Ch. 101	Earnable Compensation and Calculation of Average Final Compensation	5 MRS §17103(4)	Routine Technical	No	11/4/2019
2019-188	94-411	Maine Public Employees Retirement System	Ch. 406	Payment or Repayment of Contributions and Interest for the Purchase of Creditable Service	5 MRS §17103(4)	Routine Technical	No	11/4/2019
2019-189	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	11/4/2019

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2019-106	94-412	Saco River Corridor Commission	Ch. 102	Standard Conditions of Approval	38 MRS §954-C	Routine Technical	No	7/1/2019
2019-107	94-412	Saco River Corridor Commission	Ch. 107	Performance Standards Governing Expansions of Existing Nonconforming Uses, Including Structures	38 MRS §954-C	Routine Technical	No	7/1/2019

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2019-009	94-457	Finance Authority of Maine	Ch. 611	Maine College Savings Program	10 MRS §969-A; 20-A MRS §11485	Routine Technical	No	1/15/2019
2019-182	94-457	Finance Authority of Maine	Ch. 101	Loan Insurance Program, <i>Amendment 7</i>	10 MRS §§ 969-A(14), 1026-A	Routine Technical	No	10/29/2019
2019-226	94-457	Finance Authority of Maine	Ch. 610	Rules for the Conduct of the Educators for Maine Program, <i>Amendment 5</i>	20-A MRS §§ 12501 <i>et seq.</i> ; PL 2019 ch. 303	Routine Technical	No	12/15/2019
2019-227	94-457	Finance Authority of Maine	Ch. 612	Maine Dental Education Loan and Loan Repayment Programs, <i>Amendment 4</i>	20-A MRS §12305 <i>et seq.</i> ; PL 2019 ch. 102	Routine Technical	No	12/15/2019

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2019-016	99-346	Maine State Housing Authority	Ch. 25	Weatherization Assistance Program Rule	30-A MRS §§ 4722(1)(W), 4741(15)	Routine Technical	No	1/23/2019
2019-026	99-346	Maine State Housing Authority	Ch. 29	Multi-family Mortgage Loans	30-A MRS §§ 4740,1, 4722(1)(L)	Routine Technical	No	2/3/2019
2019-027	99-346	Maine State Housing Authority	Ch. 34	Preservation and Relocation Rule	30-A MRS §§ 4741.1, 4973, 4976.1, 4977	Routine Technical	No	2/3/2019
2019-113	99-346	Maine State Housing Authority	Ch. 16	Low Income Housing Tax Credit Rule	30-A MRS §§ 4741(1) and (14); Section 42 of the Internal Revenue Code	Routine Technical	No	7/8/2019
2019-114	99-346	Maine State Housing Authority	Ch. 24	Home Energy Assistance Program Rule	30-A MRS §§ 4722(1)(W), 4741(15), 6991 <i>et seq.</i> ; 42 USCA §§ 8621 <i>et seq.</i>	Routine Technical	No	7/8/2019
2019-185	99-346	Maine State Housing Authority	Ch. 19	Homeless Solutions Rule	30-A MRS §§ 4741(1) and (18); 42 USCA §§ 11301 <i>et seq.</i>	Routine Technical	No	11/3/2019
2019-186	99-346	Maine State Housing Authority	Ch. 24	Home Energy Assistance Program Rule	30-A MRS §§ 4722(1)(W), 4741(1) <i>and</i> (15), 4991 <i>et seq.</i> ; 42 USCA §§ 8621 <i>et seq.</i>	Routine Technical	No	11/3/2019

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2019-091	99-639	ConnectME Authority	Ch. 101	ConnectME Authority	30-A MRS §§ 4722(1)(W), 4741(1) <i>and</i> (15), 4991 <i>et seq</i> ; 42 USCA §§ 8621 <i>et seq.</i>	Major Substantive	No	6/30/2019
2019-215	99-639	ConnectME Authority	Ch. 101	ConnectME Authority	35-A MRS ch. 93	Routine Technical	No	12/3/2019

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2019-231	99-650	Combat Sports Authority of Maine	Ch. 1	Part 1, Mixed Martial Arts: General Rules for Mixed Martial Arts Contests	8 MRS §523	Routine Technical	No	12/16/2019
2019-232	99-650	Combat Sports Authority of Maine	Ch. 2	Part 1, Mixed Martial Arts: Technical Requirements for Mixed Martial Arts Contests	8 MRS §523	Routine Technical	No	12/16/2019
2019-233	99-650	Combat Sports Authority of Maine	Ch. 3	Part 1, Mixed Martial Arts: Judging/Refereeing Mixed Martial Arts Contests	8 MRS §523	Routine Technical	No	12/16/2019
2019-234	99-650	Combat Sports Authority of Maine	Ch. 4	Part 1, Mixed Martial Arts: Rules Governing Judges for Mixed Martial Arts Contests	8 MRS §523	Routine Technical	No	12/16/2019
2019-235	99-650	Combat Sports Authority of Maine	Ch. 5	Part 1, Mixed Martial Arts: Rules Governing Referees of Mixed Martial Arts Contests	8 MRS §523	Routine Technical	No	12/16/2019
2019-236	99-650	Combat Sports Authority of Maine	Ch. 6	Part 1, Mixed Martial Arts: Rules Governing Promoters of Mixed Martial Arts Contests	8 MRS §523	Routine Technical	No	12/16/2019
2019-237	99-650	Combat Sports Authority of Maine	Ch. 7	Part 1, Mixed Martial Arts: Requirements for Mixed Martial Arts Competitors	8 MRS §523	Routine Technical	No	12/16/2019
2019-238	99-650	Combat Sports Authority of Maine	Ch. 8	Part 1, Mixed Martial Arts: Rules Governing Managers, Trainers, Seconds, Cutpersons, Scorekeepers, and Cornerpersons for Mixed Martial Arts Competitors	8 MRS §523	Routine Technical	No	12/16/2019
2019-239	99-650	Combat Sports Authority of Maine	Ch. 9	Part 1, Mixed Martial Arts: Rules Governing Attending Physicians for Mixed Martial Arts Contests	8 MRS §523	Routine Technical	No	12/16/2019
2019-240	99-650	Combat Sports Authority of Maine	Ch. 10	Part 1, Mixed Martial Arts: Rules Governing Inspectors for Mixed Martial Arts Contests	8 MRS §523	Routine Technical	No	12/16/2019

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2019-241	99-650	Combat Sports Authority of Maine	Ch. 11	Part 1, Mixed Martial Arts: Rules Governing Timekeepers for Mixed Martial Arts Contests	8 MRS §523	Routine Technical	No	12/16/2019
2019-258	99-650	Combat Sports Authority of Maine	Ch. 1	Part 2, Boxing: General Rules for Boxing Contests	8 MRS §523	Routine Technical	No	12/20/2019
2019-259	99-650	Combat Sports Authority of Maine	Ch. 2	Part 2, Boxing: Technical Requirements for Boxing Contests	8 MRS §523	Routine Technical	No	12/20/2019
2019-260	99-650	Combat Sports Authority of Maine	Ch. 3	Part 2, Boxing: Judging / Refereeing Boxing Competitions	8 MRS §523	Routine Technical	No	12/20/2019
2019-261	99-650	Combat Sports Authority of Maine	Ch. 4	Part 2, Boxing: Rules Governing Judges for Boxing Contests	8 MRS §523	Routine Technical	No	12/20/2019
2019-262	99-650	Combat Sports Authority of Maine	Ch. 5	Part 2, Boxing: Rules Governing Referees for Boxing Contests	8 MRS §523	Routine Technical	No	12/20/2019
2019-263	99-650	Combat Sports Authority of Maine	Ch. 6	Part 2, Boxing: Rules Governing Promoters of Boxing Contests	8 MRS §523	Routine Technical	No	12/20/2019
2019-264	99-650	Combat Sports Authority of Maine	Ch. 7	Part 2, Boxing: Requirements for Boxers	8 MRS §523	Routine Technical	No	12/20/2019
2019-265	99-650	Combat Sports Authority of Maine	Ch. 8	Part 2, Boxing: Rules Governing Managers, Trainers, Seconds, Cutpersons, Scorekeepers, and Cornerpersons for Boxing	8 MRS §523	Routine Technical	No	12/20/2019
2019-266	99-650	Combat Sports Authority of Maine	Ch. 9	Part 2, Boxing: Rules Governing Attending Physicians for Boxing Contests	8 MRS §523	Routine Technical	No	12/20/2019
2019-267	99-650	Combat Sports Authority of Maine	Ch. 10	Part 2, Boxing: Rules Governing Inspectors for Boxing Contests	8 MRS §523	Routine Technical	No	12/20/2019
2019-268	99-650	Combat Sports Authority of Maine	Ch. 11	Part 2, Boxing: Rules Governing Timekeepers for Boxing Contests	8 MRS §523	Routine Technical	No	12/20/2019
2019-269	99-650	Combat Sports Authority of Maine	Ch. 12	Part 2, Boxing: Rules for Women's Boxing Contests	8 MRS §523	Routine Technical	No	12/20/2019

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Agency name: Department of Agriculture, Conservation and Forestry (General)
Umbrella-Unit: 01-001
Statutory authority: 7 MRS §§ 2301 - 2303
Chapter number/title: Ch. 275, Emerald Ash Borer Quarantine
Filing number: 2019-062
Effective date: 4/10/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The principal reason for proposing this rule is to prevent the spread of Emerald Ash Borer, a highly destructive pest of all types of true ash trees, within the State of Maine.

Basis statement:

Emerald Ash Borer (EAB) has been federally regulated pests since 2010. It has already killed millions of ash trees from Minnesota to Texas and Georgia to New Hampshire. Unfortunately, only a fraction of a percent of Maine's more than 400 million stems of white, green and black/brown ash are expected to survive this insect. The first detection for emerald ash borer in Maine was in Madawaska on May 22, 2018 and subsequent infestations were found in Frenchville and Grand Isle. In September of 2018 EAB was also detected on monitoring traps in Lebanon and Acton. It was most recently detected in trees in Acton and Berwick in February 2019. If Maine does not impose a partial state quarantine, the USDA will most likely impose a full state quarantine. Maine Forest Service would like to contain potentially infested wood and wood products within the smaller quarantined areas to help slow the spread into uninfested areas of the state. Ch. 275 quarantines the towns with known EAB infestations and provides a two to three town buffer area around the infested towns.

The Secretary of State published a newspaper notice on January 15, 2019 and over 2500 companies and individuals representing municipal, arboriculture, horticulture and forestry interests in the state had been notified electronically. Two public hearings were held on February 11 in Ashland and February 13 in Springvale. Both hearings were attended by a cross-section of constituents and a few comments were received.

The comment period ended on February 25 and only three additional comments were received. Most of the comments were questions about how the quarantine would function. Substantive comments came from firewood dealers whose businesses are within the quarantine area and would be impacted by the loss of market area outside the quarantine boundaries and similar concerns were voiced about biomass harvesters whose chips might contain some ash and would not be able to freely move outside the quarantine boundaries. In both instances MFS will work with USDA to develop compliance agreements to facilitate the movement of ash-free firewood or mixed chips during the winter months when the EAB is unlikely to be spread.

The Department's staff reviewed the comments on March 15, 2019 and noted that none required changes to the proposed rule. The Department therefore felt very comfortable adopting Ch. 275 to create a quarantine to regulate the northeast corner of Aroostook County and all of York County.

Fiscal impact of rule:

The fiscal impact of the proposed rule on state government should be minor. The state will continue to monitor the spread of EAB with funds provided by USDA-APHIS. Education and enforcement has already been ongoing and should continue with a minor increase in effort. Impacts on firewood dealers could be significant if their market area is reduced or if

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

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Agency name: Department of Agriculture, Conservation and Forestry (General)
Umbrella-Unit: 01-001
Statutory authority: 7 MRS §§ 2301 - 2303
Chapter number/title: Ch. 271, Gypsy Moth Quarantine
Filing number: 2019-077
Effective date: 5/20/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The principal reason for proposing this rule is to prevent the spread of Gypsy Moth, a highly destructive pest of hardwood trees, within the State of Maine.

Basis statement:

Gypsy moth has been a federally regulated pest for over 25 years. Maine has been partially infested with gypsy moth since 1906. The state has been monitoring the spread of these pests for over 30 years. The infestation now covers more than two-thirds of the state, so it is time to quarantine the entire state.

The Secretary of State published a notice on March 20, 2019 and by that date over 7500 companies and individuals representing horticulture and forestry interests in the state had been notified by email. No public hearing was held.

The comment period ended on April 26, 2019 and only six comments were received. The Department's staff reviewed the comments on April 30, 2019. Three commenters agreed with the proposal as written and two only had questions regarding how a quarantine works. One was in opposition, believing the quarantine was excessive. Since only 10 major Maine towns remain uninfested and the major businesses affected in the area agreed with the full state quarantine, the Department staff decided to adopt the rule as proposed placing the entire state under quarantine for gypsy moth.

Fiscal impact of rule:

The fiscal impact of the proposed rule will be minor. The rules could have an impact on out of state movement of Christmas trees and wood products particularly from the northern part of the state. These materials will require phytosanitary certificates to be moved to uninfested states or provinces.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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 §§ 2701 - 2872
Chapter number/title: Ch. 270, Maine Apiary Rules and Regulations
Filing number: 2019-102
Effective date: 6/24/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The purpose of the Apiary Program is to prevent the introduction and/or spread of regulated honey bee diseases, parasites, and undesirable genetic material in resident and migratory honey bee colonies, as well as encourage and maintain interstate movement of honey bees for crop pollination and honey production. Proposed changes to the current rules include:

1. Defining and clarifying terms within the rules.
2. Deregulate well established pests that are currently regulated, including the varroa mite and European foulbrood.
3. Adding pests and diseases of honey bees to the regulated pest list that do not currently exist in the United States but have the potential to be very harmful to the State of Maine Beekeeping industry.
4. Clarify areas of the current rule that are unclear and/or burdensome to beekeepers including the follow sections:
 - a. Regulation
 - b. Possession and Sale
 - c. Abatement Procedures
 - d. Inspection
5. Increase the apiary registration fee. The current fee schedule was first adopted in 1985 and has never been increased.

The Secretary of State published a newspaper notice on April 10, 2019. Registered beekeepers were notified of the proposed changes on March 22nd and April 23rd through GovDelivery. Email notifications were sent to the Maine Pomological Society, Maine Small Fruit and Vegetable Growers, The Maine State Beekeeper Association, the apple Cooperative Extension Specialist and the wild blueberry crop Cooperative Extension Specialist for distribution. Two public hearings were held on April 29th in Falmouth and May 2nd in Bangor.

The comment period ended on May 13, 2019. A total of 16 comments were received and responses to those comments are published on a separate document. The comments were overwhelmingly supportive of the proposed changes.

The Department's staff reviewed the comments on May 15, 2019 and noted that only minor changes were required to the proposed rule. The Department therefore felt very comfortable adopting the proposed changes to Ch, 270, *Maine Apiary Rules and Regulations*.

Fiscal impact of rule:

The fiscal impact on state government will be positive. The fee increase will provide the necessary funds to continue the inspection and extension programs. The fiscal impact on the majority of beekeepers will be negligible (\$8.00/year increase). Commercial operations will only see a maximum fee increase of \$50/year. Neither of those fee increases should be a large burden on the beekeeping industry nor should it cascade into higher honey or hive rental prices.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

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

Umbrella-Unit: **01-015**

Statutory authority: 7 MRS §2954

Chapter number/title: **Ch. 29**, Dealer Margins

Filing number: **2019-008**

Effective date: 1/15/2019

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The principal reason for this rulemaking is to update dealer margins. The margins adopted in this rule reflect the current cost of processing milk in Maine and will be used by the Maine Milk Commission in their monthly milk price setting meetings.

Basis statement:

Pursuant to 7 MRS §2954, the Maine Milk Commission is responsible for setting minimum wholesale and retail milk prices. Minimum wholesale prices paid to processors (dairies) are set to reflect the lowest price at which milk purchased from Maine producers can be received, processed, packaged, and distributed to retailers within the state at a just and reasonable return. 7 MRS §2954(2)(B).

To arrive at the dairy-processing price, also known as the dealer margin, the Maine Milk Commission first conducts a cost study that evaluates the operation of milk processing plants in Maine. The study uses current price data for supplies, labor, electricity, trucking, etc., to calculate a lowest achievable price. The lowest achievable price is the theoretical price at which a Maine dairy should be able to process milk from raw product to finished product and distribute it to retailers. *Cumberland Farms Northern, Inc. v. Me. Milk Comm'n*, 377 A.2d 84, 91-92 (Me. 1977). The lowest achievable price must also factor in a reasonable return on investment. *Id.* at 92. To arrive at the dealer margin, the Commission takes the lowest achievable price generated by the study and then adjusts it, as warranted, after considering the criteria set forth in 7 MRS §2954(2), including, without limitation, conditions specific to Maine processors and the need to make milk available to the public at the lowest possible prices. *Id.*; *Cumberland Farms Northern, Inc. v. Me. Milk Comm'n*, 428 A.2d 869, 877-78 (Me. 1981).

The procedure employed to arrive at the dealer margin includes both independent investigation and a public hearing. 7 MRS §2954(1); *Cumberland Farms Northern, Inc.*, 377 A.2d at 88. The Commission conducts a public hearing on the proposed dealer margin. After considering the input of processors, any other interested parties, and the public, the Commission adopts a rule establishing the dealer margin. This margin is the minimum return that processors are guaranteed until a new study is completed. Processors may obtain a higher price for a gallon of milk from retailers, but the price paid by retailers cannot be below the dealer margin. A new cost study is required every three years. 7 MRS §2952-A (3).

In June of 2018, the Commission contracted with Herbein & Co. of Reading, Pennsylvania to conduct a new dairy processing cost study to be used as the basis for setting new dealer margins. This is the thirteenth major pricing order the Commission has set, and embodies continued improvement and refinement over earlier orders. With each new order the data, and the information made available and reviewed by the Commission, has become more detailed and specific.

The Commission received input from interveners, processors, and milk producers.

Fiscal impact of rule: None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

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

Umbrella-Unit: **01-015**

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

Chapter number/title: **Ch. 3, Schedule of Minimum Prices, Order #02-19**

Filing number: **2019-020**

Effective date: 2/3/2019

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 2019** minimum Class I price is **\$18.55/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 **\$23.75/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$3.79.**

Basis statement:

Pursuant to 5 MRS §8054 and 7 MRS §2954 the Maine Milk Commission conducted an emergency 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 **\$13.78/cwt.** and a Class IV price of **\$15.09/cwt.** for **December 2018.**

The Class II price for **December 2018** is **\$15.67/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 **\$18.55/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 24, 2019 and therefore should be passed on in minimum prices effective February 3, 2019. 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, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

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

Umbrella-Unit: **01-015**

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

Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #03-19**

Filing number: **2019-043**

Effective date: 3/3/2019

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 2019** minimum Class I price is **\$19.23/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 **\$1.86/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 **\$3.81**.

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 **\$13.96/cwt.** and a Class IV price of **\$15.48/cwt.** for **January 2019**.

The Class II price for **January 2019** is **\$15.74/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 **\$19.23/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 21, 2019 and therefore should be passed on in minimum prices effective March 3, 2019. These prices also include a handling fee of \$1.86/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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 #04-19**

Filing number: **2019-054**

Effective date: 3/31/2019

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 2019** minimum Class I price is **\$19.01/cwt. plus \$1.63/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$1.86/cwt.** handling fee for a total of **\$23.74/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$3.79**.

Basis statement:

Pursuant to 5 MRS §8054 and 7 MRS §2954 the Maine Milk Commission conducted an emergency 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 **\$13.89/cwt.** and a Class IV price of **\$15.86/cwt.** for **February 2019**.

The Class II price for **February 2019** is **\$16.13/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 **\$19.01/cwt. plus \$1.63/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on March 21, 2019 and therefore should be passed on in minimum prices effective March 31, 2019. These prices also include a handling fee of \$1.86/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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 #05-19**

Filing number: **2019-067**

Effective date: 4/28/2019

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 2019** minimum Class I price is **\$19.67/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 **\$23.94/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$3.81**.

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 **\$15.04/cwt.** and a Class IV price of **\$15.71/cwt.** for **March 2019**.

The Class II price for **March 2019** is **\$16.61/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 **\$19.67/cwt. plus \$1.63/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on April 18, 2019 and therefore should be passed on in minimum prices effective April 28, 2019. 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, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

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

Umbrella-Unit: **01-015**

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

Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #06-19**

Filing number: **2019-087**

Effective date: 6/2/2019

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 2019** minimum Class I price is **\$20.32/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 **\$.93/cwt.** handling fee for a total of **\$24.12/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$3.83.**

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 **\$15.96/cwt.** and a Class IV price of **\$15.72/cwt.** for **April 2019.**

The Class II price for **April 2019** is **\$16.38/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$20.32/cwt. plus \$1.63/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on May 23, 2019 and therefore should be passed on in minimum prices effective June 2, 2019. These prices also include a handling fee of \$0.93/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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 #07-19**

Filing number: **2019-104**

Effective date: 6/30/2019

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 2019** minimum Class I price is **\$20.43/cwt. plus \$1.63/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.93/cwt.** handling fee for a total of **\$24.23/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$3.84.**

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 **\$16.39/cwt.** and a Class IV price of **\$16.29/cwt.** for **May 2019.**

The Class II price for **May 2019** is **\$16.48/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 **\$20.43/cwt. plus \$1.63/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on June 20, 2019 and therefore should be passed on in minimum prices effective June 30, 2019. These prices also include a handling fee of \$0.93/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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 #08-19**

Filing number: **2019-137**

Effective date: 8/4/2019

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 2019** minimum Class I price is **\$21.14/cwt. plus \$1.53/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$24.38/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$3.86.**

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 **\$16.27/cwt.** and a Class IV price of **\$16.83/cwt.** for **June 2019.**

The Class II price for **June 2019** is **\$17.30/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$21.14/cwt. plus \$1.53/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on July 18, 2019 and therefore should be passed on in minimum prices effective August 4, 2019. These prices also include a handling fee of \$0.47/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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 #09-19**

Filing number: **2019-157**

Effective date: 9/1/2019

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 2019** minimum Class I price is **\$21.10/cwt. plus \$1.53/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$24.34/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$3.85**.

Basis statement:

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

Federal Order One Northeast Market Administrator announced a Class III price of **\$17.55/cwt.** and a Class IV price of **\$16.90/cwt.** for **July 2019**.

The Class II price for **July 2019** is **\$17.61/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 **\$21.10/cwt. plus \$1.53/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on August 22, 2019 and therefore should be passed on in minimum prices effective September 1, 2019. These prices also include a handling fee of \$0.47/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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 #10-19**

Filing number: **2019-171**

Effective date: 10/29/2019

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 2019** minimum Class I price is **\$21.09/cwt. plus \$1.53/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$24.33/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$3.85.**

Basis statement:

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

Federal Order One Northeast Market Administrator announced a Class III price of **\$17.60/cwt.** and a Class IV price of **\$16.74/cwt.** for **August 2019.**

The Class II price for **August 2019** is **\$17.60/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$21.09/cwt. plus \$1.53/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on September 19, 2019 and therefore should be passed on in minimum prices effective September 29, 2019. These prices also include a handling fee of \$0.47/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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 #11-19**

Filing number: **2019-184**

Effective date: 11/3/2019

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 2019** minimum Class I price is **\$21.39/cwt. plus \$1.53/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$24.63/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$3.88.**

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 **\$18.31/cwt.** and a Class IV price of **\$16.35/cwt.** for **September 2019.**

The Class II price for **September 2019** is **\$16.93/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 **\$21.39/cwt. plus \$1.53/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on October 24, 2019 and therefore should be passed on in minimum prices effective November 29, 2019. These prices also include a handling fee of \$0.47/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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 #12-19**

Filing number: **2019-211**

Effective date: 12/1/2019

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 2019** minimum Class I price is **\$22.58/cwt. plus \$1.53/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$25.82/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$3.98.**

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 **\$18.72/cwt.** and a Class IV price of **\$16.39/cwt.** for **October 2019.**

The Class II price for **October 2019** is **\$16.68/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 **\$22.58/cwt. plus \$1.53/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on November 21, 2019 and therefore should be passed on in minimum prices effective December 01, 2019. These prices also include a handling fee of \$0.47/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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 #01-20**

Filing number: **2019-255**

Effective date: 12/29/2019

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 2020** minimum Class I price is **\$22.26/cwt. plus \$1.53/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$25.50/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$3.95.**

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 **\$20.45/cwt.** and a Class IV price of **\$16.60/cwt.** for **November 2019.**

The Class II price for **November 2019** is **\$16.85/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 **\$22.26/cwt. plus \$1.53/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on December 19, 2019 and therefore should be passed on in minimum prices effective December 29, 2019. These prices also include a handling fee of \$0.47/cwt.**

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

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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. 5, Tracks**

Filing number: **2019-011**

Effective date: 1/22/2019

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The amendments establish standards for the proper maintenance of tracks.

Basis statement:

Two amendments were proposed for Ch. 5 of the Commission rules. The first proposed amendment, found in new Section 5.1, would require licensed associations conducting pari-mutuel racing to submit a “purse distribution plan” to the Commission for approval prior to the first race date in any calendar year. The Commission could waive the requirement for a plan whenever a written agreement existed between the association and a state-wide organization representing horsemen, which addressed purse distribution.

The second proposed amendment involved a new section which would create standards for the maintenance of tracks. Each association would be required to prepare an annual track maintenance plan. Additionally, tracks would need to ensure there would be adequate drainage and adequate equipment.

After reviewing the testimony and deliberating on the propriety of the proposed amendments, the Commission found that the requirements for an annual purse distribution plan was reasonable and best served the interests of the industry. Consequently, the Commission voted to retain that language in the final rule.

However, the Commission found that the proposed new section creating standards for track maintenance was somewhat vague and likely difficult to enforce. In addition, the Commission agreed that the track licensing criteria—while not the ideal mechanism—provides an avenue to address track maintenance concerns. Consequently, the Commission elected not to adopt proposed new Section 8.

Fiscal impact of rule:

The only changes that could potentially have any significant fiscal impact might be the establishment of standards for the maintenance of tracks in Ch. 5, although tracks are presumably already conducting maintenance similar to what is described in the draft amendments.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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. 7, Racing**

Filing number: **2019-012**

Effective date: 1/22/2019

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The proposed amendments involve a fairly comprehensive update to this chapter. The chapter needs to be aligned with Ch. 17, *Rule Violations: Penalties*, because there are now penalties for conduct that is not specifically prohibited in rule. Also, the language in the chapter is not well constructed. Horsemen has expressed sentiment indicating that greater flexibility is appropriate in rules specific to the types of races that are conducted and the manner in which purses are paid out. Finally, the Commission recognized that the conduct of drivers participating in a race is regulated, but the conduct of other licensed participants at the track is not regulated.

Basis statement:

The Commission proposed dozens of minor amendments and updates to Ch. 7, together with a few more substantive ones over a process that spanned two rulemaking initiatives (the first effort was not adopted) and the better part of two years. The Commission took extensive testimony and received written comments on the proposals, and it deliberated the merits of many specific amendments at three separate meetings covering the most recent rulemaking initiative.

The Commission made minor refinements to the proposed language in several areas based largely on comments received, and in some cases findings made by the Commission. The Commission deliberated extensively on the language and proposed amendments contained in Section 46, "Duties of Trainer", and finally settled on language which the Commission determined best described the minimum interactions and decision making required to legitimately define the role of a trainer.

After extensive review and deliberation, the Commission voted to adopt the revised language on December 13, 2018 based on its belief that the adopted amendments best serve the public interest.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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. 9**, Sire Stakes

Filing number: **2019-013**

Effective date: 1/22/2019

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The proposed amendments would alter the purse distribution formula for the Sire Stakes finals and would require trainers to notify the Department about the location where participating horses are trained to facilitate testing.

Basis statement:

The Commission proposed two amendments to Ch. 9 which were supported by the Maine Standardbred Breeders and Owners Association. The first amendment would require trainers of horses participating in Maine's Sire Stakes Program to notify the Commission of the location where participating horses would be stabled for the year. This information would facilitate out-of-competition testing.

The second proposed amendment involved a change in the purse distribution structure for the Sire Stakes Finals. Sixth, seventh and eighth place finishers would now receive 1.25%, 1% and 0.75% of the base purse respectively.

No comments were received relative to the first proposal. The Commission received a comment from a representative of Scarborough Downs opposing the purse payment structure believing it be too complicated. The commenter offered an alternative purse payment plan.

The Commission reviewed the comment and deliberated on the merits of the proposals. The Commission determined that the proposed amendment relating to purses was reasonable given that it only affects eight races/year which all occur on the same day. Consequently, the Commission elected to adopt both proposed amendments as written.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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. 11, Medications, Prohibited Substances and Testing**

Filing number: **2019-014**

Effective date: 1/22/2019

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

This chapter received extensive updating in 2016 in order to keep pace with the rapidly evolving science and policies around preventing the use of performance enhancing drugs. A couple of additional updates are appropriate to clarify that drugs not currently listed are prohibited, and to specify the process for assigning unlisted drugs to a penalty class.

Basis statement:

The Commission proposed a handful of substantive changes to Ch. 11. First, it proposed updating the prohibited substance list which is adopted by reference. Second, it added a subsection intended to further discourage the use of alkalizing agents. Third, the Commission proposed to replace the incorporated reference to a therapeutic medication list with a list contained within the rule itself.

Only one comment was received relative to Ch. 11 questioning the intent of specific language relative to the new list of therapeutic medications. The Commission was satisfied that the legal intent was evident and clear.

After deliberating, the Commission determined that all three proposed amendments served the interests of the harness racing community and voted to adopt the amendments as proposed.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Board of Pesticides Control
Umbrella-Unit: **01-026**
Statutory authority: 22 MRS §1471A-X
Chapter number/title: **Ch. 10**, Definition and Terms
Filing number: **2019-130**
Effective date: 7/23/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

1. Amend the definition of “Aerial Applicator” to allow certification as a private applicator. Currently the rule requires applicators to hold a commercial license which prevents an individual from making applications on their own property. This is required by the new EPA C&T rules, and is in anticipation of potential applications by unmanned aircraft systems.
2. Clarify the definition of property not deemed to be open to use by the public to also include where the public has not been permitted on the treated portion of privately held recreational land within seven days of a pesticide application for vegetation management.

Fiscal impact of rule:
(No response)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Board of Pesticides Control

Umbrella-Unit: **01-026**

Statutory authority: 22 MRS §§ 1471-D and S

Chapter number/title: **Ch. 31**, Certification and Licensing Provisions / Commercial Applicators

Filing number: **2019-131**

Effective date: 7/23/2019

Type of rule: Routine Technical

Emergency rule: No

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

Basis statement:

1. Add requirement for a government-issued photo id for all exams (required by EPA C&T).
2. Establish annual training requirements for noncertified applicators of restricted use pesticides (required by EPA C&T).
3. Establish minimum age for individuals certified as commercial or private applicators (required by EPA C&T).
4. Describe the credentials which will be issued to each applicator verifying certification (required by EPA C&T).
5. Remove section on transitioning to revised licensing and certification requirements since the time frame has passed.
6. Update the names of certain categories to align with current exams.
7. Remove requirement to collect social security number.
8. Change cost of master exams from \$50 for both to \$10 for Master Regulations exam and \$40 for Master Oral exam.
9. Remove exemption for those certifying in the Post Harvest Treatment category from having to take the core exam.
10. Remove requirements for applicators to receive continuing education credits in specific categories as the Board doesn't categorize courses this way.
11. Remove fee for replacement and upgraded licenses as the Board no longer charges for these due to improved software.

Fiscal impact of rule:
(No response)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Board of Pesticides Control

Umbrella-Unit: **01-026**

Statutory authority: 22 MRS §§ 1471-D and S

Chapter number/title: **Ch. 32**, Certification and Licensing Provisions for Private Applicators

Filing number: **2019-132**

Effective date: 7/23/2019

Type of rule: Routine Technical

Emergency rule: No

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

Basis statement:

1. Amend competency standards to include those required by EPA C&T: label comprehension; responsibilities for supervisors of noncertified applicators; stewardship; ability to read and understand pesticide labeling.
2. Remove option to provide oral exam as EPA C&T no longer allows non-reader accommodations.
3. Add supplemental private categories which can be obtained in addition to certification for private licensure: aerial application; soil fumigation; non-soil fumigation (required by EPA C&T).
4. Establish minimum age for individuals certified as commercial or private applicators (required by EPA C&T).
5. Describe the credentials which will be issued to each applicator verifying certification (required by EPA C&T).
6. Add requirement for a government-issued photo id for all exams (required by EPA C&T amendments).

Fiscal impact of rule:
(No response)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Board of Pesticides Control
Umbrella-Unit: **01-026**
Statutory authority: 22 MRS §§ 1471-G and M
Chapter number/title: **Ch. 50**, Record Keeping & Reporting Requirements
Filing number: **2019-133**
Effective date: 7/23/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

1. Add requirements to dealer records of sales (required by EPA C&T amendments):
 - a. customer address
 - b. issuing authority, certification expiration date, and categories of certification in addition to the applicator's certification number

Fiscal impact of rule:
(No response)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Board of Pesticides Control

Umbrella-Unit: **01-026**

Statutory authority: 22 MRS §§ 1471-D and S

Chapter number/title: **Ch. 36** (*Repeal*), Certification and Licensing Provisions for Monitors and Spotters for Forest Insect Aerial Spray Program

Filing number: **2019-134**

Effective date: 7/23/2019

Type of rule: Routine Technical

Emergency rule: No

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

Basis statement:
Repeal of chapter. Associated requirements were previously repealed because they are no longer necessary with the current technology used in aircraft.

Fiscal impact of rule:
(No response)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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 774 (Chesuncook Twp., — Piscataquis County) (petitioner David and Luisa Suprenant)
Filing number: **2019-019**
Effective date: 1/21/2019
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 774

**PETITIONER OR
COPETITIONER**

David and Luisa
Suprenant

LOCATION

Chesuncook Twp.,
Piscataquis County

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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)

Chapter number/title: **Ch. 10**, Land Use Districts and Standards: **10.27**, Activity-Specific Standards: **D.**, Roads and Water Crossings

Filing number: **2019-092**

Effective date: 6/17/2019

Type of rule: Routine Technical

Emergency rule: No

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

Basis statement:

The primary objectives of this rulemaking were to update the standards regarding roads and water crossings to be more consistent with the Maine Department of Environmental Protection's (DEP) standards in 06-096 CMR 305, *Permit By Rule*; to enhance public safety; and to provide for aquatic habitat connectivity in flowing waters. The amendments also reorganize Section 10.27,D, "Roads and Water Crossings", to improve readability.

Key changes to the rules include:

- A reorganization to group standards by roads, water crossings, and wetland crossings.
- Additional and improved provisions to minimize erosion and sedimentation of surface waters.
- New requirements for maintenance of roads, drainage structures, and crossings.
- A new instream work window of July 15 to September 30.
- New standards for temporary crossings.
- Improved standards for permanent crossings including sizing standards to accommodate a 25-year frequency storm event, a width standard for sizing crossings, a requirement to embed culverts below the streambed elevation, and a requirement for natural substrate installation for certain larger crossings.

Fiscal impact of rule:

Not applicable. 12 MRS §685-A(7-A)(B)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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(10)(D)

Chapter number/title: **Ch. 10**, Land Use Districts and Standards: **Appendix D**, Lakes and Rivers on which the Use of Personal Watercraft is Prohibited: Upper Wilson Pond (Lake 30410), Piscataquis County

Filing number: **2019-093**

Effective date: 6/17/2019

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

Consistent with 12 MRS §685-C(10)(D), the Commission is updating its list of "Lakes and rivers on which the use of personal watercraft is prohibited" to include Upper Wilson Pond in Bowdoin College Grant West Township. Because of the Moosehead Region Conservation Easement, Upper Wilson Pond now meets the statutory criteria for prohibition of personal watercraft.

Basis statement:

On January 3, 2019, the Commission received a petition requesting rulemaking to update the list of "Lakes and rivers on which the use of personal watercraft is prohibited" (Ch.10, Appendix D). Specifically, the petitioner requests that the Commission add Upper Wilson Pond in Bowdoin College Grant West Township to the list.

The use of personal watercraft on certain categories of great ponds is prohibited by statute (12 MRS §685-C(10)). Since the Moosehead Region Conservation Easement became effective (2009), Upper Wilson Pond now falls into one of those categories. The Commission maintains a list of the waterbodies on which the use of personal watercraft is statutorily prohibited in Ch. 10, Appendix D. This list is used by the public and by staff as a helpful reference.

The statute (12 MRS §685-C(10)) reads, in part:

"10. Operating a personal watercraft is prohibited on the following categories of great ponds: ...

D. Great ponds with less than all but more than 2/3 of their surface area in or partly in the jurisdiction of the commission that are identified as being of statewide significance in the "Maine Wildlands Lake Assessment" dated June 1, 1987 prepared by the commission, with 2 or more outstanding resource values in fisheries, wildlife, scenic or shore character and with more than 1/2 of their shoreline in public and private conservation ownership with guaranteed public access for low-impact public recreation."

Upper Wilson Pond is a Great Pond designated as a resource class 1A lake. This means that it is a lake of statewide significance with two or more outstanding values, specifically outstanding fisheries and scenic values.

About 88%, or more than 2/3, of the surface area of Upper Wilson Pond is in Bowdoinham College Grant West Township and within the LUPC jurisdiction. The remainder of Upper Wilson Pond lies within the Town of Greenville. Approximately 67% of the shoreline of Upper Wilson Pond, or more than 1/2, is protected by the Moosehead Region Conservation Easement.

The Moosehead Region Conservation Easement establishes a permanent right of public access for low intensity outdoor recreation on protected lands. This right is described in Section 6 of the Conservation Easement.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Therefore, based on the facts presented here, the use of personal watercraft is prohibited by statute on Upper Wilson Pond. This rulemaking updates Appendix D of Ch. 10 of the Commission's rules to reflect that.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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(1),(3),(7-A)

Chapter number/title: **Ch. 10**, Land Use Districts and Standards (relating to the
Adjacency Principle)

Filing number: **2019-094**

Effective date: 6/17/2019

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

**Amendments to Ch. 10, Land Use Districts and Standards, related to the
Commission's policy for locating new development, called the adjacency principle:**

Today, single family homes can locate in most places in the Commission's service area, but most subdivisions and commercial development need a rezoning. To get a rezoning, these subdivisions and commercial developments generally must be located within one mile by road of existing compatible development. The changes replace the one mile rule-of-thumb with a new system for locating most new development near existing communities and public roads to make the delivery of public services more cost-effective and reduce fragmentation of undeveloped areas. In addition, the proposal would allow commercial and residential development that is dependent on, or centered around, natural or recreational resources to locate near these resources in certain circumstances. Also included in the amendment are revisions to the Commission's subdivision layout and design standards. The changes are intended to improve the subdivision layout and design standards for the area served by the Commission, incorporating more flexibility and allowing more design options, while improving protections for important natural and cultural resources.

Basis statement:

The Maine Land Use Planning Commission adopts rule changes that guide the location of zoning subdistricts for new development, including through refinement of the adjacency principle, and that update the standards for how subdivisions may be developed. This rulemaking is intended to improve economic opportunity, encourage the health of service providing communities and the surrounding region, and protect the environmental quality and habitat and the unique character of lands in the area served by the Commission, an area that comprises nearly half of the State of Maine.

1. Purpose and Objectives of the Adjacency Principle

The adjacency principle is one of the fundamental elements of the Commission's planning for development in the unorganized and deorganized areas of Maine (the UT). This long-standing policy guides new zones for development toward existing development and away from undeveloped areas. This helps lower tax burdens, ensures land remains available for forestry, agriculture and recreation, and promotes the health of existing communities.

The Purpose and Scope section of the Commission's statute states that "it is desirable to extend principles of sound planning, zoning and development to the unorganized and deorganized townships of the State ... " and goes on to describe some broad concepts that reflect these sound planning principles. The 2010 Comprehensive Land Use Plan (CLUP) describes the adjacency principle and how it should be applied (CLUP, pg. 62), along with its deficiencies (CLUP, pg. 120).

The Commission has used the adjacency principle as a tool to guide new zones for development to locations that satisfy the sound planning and zoning principles articulated in the

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Statute and in the CLUP. These principles can be thought of as objectives that need to be achieved when locating a new zone for development.

Objectives:

- Encourage appropriate residential, recreational, commercial and industrial uses
- Encourage well-planned and managed multiple uses, while discouraging intermixing of incompatible uses
- Support and encourage Maine's natural resource-based economy and strong environmental protections
- Promote economic health of development centers, and encourage and facilitate regional economic viability
- Ensure that the provision of public services matches the new development, or that any needed additional service capacity may be added efficiently and economically over time
- Minimize development near productive natural resource based activities
- Protect resources and values of the jurisdiction
- Ensure that the anticipated future development is in keeping with the character of the area
- Ensure orderly growth by pacing development
- Allow for incremental assessment of impacts from development (the resources and values of the jurisdiction may be better supported, and development may be better planned, by providing an opportunity for interim assessments of impacts because future phases of development can then consider those impact assessments).

In the past, the Commission has interpreted the adjacency principle to mean that areas to be rezoned for development must be within one road mile of existing, compatible development (CLUP, pg. 62). However, the CLUP recognizes that this application of the policy has significant flaws and calls for it to be further refined (CLUP, pg. 120, 128).

The adopted rule revisions represent a more nuanced approach to applying the adjacency principle than the one-mile rule of thumb to better meet the policy objectives.

Fiscal impact of rule:

N/A

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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 776 (Unity Twp. — Kennebec County)
(petitioner Three Corners Solar, LLC)
ZP 768: (Cross Lake Twp., Madawaska Lake Twp., Sinclair Twp., T15 R5 WELS, T16 R5 WELS, T17 R3 WELS) (Aroostook County)
(petitioners Allagash Timberlands LLC, Aroostook Timberlands LP, and Maine Woodlands Realty Company)
Filing number: **2019-175**
Effective date: 9/30/2019
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 776	Three Corners Solar, LLC)	(Unity Twp. — Kennebec County)
ZP 768:	Allagash Timberlands LLC, Aroostook Timberlands LP, and Maine Woodlands Realty Company	(Cross Lake Twp., Madawaska Lake Twp., Sinclair Twp., T15 R5 WELS, T16 R5 WELS, T17 R3 WELS) (Aroostook County)

Fiscal impact of rule:

N/A

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

Agency name: Department of Professional and Financial Regulation,
Bureau of Financial Institutions
Umbrella-Unit: **02-029**
Statutory authority: 9-B MRS §§ 111, 131(37), 215, 828, 864
Chapter number/title: **Ch. 134 (Regulation 34)**, Credit Union Service Corporations
Filing number: **2019-152**
Effective date: 8/25/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this regulation is to repeal and replace the former Regulation 34. It continues to authorize state-chartered credit unions to organize service corporations that can engage in any activity permissible for a federally-chartered credit union's service corporation.

Basis statement:

This regulation repeals and replaces the former Regulation 34 originally effective on August 21, 1996. Rulemaking is in response to Public Law 2017 ch. 143, which amended the requirements for notifying the Superintendent of investments in credit union service corporations as well as the maximum amount of such investments. The rule also updates citations in federal law that were recodified since the last promulgation of the rule. It is applicable to credit unions as that term is defined in 9-B MRS §131(12) and state credit union service corporations as defined in Section III(G) of this regulation

Fiscal impact of rule:

None expected.

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Agency name: Department of Professional and Financial Regulation,
Bureau of Insurance
Umbrella-Unit: **02-031**
Statutory authority: 24 MRS §§ 212, 707(3)
Chapter number/title: **Ch. 135** (*New*), Employee Benefit Excess Insurance
Filing number: **2019-164**
Effective date: 9/18/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The primary purpose of the rule is to set forth standards for employee benefit excess insurance that is provided to employers maintaining group health plans, such as minimum attachment points for coverage, tail coverage, and disclosure of annual limits on coverage. The rule also includes standards specific to small groups under which they may purchase employee benefit excess insurance.

Basis statement:

In this rulemaking, Superintendent of Insurance Eric Cioppa adopts a new rule chapter, Ch. 135, *Employee Benefit Excess Insurance*. Pursuant to a March 20, 2019 Notice of Rulemaking, Superintendent Cioppa held a public hearing on April 10, 2019, and the public comment period was open until April 22, 2019 at 4:30 p.m. The primary purpose of this rule is to set forth standards for employee benefit excess insurance, also known as stop loss insurance, that is provided to employers maintaining group health plans, such as minimum attachment points for coverage, tail coverage, and disclosure of annual limits on coverage. The rule also includes standards specific to small groups under which they may purchase employee benefit excess insurance.

Fiscal impact of rule:

No fiscal impact on state government.

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Agency name: Department of Professional and Financial Regulation,
Bureau of Insurance
Umbrella-Unit: **02-031**
Statutory authority: 24 MRS §2317(2); 24-A §§ 212, 221-A(5), 4218
Chapter number/title: **Ch. 235**, Annual Audited Financial Reports
Filing number: **2019-192**
Effective date: 11/6/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The amendments update the current regulation in response to changes adopted by the National Association of Insurance Commissioners in 2014 and 2015. The amendments require certain large insurers or insurance groups to establish an internal audit function. The audit function must be organizationally independent from management.

Basis statement:

The Superintendent of Insurance hereby amends Bureau of Insurance Rule 235, *Annual Audited Financial Reports*, pursuant to 24 MRS §2317(2) and 24 A MRS §§ 212, 221-A(5), and 4218, to require certain large insurers or insurance groups to establish an internal audit function that is organizationally independent from management.

On June 28, 2019, the Superintendent issued a Notice of Rulemaking, which was published in newspapers of general circulation on July 10, 2019. He held a hearing on July 29, 2019, and the comment period expired on August 9, 2019. No comments were submitted, either in person or in writing, and the amendments are adopted as proposed.

The Amendments are based on recent amendments adopted by the National Association of Insurance Commissioners (NAIC) to its Annual Financial Reporting Model Regulation, and adoption of these Amendments is one of the requirements for the Bureau's continuing accreditation by the NAIC. A new Section 14 has been added to Rule 235, requiring each insurer or insurance group with sufficient annual premium volume to trigger the Own Risk and Solvency Assessment requirements (currently \$1 billion for a group or \$500 million for a single insurer)¹ to "establish an internal audit function that brings a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes." The internal audit may be conducted at either the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level. The audit function must be organizationally independent of management, may not defer ultimate judgment on audit matters to others, and must be headed by someone with direct and unrestricted access to the board of directors. In addition, Section 13 has been amended to add the supervision of the internal audit function to the duties of the audit committee if an internal audit is required. Sections following the new Section 14 have been renumbered, cross-references have been updated, and miscellaneous non-substantive editorial corrections have also been made.

Fiscal impact of rule:

No fiscal impact on state government.

¹ 24-A MRS §222(8)(B-3)

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Agency name: Department of Professional and Financial Regulation,
Bureau of Insurance
Umbrella-Unit: **02-031**
Statutory authority: 24-A MRS §§ 212, 423-G(6)
Chapter number/title: **Ch. 705** (*New*), Corporate Governance Annual Disclosure
Filing number: **2019-193**
Effective date: 11/6/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule implements part of 2017 PL ch. 169, *An Act To Update the Maine Insurance Code to Maintain Conformance with Uniform National Standards* (LS 1544), enacted at 24-A MRS §423-F. The rule sets forth the required contents and filing procedures for the Corporate Governance Annual Disclosure.

Basis statement:

The Superintendent of Insurance hereby adopts Bureau of Insurance Rule 705, *Corporate Governance Annual Disclosure*, pursuant to 24-A MRS §§ 212 and 423-G(6), to set forth the required contents and filing procedures for the Corporate Governance Annual Disclosure (CGAD). The rule is adopted as proposed, correcting a typographical error in Section 1.

On June 28, 2019, the Superintendent issued a Notice of Rulemaking, which was published in newspapers of general circulation on July 10, 2019. He held a hearing on July 29, 2019.² No members of the public offered comments at the hearing, and the comment period expired on August 9, 2019. One written comment was submitted, on behalf of the American Council of Life Insurers (ACLI), by Michelle Carroll Foster, ACLI's Regional Vice President for State Relations.

Fiscal impact of rule:

No fiscal impact on state government.

² The notice erroneously referenced 24-A M.R.S. §423-F (governing an insurer's Own Risk and Solvency Assessment) rather than §423-G, and included an additional reference to 24-A M.R.S. §6718(2), granting rulemaking authority for captive risk retention groups. The rule does not apply to captive risk retention groups.

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Agency name: Department of Professional and Financial Regulation,
Office of Securities
Umbrella-Unit: **02-032**
Statutory authority: 32 MRS §§ 16406, 16411, 16412, 16605
Chapter number/title: **Ch. 504**, Broker-Dealer and Agent Licensing
Filing number: **2019-221**
Effective date: 12/14/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This filing makes two updates to ch. 504:

- (1) References in Section 6 to FINRA's examination program would be updated to reflect FINRA's recent restructuring of the program; and
- (2) A broker-dealer's or agent's use of a client's unique identifying information to access a client's account would be added to Section 8's list of dishonest and unethical practices because the practice can run afoul of custody and record-keeping requirements and can void a client's user agreements with a custodian.

Basis statement:

The Securities Administrator proposed changes to ch. 504 to update references to FINRA examinations following updates to FINRA's examination program and to add to the list of dishonest and unethical practices an Investment Adviser's or Investment Adviser Representative's use of a client's unique identifying information to access a client's account.

On July 31, 2019, public notice of the proposed changes to ch. 504, and the opportunity to comment, were provided in the Secretary of State's consolidated advertisement in Maine newspapers, pursuant to 5 MRS §8053. Notice was further provided to interested parties on August 1, 2019, by posting on the Office of Securities website and by electronic distribution via Granicus. The public comment period ended September 3, 2019.

The Securities Administrator received one comment on the proposed changes submitted by email.

Fiscal impact of rule:

The updates will not have a fiscal impact.

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Agency name: Department of Professional and Financial Regulation,
Office of Securities

Umbrella-Unit: **02-032**

Statutory authority: 32 MRS §§ 16403, 16404, 16405, 16406, 16408, 16409, 16411,
16412, 16605

Chapter number/title: **Ch. 515**, Investment Adviser Licensing

Filing number: **2019-222**

Effective date: 12/14/2019

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

- (1) References in Section 10 to FINRA's examination program would be updated to reflect FINRA's recent restructuring of the program; and
- (2) An IA/IAR's use of a client's unique identifying information to access a client's account would be added to Section 14's list of dishonest and unethical practices because the practice can run afoul of custody and record-keeping requirements and an IA/IIAR's fiduciary duty to a client.

Basis statement:

The Securities Administrator proposed changes to Ch. 515 to update references to FINRA examinations following updates to FINRA's examination program and to add to the list of dishonest and unethical practices an Investment Adviser's or Investment Adviser Representative's use of a client's unique identifying information to access a client's account.

On July 31, 2019, public notice of the proposed changes to Ch. 515, and the opportunity to comment, were provided in the Secretary of State's consolidated advertisement in Maine newspapers, pursuant to 5 MRS §8053. Notice was further provided to interested parties on August 1, 2019, by posting on the Office of Securities website and by electronic distribution via Granicus. The public comment period ended September 3, 2019.

The Securities Administrator received one comment on the proposed changes submitted by email.

Fiscal impact of rule:

The updates will not have a fiscal impact.

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

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

Umbrella-Unit: **02-041**

Statutory authority: 10 MRS §8003(2-A)(D); 32 MRS §12203; 32 MRS §1527; 32 MRS §14358; 32 MRS §14238; 32 MRS §15104-C; 9 MRS §5015-A; 32 MRS §558; 32 MRS §§ 12514-A, 12526; 32 MRS §13859; 32 MRS §1203-A; 32 MRS §§ 1501-B, 1504; 10 MRS §§ 9021(2-A), 9065-A; 32 MRS §14306-G; 32 MRS §67; 32 MRS §2285; 32 MRS §13724; 32 MRS §3501-B; 32 MRS §3652; 32 MRS §9859-A; 32 MRS §§ 7056, 7060; 32 MRS §17309; 32 MRS §4863-A; 32 MRS §12538.

Chapter number/title: **Ch. 10**, Establishment of License Fees

Filing number: **2019-270**

Effective date: 12/25/2019

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

Financial projections and budget reviews of licensing boards and programs within the Office of Professional and Occupational Regulation identified fees that were reasonable to reduce or eliminate. The analysis also identified new license categories and fees that should be added as a result of legislative action and licensing categories that can be eliminated.

Basis statement:

Maine law provides that licensing entities within the Office of Professional and Occupational Regulation are required to be financially self-supporting through established license fees established for each licensing entity. A review of financial projections and budget reviews of licensing boards and programs within the Office of Professional and Occupational Regulation indicated that certain license fees could reasonably be reduced or eliminated. The analysis also identified new license categories and established license fees that should be included in this fee rule to implement legislative directives.

Fiscal impact of rule:

Minimal.

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

Umbrella-Unit: **02-280**

Statutory authority: 32 MRS §12214(4)

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

Filing number: **2019-247**

Effective date: 12/22/2019

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

Proposed changes reflect Board current practices and propose modifications to more efficiently manage Board resources.

Basis statement:

In this rulemaking, the Board of Accountancy revises rule ch. 1-3, 5 and 6 to update existing rules. The substantive rule changes include the following:

In **Chapter 1**, entitled “Definitions,” definitions of terms no longer used are deleted and new definitions of terms used are added.

In **Chapter 2**, entitled “Advisory Rulings,” an unnecessary citation to 5 MRS §9001 is deleted. The deletion does not affect the Board’s authority to issue advisory rulings.

In **Chapter 3**, entitled “Examination Requirements,” language regarding application for examination and candidate payment of exam fees is deleted because the required examination is now administered by the National Association of Boards of Accountancy, rather than the Maine Board of Accountancy. Because the Board of Accountancy does not administer the required examination, section 10 entitled ‘Security and Irregularities’ is deleted. A provision has been added to allow for continuous testing, which eliminates testing windows in the administration of the Uniform CPA Examination.

Chapter 4 entitled “Application for Certificate” was repealed effective October 27, 2010 by rulemaking filing 2010-516 but the summary was not removed.

In **Chapter 5**, entitled “Certified Public Accountant License Requirements,” a provision that allowed the board to consider nonpublic accounting work to be credited toward licensure as a certified public accountant is deleted. Work experience must be earned in the employment of a firm licensed by the board, or an equivalent license or permit of another state; a provision that has been in place and is a similar requirement of most state boards of accountancy. Added to ch. 5 is a requirement that supervising CPAs are required to verify work experience of CPA applicants they have supervised. Ch. 5 also includes a change to a consolidated license renewal date for all licenses issued by the Board and modifies language to change the manner in which continuing education is measured. Finally, a clarification is made to the Board’s authority to license an applicant who holds an active license in another country with which the International Qualifications Appraisal Board has established a Mutual Recognition Agreement with NASBA/AICPA.

Chapter 6 entitled “Accounting Firm License Requirements,” clarifies that firms that receive a peer review report must submit the report to the board within 10 days of the licensed firm’s receipt of the report.

Chapter 7 entitled “Complaints, Investigations and Adjudicatory Hearings” was repealed effective October 27, 2010 by rulemaking filing 2010-516 but the summary was not removed.

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These are routine technical rules as defined in the *Maine Revised Statutes*, Title 5 ch. 375, sub-ch. 2-A.

Fiscal impact of rule:

None.

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

Umbrella-Unit: **02-280**

Statutory authority: 5 MRS §§ 8051, 9001(4)

Chapter number/title: **Ch. 2**, Advisory Rulings

Filing number: **2019-248**

Effective date: 12/22/2019

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

Proposed changes reflect Board current practices and propose modifications to more efficiently manage Board resources.

Basis statement:

In this rulemaking, the Board of Accountancy revises rule ch. 1-3, 5 and 6 to update existing rules. The substantive rule changes include the following:

In **Chapter 1**, entitled “Definitions,” definitions of terms no longer used are deleted and new definitions of terms used are added.

In **Chapter 2**, entitled “Advisory Rulings,” an unnecessary citation to 5 MRS §9001 is deleted. The deletion does not affect the Board’s authority to issue advisory rulings.

In **Chapter 3**, entitled “Examination Requirements,” language regarding application for examination and candidate payment of exam fees is deleted because the required examination is now administered by the National Association of Boards of Accountancy, rather than the Maine Board of Accountancy. Because the Board of Accountancy does not administer the required examination, section 10 entitled ‘Security and Irregularities’ is deleted. A provision has been added to allow for continuous testing, which eliminates testing windows in the administration of the Uniform CPA Examination.

Chapter 4 entitled “Application for Certificate” was repealed effective October 27, 2010 by rulemaking filing 2010-516 but the summary was not removed.

In **Chapter 5**, entitled “Certified Public Accountant License Requirements,” a provision that allowed the board to consider nonpublic accounting work to be credited toward licensure as a certified public accountant is deleted. Work experience must be earned in the employment of a firm licensed by the board, or an equivalent license or permit of another state; a provision that has been in place and is a similar requirement of most state boards of accountancy. Added to ch. 5 is a requirement that supervising CPAs are required to verify work experience of CPA applicants they have supervised. Ch. 5 also includes a change to a consolidated license renewal date for all licenses issued by the Board and modifies language to change the manner in which continuing education is measured. Finally, a clarification is made to the Board’s authority to license an applicant who holds an active license in another country with which the International Qualifications Appraisal Board has established a Mutual Recognition Agreement with NASBA/AICPA.

Chapter 6 entitled “Accounting Firm License Requirements,” clarifies that firms that receive a peer review report must submit the report to the board within 10 days of the licensed firm’s receipt of the report.

Chapter 7 entitled “Complaints, Investigations and Adjudicatory Hearings” was repealed effective October 27, 2010 by rulemaking filing 2010-516 but the summary was not removed.

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These are routine technical rules as defined in the *Maine Revised Statutes*, Title 5 ch. 375, sub-ch. 2-A.

Fiscal impact of rule:

None.

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

Umbrella-Unit: **02-280**

Statutory authority: 32 MRS §§ 12214(4), 12228(4), 12240(4)

Chapter number/title: **Ch. 3, Examination Requirements**

Filing number: **2019-249**

Effective date: 12/22/2019

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

Proposed changes reflect Board current practices and propose modifications to more efficiently manage Board resources.

Basis statement:

In this rulemaking, the Board of Accountancy revises rule ch. 1-3, 5 and 6 to update existing rules. The substantive rule changes include the following:

In **Chapter 1**, entitled “Definitions,” definitions of terms no longer used are deleted and new definitions of terms used are added.

In **Chapter 2**, entitled “Advisory Rulings,” an unnecessary citation to 5 MRS §9001 is deleted. The deletion does not affect the Board’s authority to issue advisory rulings.

In **Chapter 3**, entitled “Examination Requirements,” language regarding application for examination and candidate payment of exam fees is deleted because the required examination is now administered by the National Association of Boards of Accountancy, rather than the Maine Board of Accountancy. Because the Board of Accountancy does not administer the required examination, section 10 entitled ‘Security and Irregularities’ is deleted. A provision has been added to allow for continuous testing, which eliminates testing windows in the administration of the Uniform CPA Examination.

Chapter 4 entitled “Application for Certificate” was repealed effective October 27, 2010 by rulemaking filing 2010-516 but the summary was not removed.

In **Chapter 5**, entitled “Certified Public Accountant License Requirements,” a provision that allowed the board to consider nonpublic accounting work to be credited toward licensure as a certified public accountant is deleted. Work experience must be earned in the employment of a firm licensed by the board, or an equivalent license or permit of another state; a provision that has been in place and is a similar requirement of most state boards of accountancy. Added to ch. 5 is a requirement that supervising CPAs are required to verify work experience of CPA applicants they have supervised. Ch. 5 also includes a change to a consolidated license renewal date for all licenses issued by the Board and modifies language to change the manner in which continuing education is measured. Finally, a clarification is made to the Board’s authority to license an applicant who holds an active license in another country with which the International Qualifications Appraisal Board has established a Mutual Recognition Agreement with NASBA/AICPA.

Chapter 6 entitled “Accounting Firm License Requirements,” clarifies that firms that receive a peer review report must submit the report to the board within 10 days of the licensed firm’s receipt of the report.

Chapter 7 entitled “Complaints, Investigations and Adjudicatory Hearings” was repealed effective October 27, 2010 by rulemaking filing 2010-516 but the summary was not removed.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

These are routine technical rules as defined in the *Maine Revised Statutes*, Title 5 ch. 375, sub-ch. 2-A.

Fiscal impact of rule:

None.

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

Umbrella-Unit: **02-280**

Statutory authority: 32 MRS §12214(4),(4)(A),(5) (repealed by PL 2009), §§
12228(3)(B),(4),(10), 12231(2)(D)(2), 12233; 10 MRS §8003(4)

Chapter number/title: **Ch. 5, Certified Public Accountant Licensure Requirements**

Filing number: **2019-250**

Effective date: 12/22/2019

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

Proposed changes reflect Board current practices and propose modifications to more efficiently manage Board resources.

Basis statement:

In this rulemaking, the Board of Accountancy revises rule ch. 1-3, 5 and 6 to update existing rules. The substantive rule changes include the following:

In **Chapter 1**, entitled “Definitions,” definitions of terms no longer used are deleted and new definitions of terms used are added.

In **Chapter 2**, entitled “Advisory Rulings,” an unnecessary citation to 5 MRS §9001 is deleted. The deletion does not affect the Board’s authority to issue advisory rulings.

In **Chapter 3**, entitled “Examination Requirements,” language regarding application for examination and candidate payment of exam fees is deleted because the required examination is now administered by the National Association of Boards of Accountancy, rather than the Maine Board of Accountancy. Because the Board of Accountancy does not administer the required examination, section 10 entitled ‘Security and Irregularities’ is deleted. A provision has been added to allow for continuous testing, which eliminates testing windows in the administration of the Uniform CPA Examination.

Chapter 4 entitled “Application for Certificate” was repealed effective October 27, 2010 by rulemaking filing 2010-516 but the summary was not removed.

In **Chapter 5**, entitled “Certified Public Accountant License Requirements,” a provision that allowed the board to consider nonpublic accounting work to be credited toward licensure as a certified public accountant is deleted. Work experience must be earned in the employment of a firm licensed by the board, or an equivalent license or permit of another state; a provision that has been in place and is a similar requirement of most state boards of accountancy. Added to ch. 5 is a requirement that supervising CPAs are required to verify work experience of CPA applicants they have supervised. Ch. 5 also includes a change to a consolidated license renewal date for all licenses issued by the Board and modifies language to change the manner in which continuing education is measured. Finally, a clarification is made to the Board’s authority to license an applicant who holds an active license in another country with which the International Qualifications Appraisal Board has established a Mutual Recognition Agreement with NASBA/AICPA.

Chapter 6 entitled “Accounting Firm License Requirements,” clarifies that firms that receive a peer review report must submit the report to the board within 10 days of the licensed firm’s receipt of the report.

Chapter 7 entitled “Complaints, Investigations and Adjudicatory Hearings” was repealed effective October 27, 2010 by rulemaking filing 2010-516 but the summary was not removed.

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

These are routine technical rules as defined in the *Maine Revised Statutes*, Title 5 ch. 375, sub-ch. 2-A.

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 Professional and Financial Regulation,
Office of Professional and Occupational Regulation,
Board of Accountancy

Umbrella-Unit: **02-280**

Statutory authority: 32 MRS §§ 12214(4), §12252, §12252(8); 10 MRS §8003(4)

Chapter number/title: **Ch. 6**, Accounting Firm License Requirements

Filing number: **2019-251**

Effective date: 12/22/2019

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

Proposed changes reflect Board current practices and propose modifications to more efficiently manage Board resources.

Basis statement:

In this rulemaking, the Board of Accountancy revises rule ch. 1-3, 5 and 6 to update existing rules. The substantive rule changes include the following:

In **Chapter 1**, entitled “Definitions,” definitions of terms no longer used are deleted and new definitions of terms used are added.

In **Chapter 2**, entitled “Advisory Rulings,” an unnecessary citation to 5 MRS §9001 is deleted. The deletion does not affect the Board’s authority to issue advisory rulings.

In **Chapter 3**, entitled “Examination Requirements,” language regarding application for examination and candidate payment of exam fees is deleted because the required examination is now administered by the National Association of Boards of Accountancy, rather than the Maine Board of Accountancy. Because the Board of Accountancy does not administer the required examination, section 10 entitled ‘Security and Irregularities’ is deleted. A provision has been added to allow for continuous testing, which eliminates testing windows in the administration of the Uniform CPA Examination.

Chapter 4 entitled “Application for Certificate” was repealed effective October 27, 2010 by rulemaking filing 2010-516 but the summary was not removed.

In **Chapter 5**, entitled “Certified Public Accountant License Requirements,” a provision that allowed the board to consider nonpublic accounting work to be credited toward licensure as a certified public accountant is deleted. Work experience must be earned in the employment of a firm licensed by the board, or an equivalent license or permit of another state; a provision that has been in place and is a similar requirement of most state boards of accountancy. Added to ch. 5 is a requirement that supervising CPAs are required to verify work experience of CPA applicants they have supervised. Ch. 5 also includes a change to a consolidated license renewal date for all licenses issued by the Board and modifies language to change the manner in which continuing education is measured. Finally, a clarification is made to the Board’s authority to license an applicant who holds an active license in another country with which the International Qualifications Appraisal Board has established a Mutual Recognition Agreement with NASBA/AICPA.

Chapter 6 entitled “Accounting Firm License Requirements,” clarifies that firms that receive a peer review report must submit the report to the board within 10 days of the licensed firm’s receipt of the report.

Chapter 7 entitled “Complaints, Investigations and Adjudicatory Hearings” was repealed effective October 27, 2010 by rulemaking filing 2010-516 but the summary was not removed.

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These are routine technical rules as defined in the *Maine Revised Statutes*, Title 5 ch. 375, sub-ch. 2-A.

Fiscal impact of rule:

None.

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Rules Adopted January 1, 2019 to December 31, 2019
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 §§ 18323(3), 18324

Chapter number/title: **Ch. 7, Establishment of Fees**

Filing number: **2019-109**

Effective date: 7/3/2019

Type of rule: Routine Technical

Emergency rule: No

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

Basis statement:

The Maine Board of Dental Practice ("the Board") is charged by the Legislature with the regulation of dentists, dental hygienists, denturists, dental radiographers, and expanded function dental assistants in the State of Maine for the sole purpose to protect the public health and welfare. The Legislature granted the Board rulemaking authority pursuant to 32 MRS §18324 to fully implement its statutory mandates.

Additionally, 32 MRS §18323(3) authorizes the Board to establish by rule fees in amounts that are reasonable and necessary to sustain the operations of the Board on an ongoing basis. The repeal and replace of Board rule Ch. 7, *Establishment of Fees*, fully implements the various legislative changes to the *Dental Practice Act* since 2016, and stabilizes the Board's collection of fees. Based on financial projections, the fees established in this rule will generate additional revenue necessary to maintain the current level of services necessary for the Board to meet its statutory mandate. It is projected that an additional \$400,000 in revenue will be collected biennially.

Below is a summary of the various fee structure changes identified in the rule:

- 1) It establishes the Board's collection of fees to be consistent with the licensure categories, registration categories, sedation permits and dental hygiene practice authorities pursuant to Title 32 ch. 143, "Dental Professions."
- 2) It establishes the Board's collection of licensing fees to be consistent with the initial, renewal and reinstatement provisions pursuant to Title 32 ch. 143, "Dental Professions."
- 3) It streamlines the establishment of licensing fees to renew with an inactive status.
- 4) It streamlines the fee structure of sedation permits issued pursuant to Board rule Ch. 14.
- 5) It eliminates fees in the following categories:
 - a) Fees for failing to report a change of name, address, or practice location;
 - b) Reinstatement fees in the following licensing and permitting categories: dentist, dental hygienist, denturist, dental radiographer, expanded function dental assistant, sedation permits, local anesthesia permits and nitrous oxide analgesia permits; and
 - c) Biennial registration and late fees for independent practice dental hygiene, local anesthesia permit, and nitrous oxide analgesia permit.
- 6) It reduces fees in the following categories:
 - a) Faculty licensure for dental hygienist and denturist; and
 - b) Application fee for dental hygienist, denturist and expanded function dental assistant.
- 7) It increases and establishes fees in the following categories:

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- a) Dentist, faculty dentist, limited dentist, resident dentist, sedation and general anesthesia permits;
 - b) Denturist;
 - c) Expanded function dental assistant;
 - d) Dental radiographer;
 - e) Temporary license; and
 - f) Duplicate license, verification of licensure and data lists.
- 8) And it establishes fees in the following categories:
- a) Dental hygiene authority fees (local anesthesia, nitrous oxide analgesia, independent practice dental hygiene, public health dental hygiene, provisional dental hygiene therapy and dental hygiene therapy;
 - b) Registration to obtain additional clinical training in categories of sedation and general anesthesia, local anesthesia, nitrous oxide analgesia and denturist trainee; and
 - c) Application fees to accompany initial applications for licensure, registration, authority and sedation/general anesthesia permits.

Fiscal impact of rule:

The fees established in this rule will generate additional revenue necessary to maintain the current level of services necessary to meet the Board's statutory mandate. It is projected that an additional \$400,000 in revenue will be collected biennially.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Professional and Financial Regulation,
State Board of Licensure for Professional Engineers
Umbrella-Unit: **02-322**
Statutory authority: 32 MRS §§ 1306(2), 1353
Chapter number/title: **Ch. 5**, Application and Licensure Fees
Filing number: **2019-160**
Effective date: 9/8/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Budgetary requirements necessitate that application, licensure, renewal, and late fees be increased to meet current and future funding needs. Revisions in the professional engineering statute, 32 MRS §§ 1251-1362, eliminate temporary licensure, permitting an elimination of the attendant fee; and the adoption of technology allows the elimination of fees for replacement certificates.

Basis statement:

Budget analysis conducted by the Department of Administrative and Financial Services showed that at current levels of expense and revenue the State Board of Licensure for Professional Engineers was operating at a deficit that would result in the depletion of all cash reserves and a negative cash balance by FY 2023. After adjusting budget items within the board's control and using existing technologies to reduce expenses, a deficit still existed. Therefore, the board determined it was essential to increase fees for the board to continue to exist and to perform its public safety function. The board revised the professional engineering statute to eliminate temporary licensure and the related fee. In addition, the board now prints licenses and certificates, eliminating the fee for replacement certificates. Licensure, renewal, and late fees have been increased to the level necessary to cover the board biennial budget and to restore the cash reserves to an appropriate level. It is projected that cash reserves will return to the level of one year of operating expenses by FY2024.

Fiscal impact of rule:

Each licensed professional engineer will pay an additional \$20 per year in licensure fees. Individuals in retired status will pay an additional \$5 per year. Applicants for Engineer-Intern certification will pay a one-time fee of \$25 versus the former fee of \$10; and applicants for Professional Engineer Licensure will pay a \$50 application fee, versus the former fee of \$25, plus the increased licensure fee.

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Rules Adopted January 1, 2019 to December 31, 2019
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)

Chapter number/title: **Ch. 10**, Sexual Misconduct (*jointly with 02-383, Board of Osteopathic Licensure*)

Filing number: **2019-146**

Effective date: 8/17/2019

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To update the existing rule regarding sexual misconduct by physicians and physician assistants, including: prohibiting sexual misconduct with "key third parties" such as the spouse or parent of a patient; defining "sexual misconduct" to include additional acts by physicians and physician assistants using photographs or social media and certain criminal convictions; setting forth the range of sanctions applicable to violations of the rule; and identifying factors the Boards should consider in imposing sanctions.

Basis statement:

The Board of Licensure in Medicine and the Board of Osteopathic Licensure ("Boards") have an existing joint rule (Ch. 10) regarding Sexual Misconduct. The original joint rule was adopted by the Boards in 1997 - over 22 years ago. Since that time, the Federation of State Medical Boards ("FSMB") and the American Medical Association's Code of Medical Ethics have updated their standards and guidelines to further expand the definition of "sexual misconduct" and to prohibit sexual misconduct with "key third parties" of the patient such as the patient's spouse or guardian who may play an important role in the patient-physician relationship, including medical decision-making that directly affects the health and welfare of the patient. As both the FSMB and the AMA point out, sexual relationships with "key third parties" may negatively impact the physician-patient relationship, exploit the vulnerability of the "key third party", and negatively affect the physician's objectivity regarding the patient's health care.

The new joint rule: (1) defines two levels of sexual misconduct: "sexual violation" and "sexual impropriety"; and (2) outlines sanctions the Boards may impose for acts of sexual misconduct and identifies factors that the Board should consider.

The new joint rule as originally proposed was comprised of the following sections:

Section 1 defines "sexual misconduct" - to include two levels: "sexual violation" and sexual impropriety."

Section 2 outlines sanctions the Boards may impose for acts of sexual misconduct.

The Boards published the joint rule for public comment on March 13, 2019. The Boards did not receive any comments regarding the proposed joint rule.

Fiscal impact of rule:

Minimal.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Professional and Financial Regulation,
State Board of Nursing

Umbrella-Unit: **02-380**

Statutory authority: 32 MRS §2153-A

Chapter number/title: **Ch. 5**, Regulations Relating to Training and Delegation by
Registered Professional Nurses of Selected Nursing Tasks to
Certified Nursing Assistants

Filing number: **2019-017**

Effective date: 1/30/2019

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To provide a workable mechanism for CNAs from other jurisdictions to be placed on the Maine Registry of Certified Nursing Assistants.

Basis statement:

The amendment to Ch. 5, *Regulations Relating to Training Programs and Delegation by Registered Professional Nurses of Selected Nursing Tasks to Certified Nursing Assistants*, allows certified nursing assistants outside of the state of Maine who have had national testing for both theory and clinical; recently graduated from a nursing assistant program; or have been employed outside of the state of Maine for two years to be placed on the Maine CNA Registry. This alleviates the barriers for qualified nursing assistants to work in Maine and assist with the work force shortage.

Fiscal impact of rule:

None.

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Agency name: Department of Professional and Financial Regulation,
State Board Nursing

Umbrella-Unit: **02-380**

Statutory authority: 32 MRS §§ 2153-1, 2104(1)(B)

Chapter number/title: **Ch. 7**, Regulations for Approval of Prelicensure Nursing Education Programs

Filing number: **2019-085**

Effective date: 5/29/2019

Type of rule: Routine Technical

Emergency rule: No

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

Basis statement:
To update the rule to reflect current national standards and to change vague language to more specific requirements.

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 Professional and Financial Regulation,
State Board Nursing

Umbrella-Unit: **02-380**

Statutory authority: 32 MRS ch. 31 sub-ch. 2-A §A-1

Chapter number/title: **Ch. 11** (*Repeal*), Regulations Relating to the Nurse Licensure Compact

Filing number: **2019-153**

Effective date: 8/26/2019

Type of rule: Routine Technical

Emergency rule: No

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

Basis statement:

This chapter is superseded by Sec. A-1. 32 MRSA c. 31, sub-c. 2-A, also entitled *Nurse Licensure Compact*, adopted into law on June 25, 2017.

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 Professional and Financial Regulation,
Board of Osteopathic Licensure

Umbrella-Unit: **02-383**

Statutory authority: 32 MRS §2562

Chapter number/title: **Ch. 10**, Sexual Misconduct (*jointly with 02-373, Board of Licensure in Medicine*)

Filing number: **2019-147**

Effective date: 8/17/2019

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To update the existing rule regarding sexual misconduct by physicians and physician assistants, including: prohibiting sexual misconduct with "key third parties" such as the spouse or parent of a patient; defining "sexual misconduct" to include additional acts by physicians and physician assistants using photographs or social media and certain criminal convictions; setting forth the range of sanctions applicable to violations of the rule; and identifying factors the Boards should consider in imposing sanctions.

Basis statement:

The Board of Licensure in Medicine and the Board of Osteopathic Licensure ("Boards") have an existing joint rule (Ch. 10) regarding Sexual Misconduct. The original joint rule was adopted by the Boards in 1997 - over 22 years ago. Since that time, the Federation of State Medical Boards ("FSMB") and the American Medical Association's Code of Medical Ethics have updated their standards and guidelines to further expand the definition of "sexual misconduct" and to prohibit sexual misconduct with "key third parties" of the patient such as the patient's spouse or guardian who may play an important role in the patient-physician relationship, including medical decision-making that directly affects the health and welfare of the patient. As both the FSMB and the AMA point out, sexual relationships with "key third parties" may negatively impact the physician-patient relationship, exploit the vulnerability of the "key third party", and negatively affect the physician's objectivity regarding the patient's health care.

The new joint rule: (1) defines two levels of sexual misconduct: "sexual violation" and "sexual impropriety"; and (2) outlines sanctions the Boards may impose for acts of sexual misconduct and identifies factors that the Board should consider.

The new joint rule as originally proposed was comprised of the following sections:

Section 1 defines "sexual misconduct" - to include two levels: "sexual violation" and sexual impropriety."

Section 2 outlines sanctions the Boards may impose for acts of sexual misconduct.

The Boards published the joint rule for public comment on March 13, 2019. The Boards did not receive any comments regarding the proposed joint rule.

Fiscal impact of rule:

Minimal.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Corrections
Umbrella-Unit: 03-201
Statutory authority: 34-A MRS §§ 1402, 1403, 3032
Chapter number/title: Ch. 10, Policy and Procedures Manual – Adult:
Subsection 20.1, Prisoner Discipline
Filing number: 2019-178
Effective date: 11/6/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

A citizens' petition (*Citizen Petition for Rulemaking to Require the Maine Department of Corrections to Amend Department of Corrections Rule: Chapter 10, Subsection 20.1, Prisoner Discipline*) was received on 1/14/2019 for the Department to initiate rulemaking pursuant to 5 M.R.S. § 8055. The Petition was verified and certified as required by Maine law. Therefore, pursuant to 5 MRS §8055, the Department initiated rulemaking on DOC Rule, Ch. 10 Subsection 20.1: Prisoner Discipline.

In addition, the Department proposed to amend the rule to improve the prisoner discipline process by providing clarifications, increasing efficiency in the prisoner discipline process, re-aligning appropriate dispositions to violations, and enhancing the informal resolution process for applicable violations.

Basis statement:

This adopted rule amends the prisoner discipline process and the amendments to the rule are listed below:

1. A list of definitions has been included.
2. The informal resolution process is clarified and may only be used on Class B and C violations and only if the prisoner is not a repeat violator.
3. The imposition of restrictions or privileges that may be imposed as a result of an informal resolution have been defined to include restrictions on recreation, canteen/commissary, electronic entertainment items, and on musical instruments. The imposition of restrictions has been reduced from 7 days to 5 days. Monetary sanctions have been eliminated as an informal resolution.
4. A disciplinary report shall be submitted on a Class A rule violation.
5. The description of what needs to be included in a disciplinary report is expanded.
6. The responsibilities of security supervisors are further elaborated on for formal resolutions.
7. A requirement that when staff complete a report that relied on an audio or video recording to substantiate the conduct, the description of the incident shall include that fact.
8. When the charge involves alcohol, inhalant, marijuana, or drug testing, the description of the incident shall include the reason for the test (e.g., random, reasonable suspicion, condition of program, etc.) and, the prisoner's admission form, a printout, photocopy, or photograph of the test results, or a copy of the report of an independent test, whichever is applicable, shall be attached to and become part of the disciplinary report
9. If the violation is "Test, Positive Alcohol, Inhalant, Marijuana, or Drug Test," "Test, Negative Drug Test," or "Test, Tampering with Alcohol, Inhalant, Marijuana, or Drug Test" (due to dilution), the time frame for the submission of the disciplinary report

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- begins after the observation by facility staff of the facility test result or, if applicable, the receipt by facility staff of the confirmation test result, whichever is later.
10. Multiple violations have been clarified.
 11. The management of information from a confidential informant is described and clarified.
 12. A violation is considered reported when the disciplinary report is reviewed and approved in CORIS by the receiving Shift Commander, Unit Manager, or other security supervisor designated by the Chief Administrative Officer.
 13. The time frame for initiating the investigation begins when the violation is reported (i.e., when the disciplinary report is reviewed and approved by the receiving security supervisor).
 14. A requirement that the disciplinary hearing officer shall be impartial has been added.
 15. A requirement has been added that the disciplinary hearing officer shall document the reason(s) in the written summary if a prisoner requests a continuance and the request is denied.
 16. A requirement that if the prisoner is requesting a foreign language interpreter or sign language interpreter or other disability accommodation, the prisoner shall inform the staff person providing the notification of his or her request at the time the notification is provided. The staff person shall ensure the request is documented on the notification.
 17. A requirement that if the prisoner wishes to present exhibits, the prisoner shall inform the staff person providing the notification of the exhibits at the time the notification is provided. The staff person shall ensure this is documented on the notification.
 18. If an exhibit is to be permitted to be presented, the disciplinary hearing officer shall take all reasonable steps to ensure the exhibit is presented at the hearing. Whenever permission has been granted to present an exhibit and the exhibit is not presented, the disciplinary hearing officer shall document the reason(s) in the written summary.
 19. If a staff counsel substitute examines, listens to or views an exhibit because it cannot be reviewed by a prisoner for security or safety reasons, the staff counsel substitute shall write a summary of what he or she observed or listened to, without revealing any information that would create a risk to security or safety, and this summary shall be provided to the prisoner prior to or at the hearing.
 20. A prisoner, or his or her counsel substitute, may present his or her verbal and/or written arguments regarding the charge(s) at the closing of the hearing. A prisoner, or his or her counsel substitute, may also submit written arguments regarding the charge(s) to the disciplinary hearing officer prior to the hearing.
 21. In the case of a charge for which trafficking is an element, trafficking may be inferred by the amount of an item or by the number of items a prisoner possesses or by any other circumstances that indicates the item(s) are not likely to be for personal use only.
 22. The grounds for dismissal of a disciplinary report are clarified.
 23. In a case in which restitution is a recommended disposition, evidence of the actual cost of property damage or medical care, as applicable, shall be presented at the hearing, whether through witness testimony or an exhibit. If the actual cost is unknown at the time of the hearing, the disciplinary hearing officer may recommend an amount of restitution based on the minimum cost that will be incurred as shown by witness testimony or an exhibit, e.g., an exhibit showing that a minimum ambulance cost is \$500.00.
 24. The handling of appeals by violation class is described.

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25. The specific restrictions imposed on a prisoner given disciplinary restriction are described.
26. There are now 3 classes of violations (Class A, B & C) Violations. All prior Class D violations have been made into Class C violations and some of the other violations have been changed to different classes.
27. Acts Prohibited (Procedure F) has been revised in that new acts have been added and some acts have been redefined.
28. Dispositions have been revised, mostly to reduce the dispositions, but in the case of certain especially serious violations, those dispositions have been increased.
29. A mandatory minimum monetary sanction of \$5.00 shall be imposed upon a finding of guilt of any disciplinary violation, regardless of any other sanctions imposed, to help defray the cost of holding disciplinary hearings. This disposition may not be suspended.
30. In the case of a prisoner who has been given a disciplinary disposition that would result in the prisoner being on continuous disciplinary segregation status for more than thirty (30) days, there is a requirement that the Chief Administrative Officer, or designee, shall review and determine whether to approve the continuation on disciplinary segregation status beyond the thirty (30) days or modify or suspend the disposition.

Fiscal impact of rule:

None.

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Rules Adopted January 1, 2019 to December 31, 2019
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 §2651(5)
Chapter number/title: Ch. 122, Grant Application and Award Procedure: Fund for the Efficient Delivery of Educational Services
Filing number: 2019-064
Effective date: 5/12/2019
Type of rule: Major Substantive
Emergency rule: No

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

Basis statement:

- Provided clarification by connecting language in rule back to Title 20-A MRS §2651
- Corrected statutory citations throughout
- Provided clarification on project design, objectives, and sustainability
- Revised programmatic criteria for evaluating grant applications
- Added budget criteria for evaluating grant applications
- Connected Priority Areas in rule back to Title 20-A MRS §2651
- Included clarification regarding consensus scoring
- Changed the method to score proposals
- Provided clarification regarding the eligibility for subsequent grants
- Corrected the Division of Purchases to the Division of Procurement Services

Fiscal impact of rule:
N/A

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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 §6211
Chapter number/title: Ch. 132, Learning Results: Parameters for Essential Instruction and State Accountability
Filing number: 2019-086
Effective date: 6/23/2019
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

This amended rule is the culmination of the periodic review of two of the content areas of the Maine Learning Results: social studies, and science and technology.

Basis statement:

As part of this revision, both the social studies and the science and engineering standards have been reformatted into our newly designed Maine Learning Results structure. This structure divides each of the content standards into three stages of development, childhood, pre-adolescence, and adolescence. Within these stages, we have also identified the associated grade levels, elementary, middle, high school. Additionally, we have standardized the language used so that the following three descriptors mean the same for each content area. These descriptors and their corresponding definitions are:

Strand: A body of knowledge in a content area identified by a simple title.

Standard: Enduring understandings and skills that students can apply and transfer to contexts that are new to the student.

Performance Expectation: Building blocks to the standard and measurable articulations of what the student understands and can do.

Substantively, the social studies standards revision included emphasizing the guiding principles and their connections to the essential skills and practices of social studies. This was done both by highlighting them in the introduction and by embedding examples of what this looks like throughout the performance expectations. The revision process also led to more of a focus on personal finance in the economics strand including adding "personal finance" to the strand title and through the creation of a new subsection that better reflects the importance of personal finance. Along the same lines, work was done to make sure that the teaching of Maine Native Americans occurred more authentically instead of appearing to be an add-on to existing performance expectations. There was also work done to better demonstrate a progression of rigorous expectations for our students as they progressed through their educational career. Lastly, the revised standards have updated language that reflects changes in technology and teacher capacity.

The science and technology standards revision adopted the Next Generation Science Standards© (NGSS), adapting them to Maine's standards format. The revised standards utilize a three-dimensional approach to science incorporating the actual "doing" of science. The revised standards build coherent learning progressions and provide students multiple opportunities over various grade bands to develop a deeper understanding of each of the three dimensions of science. Students also engage with real-world problems and design solutions. This promotes critical thinking and problem-solving skills which are vital to students' post-secondary success. To help make the standards relevant and meaningful to Maine students, the writing team provided examples from our Maine economy, ecosystem, and lifestyle wherever possible. And finally, the name of the standards has been updated to science and engineering standards to reflect the new three-dimensional approach.

Fiscal impact of rule:

N/A

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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 §4502 sub-§5-B
Chapter number/title: Ch. 38, Suicide Awareness and Prevention in Maine Schools
Filing number: 2019-095
Effective date: 7/5/2019
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

The amendment to rule chapter 38 regarding *Suicide Awareness and Prevention in Maine Public Schools* is being made pursuant to LD 1694, “Resolve, Directing the Department of Education To Adopt Protocols Designed To Prevent Youth Suicide”. The resolve specifies that the language regarding protocols in the current rule chapter 38 be changed from a recommendation that all Maine schools have protocols for suicide prevention and intervention in place, to *require that school administrative units have protocols for suicide prevention and intervention and counseling services after an incident of youth suicide in place that are reviewed and approved by the Department of Education based on the best practices established by the National Alliance on Mental Illness Maine or a similar organization authorized by the Department of Health and Human Services through its suicide prevention program.*

Fiscal impact of rule:

N/A

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Agency name: Department of Education
Umbrella-Unit: 05-071
Statutory authority: 20-A MRS §13011(1)
Chapter number/title: Ch. 115, The Credentialing of Education Personnel:
Part II, Requirements for Specific Certificates and Endorsements
Filing number: 2019-204
Effective date: 11/19/2019
Type of rule: Major Substantive
Emergency rule: Yes

Principal reason or purpose for rule:

The State Board is reinstating Ch. 115 Part II, “Requirements for Specific Certificates and Endorsements”, which was in effect May 14, 2014 to June 30, 2019

Basis statement:

The State Board is reinstating Ch. 115 Part II: Requirements for Specific Certificates and Endorsements, which was in effect from May 14, 2014 to June 30, 2019.

Background

The State Board proposed amendments to Part II of Ch. 115 in 2016 which were finally adopted after Legislative review in the Spring of 2017 and were to go into effect on July 1, 2019 (the "2017 Amendments"). Among the changes that were to go into effect on July 1, 2019, were changes to the grade spans of a number of endorsements from K-8 and 7-12 to K-6, 4-8 and 6-12. This was a significant change from what had been in place for many years.

In the fall of 2018, the State Board proposed amendments to both Parts I and II (the "2019 Amendments") of Ch. 115 that would, among other changes, return the grade spans to K-8 and 7-12. This proposed reversion to the prior grade spans was supported by educators in the field, the education associations and the institutions of higher education. The State Board provisionally adopted the 2019 Amendments and submitted them to the Legislature for review. The Legislature specified a number of changes to the provisionally adopted rule that the State Board would have been required to make before finally adopting the rule. Resolves 2019 ch. 101. Among the changes that the Legislature specified was to impose a grade span of K-8 until July 1, 2022 and K-6 after July 1, 2022. Resolves 2019 ch. 101.

Because the Resolve was not enacted as emergency legislation, it did not become effective until September 19, 2019, over two months after the change to the grade ranges in the 2017 Amendments was scheduled to take effect. The State Board could not act until the Resolve took effect. In order to maintain the status quo during the period between July 1, 2019 and the State Board's final consideration of adoption of the 2019 Amendments, the Commissioner advised the field that the Department would not be implementing the changes that were set to go into effect on July 1, 2019.

After careful consideration the State Board has now decided not to finally adopt the 2019 Amendments with the changes authorized in the Resolve. The State Board has determined that the grade span provisions in the version of Ch. 115 Part II that was in effect from May 14, 2014 to June 30, 2019 are more appropriate. The State Board intends to undertake a comprehensive review of Ch. 115 and propose amendments for legislative review during the first session of the 130th Legislature. Because the State Board decided not to adopt the 2019 Amendments the Commissioner's decision to retain the status quo for the short period between July 1st and the State Board's adoption of the 2019 Amendments is no longer applicable.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §585-A
Chapter number/title: Ch. 100, Definitions Regulation
Filing number: 2019-006
Effective date: 1/14/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See 2019-007 below)

Basis statement:
(See 2019-007 below)

Fiscal impact of rule:
(See 2019-007 below)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §585-A
Chapter number/title: Ch. 113, Growth Offset Regulation
Filing number: 2019-007
Effective date: 1/14/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Section 173 of the *Clean Air Act* requires new facilities or modifications that will 1) emit a significant level of pollutant in an area that is not in attainment for that pollutant, or 2) emit a significant level of VOC or NO_x in the Ozone Transport Region, to offset those new emissions by obtaining reductions (called "offset credits") of that pollutant in an amount greater than the new emissions. The Department's Ch. 113, *Growth Offsets Regulations*, implements the federal requirement that new emissions of the criteria pollutants (VOC and NO_x, SO₂, PM₁₀, PM_{2.5}, NO₂, CO, and Lead) be offset with reductions of the pollutants made elsewhere when air quality does not meet health-based standards.

Basis statement:

Ch. 113 was originally promulgated in 1979 and was most recently updated in 1999. Since that time, the Department and U.S. Environmental Protection Agency (EPA) have identified several revisions that will provide greater clarity and flexibility to the emission offsets generation and use processes for Maine businesses and those businesses which may locate in Maine. The Department's proposed revisions to Ch. 113 include:

- New provisions that authorize the Department to allow the use of offset reductions, originating from formerly licensed sources which have surrendered or terminated their licenses, to offset emissions from new major sources or major modifications;
- Identification of the disposition of offset credits used in a licensing action for a project that is never constructed. If a facility fails to construct and/or begin operation of a project that required the use of offset credits, and the facility's license is subsequently surrendered or otherwise terminated, the offset credits will revert to the Department if those offset credits initially originated within Maine and were not purchased by the surrendering licensee. The Department may use those offset credits to offset emissions from major new sources or major modifications;
- Clarification that offsets must be surplus, permanent, quantifiable, and federally enforceable reductions in emissions as certified by the Department;
- Establishment of a process for a third party (i.e., a party other than the licensed source of emission reductions) to certify in-state emission reductions that have not been previously certified by the Department; and
- Reduction of the offset ratio for emission reduction credits obtained outside of New England from 2.0-to-1 to 1.15-to-1, thereby aligning Maine's rule with federal requirements.

To help facilitate this rulemaking, the Department also revised several definitions in its Ch. 100 *Definitions Regulation*.

Fiscal impact of rule:

New or expanded major sources of air emissions in the state will benefit from these changes, thereby reducing some regulatory barriers to business investments and ultimately providing fiscal benefits to the businesses, their employees, and the surrounding communities. The amendments are not anticipated to have an impact on state government.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §585-A
Chapter number/title: Ch. 101, Visible Emissions Regulation
Filing number: 2019-044
Effective date: 3/10/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Emissions into the ambient air from facilities, both licensed and unlicensed, are subject to visible emissions standards. These standards may be located in the Department's Ch. 101, *Visible Emissions Regulation*, in State-determined Best Available Control Technology (BACT) and Best Practical Treatment (BPT) determinations, and in federal National Emissions Standards for Hazardous Air Pollutants (NESHAP) and/or New Source Performance Standards (NSPS). Emissions sources identified in this chapter include sources which may not otherwise be subject to visible emissions requirements.

Currently, Ch.101 includes up to two six-minute exemptions from visible emissions standards per three-hour period for certain regulated emissions units. As the result of legal action against the U.S. Environmental Protection Agency (EPA), the court had deemed such exemptions as "unregulated periods" and thus in conflict with *Clean Air Act* (CAA) requirements. Per direction from the court, the EPA issued a State Implementation Plans (SIP) Call, identifying each state and state rule deemed in conflict with such CAA requirements. This proposed rulemaking rectifies language and requirements to bring the chapter in compliance with the SIP Call and CAA requirements.

Basis statement:

In 2015, the U.S. Environmental Protection Agency issued a final rule (or "SIP Call") to ensure states have plans in place that require industrial facilities to follow air pollution rules during times when the facility is starting up or shutting down, or when a malfunction occurs (or "SSM"). The Department is amending its Ch. 101 *Visible Emissions Regulation* to eliminate periods of unregulated emissions in accordance with the SIP Call and 1990 *Clean Air Act* Amendments. Revisions to the rule include: removal of the "unregulated" exemption periods and inclusion of new, alternate provisions for periods of startup, shutdown, malfunction, or approved equipment maintenance, allowing the option of compliance with work practice standards to minimize emissions during such times instead of a numerical opacity limit; clarification of exemptions from the chapter; clarification of the applicability of the annual capacity factor visible emission standard; and removal of specific visible emissions standards for sources already subject to visible emission standards in applicable federal rules.

Fiscal impact of rule:

This is not expected to have a fiscal impact on affected facilities

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §584
Chapter number/title: Ch. 110, Ambient Air Quality Standards
Filing number: 2019-055
Effective date: 3/27/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department amends its Ch. 110 *Ambient Air Quality Standards* to incorporate the current national ambient air quality standards (NAAQS) for particulate matter (PM) and ozone. Maine statute at 38 MRS §584-A states:

For purposes of statutory interpretation, rules, licensing determinations, policy guidance and all other actions by the department or the board, any reference to an ambient air quality standard is interpreted to refer to the national ambient air quality standard established pursuant to Section 109 of the federal *Clean Air Act*, 42 *United States Code*, Section 7409, as amended. The department shall implement ambient air quality standards as required by the federal *Clean Air Act*, 42 *United States Code*, Section 7409 and regulations promulgated under that section by the United States Environmental Protection Agency. Nothing in this section may be construed to limit the authority of the department to adopt emission standards designed to achieve and maintain ambient air quality standards.

The amendments update and align the rules governing the Maine ambient air quality standards to provide consistency with the federal NAAQS. The amendments to Ch. 110 are required to satisfy CAA Section 110(a)(1) and (2) infrastructure requirements and Prevention of Significant Deterioration (PSD) requirements under CAA Section 160 *et seq.*. The Department has been implementing these requirements since they are already required under federal laws/regulations; the amendments are intended to update Maine regulations and match these federal requirements.

Basis statement:

These amendments update Ch. 110 to incorporate the current National Ambient Air Quality Standards (NAAQS) for particulate matter (PM_{2.5}) and ozone, and provide consistency with the federal NAAQS pursuant to Maine statute at 38 MRS §584-A. The proposed amendments were posted to a 30-day written public comment period beginning November 14, 2018, with a comment deadline of December 17, 2018. No comments nor any requests for a public hearing were received. No changes were made to the proposed amendments

Fiscal impact of rule:

This adoption will not have a fiscal impact on small business, the regulated community or municipalities that is above and beyond existing federal requirements.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Environmental Protection (DEP), jointly with
94-376, Maine Municipal Bond Bank
Umbrella-Unit: 06-096
Statutory authority: 30-A MRS §5959
Chapter number/title: Ch. 595, State Revolving Fund
Filing number: 2019-059
Effective date: 3/27/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Ch. 595 contains eligibility requirements for the funding of planning, design, and/or construction of municipal wastewater treatment works and other water pollution control facilities or practices under the State Revolving Fund. The amendments will allow for awarding construction contracts based on three additional delivery methods: Construction Management At-Risk (CMAR), Progressive Design-Build (PDB), & Fixed-Price Design-Build (FPDB). When the rules were first written, most municipal projects were designed to 100% by an engineering firm, bid, then awarded to the construction contractor for building, known as Design-Bid-Build (DBB). Since then, municipalities have seen the advantage of awarding construction contracts based on other delivery methods that allow for contractor input into the design or to compress the design/construction schedule. These changes allow eligible applicants of Maine's SRF program to use these additional construction delivery methods that have become common practice in the construction industry and are utilized by other state SRF's nationally. The amendments also update the rule in accordance with current procedures at the Maine Municipal Bond Bank, and bring the rule into consistency with current Federal requirements.

Basis statement:

Ch. 595 contains eligibility requirements for the funding of planning, design, and/or construction of municipal wastewater treatment works and other water pollution control facilities or practices under the State Revolving Fund (SRF). Ch. 595 is being amended to allow eligible applicants of Maine's SRF program to use construction delivery methods that have become common practice in the construction industry and are utilized by other state SRF's nationally. The amendments also update the rule in accordance with current procedures at the Maine Municipal Bond Bank, and bring the rule into consistency with current Federal requirements contained in the *Water Resources Reform and Development Act* (June 10, 2014) (WRRDA), amending Titles I, II, V, and VI of the *Federal Water Pollution Control Act* (FWPCA), and the *Federal Funding Accountability and Transparency Act of 2010*.

Fiscal impact of rule:

The amendments are largely procedural and are not expected to have any significant fiscal impact. Greater flexibility in construction delivery methods may provide cost savings in some cases.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 1391, 341-H, 1400
Chapter number/title: Ch. 692, Siting of Oil Storage Facilities
Filing number: 2019-116
Effective date: 8/7/2019
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

These amendments provide flexibility to municipalities and businesses siting oil storage facilities, as long as certain criteria and design standards are met. This rulemaking adds variance language to allow for more areas to be developed without negatively impacting groundwater or drinking water.

Basis statement:

The revisions to *Siting of Oil Storage Facilities*, 06-096 CMR ch. 692, update and clarify certain provisions of the rule. The Department's experience administering this rule over the past several years has highlighted the need to propose these amendments. The amendments provide flexibility to municipalities and facility owners while still protecting public and private drinking water supplies and significant sand and gravel aquifers.

Fiscal impact of rule:

None.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 585, 585-B, 590
Chapter number/title: Ch. 121, Emission Limitations and Emission Testing of Resource Recovery Facilities
Filing number: 2019-162
Effective date: 9/14/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Section 111(d) of the *Clean Air Act Amendments (CAAA) of 1990* requires each state with municipal waste combustion facilities to adopt a Municipal Waste Combustor (MWC) 111(d)/129 Plan that demonstrates implementation of federal emission guidelines for reductions in emissions of air pollutants¹ from solid waste combustion, such guidelines established as directed by Section 129 of the CAAA. Federal requirements applicable to Maine MWC facilities were promulgated in federal subparts.

Maine regulation 06-096 CMR ch. 121, *Emission Limitations and Emission Testing of Resource Recovery Facilities*, first promulgated in 1989, was updated in 2007. Maine submitted the required MWC 111(d)/129 Plan which incorporated requirements and emission limitations of applicable subparts. The State Plan submitted in 2007 did not obtain EPA final approval. Ch. 121 and the corresponding State Plan have been revised and updated based on recent EPA comments on the 2007 submittal and input from the three facilities in the State subject to this rule.

Basis statement:

Section 111 (d) of the *Clean Air Act Amendments (CAAA) of 1990* requires each state with municipal waste combustion facilities to adopt a Municipal Waste Combustor (MWC) 111(d)/129 Plan that demonstrates implementation of federal emission guidelines for reductions in emissions of air pollutants¹ from solid waste combustion, such guidelines established as directed by Section 129 of the CAAA. Federal requirements applicable to Maine MWC facilities were promulgated in federal subparts.

Maine regulation 06-096 CMR ch. 121, *Emission Limitations and Emission Testing of Resource Recovery Facilities*, first promulgated in 1989, was last updated in 2007. Maine submitted the required MWC 111(d)/129 Plan which incorporated requirements and emission limitations of applicable subparts. The State Plan submitted in 2007 did not obtain BPA final approval. Ch. 121 and the corresponding State Plan have been revised and updated based on recent EPA comments on the 2007 submittal and input from the three facilities in the State subject to this chapter.

This chapter establishes emission standards and requirements of specific operating practices, compliance and performance testing, and reporting and recordkeeping for resource recovery facilities. The changes in this rulemaking result in more consistency between the state and federal regulation. In addition, the changes reduce redundancy, update emission testing and continuous emission monitoring requirements, and update approval designations.

Fiscal impact of rule:

None. Facilities are already complying with both state and federal regulations. This action brings consistency to the specified requirements at both levels.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 10105
Chapter number/title: Ch. 27 (New), Animal Damage Control Agent Certificate
Filing number: 2019-028
Effective date: 2/5/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

In the process of modernizing the policy that governs the Animal Damage Control (ADC) Program, the Department has developed rules to govern how IFW staff utilize Animal Damage Control agents and how the agents function when dealing with human-wildlife conflicts. Increased demand for services on Departmental staff and ADC agents that deal with nuisance wildlife issues necessitate these rules. The rule establishes a standard application, operating standards, and eligibility requirements. As part of the application process, prospective ADC agents must meet minimum experience and training requirements as well as submit to a background check. The combination of expectations established in this new rule should provide consistent, safe, and reliable services to Maine's citizens when resolving human-wildlife conflicts.

Basis statement:

This rule is the result of an extensive review over the past year to modernize the Department's policy governing the ADC program. This review involved Department staff representing multiple Bureaus. During the review, Department staff examined other states' ADC programs to evaluate consistency, guidance, and administration. This review also involved consultation with several ADC agents certified under the current standards.

In the process of modernizing the policy that governs the Animal Damage Control (ADC) Program, the Department developed the new rule (Ch. 27) to govern how IFW staff utilize Animal Damage Control agents and how the agents function when dealing with human-wildlife conflicts. Increased demand for services on Departmental staff and ADC agents that deal with nuisance wildlife issues necessitate these rules. The rule establishes a standard application, operating standards, and eligibility requirements. As part of the application process, prospective ADC agents must meet minimum experience and training requirements as well as submit to a background check. The combination of expectations established in this new rule should provide consistent, safe, and reliable services to Maine's citizens when resolving human-wildlife conflicts.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §10104
Chapter number/title: Ch. 4, Hunting and Trapping (*Repeal*)
Ch. 4, Falconry (*New*)
Ch. 16, Hunting (*New*)
Ch. 17, Trapping (*New*)
Filing number: 2019-033 thru 036
Effective date: 2/12/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The repeal and replace of Ch. 4, which included hunting, trapping and falconry related rules, takes the rule and breaks it into three separate chapters: Ch. 16, Hunting Rule; Ch. 17, Trapping Rule; and a Falconry rule chapter which will remain as Ch. 4. The primary focus of the repeal and replace was to address outdated information, inconsistencies between the rule and current statutory language, and formatting. All wildlife management district boundaries were reviewed for road name accuracy and updates were made accordingly. Due to the nature of the presentation of a repeal and replace document, a supplemental summary document was provided to the public to demonstrate substantive changes.

Fiscal impact of rule:

No fiscal impact anticipated.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §10104; PL 2019-ch. 9
Chapter number/title: Ch. 1, Open Water and Ice Fishing Regulations (Ice Fishing Season Extension)
Filing number: 2019-056
Effective date: 4/1/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

Extend the 2019 recreational ice fishing season by emergency rule on waters currently open to ice fishing in the North Region designated by a special season code of “B”.

Basis statement:

The Commissioner of Inland Fisheries and Wildlife, in accordance with emergency Legislation passed by the 129th Legislature (LD 1298), has amended the *Open Water and Ice Fishing Regulations* to allow bodies of water that are currently open to ice fishing in the North Region designated by a special season code of “B” to continue to be open April 1 through April 21, 2019. All rules and regulations for those waters that are already open to ice fishing in the North Region will remain in effect. The extension does not apply to tribal waters. Based on unusually cold weather conditions and lack of open water availability in the North Region, the Commissioner has determined that an extension of the ice fishing season is necessary to enhance fishing opportunities for anglers in that region.

Currently, waters in the south zone are open year round to both ice fishing and open water season unless closed by special rule. This provides those in the south with fishing opportunity no matter if there is an early or delayed spring. Extending the ice fishing season in Northern Maine provides similar opportunity for areas that would normally be free and clear of ice for open water fishing but are still ice covered. This will allow waters that are currently open to ice fishing to be ice fished while still protected under current regulations.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 12909, 12910, 12913
Chapter number/title: Ch. 14, Commercial Whitewater Rafting
Filing number: 2019-058
Effective date: 4/2/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The following changes to the commercial whitewater rafting rules have been adopted: Every whitewater guide applicant, currently licensed whitewater guide and trip leaders must be certified in First Aid and C.P.R. The rule will now allow online certifications. It reduces the minimum length of a whitewater craft from at least 15 feet to 13 feet. This allows the removal of the exceptions to having the minimum craft length of 15 feet on the West Branch of the Penobscot River (there are 5 rivers which are current exceptions). This also repeals the language requiring a whitewater outfitter to request authorization to run a whitewater craft that is less than 15 feet in length. The way in which allocation review will be conducted has been modified to allow more flexibility to for the outfitters to be able to keep their allocations even if the they are having difficulty in getting the number of allocated river runs required within the 5-year rating period. There is added language that allows the commissioner the option not to take administrative action on an outfitter due to low industry use during any five-year review of allocations. This also allows increased flexibility for outfitters when the commissioner determines it is necessary to help viability for the industry. The launch order has been removed from rule so that it can be changed as necessary and with a quicker response than it has in the past.

Basis statement:

This rule was initiated by the commercial industry. Staff met with industry representatives in crafting the language for the rule. Commercial outfitters were having difficulty meeting their allocation system that was currently under state law. Currently, there were allocations for trips on the Kennebec River and we had not been able to sell them for over 6 years. The way in which allocation review will be conducted has been modified to allow more flexibility to for the outfitters to be able to keep their allocations even if the they are having difficulty in getting the number of allocated river runs required within the 5-year rating period. There is added language that allows the commissioner the option not to take administrative action on an outfitter due to low industry use during any five-year review of allocations. This also allows increased flexibility for outfitters when the commissioner determines it is necessary to help viability for the industry. The rule also will allow online certifications for First Aid and CPR. It reduces the minimum length of a whitewater craft from at least 15 feet to 13 feet. This allows the removal of the exceptions to having the minimum craft length of 15 feet on the West Branch of the Penobscot River (there are 5 rivers which are current exceptions). This also repeals the language requiring a whitewater outfitter to request authorization to run a whitewater craft that is less than 15 feet in length. The launch order has been removed from rule so that it can be changed as necessary and with a quicker response than it has in the past.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 11855
Chapter number/title: Ch. 16, Hunting: 16.11, Migratory Game Bird Hunting
Filing number: 2019-073
Effective date: 5/12/2019
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 rule implements Maine's 2019/20 migratory bird hunting seasons by selecting season dates and bag limits for ducks, coots, mergansers, geese, crows and woodcock. Based on population trends, there is a reduction in the daily bag limit for mallards from 4 per day to 2 per day with a 1 hen restriction and a reduction in the daily bag limit for Northern pintails from 2 per day to 1 per day. The Coastal Zone regular goose season is proposed to be increased by 10 days for a 70-day season, while North and South Zone regular goose season will remain at 60 days.

A public hearing was held on March 6, 2019 with 5 members of the Waterfowl Council present, and 25 citizens in attendance. The Department presented the proposal and discussed the season frameworks and bag and possession limits. Testimony was limited but seemed to be overall in favor of the proposal. Some had questions on how the dates were set and the timing of the seasons. The Department also received two (2) written comments. The comments were acknowledged and forwarded to appropriate Department staff as well as the Commissioner's Advisory Council. One of the written comments was submitted by the Maine Professional Guides about the woodcock season. There was legislation going through the process that would open the grouse season in September rather than October 1, and they proposed the woodcock season be set the same. The Department responded that under federal guidelines, we did not have the ability to set the opening date any sooner than October 1 for woodcock.

There were two changes from the original proposal. To correct an error in the original proposal pintail was removed from the 2-bird bag limit. Also, survey results received after the proposal had been advertised indicated population estimates for brant were below the liberal threshold so based on federal guidelines we had to go from a 60-day season and limit of 2 to a 30-day season and limit of 2. Based on a comment made at the public hearing on the coastal zone of when the brant were more likely to be there, the Department modified the brant season dates. December 3 to Jan. 6 was 30-days counting backwards from the end of the coastal zone season.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

After reviewing the comments and discussion with staff and the Waterfowl Council, the Commissioner moved forward with the amended proposal. The Commissioner's Advisory Council met on April 30, 2019 and voted unanimously to accept the proposal as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12260
Chapter number/title: Ch. 17, Trapping: 17.03, Definitions; 17.06(1), Bear Trapping
Filing number: 2019-074
Effective date: 5/12/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department of Inland Fisheries and Wildlife has amended bear trapping rules that were identified in the Department's Big Game Management Plan, to limit bear traps and bear trapping methods that may accidentally capture the federally threatened Canada Lynx. This rule is necessary to comply with Incidental Take Permit Number TE48539B-0 issued by the United States Fish and Wildlife Service. The Department promulgated an emergency rule to address this issue in August, 2018, however, that rule expired after 90 days. The rule will address the issue long-term by requiring trap design and placement standards that prevent access by lynx.

Basis statement:

The Department of Inland Fisheries and Wildlife has amended bear trapping rules that were identified in the Department's Big Game Management Plan, to limit bear traps and bear trapping methods that may accidentally capture the federally threatened Canada Lynx. This rule is necessary to comply with Incidental Take Permit Number TE48539B-0 issued by the United States Fish and Wildlife Service. The Department promulgated an emergency rule to address this issue in August, 2018, however, that rule expired after 90 days. The rule will address the issue long-term by requiring trap design and placement standards that prevent access by lynx, and ensure that all bear trappers are using devices and methods that meet the highest standards for humaneness and selectivity.

A public hearing was held on March 5, 2019 with 22 citizens in attendance. Twelve people provided testimony and/or asked questions regarding the proposal. The use of drags and the desire to reinstate the use of drags when trapping for bear was expressed, as well as concern for placement of an anchor for the trap. When using a tree as an anchor point many felt this would be harmful to the trees and may create issues with landowners. Trigger depth and bait placement was also discussed.

There were four written comments received on the proposal. Comments were acknowledged and forwarded to appropriate staff and the Commissioner's Advisory Council. Comments from the Humane Society of the U.S. stated their position that trapping of bears should be eliminated. The remaining comments were in favor with questions around the depth of the trigger for the trap, the opening and inside diameter for certain types of traps and the use drags.

After reviewing the comments and discussion with staff, the Commissioner moved forward with an amended proposal. There was a slight change made to language in 17.06, 1.B.(4)vii. to clarify that a tree used as an anchor could be within the area of the catch circle, and the word "small" was removed when describing stepping guide materials.

The Commissioner's Advisory Council met on April 30, 2019 and of the 10 members participating, 9 voted in favor and 1 (Mr. Sage) opposed to the proposal as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 11551, 11552
Chapter number/title: Ch. 16, Hunting: 16.08, Moose Hunting
Filing number: 2019-088
Effective date: 6/3/2019
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 antlered and cow moose that will achieve the population goal for a particular WMD, while also maintaining desired numbers of mature antlered moose 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 2019 season. The Department advertised a proposal on March 27, 2019 with a recommended total of 2,820 permits be issued in order to meet moose harvest objectives. This is an increase of 320 permits from 2018. 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. For the 2019 moose season the majority of WMDs open to moose hunting showed a stable population and for most of the core moose range (WMDs 1-9) an incremental increase in antlerless permits was recommended. The rule was also amended to reflect a statutory change which reduced the amount of permits available to nonresidents from 10% of the total permits issued to 8%. The 2% reduction of permits to nonresidents was used to make permits available to qualifying hunting lodges (12 MRS Section 11154 §14).

Fiscal impact of rule:

No fiscal impact anticipated.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §11701
Chapter number/title: Ch. 16, Hunting: 16.10, Wild Turkey Hunting
Filing number: 2019-089
Effective date: 6/3/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To implement the rule making process which establishes the general guidelines within which the State is permitted to regulate the hunting of wild turkeys.

Basis statement:

This rule will open the spring wild turkey hunting season in Wildlife Management Districts 1 through 6 to all hunters for the entirety of the season by eliminating the split A/B season based on even and odd birth years. Originally, when these districts were open to a spring wild turkey hunting season, the season was split by birth year to reduce the number of hunters on the landscape at any given time and minimize conflicts with landowners. Since then, landowner conflicts have been minimal. Now that the spring season is established and landowners are used to it, we expect landowner conflicts will remain minimal. The fall wild turkey hunting season was modified by changing the start of the season to the Monday closest to the 17th of September and running to November 7; establishing a youth only wild turkey hunting day in the fall and increasing the fall wild turkey hunting season bag limit in Wildlife Management Districts 15, 16, 17, 20, 21, 22, 23, 24 and 25 from two to five birds and from one to three birds in Wildlife Management District 26. The number of wild turkeys appears to be reaching, and in some areas exceeding social tolerance. Through a recent process of developing wild turkey goals and objectives involving public input through survey and committee work, the wild turkey population in these districts was identified as needing stabilization. One management tool to stabilize a wild turkey population is through liberalization of fall wild turkey hunting, where females are legal to harvest. Non-toxic, denser than lead shot size options are becoming more available in various shotgun shell gauges that are effective in killing wild turkeys. The use of these methods has been requested by members of the public in the past. Expanding the options for shotgun gauges and shot size legal for wild turkey hunting will include shotgun gauges 10 through 28, and .410 with the use of shot sizes 7 through 9 in Tungsten Super Shot (TSS).

No public hearing was held, and 18 written comments were received on the proposal (attached). Comments were acknowledged and forwarded to Department staff and the Commissioner's Advisory Council for review. Five of the comments were in favor of all or parts of the proposal and 13 comments were received either opposed to or having concern with parts of the proposal. The majority of concerns focused on the increased bag limit and the ability to potentially harvest all five birds in one day. Flock shooting was a concern. There was also concern regarding the shotgun gauges and shot sizes. Some felt there was potential for hunter fatalities and the increased chance of wounding or injuring wild turkeys when hunting them with smaller gauge shotguns.

The Commissioner reviewed the comments and after discussion with staff and the Advisory Council recommended several changes from the original proposal as follows: The addition of shotgun gauges 10 through 28, including .410 would be limited to using shot sizes 7 through 9 in Tungsten Super Shot (TSS) instead of shot sizes 2 through 9 as originally proposed; limited the daily turkey harvest to two birds per day with the increased season limit

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of five birds during the fall season and removed the date references from the fall turkey hunting season chart to eliminate the need for rulemaking to reflect the change in the calendar dates each year. The Advisory Council met on May 21, 2019 and of the 8 members participating 7 voted in favor and 1 opposed (Mr. Smith) to adopt the proposal as amended.

Fiscal impact of rule:

No fiscal impact anticipated.

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

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §12952
Chapter number/title: Ch. 20, Taxidermy License
Filing number: 2019-090
Effective date: 6/3/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule creates two new classifications to modernize the Department's Taxidermy rules, by including a "Freeze-Dried" and a "Reptile and Amphibian" Classification to the taxidermy license process. These classifications further clarify authorities permitted by a licensed taxidermist in the preservation of wildlife, skins of fish or parts thereof. These classifications directly relate to the Department's current definition of "taxidermy," which is defined as the art of preparing, stuffing and/or mounting of skins of fish, wildlife or parts thereof, so as to make them appear lifelike. Applicants that are successful in the Freeze-Dried Classification, that do not already hold the Bird or General Classification, will be able to apply for the federal "Taxidermy Permit," through the US Fish and Wildlife Service, which is required to perform taxidermy services on migratory birds or their parts, nests, or eggs.

Basis statement:

This rule will provide the Department a clear direction for the certification of taxidermists in the preservation process, as well as providing applicants with a clear outline of the requirements that need to be met, to become certified in one or more of the Department's taxidermy license classifications. The rule creates two new classifications to modernize the Department's Taxidermy rules, by including a "Freeze-Dried" and a "Reptile and Amphibian" Classification to the taxidermy license process. These classifications further clarify authorities permitted by a licensed taxidermist in the preservation of wildlife, skins of fish or parts thereof. These classifications directly relate to the Department's current definition of "taxidermy," which is defined as the art of preparing, stuffing and/or mounting of skins of fish, wildlife or parts thereof, so as to make them appear lifelike. Applicants that are successful in the Freeze-Dried Classification, that do not already hold the Bird or General Classification, will be able to apply for the federal "Taxidermy Permit," through the US Fish and Wildlife Service, which is required to perform taxidermy services on migratory birds or their parts, nests, or eggs.

The rule complies with the Department's taxidermy competency standards, which require applicants and licensed taxidermists to provide the Department and the public with specimens that are professional in quality, lifelike and realistic in appearance. Taxidermists already licensed under the General Classification will be able to obtain their Reptile and Amphibian Classification, by presenting one native reptile or amphibian to the Taxidermy Board without further testing requirements.

No public hearing was held, and no written comments were received on the proposal. During discussion of the proposal at the March 21, 2019 Advisory Council meeting, Council member Jeff Lewis commented on the rule language in 20.05 (3. vi.) and recommended the language be changed from "bleached and sealed." Bleaching and sealing tended to yellow the mounts.

The Commissioner did recommend a change from the original proposal, and modified the language in 20.05 (3. vi.) to change the word "bleached" to "whitened". There were no other

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modifications to the proposal. The Advisory Council met on May 21, 2019 and of the 8 members participating voted unanimously to adopt the amended proposal.

Fiscal impact of rule:

No fiscal impact anticipated.

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

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 10954, 12301-A
Chapter number/title: Ch. 16, Hunting (16.06, 16.12, 16.13)
Filing number: 2019-128
Effective date: 7/23/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department of Inland Fisheries and Wildlife has amended hunting laws as they apply to submission of tooth and tissue samples when registering a bobcat. To standardize requirements across species all bobcat harvested by hunting must be registered within 10 days. An amendment to furbearing animal possession, transportation and registration requirements will allow someone the ability to gift unregistered coyote pelts to someone else for registration and utilization of the pelt. To comply with newly enacted legislation, season dates for upland game hunting of certain species has been modified to begin on the last Saturday in September.

Basis statement:

Otter and bobcat are governed by the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES) and must be registered and tagged by Department staff. To simplify regulations and standardize requirements across species, we will require that all bobcats harvested by hunting be registered within 10 days, instead of 3 days as in the past. Currently, people that want to tan and/or sell a coyote pelt are required to register each coyote they harvest. We will now allow unregistered coyotes to be gifted to people wanting to utilize these pelts. In order to comply with LD 265 (*An Act To Increase Opportunities for Hunters, Anglers and Sporting Camps by Extending the Seasons on Upland Game*) hunting seasons for snowshoe hare, gray squirrel, ruffed grouse, and bobwhite quail will begin on the last Saturday in September, rather than October 1st. Ring necked pheasant will also be included in the season date change.

A public hearing was held on the proposal on May 29, 2019 (minutes attached) and 4 citizens were present. The president of the Maine Trappers Association testified in favor of the proposal, but did express that some had concerns about making contact with Department staff in order to register otter or bobcat. Wildlife director Nate Webb explained the procedure and how to find contact information for Department regional offices. There were no written comments received on the proposal.

The Commissioner's Advisory Council met on July 10, 2019 and of the 9 members participating voted unanimously in favor of the proposal as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12251
Chapter number/title: Ch. 17, Trapping; 17.03, Definitions; 17.06(2), Beaver Trapping, 17.06(3), Muskrat Trapping; 17.07, Registration of Furbearing Animals
Filing number: 2019-129
Effective date: 7/23/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The Department of Inland Fisheries and Wildlife has amended trapping rules to include the following: amendment to the definition of a covered float, extension of the beaver trapping season in southern Maine by 15 days, the addition of property in Fort Fairfield to the beaver closures in WMD 6, and an adjustment to the muskrat trapping season to coincide with beaver trapping. In an effort to standardize requirements across species all bobcat harvested by hunting and otter taken in beaver traps from January 1 to April 30 must be registered by Department staff within 10 days of harvest. A lower canine may be submitted when presenting a bobcat for registration. An amendment to possession of pelts without fur registration tag requirements will allow someone the ability to gift unregistered coyote pelts to someone else for registration and utilization of the pelt.

Fiscal impact of rule:

No fiscal impact anticipated.

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

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 11152, 11401
Chapter number/title: Ch. 16, Hunting: 16.07, Deer Hunting
Filing number: 2019-135
Effective date: 7/24/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Any-deer permits (ADP) are adjusted by MDIFW on an annual basis in response to deer population estimates and population goals in each WMD. Department biologists use deer harvest levels and biological data, including estimates of winter severity, to evaluate the status of deer within each WMD. ADP recommendations are based on removal rates of adult does that will stabilize, increase, or decrease deer densities, according to the publicly derived goals in the deer management system. The winter of 2018-19 was mild to moderate in central, southern, and coastal Maine and severe to very severe in northern Maine and the western mountains. This resulted in average to above-average estimated survival rates in central, southern, and coastal Maine and below-average survival rates in northern and western Maine. In addition to annual ADP recommendations, we are also recommending issuance of bonus antlerless deer permits in two sub-units. These permits will allow hunters additional opportunity to harvest deer in areas experiencing elevated levels of Lyme disease, deer-vehicle collisions, and public complaints about deer.

Basis statement:

The Department allocates any-deer permits by Wildlife Management Districts (WMDs) to limit the number of antlerless deer taken by hunters in each WMD. Allocations vary across the state, reflecting the different quality of deer habitat and potential to support and grow deer populations in each WMD. ADP recommendations are based on removal rates of adult does that will stabilize, increase, or decrease deer densities, according to the publicly derived goals in the deer management system. The winter of 2018-19 was mild to moderate in central, southern, and coastal Maine and severe to very severe in northern Maine and the western mountains. This resulted in average to above-average estimated survival rates in central, southern, and coastal Maine and below-average survival rates in northern and western Maine. In addition to annual ADP recommendations, we are also implementing issuance of bonus antlerless deer permits in two sub-units. These permits will allow hunters additional opportunity to harvest deer in areas experiencing elevated levels of Lyme disease, deer-vehicle collisions, and public complaints about deer.

For 2019, the Department will issue a total of 68,145 ADP to be issued across 20 WMDs, including 470 bonus antlerless permits in two deer management subunits, to meet our doe harvest objective of 7,966 does. This is a decrease in permits of 19.6% from 2018 (84,745 ADP). Subjected to severe winter conditions and/or with deer populations below goal, WMDs 1, 4, 5, 7, 10-13, and 19 will be restricted to bucks-only harvest. Having achieved an increased doe harvest in 2018, we will not be compensating for under-harvest of does in 2019, which has led to a decreased recommendation in many of our central and southern WMDs. We continue to try to maximize doe harvest in WMD 29 to target difficult-to-hunt coastal and island deer populations. Two deer management subunits have been implemented for 2019 in WMDs 25 and 26. Deer management subunit 25a will consist of the towns of Arrowsic and Georgetown and offer 270 bonus permits. Deer management subunit 26a will consist of portions of the towns of Brewer, Bucksport, Castine, Dedham, Holden, Orland, Orrington, Penobscot, and Verona and we are recommending 200 bonus permits.

Fiscal impact of rule:

No fiscal impact anticipated.

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

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 13051, 13068-A
Chapter number/title: Ch. 13, Watercraft Rules
Filing number: 2019-138
Effective date: 7/31/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The Department of Inland Fisheries and Wildlife has received complaints from waterfront property owners and visitors throughout the years regarding excessive watercraft noise. In an effort to deal with increasing complaints the Department has adopted rules for testing guidelines and devices to determine whether or not watercraft are operating at acceptable decibel levels or exceeding the threshold set in statute, Title 12 MRS §10368-A(10).

The rule will point to the national standards, SAE J2005 – JUN2018, for stationary sound level measurement procedure, and SAE J34 – JUN2018, for exterior operational sound level measurement procedure for recreational motorboats. A copy of these standards may be purchased by the public and will be used by law enforcement to test and determine at what decibel level the watercraft is operating at. The standards will provide specific guidelines for testing marine engines as well as prescribe the testing devices and outline critical training and certifications required to test for decibel output.

Fiscal impact of rule:

No fiscal impact anticipated.

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

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 13051
Chapter number/title: Ch. 13, Watercraft Rules
Filing number: 2019-139
Effective date: 7/26/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Department of Inland Fisheries and Wildlife is adopting an emergency rule to remove the scope of rule previously adopted in a rulemaking notice that was advertised on May 15, 2019. This scope of rule is being removed so that Ch. 13, *Watercraft Rules*, may be enforced not only on Maine inland waters, but also in coastal waters. In accordance with Title 12 MRS §13051, §§3, watercraft rules adopted by the Commissioner govern the use and operation of watercraft upon all waters of the State to insure safety of persons and property.

Basis statement:

The Department of Inland Fisheries and Wildlife has received complaints from waterfront property owners and visitors throughout the years regarding excessive watercraft noise. In an effort to deal with increasing complaints the Department, in a rulemaking notice advertised May 15, 2019, proposed rules for testing guidelines and devices to determine whether or not watercraft are operating at acceptable decibel levels or exceeding the threshold set in statute, Title 12 MRS §10368-A (10).

The Commissioner's Advisory Council gave consent to the proposed rulemaking on July 10, 2019. Prior to the filing of the adoption notice for the rule, an error was discovered in Section 13.01, Scope of Rules. The statement, "These rules shall apply to the legal and safe operation of all watercraft on Maine's inland waters." would have restricted Ch. 13 rules to be enforced on inland waters only. These rules are also necessary for safe use and operation in all of the State's waters, including tidal waters and are being adopted on an emergency basis as necessary to avoid an imminent threat to public safety and welfare.

In accordance with Title 12 MRS §13051 §§ 3, watercraft rules adopted by the Commissioner govern the use and operation of watercraft upon the waters of the State to insure safety of persons and property. The authority as described in statute makes the scope of rule in Ch. 13 unnecessary. With the exception of section numbering, the remainder of the rule remains unchanged from what the Council gave consent on July 10, 2019.

Fiscal impact of rule:

No fiscal impact anticipated.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12453, 12454
Chapter number/title: Ch. 1, Open Water and Ice Fishing Regulations (North Zone General Law)
Filing number: 2019-155
Effective date: 1/1/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is intended to discourage introductions of fish, including baitfish that compete with wild native brook trout and charr and to increase public awareness regarding unintended adverse consequences to wild trout and charr that can result from unintentionally introducing the contents of the bait bucket. The rule will change the General Law in the North Region (Franklin, Somerset, Piscataquis, Aroostook, and northern portions of Oxford and Penobscot Counties) to further protect wild trout waters, including tributaries and outlets of heritage ponds in the North Region.

Basis statement:

This rule will change the General Law in the North Region (Franklin, Somerset, Piscataquis, Aroostook, and northern portions of Oxford and Penobscot Counties) to further protect wild trout waters, including tributaries and outlets of heritage ponds in the North Region. The rule is an amended version of a previous proposal advertised on February 27, 2019. Based on public comment received during the previous comment period, the rule was re-advertised with a refined list of exceptions. The rule will prohibit use and possession of live fish as bait, except where designated by special rule, reducing the chance of new introductions of baitfish and other fish in the vast majority of flowing waters, dead-waters, and small ponds in the North Region. Waters currently open to ice fishing with the use of live fish as bait will remain open "as is" during the ice and open water seasons. Additional waters with a tradition of fishing with live baitfish during the open water season will also retain use of live baitfish/live smelts (these waters were the focus of the review conducted by the Department following public comments received on a previous proposal advertised on February 27, 2019). All waters that retain use of live baitfish/live smelts will be assigned a special regulation allowing the use and possession of live fish as bait, "**S-11**: The use or possession of live baitfish/live smelts is permitted". The General Law change will allow the removal of most North Region "**S-4**: Use or possession of live fish as bait is prohibited" regulations from the law book. On most waters, deletion of "**S-4**" will result in no change to tackle restrictions due to the proposed General Law; therefore, a list of these waters is not included. On rivers, streams, and brooks where "**S-4**" will be deleted, a change in terminal tackle restrictions will occur due to the current "artificial lures and flies only" restriction that applies from August 16 - September 30; therefore, a list of these waters is included. Lists of affected waters include lakes, ponds, rivers, streams, and brooks where the use and possession of live fish as bait will be retained as an exception to the proposed General Law change in the N011h Region (**S-11**) and flowing waters and sections where the removal of "**S-4**" is proposed. These rules will become effective January 1, 2020.

Fiscal impact of rule:

No fiscal impact anticipated as a result of this rule.

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

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §10104
Chapter number/title: Ch. 1, Open Water and Fishing Regulations (Conroy Lake Petition)
Filing number: 2019-156
Effective date: 1/1/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department of Inland Fisheries and Wildlife received a valid petition of 150 or more signatures to consider fishing rule changes on Conroy Lake in Monticello. The petitioner requested the Department open the body of water to ice fishing for smelt and trout with bag limits and season at the discretion of the Department.

Basis statement:

The Department received a valid public petition from Monticello Fish and Game Club to open Conroy Lake to ice fishing for smelt and brook trout. Conroy Lake is a small 25-acre lake. A public hearing was held on June 13, 2019 and there were 13 public members in attendance. All the public members in attendance were supportive of moving forward with the petition. Parking along the pond was an issue that was raised. There were a lot of private roads around the pond and in the winter time snow plowing was challenging to accommodate public use. It is also a very well-developed pond. One of the property owners has a business on the pond and has offered to plow an area for parking for the public and provide access to the pond resolving the issue. The Department initially had reservations about opening the small pond to ice fishing. Increased fishing pressure could mean the open water season would be compromised.

One written comment was received in support of the proposal. No comments in opposition were received. After considering all public comment and discussion with staff, the Commissioner moved forward in support of the petitioner's request to open the water to ice fishing. The water would be opened under the "B" season of January 1 - March 31. Based on comment at the hearing and regional biologist input, an amendment to the original proposal was adopted that would establish a two-line limit (S-8). Generally, ice fishing is open to the use of five lines through the ice and the reduction to two lines will help distribute the catch for the ice and open water fishing seasons. Fish in the pond, aside from the smelt, are stocked (brook trout and splake). There is no wild reproduction there. Due to a limited number of waters in the region open to ice fishing, the new rule will provide additional opportunity to fish during the winter.

Fiscal impact of rule:

No fiscal impact anticipated.

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

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 13051, 13068-A
Chapter number/title: Ch. 13, Watercraft Rules
Filing number: 2019-177
Effective date: 10/12/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The Department of Inland Fisheries and Wildlife has received complaints from waterfront property owners and visitors throughout the years regarding excessive watercraft noise. In an effort to deal with increasing complaints the Department, in a rulemaking notice advertised May 15, 2019, proposed rules for testing guidelines and devices to determine whether or not watercraft are operating at acceptable decibel levels or exceeding the threshold set in statute, Title 12 MRS §10368-A (10).

The Commissioner's Advisory Council gave consent to the proposed rulemaking on July 10, 2019. Prior to the filing of the adoption notice for the rule, an error was discovered in Section 13.01, "Scope of Rules". The statement, "These rules shall apply to the legal and safe operation of all watercraft on Maine's inland waters." would have restricted ch. 13 rules to be enforced on inland waters only. These rules are also necessary for safe use and operation in all of the State's waters, including tidal waters and in a notice filed July 26, 2019 (2019-139) a change striking the scope of rules was adopted on an emergency basis as necessary to avoid an imminent threat to public safety and welfare.

In accordance with Title 12 MRS §13051 sub-§3, watercraft rules adopted by the Commissioner govern the use and operation of watercraft upon the waters of the State to insure safety of persons and property. The authority as described in statute made the scope of rule in Ch. 13 which the Council gave consent on July 10, 2019 unnecessary.

In a notice advertised August 21, 2019 the Department proposed the final adoption of Ch. 13 watercraft rules without the Scope of Rules. No public hearing was held, and no public comment was received on the proposal.

The Commissioner's Advisory Council met on October 1, 2019 and the eight (8) members participating voted unanimously in favor to adopt the rule as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12452, 12461
Chapter number/title: Ch. 1, Open Water and Ice Fishing Regulations
Ch. 1-A, State Heritage Fish Waters
Filing number: 2019-179, 180
Effective date: 1/1/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is designed to provide for the effective conservation of game fish throughout the state and provide for a variety of fishing opportunities. The rule sets specific season dates, bag limits, length limits, tackle restrictions, and other special regulations designed to accomplish fisheries management objectives.

Basis statement:

The Department of Inland Fisheries and Wildlife has adopted rules pertaining to the 2020 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.

The Department, in a notice advertised July 10, 2019, proposed changes to open water and ice fishing regulations and modifications to State Heritage fish waters as follows: Addition of five (5) waters to the State Heritage Fish Waters list and removal of three (3) waters from the State Heritage Fish Waters list; Addition of "S-4" to tributaries of nineteen (19) south region State Heritage Fish Waters; Extending the end date of the "B." ice fishing season to eliminate the need for emergency rule changes (including creating special language on two (2) waters to address harvest concerns); Amending eighteen (18) water specific regulations to address management changes, public requests, and to correct a law book error. Rule changes for each body of water and their explanations is attached separately.

The proposed changes were advertised with one public hearing held in Augusta (minutes attached) with 4 citizens in attendance. The Department also received 19 comments in writing both for and against various proposals (comment summary with justifications attached). Written comments were acknowledged and forwarded to the Commissioner's Advisory Council as well as appropriate staff for consideration.

On October 1, 2019, the Commissioner brought forward the original proposal for adoption by the Advisory Council. Of the eight (8) member present seven (7) voted in favor and one (1) opposed (Mr. Farrington) to adopt the fishing regulations package for 2020 as presented.

Copies of the publication will be available from license agents, on the Department's website or from the Department of Inland Fisheries and Wildlife, 284 State Street, Augusta, ME 04333-0041. This body of rules is posted in its entirety on the Department's website and in a hard copy publication entitled *Open Water & Ice Fishing Laws and Rules* (January 1, 2020 – December 31, 2020) and by authority of 12 MRS §12452, is an official consolidation of the open water and ice fishing rules as maintained by the Department in an electronic version and distributed through electronic means.

Fiscal impact of rule:

No fiscal impact anticipated as a result of this rule.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12701
Chapter number/title: Ch. 5, State Owned Wildlife Management Areas, Shooting Ranges and Boat Launch Facilities
Filing number: 2019-242
Effective date: 12/22/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To create a set of rules to guide safe use of the Department's water access facilities as authorized in 12 MRS §12701 sub-§5. These rules will clarify what types of uses are allowed at the Department's facilities and provide the Department and law enforcement the ability to ensure public safety.

Basis statement:

The Department has clear rules in Ch. 5 for the use of its Wildlife Management Areas and Shooting Ranges, but there were currently no formal rules for the use of its 147 Water Access Sites. The adopted rule will provide the Department and public clear guidance on how the water access facilities can be utilized.

There were 23 written comments received on the proposal. Twenty-two (22) of those comments were regarding the portion of the proposal specific to the Mere Point, Brunswick access site, Section 5.05. There were two specific rules in the proposal that applied to Mere Point and there was a lot of history there. At Mere Point, boats over 24 feet were not allowed at the facility and overnight parking was not allowed at the facility. This was based on a previous agreement and discussions with the City of Brunswick prior to construction of the site. Enforcement was currently under the jurisdiction of local and state law enforcement. The inclusion of rules in Chapter 5 specific to Mere Point would give agents of DIFW clear authority to provide enforcement at the launch.

The public comment came from two different perspectives, there were some that did commercial work at the facility and they would like to see the restriction on the use of commercial boats at the facility removed so they could use the facility without any impediment and the length limit be removed. There was another group that lived near Mere Point that had serious concerns about boats over 24 feet and about commercial use at the facility in general. Many of the comments also expressed concern over watercraft noise issues at the launch, but those were not germane to the proposal.

A public hearing was also held on the proposal with 13 citizens in attendance. The majority in attendance were residents of Brunswick and came to give testimony regarding the Mere Point launch portion of the rule proposal. As with the written comments, testimony was given regarding commercial use of the facility, concerns with use by boats larger than 24 feet, overnight parking and watercraft noise.

Given the complexity of the issue and the public comments the Commissioner removed the Mere Point component (Section 5.05) from the proposal. A series of meetings would be held with the town and community to develop the best path forward at the Mere Point access site. The remainder of the proposal was put forward with no further changes.

The Commissioner's Advisory Council met on December 10, 2019 and of the 9 members participating, voted unanimously in favor of the proposal as amended.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-585
Statutory authority: 12 MRS §10308
Chapter number/title: Ch. 25, Maine Outdoor Heritage Fund: Strategic Plan
Filing number: 2019-214
Effective date: 12/2/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

To provide a six-year review of the plan. The strategic plan is the guiding document governing the types of projects that may be funded by the Maine Outdoor Heritage Fund.

Fiscal impact of rule:

No adverse economic impact anticipated.

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Rules Adopted January 1, 2019 to December 31, 2019
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; 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: **2019-001**
Effective date: 1/7/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The Department is adopting this rule in accordance with P.L. 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 Department is adopting rules for Sec. 19, Ch. III, as directed in the Act, and increasing personal care and related rates, simultaneously with the adoption of these 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)).

On October 9, 2018, the Department adopted the increased cap through emergency rulemaking. This rulemaking permanently adopts the emergency cap increase.

In addition, the Department adopts the following changes to this rule:

1. Adds a requirement for Electronic Visit Verification (“EVV”), consistent with the requirements of Section 12006 of the *21st Century CURES Act* (PL 114-255), as codified in 42 U.S.C. § 1396b(l)(1). THIS CHANGE REQUIRES CMS APPROVAL, BUT IS EFFECTIVE PENDING APPROVAL.
2. Adds an exception to the Limit of 40/hours week of service by an individual worker that is reimbursable. The exception is for a Member who is at risk for institutionalization unless the individual worker can be reimbursed for more than 40 hour/week. The provision sets forth criteria for the Department to consider in its evaluation of the request. The provision also adds that the Department’s decision must be in writing, and given to the Member. Members can appeal an adverse decision. This exception language is required pursuant to the Settlement Agreement in *Roy v. Dept. of Health and Human Services*, U.S. Dist. Ct., D. Me., Civil No. 1:16-cv-00592-NT. THIS CHANGE REQUIRES CMS APPROVAL BUT IS EFFECTIVE PENDING APPROVAL.
3. Deletes a provision in § 19.02-3(H) that provided that a portion of the member capacity for this Section 19 service would be reserved for members eligible and participating in the Department’s Follow the Money (Homeward Bound) program. The Department is deleting this provision since there is no waiting list for the Section 19 service, and so it is unnecessary to reserve capacity. In addition, the Department will shortly submit an amendment to the Section 19 waiver which

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will significantly increase the number of funded openings for Section 19 services over the next five years. CMS HAS APPROVED THIS CHANGE.

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.

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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; 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: **2019-002**
Effective date: 1/7/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department is adopting this routine technical 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 proposed rule increases rates for 30 procedure codes. In addition, the rule adds in the code and rate for Home Health Aide Visit—Home Health Services, which was inadvertently deleted during final adoption of this rule in January 2018.

The Department has adopted these rates through emergency rulemaking. The Legislature determined 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. Pursuant to 5 MRS §8054 (3), the emergency rule may be effective for up to ninety (90) days. The Department is now engaging in proposed routine technical rulemaking to permanently adopt these Section 19 rule changes.

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.

In addition to this rulemaking, the Department is simultaneously adopting emergency rules as well as proposing routine technical rules for Section 19, Ch. II, which rulemaking raises the program cap, in accordance with the Act.

Basis statement:

The Department is adopting this 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,

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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. **These increased rates will be effective retroactive to July 1, 2018.**

On October 9, 2018, the Department adopted these rate increases via emergency rulemaking, with a retroactive effective date of July 1, 2018. The Department is now permanently adopting these Section 19 rule changes.

The adopted 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
- 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

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- 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 U7 TF (0571) Home Health Aide- Home Health Services
- G0156 U7 TF UN (0571) Home Health Aide- Home Health Services-2 members served
- G0156 U7 TF UP (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 adopted 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.

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.

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

Fiscal impact of rule:

The Department does not anticipate there will be adverse or economic impacts on small businesses, countries, 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; PL 2017 ch. 460
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 2**, Adult Family Care Services
Filing number: **2019-021**
Effective date: 2/4/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The Department adopts this 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 and each year thereafter 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. This rulemaking 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 until Section 96 or under the waiver programs.

These changes were initially implemented through November 6, 2018 emergency rulemaking, and the Department finally adopts these rule changes at this time. The reimbursement increases are effective retroactive to August 1, 2018, which was necessary for providers to receive increased reimbursement consistent with the Act. 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 (8) calendar quarters.

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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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
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 23**, Developmental and Behavioral Clinic Services
Filing number: **2019-023**
Effective date: 2/3/2019
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 PL 2017 ch. 460 part D, *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 adopted 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 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.

On November 6, 2018, the Department adopted emergency rules adopting the rate increases. This rulemaking permanently adopts the emergency rule changes.

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

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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 \$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; 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: **2019-024**
Effective date: 2/12/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The Department adopts this 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 (Act)*. 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 also 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.

On November 20, 2018, the Department adopted emergency rules implementing the ch. 460 rate increases with a retroactive August 1, 2018 effective date. This rulemaking permanently adopts the emergency rule changes.

In addition, this rulemaking adopts the ch. 460, Part B-2 requirement 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.

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 involved 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 rate on July 31, 2018. Upon the advice of the Office of

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the Attorney General, the increased rates will be effective August 1, 2018, which effective date comports with the federal law requirement. Pending CMS approval of the rate increase, the increased rate will be implemented with an August 1, 2018 effective date.

The retroactive effective date is allowable under 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, versus the August 1, 2018 date 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.

The Department is seeking, and anticipates receiving, approval from the Centers for Medicare and Medicaid Services (CMS) for these rate changes. Pending CMS approval, the rate increase will be effective retroactive to August 1, 2018.

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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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. 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: **2019-025**
Effective date: 2/4/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The Department is adopting this routine technical 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 reimbursements that result from this Part.”

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, the Department adopted an emergency rule for Chapter II to increase caps in Section 29 to reflect those rate increases. The emergency rulemaking is effective for 90 days. This adopted rulemaking follows the rule proposal on November 6, 2018 to adopt these cap increases permanently.

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.

The adopted rule includes the following cap changes:

Limits

- 29.07-2: Raised annual limit for members who receive Home Support, Community Support, or Shared Living from \$52,425.00 to \$58,168.50.
- 29.07-6: Raised limit for Respite Services from \$1,100.00 per year to \$1,224.60.
- 29.07-6: Raised the per diem limit for quarter (1/4) hour Respite billing from \$90.00 to \$110.21 for each date of service.

In addition, the Department adopts the following changes to this rule:

Provider Qualifications and Requirements

- 29.10: Added reference to Adult Protective reporting requirements.
- 29.10-1(C): Updated reference to rules governing Reportable Events (14-197 CMR ch. 12) and added Adult Protective Services System (10-149 CMR ch. 1).
- 29.10-1(C): Deleted the requirement for grievance training to occur before working with members.

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- 29.10-4, Electronic Visit Verification: Added a requirement for Electronic Visit Verification (“EVV”), consistent with the requirements of Section 12006 of the *21st Century CURES Act* (PL 114-255), as codified in 42 USC §1396b(l)(1). THIS CHANGE REQUIRES CMS APPROVAL, BUT IS EFFECTIVE PENDING APPROVAL.
- 29.10-5: Wording corrections for clarity.
- 29.10-6: Sentence deleted to make Section 29 requirements consistent with those in Section 21.
- 29.10-8: Reportable Events & Behavioral Treatment:
 - Updated reference to rules governing Reportable Events (14-197 CMR Ch. 12) and added Adult Protective Services System (10-149 CMR Ch. 1).

Appendix IV

- Reports of Abuse, Neglect, or Exploitation: Updated reference to rules governing Reportable Events (14-197 CMR ch. 12) and Adult Protective Services System (10-149 CMR ch. 1).

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$9,221,642 in SFY 2019, which includes \$3,275,527 in state dollars and \$5,946,115 in federal dollars.

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Rules Adopted January 1, 2019 to December 31, 2019
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; PL 2017 ch. 459 part B
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 12**, Consumer-Directed Attendant Services, and Allowances for Consumer-Directed Attendant Services
Filing number: **2019-030**
Effective date: 2/11/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The Department of Health and Human Services adopts these rules to Ch. II & III Section 12 to add a definition of “Fiscal Intermediary;” replace the phrase “Authorized Agent” with “Authorized Entity;” implement Electronic Visit Verification (EVV); clarify that personal care services provided under other rules may not be duplicated under Section 12; and to increase reimbursement rates in compliance 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* (“the Act”).

The rate changes are consistent with PL 2017 ch. 459 part B, which required the Department to amend its rules for reimbursement rates for personal care services provided under the provisions of 10-144 CMR ch. 101, *MaineCare Benefits Manual*, Ch. III Section 12, “Allowances for Consumer-Directed Attendant Services” to reflect the final rates modeled in the February 1, 2016 “Rate Review for Personal Care and Related Services: Final Rate Models” prepared for the Department by Burns & Associates, Inc.

The Act required 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.

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.

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There are four separate rate change requests 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 from 8/1/18 on); thus, there are four retroactive effective dates applicable for these rates included in Ch. III.

On November 13, 2018, the Department adopted an emergency Ch. III rule to effectuate the increased Section 12 reimbursement rates with a retroactive effective date of August 1, 2018. This rulemaking makes permanent the emergency rule changes.

In addition, Ch. II changes are adopted, which were proposed on November 21, 2018, and are outlined below:

- 1) New Definition added for Fiscal Intermediary (FI), which is an organization that provides administrative and payroll services on behalf of members self-directing their personal care services. The FI must have an established contract with the Department. The services of the Fiscal Intermediary are not billable under this section. In addition, the Definition of Fiscal Intermediary has been moved to 12.02-11 and subsequent definitions have been renumbered.
- 2) “Authorized Agent” is replaced with “Authorized Entity” throughout the policy.
- 3) Electronic Visit Verification (EVV) requirements are added effective January 1, 2020 pursuant to Section 12006 of the *21st Century CURES Act* (PL 114-255), as codified in 42 USC §1396b(l)(1).
- 4) Clarification that personal care services provided under other Sections of the MaineCare Benefit Manual may not be duplicated under Section 12.
- 5) Grammatical and typographical corrections have been made throughout the policy.

Fiscal impact of rule:

The Department estimates that the General Fund impact for these changes is \$608,879 in SFY 2019, which includes \$216,274 in state dollars and \$392,605 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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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. 460 parts D, E, I
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 65**, Behavioral Health Services
Filing number: **2019-031**
Effective date: 2/11/2019
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”) finally adopts these 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 for 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 Department initially implemented these changes through emergency rulemaking. 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 added 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 thus broadened the language in Ch. II Sections 65.06-1, 65.06-2, to extend eligibility to members with developmental disabilities. 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 added 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.

As a result of internal review by the Division of Rate Setting, a minor clerical error in the new rates for Crisis Services, H2011 and H2011 HA, was found and corrected through the final rule. The rates increase from \$58.46 to \$59.01 per unit effective 8/1/18, and from \$58.36 to \$58.91 per unit effective 7/1/19. This update results in a benefit to providers as an increase from the emergency reimbursement rates.

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(8), 3173; 5 MRS §8054; 42 USC §1396b(1)(1); 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: **2019-032**
Effective date: 2/11/2019
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 these Section 96, “Private Duty Nursing and Personal Care Services” rules to add or update definitions of “Custodial Care,” “Private Duty Nursing,” and “Respite Care;” implement Electronic Visit Verification (“EVV”); increase the maximum available Care Coordination units from 18 to 24 per eligibility period; clarify that Section 96 services are not available to duplicate other personal care services; require that Plans of Care for members under the age of 21 show the medical necessity of school-based nursing services not provided by a school nurse; and to adopt, finally, certain rate increases in conformance with Public Law 2017, *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 rate changes are consistent with PL 2017 ch. 459 part B, which required the Department to amend its rules for reimbursement rates for the home-based and community-based personal care services under the provisions of 10-144 CMR ch. 101, *MaineCare Benefits Manual*, Ch. II & III, “Private Duty Nursing and Personal Care Services” 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 on home-based and community-based personal care and related services are increased to reflect the increase in reimbursement rates that result from this change, such that Section 96 recipients may not experience a reduction in hours solely as a result of increased reimbursement rates authorized by the Act.

This Ch. III adopted rule effectuates the following rate increases:

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)

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T1004 UP (0571)-Home Health Aide/Certified Nursing Assistant Services–multiple patients (3)

T1019 (0589)-Personal Support Services

T1019-Personal Support Services (PCA Agencies only)

T1019 UN-Personal Support Services (PCA Agencies only) multiple patients (2)

T1019 UP-Personal Support Services (PCA Agencies only) multiple patients (3)

S5125 TF (0589)-PCA Supervisit

S5125 TF UN (0589)-PCA Supervisit-multiple patients (2)

S5125 TF UP (0589)-PCA Supervisit–multiple patients (3)

S5125 TF-PCA Supervisit (PCA Agencies only)

S5125 TF UN-PCA Supervisit (PCA Agencies only) multiple patients (2)

S5125 TF UP-PCA Supervisit (PCA Agencies only) multiple patients (3)

This Ch. II adopted rule effectuates the following level of care limits in conformance with the rate increases:

Level I

Level II

Level III

Level IV

Level

Level VIII

Level IX

The Act required 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, the rate increases 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; this 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 three separate rate changes and increased level of care limits pending before CMS: one submitted in July 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 three retroactive effective dates applicable for these rates included in Ch. III and level of care limits in Ch. II.

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.

On November 13, 2018, the Department adopted an emergency rule to effectuate the increased Section 96 reimbursement rates with a retroactive effective date of August 1, 2018. This rulemaking makes permanent the emergency rule changes.

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Additional Ch. II changes are adopted, as were proposed on November 21, 2018, and are outlined below:

- 1) Electronic Visit Verification (EVV) requirements as mandated by Section 12006 of the *21st Century CURES Act* (PL 114-255) as codified in 42 USC §1396b(l)(1).
- 2) Care Coordination units are increased from eighteen (18) to twenty-four (24) hours annually.
- 3) Duration of Care and Non-Covered Services are updated to clarify duplicative personal care services in Section 96 and personal care services in other identified sections of the *MaineCare Benefits Manual*.
- 4) For any members under the age of 21 receiving 1:1 Nursing Services in conformance with the member's authorized Plan of Care in a school-based setting, the medical necessity of the services being provided and the inability of the nurse, already on site or one at another district, to provide the medically necessary services must be documented on the member's Plan of Care.
- 5) New definitions added are Custodial Care and Respite Care.
- 6) The Private Duty Nursing definition has been updated to state "when normal life activities take the member outside of his or her residence" from "required life activities."
- 7) Grammatical and typographical corrections have been made throughout the policy.

Fiscal impact of rule:

The Department estimates that the General Fund impact for these changes is \$3,239,154 in SFY 2019, which includes \$1,150,548 in state dollars and \$2,088,606 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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Agency name: Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(8), 3173; PL 2017 ch. 460 part D
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 13**, Allowances for Targeted Case Management
Filing number: **2019-037**
Effective date: 2/14/2019
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 to finalize the increase the rates of reimbursement for targeted case management services pursuant to Public Law 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 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.

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.

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.

The retroactive application of the rate increases to August 1, 2018, 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 eight calendar quarters.

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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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; 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: **2019-038**
Effective date: 2/14/2019
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 to finalize the increases in the rates of reimbursement for Community Support Services pursuant to Public Law 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.

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.

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.

The retroactive application of the rate increases to August 1, 2018, 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 eight calendar quarters.

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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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, 1708(3); PL 2017 ch. 460 §§ B-1, B-3; PL 2013 ch. 594 §3
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 67**, Principles of Reimbursement for Nursing Facilities
Filing number: **2019-042**
Effective date: 3/5/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

The Department of Health and Human Services (Department) adopts these rule changes to Ch. III Section 67, “Principles of Reimbursement for Nursing Facility Services”, to effectuate a number of changes to the reimbursement methodology pursuant to Public Law 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.

These changes required by P.L. 2017, ch. 460 include:

1. **Principles 18.9 and 22.2:** A change in the Occupancy Adjustment to allow for reduced occupancy percentage (ch. 460 sec. B-3(2));
2. **Principle 18.12:** An increase in the High MaineCare Utilization payment (ch. 460 sec. B-3(3));
3. **Principle 43:** The adoption of a special wage allowance for fiscal year 2018-19. The final rule clarifies that this special allowance will be allowed and paid at final audit to the full extent that it does not cause reimbursement to exceed the facility’s allowable cost in that fiscal year. (ch. 460 sec. B-3(1));
4. **Principle 1.4** (Definition of Base Year): 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. (ch. 460 sec. B-1, to be codified in 22 MRS §1708(3)(F));
5. **Principle 18.13:** Finally, in compliance with sec. B-3(4), 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

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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.

On December 4, 2018, the Department adopted an emergency rule to effectuate the changes to the reimbursement methodology for Nursing Facilities with a retroactive effective date of August 2, 2018. This rulemaking makes permanent the emergency rule changes. Additional changes in this rulemaking include:

- **Principle 1.1:** The Department deleted non-essential and ambiguous language, so that the principle now reads: “The purpose of these principles is to provide for payment of nursing facility services provided under the MaineCare program in accordance with Title XIX of the Social Security Act.”
- **Principle 13.4.1.3:** Uniform desk review completion is extended from one hundred eighty days to three hundred and sixty-five days, in order to allow the Department sufficient time to do a comprehensive and accurate desk review;
- **Principle 18.5:** Clarification is added to describe the conditions required for interest expenses to be allowable. Similarly, the Department elaborated upon when refinancing expenses may be allowable;
- **Principle 23.4 (Funding Adjustment):** The Department is deleting this principle. The purpose of this provision was to hold nursing facilities harmless from the calculation of the prospective rate in Principle 23.3 at less than 100% of the calculated Direct and Routine Cost Components. Principle 23.4 is no longer necessary because the calculation of the prospective rate in Principle 23.3. is not at 100% of the calculated Direct and Routing Cost components;
- **Principle 39 (Community-Based Specialty Nursing Facility Units):** The Department clarified that services provided are medical-psychiatric services. The Department removed the requirement of a contract between the nursing facility and the Department and replaced it with the requirement that in order to get reimbursement under this provision there needs to be a written approval by the Department for this service;
- Throughout the policy “if CMS approves” language has been removed, where applicable, based on approved State Plan Amendment status.

Fiscal impact of rule:

The Department estimates that the General Fund impact for these changes is 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. This rulemaking will not impose any costs on municipal or county governments, or on small businesses employing twenty or fewer employees.

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Agency name: Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173; 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: **2019-052**
Effective date: 3/16/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The Department of Health and Human Services (“Department”) adopts changes to Ch. II and III Section 93, “Opioid Health Home Services” of the *MaineCare Benefits Manual* 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 in response to the ongoing opioid crisis. This routine technical rule adoption follows emergency rulemaking which became effective November 27, 2018 and is only effective for up to ninety days. 5 MRS §8074. This rule adoption permanently adopts the emergency rule changes, with the exception of a few additional changes following public comment on the rule proposal.

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 (OUD), 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 OUD 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 MaineCare members through Section 93 of the *MaineCare Benefits Manual* and to the uninsured through OHH contracts that mirror these rules.

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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 more closely align with the Legislature's directive, the Department has implemented the following changes, initially on an emergency basis and now through this rule adoption: added a definition of Integrated Medication Assisted Treatment (IMAT) to describe OHH service expectations; added urine drug screening as an integral part of IMAT services; established levels of care (intensive, intermediate/stabilization, and maintenance) that correspond to the member's needs; and created a tiered reimbursement rate structure corresponding to these levels of care.

In conjunction with these legislatively-directed changes, the Department is also adopting changes 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. These additional changes, first implemented on an emergency basis and now through this rule adoption, include: altering the current staffing requirements and adding a new patient navigator to the OHH team to ensure flexibility for provider organizations and expertise to meet members' needs; creating 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; easing requirements regarding the Electronic Health Record to allow provider flexibility in meeting OHH program requirements; providing clarification to covered services; and making minor and technical changes to the operation of OHH. These changes are the result of Departmental review and stakeholder feedback. Both providers and members alike will benefit from these changes.

With these 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.

Following public comment and further review, the Department has made additional changes to the rule including removing the preference on substance use licensing for the OHH, easing the parameters for the Nurse Care Manager, expanding who can serve as the Patient Navigator, altering counseling requirements, removing interpretive language on the Prescription Monitoring Program rules, adding the requirement that member's must consent to and sign their treatment plans, and clarifying minimum requirements for OHH reimbursement.

In addition to this rulemaking, in order to continue to ensure that all individuals with OUD 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

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source and to avoid any administrative burden that would arise from operating two different models of service delivery.

The rule changes are contingent upon approval from the Centers for Medicare and Medicaid Services (CMS). CMS approved the State Plan Amendment 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 submitted the State Plan Amendment to CMS for approval on December 31, 2018.

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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Agency name: Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 15**, Chiropractic Services
Filing number: **2019-061**
Effective date: 4/12/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department of Health and Human Services (“the Department”) proposes this rule to add coverage of evaluation and management codes for chiropractors pursuant to PL 2017 ch. 421, *An Act To Provide MaineCare Coverage for Chiropractic Treatment*.

PL 2017 ch. 421 requires chiropractic evaluation and management codes be added to 10-144 CMR ch. 101, *MaineCare Benefits Manual* (MBM), Ch. II and III Section 15, “Chiropractic Services.”

In Ch. II, the Department proposes adding coverage for evaluations. Additionally, the Department is proposing changing the requirement of “subluxation” to “conditions” to align with Medicaid requirements. Finally, the Department is limiting the evaluation codes to 99201-99215 for the purpose of examining and diagnosing a spinal condition.

In Ch. III, the Department has inserted a link to the physician fee schedule for reimbursement purposes. Finally, the Department is proposing minor technical edits.

Basis statement:

The Department of Health and Human Services (“the Department”) is adopting this rule to add coverage of evaluation and management examinations performed by chiropractors, pursuant to PL 2017 ch. 421, *An Act To Provide MaineCare Coverage for Chiropractic Treatment*.

PL 2017 ch 421 requires the Department under the MaineCare program to reimburse chiropractic evaluation and management examinations performed by a chiropractic doctor licensed under Title 32, *Maine Revised Statutes*, ch. 9, that are within the scope of practice of chiropractic doctors. The Legislature authorized the Department to adopt routine technical rules to implement PL 2017 ch. 421. MaineCare reimbursement for chiropractic services is regulated by 10-144 CMR ch. 101, *MaineCare Benefits Manual* (MBM), Ch. II and III Section 15, “Chiropractic Services”.

In Ch. II, the Department added coverage for evaluations or re-evaluations of spinal conditions to determine the rehabilitative effectiveness of chiropractic manipulation by chiropractors as a covered service under Subsection 15.04(A). Eligibility for chiropractic services may be determined by members’ primary care providers or a chiropractor, as set forth in Subsection 15.03(B). Additionally, the Department changed the term “subluxation” to “spinal conditions” throughout the rule to align with Medicaid requirements. In Subsection 15.05, the Department clarified that X-rays ordered or performed by or for a chiropractor that are not of the spine are non-covered services. Finally, the Department directed chiropractors to use evaluation and management codes 99201-99215 for the purposes of examining and diagnosing a spinal condition, in Subsection 15.07-1(A).

In Ch. III, the Department identified evaluation and management codes 99201-99215 to be used for evaluations and management purposes. Additionally, the rule states that the rates for these codes are shown on the Physician Fee Schedule under MaineCare Usual and

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Customary Rates and a link was inserted to the Physician Fee Schedule for reimbursement purposes. Finally, the Department is adopting minor technical edits.

The Department is seeking approval from the Centers for Medicare and Medicaid Services of a State Plan Amendment providing MaineCare coverage of chiropractic evaluation and management examinations.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$84,351 in SFY 2019, which includes \$29,928 in state dollars and \$54,423 in federal dollars, and \$253,054 in SFY 2020, which includes \$89,784 in state dollars and \$163,270 in federal dollars.

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Agency name: Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 109**, Speech and Hearing Services
Filing number: **2019-076**
Effective date: 5/19/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department of Health and Human Services (“the Department”) proposes this rule to increase specific rates pursuant to Resolves 2017 ch. 60, *Resolve, Regarding Reimbursement for Speech and Language Pathology Services*.

Resolves 2017 ch. 60 requires codes to be amended to increase agency rates, independent rates, speech-pathology assistant agency rates, and speech-language pathology assistant independent rates in 10-144 CMR ch. 101, *MaineCare Benefits Manual (MBM)*, Ch. III Section 109, “Speech and Hearing Services”.

In Ch. II, the Department proposes referring Hearing Aid Services to Ch. 101, *MaineCare Benefits Manual (MBM)*, Ch. II Section 60, ‘Medical Supplies and Durable Medical Equipment’. Additionally, the Department is proposing adding language allowing adults hearing aid evaluations along with hearing and/or hearing aid periodic rechecks.

In Ch. III, the Department proposes:

- Adding Agency rates at 69% of Medicare for codes 92507 (GN), 92521 (GN), 92522 (GN), 92523 (GN), 92607 (GN), 92608 (GN), 92609 (GN), and 92610.
- Adding Independent rates at 90% of Agency rates for codes 92507 (GN), 92507 (TF,GN), 92508 (HQ,GN), 92508 (TF,HQ,GN), 92521 (GN), 92522 (GN), 92523 (GN), 92524 (GN), 92526 (GN), 92607 (GN), 92608 (GN), 92609 (GN), and 92610.
- Adding Agency and Independent codes 92537, 92538, 92540, 92541, 92542, 92544, 92545, 92546, 92547, 92548, 92570, 92611, 92612, and V5011.

Finally, removing the requirement of under age 21 only from codes 92592, 92593, and V5264.

Basis statement:

The Department of Health and Human Services (“the Department”) adopts these two rules.

Chapter II: The Department adopts changes to the rule which add two new covered services for adult Members (Members over the age of 21). The added covered adult services are: (1) Hearing Aid Evaluation and Related Procedures, by Audiologist; and (2) Hearing and/or Hearing Aid Periodic Recheck. In the previous rule, these two services were available for children Members only. The Department is adding them as adult service because hearing aids and replacement hearing aids are a covered service under Section 60, “Medical Supplies and Durable Medical Equipment”. The Department wanted to ensure that adult members received medical evaluations for the hearing aids.

In addition to the changes above, the Department updated the definition for “Hearing Aid Services.”

Chapter III: The Department adopts changes to this rule that increase specific rates pursuant to Resolves 2017, ch. 60, *Resolve, Regarding Reimbursement for Speech and Language Pathology Services* (“Resolves”). The Resolve requires codes to be amended to

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increase agency rates, independent rates, speech-pathology assistant agency rates, and speech-language pathology assistant independent rates in Ch. 101, MBM, Ch. III Section 109, Speech and Hearing Services. The Resolve provided funding to increase reimbursement for the increase to these rates. The Department adopts:

- Adding Agency rates at 69% of Medicare for codes 92507 (GN), 92521 (GN), 92522 (GN), 92523 (GN), 92607 (GN), 92608 (GN), 92609 (GN), and 92610.
- Adding Independent rates at 90% of Agency rates for codes 92507 (GN), 92507 (TF,GN), 92508 (HQ,GN), 92508 (TF,HQ,GN), 92521 (GN), 92522 (GN), 92523 (GN), 92524 (GN), 92526 (GN), 92607 (GN), 92608 (GN), 92609 (GN), and 92610.

The Resolve directed that these increased rates be effective retroactively to January 1, 2019. However, CMS has indicated to the Department that the rates can be increased no earlier than January 12, 2019, because of the notice of change in reimbursement methodology requirement in 42 CFR §447.205. The retroactive application of these increased rates comports with 22 M.R.S. § 42(8) which authorizes the Department to adopt rules with a retroactive application for a period not to exceed 8 calendar quarters if there is no adverse financial impact on any MaineCare member or provider. The Department has submitted a State Plan Amendment to CMS to allow for the rate increases to be effective retroactive to January 12, 2019.

The Resolve directed the Department to increase certain rates to a precise percentage of the federal Medicare rate for the same service. The final adopted rates are slightly lower than the proposed rates because for the proposed rule rates the Department inadvertently used the 2018 federal Medicare national reimbursement rates rather than the 2018 federal Medicare local (Maine 99) reimbursement rates (which is the same area/code the Department uses for other MaineCare rates). Upon advice from the Office of the Attorney General, the Department does not believe the change in rates require additional notice and public comment. In each instance, the final rate is higher than the rates in the former Ch. III regulation.

The Department makes additional changes to the rule:

- Removing the requirement of under age 21 only from codes 92592, 92593, and V5264.
- Adding the following codes to allow them to be billed under Section 109, where currently they can be billed only under the MCBM, Section 90 (Physician Services). The Department is seeking CMS approval for these changes, with a May 19, 2019 effective date.

The chart below matches the new codes to the provision of Section 109 policy which authorizes these services:

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Billing Code	Description	Section of Policy
92537	Caloric vestibular test with recording, bilateral; bithermal (ie, one warm and one cool irrigation in each ear for a total of four irrigations)	109.07-1; E, K, O, and N
92538	Caloric vestibular test with recording, monothermal (ie, one irrigation in each ear for a total of two irrigations)	109.07-1; E, K, O, and N
92540	Basic vestibular evaluation, includes spontaneous nystagmus test with eccentric gaze fixation nystagmus, with recording, positional nystagmus test, minimum of 4 positions, with recording, optokinetic nystagmus test, bidirectional foveal and peripheral stimulation, with recording, and oscillating tracking test, with recording	109.07-1; E, K, O, and N
92541	Spontaneous nystagmus test, including gaze and fixation nystagmus, with recording	109.07-1; E, K, O, and N
92542	Positional nystagmus test, minimum of 4 positions, with recording	109.07-1; E, K, O, and N
92544	Optokinetic nystagmus test, bidirectional, foveal or peripheral stimulation, with recording	109.07-1; E, K, O, and N
92545	Oscillating tracking test, with recording	109.07-1; E, K, O, and N
92546	Sinusoidal vertical axis rotational testing	109.07-1; E, K, O, and N
92547	Use of vertical electrodes	109.07-1; E, K, O, and N
92548	Computerized dynamic posturography	109.07-1; E, K, O, and N
92570	Acoustic immittance testing, includes tympanometry (impedance testing), acoustic reflex threshold testing, and acoustic reflex decay testing.	109.07-1; E, K, O, and N
92611	Motion fluoroscopic evaluation of swallowing function by cine or video recording	109.07-1; A, E, K, O, and N
92612	Flexible endoscopic evaluation of swallowing by cine or video recording	109.07-1; A, E, K, O, and N
V5011	Fitting/orientation/checking of hearing aid	109.07-1; S

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$159,156 in SFY 2019, which includes \$56,469 in state dollars and \$102,687 in federal dollars, and \$636,622 in SFY 2020, which includes \$227,465 in state dollars and \$409,157 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 111-148, Title I Sec. 1557
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 90**, Physician Services
Filing number: **2019-099**
Effective date: 6/18/2019
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

This emergency rulemaking eliminates transsexual procedures from the list of non-covered services in Section 90.07. Elimination of this prohibition on transsexual medical procedures complies with Section 1557 of the *Affordable Care Act* (ACA) (PL 111-148, Title I, Sec. 1557), as codified in 42 USC Sec. 18116 and its enabling regulation, 45 CFR Part 92, which prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs and activities.

Pursuant to 5 MRS Section 8054, the Department has determined that immediate adoption of this rule is necessary to avoid an immediate threat to public health, safety, or general welfare by immediately removing the access barrier for transgender individuals that the current language creates. The Department is promptly following this emergency rulemaking with proposed rulemaking.

Fiscal impact of rule:

This rulemaking is estimated to 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 2017 ch. 459 §3195

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: **2019-103**

Effective date: 6/20/2019

Type of rule: Major Substantive

Emergency rule: No

Principal reason or purpose for rule:

This major substantive rule was proposed to implement the provisions of PL 2017 ch. 459, which provides funding to increase reimbursement rates for 33 procedure codes in Ch. III Section 21. The legislation directed the Department to increase the rates for the specific procedure codes in equal proportion to the funding provided for that purpose. In addition to the rate increases required by PL 2017 ch. 459, the Department has also increased the rate for a 34th procedure code, as the Department has determined that this rate increase needs to be done in this emergency rulemaking to avoid an immediate threat to public health, safety of general welfare. These increased rates were effective retroactive to July 1, 2018.

In creating the rates for the 34 codes, 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.

The Department has adopted these rate increases via emergency rulemaking. Pursuant to 5 MRS §8073, the emergency major substantive rule may be effective for up to twelve months, or until the Legislature has completed its review. The Department has now adopted these Section 21 rule changes.

Basis statement:

The Department of Health and Human Services (“the Department”) finally adopts these major substantive rule changes to Ch. III, Section 21, “Allowances for Home and Community Benefits for Adults with Intellectual Disabilities or Autism Spectrum Disorder”, to effectuate increased reimbursement rates for thirty-three (33) procedure codes 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*.

PL 2017 ch. 459 directed the Department to increase the rates for specific procedure codes in equal proportion to the funding allocated for this purpose. In addition to the rate increases required by PL 2017 ch. 459, the Department also increased the rate for a thirty-fourth (34th) procedure code, T2017 QC (Home Support, Habilitation, residential, waiver – Remote Support – Monitor only). Increasing the rate for this procedure code created consistency with the other codes, in line with the Section 21 service and reimbursement structure. These increased rates are effective retroactive to July 1, 2018.

The Department previously implemented these rule changes to effectuate reimbursement rate increases through emergency major substantive rulemaking, effective September 11, 2018, to comply 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*. On December 16, 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.

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The Maine State Legislature authorized final adoption of this rule. Resolves 2019 ch. 20, was signed by Governor Mills on April 30, 2019.

The final adopted rule makes the permanent changes to this rule as required by the Legislature. This final major substantive rule shall become effective thirty days after filing with the Secretary of State's Office. 5 MRS §8072(8).

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 §§ 3173; 5 MRS §8054; PL 2017 ch. 460
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 28**, Rehabilitation and Community Support Services for Children with Cognitive Impairments and Functional Limitations
Filing number: **2019-105**
Effective date: 6/25/2019
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

On November 8, 2018, the Department adopted the emergency major substantive rule for Ch. III, Sec. 28 (“Allowances for Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations”). The emergency major substantive rulemaking was done to comply with Public Law 2017 ch. 460 (“the Act”) which directed the Department to amend reimbursement rates to Section 28 providers to reflect final rates modeled in the April 2017 Burns report: *Rate Study for Behavioral Health and Targeted Case Management Services: Final Proposed Rates for Formal Rulemaking*, and also to increase the rate of reimbursement for all services by two percent. The legislation was enacted as an emergency, and directed the Department to make the rate increases effective July 1, 2018. Pursuant to the emergency major substantive rule, in order to comport with federal Medicaid law, the rate increases were made with an August 1, 2018 effective date.

The November 8, 2018 emergency major substantive rule also added a new procedure code for Board Certified Behavior Analyst (BCBA) services (Procedure Code G9007), pursuant to the Act, which required the Department to “establish new reimbursement rates” in accordance with the 2017 Burns rate study.

The Department proposed rules for Ch. III Section 28, in accordance with 5 MRS §8072(1), to be provisionally adopted by the Department, pending legislative approval. The Department received comments during that rulemaking requesting clarification on the services that would be eligible for the August 1, 2018 BCBA services rate.

Therefore, the Department has determined that emergency rulemaking is required in order to clarify the services that are eligible for the new BCBA service rate. Pursuant to 5 MRS §8054, the Department finds that immediate adoption of the Ch. II Section 28 rate is necessary to avoid an immediate threat to public health, safety or general welfare, since the Legislature determined through the Act 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.” PL 2017 ch. 460.

This emergency rulemaking provides for a new provision in the rule identifying BCBA services in the Covered Services section of the rule. In addition, the emergency rule identifies the requirements for BCBA providers, consistent with requirements set forth by the Behavioral Analyst Certification Board. These standards are in effect on the effective date of this emergency rule.

BCBA services rendered between August 1, 2018, the effective date of the November 8, 2018, Ch. III Section 28 emergency major substantive rule, and the effective date of this

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emergency rule, will be reimbursed in accordance with the emergency major substantive rule BCBA rate, and the Ch. II rule in effect at that time.

Fiscal impact of rule:

Fiscal impact accounted for via PL 2017 ch. 460 rulemaking.

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Agency name: Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173; PL 2017 ch. 459 §3195
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: **2019-108**
Effective date: 7/28/2019
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

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

Basis statement:

The Department of Health and Human Services (“the Department”) finally adopts amendments of *MaineCare Benefits Manual* (“MBM”) Ch. III Section 29, “Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder”, a major substantive rule, to effectuate increased reimbursement rates for 18 procedure codes and 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*, and to implement an increase for procedure code T2017 QC in conformance with Resolves 2019 ch. 17.

The Department previously implemented rate changes to effectuate reimbursement rate increases to comply 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*, retroactive to July 1, 2018, by emergency major substantive rulemaking effective September 12, 2018.

In creating the reimbursement rates for the procedure codes shown below in conformance with PL 2017 ch. 459, the Department examined utilization of these services, and then calculated rates to ensure parity between Section 29 and MBM Ch. III Section 21, “Allowance for Home and Community Benefits for Adults with Intellectual Disabilities”, to lessen administrative complications for providers.

The Department submitted provisionally-adopted MBM Ch. III Section 29, to the Legislature pursuant to 5 MRS §8072. During the Legislative review of the provisionally adopted major substantive rule, the Legislature passed as an emergency measure Resolves 2019 ch. 17, *Resolve, Regarding Legislation Review of Portions of Chapter 101: MaineCare Benefits Manual, Chapter III, Section 29: Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder, a Major Substantive Rule of the Department of Health and Human Services*, authorizing final adoption of the provisionally adopted major substantive rule only if the following emergency change is made: The rule must be amended in Appendix I to increase the rate for procedure code T2017 QC from \$1.63 per ¼ hour to \$2.00 per ¼ hour. The Department has amended the rule accordingly for final adoption. The Governor approved Resolves 2019, ch. 17 on April 30, 2019, and the measure became effective immediately pursuant to its emergency clause.

The Department finally adopts the following major substantive rule changes to Ch. III Section 29, “Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder”:

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- 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
 - T2017 QC Home Support-Remote Support-Monitor Only
 - 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
 - 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).

The emergency major substantive rule changes effective, September 12, 2018, shall remain in effect until the time that these finally adopted rules take effect, thirty days after filing with the Secretary of State's Office. 5 MRS §8072(8).

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.

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Rules Adopted January 1, 2019 to December 31, 2019
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, 7863; 5 MRS §§ 8054, 8072; Resolve 2017 ch. 61; 42 CFR §440.70
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 40**, Home Health Services
Filing number: **2019-122**
Effective date: 8/11/2019
Type of rule: Major Substantive
Emergency rule: No

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

Basis statement:

The Department of Health and Human Services finally adopts these major substantive rule changes to Ch. II and III Section 40, “Home Health Services” to add the use of Telemonitoring Services, to be provided by home health agencies. Telemonitoring is the use of information technology to remotely monitor a member’s health status through the use of clinical data while the member remains in the residential setting. Through telemonitoring, a home health agency sets up equipment that allows for a member’s vital statistics to be monitored daily. The addition of Telemonitoring Services is beneficial to members, allowing them to receive medically necessary home health covered services that can be delivered remotely at comparable quality in their own homes.

In addition, these finally adopted major substantive rules are updated to state any home health service may be offered as the sole home health service and shall not be contingent upon the provision of another home health service.

Other Chapter II changes include:

- New definitions have been added for the following terms: Health Care Provider and Telemonitoring Services. Authorized Agent is changed to Authorized Entity.
- Eligibility for Care changes: Medical Eligibility Requirements for Telemonitoring Services.
- Additions to Covered Services: Telemonitoring Services.
- Pursuant to Section 12006, *21st Century CURES Act*, Electronic Visit Verification (EVV) requirements for home health services providers, effective January 1, 2023, are added.
- Limitations have been updated to reflect that members of Section 19, “Home and Community-Based Services for the Elderly and Adults with Disabilities”, may receive authorization for nursing services through Section 40, “Home Health Services”, should Section 19 nursing services be deemed insufficient to meet the member’s needs.
- Throughout the policy, “mental retardation” has been updated to “individuals with intellectual disabilities” and “severe and disabling mental illness” has been updated to “Severe and Persistent Mental Illness.”
- MaineCare Services, Division of Customer Service has been updated to MaineCare Provider Services with an updated toll-free number.
- Non-Routine Medical Supplies includes an updated link to billing instructions and list of supplies.

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- A typographical error in the header of Chapter II, which previously read Chapter III, has been corrected through this rulemaking.

In addition, Ch. III updates some of the procedure codes to support Ch. II Section 40, “Covered Services”, including the addition of Telemonitoring Services. Pursuant to 22 MRS §42(8), the Department shall apply certain of these procedure codes retroactively, effective eight (8) calendar quarters from when the Department finally adopts these rule changes. Additionally, pursuant to Resolve 2017, ch. 61, *To Support Home Health Services*, the Department increases the following reimbursement rates, effective January 1, 2019: G0299, G0300, G0151, G0151 TF, G0152, G0152 TF, G0153, G0153 TF, G0155, and G0156.

The Centers for Medicare and Medicaid Services (CMS) already separately approved the State Plan Amendment (SPA) for Telehealth and Telemonitoring Services. The Department is seeking, and anticipates receiving, CMS approval for the changes to Section 40, Ch. II and III, as noted specifically in the rules. Upon CMS approval, those changes shall be effective.

On February 15, 2019, the Department provisionally adopted these rules. Subsequently, the Department submitted the provisionally adopted rules to the Maine State Legislature for its review, in accordance with 5 MRS §8072.

The Maine State Legislature authorized the final adoption of these rules without making any changes to what was provisionally adopted. Resolves 2019 ch. 51, was signed by Governor Mills on June 6, 2019. Given the emergency as set forth in Resolves 2019 ch. 51, the law takes effect when approved.

These final adopted rules make the permanent changes to these rules as required by the Legislature. These final major substantive rules shall become effective thirty days after filing with the Secretary of State’s Office. 5 MRS §8072(8).

Fiscal impact of rule:

The Department anticipates these rulemakings will cost the Department approximately \$405,009 in SFY 2019, which includes \$143,697 in state dollars and \$261,312 in federal dollars.

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Rules Adopted January 1, 2019 to December 31, 2019
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; PL 2017 ch. 304, 460
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 97**, Private Non-Medical Institution Services
Filing number: **2019-123**
Effective date: 8/11/2019
Type of rule: Major Substantive
Emergency rule: No

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

Basis statement:

The Department of Health and Human Services (“the Department”) finally adopts these major substantive rule changes to Ch. III Section 97, “Private Non-Medical Institution (PNMI) Services”, to effectuate a process by which an eligible PNMI Services provider may request an Extraordinary Circumstance Allowance (ECA); allow for certain regulatory compliance costs incurred by Appendix C and F PNMI providers to be considered reasonable and necessary; and increase the limit for new construction, acquisitions, and renovations involving capital expenditures to \$500,000 from \$350,000 pursuant to PL 2017 ch. 304, *An Act to Amend Principles of Reimbursement for Residential Care Facilities* (“The First Act”).

The Department is seeking, and anticipates receiving, approval from the federal Centers for Medicare and Medicaid Services (CMS) for these changes. Pending approval, these changes will be effective retroactive to November 1, 2017.

In addition, the Department finally adopts rule changes to Ch. III Section 97, “Private Non-Medical Institution (PNMI) Services”, to increase the MaineCare payment rates attributable to wages and salaries in routine services cost 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. This rule also allows Appendix C PNMI providers to request a supplemental wage allowance for increases in wages and wage-related benefits in the routine cost component 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 Second Act”).

The Department is seeking, and anticipates receiving, approval from CMS for these changes. Pending approval, these changes will be effective retroactive to August 1, 2018. Further, as a result of comments on the proposed rule, the Department has provided that the cost of interpreter services for hearing impaired staff participating in training, supervision, and staff meetings may be an allowable cost subject to Department approval through submission of the annual budget in Ch. III Section 97, Appendix E.

The Department is authorized to finally adopt these changes retroactively under 22 MRS §42(8) because these changes increase reimbursement for providers and will have no adverse impact on either MaineCare providers or members. Additionally, the Change in Reimbursement Methodology Notice required by 42 CFR §447.205 relating to the Extraordinary Circumstance Allowance and Regulatory Compliance Costs was published on October 19, 2017 (for Appendices C and F). In regards to the Supplemental Wage Allowance and increased MaineCare payment rates for Appendix C PNMI for the state fiscal year ending

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June 30, 2020, and each year after, the Department published its Notice of Change in Reimbursement Methodology on July 31, 2018.

In addition to the changes required by the First and Second Act, 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 price 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 provisionally adopted in order to issue provider rate letters 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.
- Principle 2400.3: The cost of interpreter services for hearing impaired staff participating in supervision, training, and staff meetings may be an allowed cost for Appendix E providers. This allowance is subject to Department approval obtained through the annual budget submission process.

The Department previously implemented these same changes through emergency major substantive rulemaking, effective November 20, 2018 to comply with 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*. Pursuant to 5 MRS §8073, emergency major substantive rules are effective up to 12 months or until the Legislature has completed review, and the Department thereafter finally adopts the rule changes. On March 20, 2019, the Department provisionally adopted these rules. Subsequently, the Department submitted the provisionally adopted rules to the Maine State Legislature for its review, in accordance with 5 MRS §8072.

The Maine State Legislature authorized the final adoption of these rules without making any changes to what was provisionally adopted. Resolves 2019 ch. 39, was signed by Governor Mills on May 30, 2019. Given the emergency as set forth in Resolves 2019 ch. 39, the law takes effect when approved.

These final adopted rules make the permanent changes to these rules as required by the Legislature. These final major substantive rules shall become effective thirty days after filing with the Secretary of State's Office. 5 MRS §8072(8).

Fiscal impact of rule:

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

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Rules Adopted January 1, 2019 to December 31, 2019
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 and 8073; PL 2017 ch. 460 parts C and 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: **2019-143**
Effective date: 8/29/2019
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

The Department of Health and Human Services (“the Department”) finally adopts this major substantive rule to increase the rates of reimbursement for rehabilitative and community support services pursuant to Public Law 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 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 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.
- This rulemaking added a new procedure code, for BCBA Services (Proc. Code G9007), pursuant to the Act, which required the Department to “establish new reimbursement rates” in accordance with the 2017 Burns Rate Study.

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.

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.

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

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 were effective August 1, 2018; this effective date comports with the federal law requirement. Pending approval of the proposed changes to the Section 28 State Plan Amendment that were submitted to the Centers for Medicare and Medicaid Services, the increased rates were implemented with an August 1, 2018 effective date.

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.

In addition to the above, this final adopted rule amends the base rate of policy prior to August 1, 2018 to be compliant with the increase required via *An Act to Increase Payments to MaineCare Providers that are Subject to Maine’s Service Provider Tax*, PL 2015 ch. 477 (eff. April 15, 2016). The Department paid claims at increased rates but did not initiate rulemaking at that time.

The Department previously implemented these same changes through emergency major substantive rulemaking, effective as of November 8, 2018 to comply with 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*. On April 26, 2019 the Department provisionally adopted these rules. Subsequently, the Department submitted the provisionally adopted rules to the Maine State Legislature for its review, in accordance with 5 MRS §8072. The Maine State Legislature authorized the final adoption of these rules. Resolves 2019 ch. 40, was signed by Governor Mills on May 30, 2019.

These final adopted rules make the permanent changes to these rules as required by the Legislature. These final major substantive rules shall become effective thirty days after filing with the Secretary of State’s Office. 5 MRS §8072(8).

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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Rules Adopted January 1, 2019 to December 31, 2019
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; 81 FR 5169; Pub. L. 111-148; Title I Sec. 1557
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 90**, Physician Services
Filing number: **2019-163**
Effective date: 9/16/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule is being proposed in order to update and clarify existing policy language, prior authorization requirements, reimbursement criteria, service descriptions, and coverage limits. The proposed rule also adds three new covered services.

Basis statement:

On June 18, 2019, the Department adopted an emergency Ch. II §90 rule, which eliminated “transsexual procedures” from the list of non-covered services in §90.07. Elimination of this prohibition on transgender medical procedures complies with Section 1557 of the *Affordable Care Act* (Pub. L. 111-148, Title I, Sec. 1557), as codified in 42 USC §18116 and its enabling regulation, 45 CFR Part 92, which prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs and activities. This adopted rule makes that change permanent.

In addition, the Department is adopting the following changes in this rulemaking:

1. The addition of Appendix A as the last item on the Table of Contents, which was part of the rule previously but was not identified in the Table of Contents;
2. From the Supplies and Materials category, removal of language “that may be reimbursed as separate items” to add clarity as to what is reimbursable for medical supplies and materials under this section (90.01-5). Language about supply reimbursement already exists under Medical Supplies & Durable Medical Equipment (90.04-9);
3. Addition of language setting the reimbursement for physician’s medical direction of anesthesia services at 50% of the allowance when a physician performs anesthesia services alone (90.04-1(B)) to more closely align with the Centers for Medicare and Medicaid Services’ (CMS) reimbursement methodology;
4. Amended the provision in the policy specifying how interns, residents, and locum tenens are enrolled to require that residents, locum tenens, and temporaries to enroll either under a physicians’ group or as a hospital-based professional in order to be reimbursed through MaineCare (90.04-10). The Department added the requirement that residents must have a medical license for best practices (per Title 32, ch. 48, § 3271(2)) to enroll and receive reimbursement through MaineCare;
5. Removal of mileage reimbursement language to create consistency across the MaineCare Benefits Manual and minimize abuse of mileage reimbursement. (90.04-11);
6. Addition of two new services: Diabetes Self-Management Training Services (DSMT) (90.04-13) and Medical Nutrition Therapy Services (MNT) (90.04-14). DSMT and MNT have been linked to improved clinical outcomes;

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7. Addition of licensed dietician as an “other” professional that can work in association with Physician Services (90.04-15), and who can also provide the newly added DSMT or MNT services;
8. Addition of licensed clinical psychologists and licensed marriage and family therapists as “other” professionals practicing within the scope of their licensure that can work in association with Physician Services (90.04-15);
9. Addition of clarifying language for current and accurate prescribing criteria in the Prescriptions category of Covered Services (90.04-19);
10. Addition of transgender services (90.04-33) under Covered Services to identify coverage for medically necessary procedures. The Department had proposed to put this provision under Restricted Services, requiring prior authorization. In response to comments, the Department moved this provision to the covered services section so that prior authorization is not required for these non-surgical services;
11. Addition of (90.05-1 A (4)) Gender Dysphoria Related Surgeries to identify coverage for surgeries for the treatment of gender dysphoria. Commenters agreed that prior authorization should be required for surgeries;
12. Amendment to provider title under Restricted Services (90.05-2 A) Abortion Services, from physician to health care professional to comply with PL 2019, c. 262, *An Act to Authorize Certain Health Care Professionals to Perform Abortions*. This change is effective September 19, 2019;
13. The Reimbursement Rate for Drugs Administered by Other Than Oral Methods (90.09-3) has been amended to align MaineCare policy with the CMS Covered Outpatient Drug final rule by determining drug fee schedules as Average Sales Price (ASP), plus 6%, as set by Medicare Part B for Maine area “99”; and
14. Removal of the Member Satisfaction category under the Primary Care Provider Incentive Payment (90.09-4) list of incentives. A separate category for this is not required because member satisfaction is a targeted indicator built into the scoring of the various categories.

Fiscal impact of rule:

The Department anticipates that this rulemaking will save approximately \$956,910.00 in SFY 2019, which includes \$339,894.00 in state dollars and \$617,016.00 in federal dollars. The rulemaking will save approximately \$1,043,902.00 in SFY 2020, which includes \$370,376.00 in state dollars and \$673,526.00 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; PL 2017 ch. 460
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 28**, Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations
Filing number: **2019-167**
Effective date: 9/23/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

On June 25, 2019, the Department adopted an emergency Ch. II Section 28 rule. The Department adopts these rule changes in order to make those changes permanent.

Background: On November 8, 2018, the Department adopted an emergency major substantive rule for Ch. III Sec. 28 (“Allowances for Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations”). The emergency major substantive rulemaking was done to comply with Public Law 2017 ch. 460 (“the Act”) which directed the Department to amend reimbursement rates for Section 28 providers to reflect final rates modeled in the April 2017 Burns report: *Rate Study for Behavioral Health and Targeted Case Management Services: Final Proposed Rates for Formal Rulemaking*, and also to increase the rate of reimbursement for all services by two percent. The legislation was enacted as an emergency, and directed the Department to make the rate increases effective July 1, 2018. Pursuant to the emergency major substantive rule, in order to comport with federal Medicaid law, the rate increases were made with an August 1, 2018 effective date.

The November 8, 2018 emergency major substantive rule also added a new procedure code for Board Certified Behavior Analyst (BCBA) services (Procedure Code G9007), pursuant to the Act, which required the Department to “establish new reimbursement rates” in accordance with the 2017 Burns rate study.

The Department proposed rules for Ch. III Section 28, in accordance with 5 MRS §8072(1), to be provisionally adopted by the Department, pending legislative approval. The Department received comments during that rulemaking requesting clarification on the services that would be eligible for the August 1, 2018 BCBA services rate.

Therefore, the Department determined that rulemaking for Ch. II Section 28, is required in order to clarify the services that are eligible for the new BCBA service rate. As stated above, the Department adopted an emergency Ch. II Section 28 rule on June 25, 2019 which clarified the BCBA services. This adopted rulemaking will finalize Ch. II rule changes and provides for a new provision in the rule identifying BCBA services in the Covered Services section of the rule. In addition, the adopted rule identifies the requirements for BCBA providers, consistent with requirements set forth by the Behavioral Analyst Certification Board. These standards were originally in effect on the effective date of the emergency rule, June 25, 2019.

BCBA services rendered between August 1, 2018, the effective date of the November 8, 2018, Ch. III Section 28, emergency major substantive rule, and the effective date of the emergency rule, June 25, 2019, will be reimbursed in accordance with the emergency major substantive rule BCBA rate, and the Ch. II rule in effect at that time.

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In addition to the changes described above, this adopted rulemaking adds telemedicine language under Provider Requirements. As a result of public comments and review by the Office of the Attorney General, the Department amended the final rule to remove the EVV language. While Section 28 providers are subject to the EVV requirement, the Department removed the language requiring EVV as the Centers for Medicare and Medicaid Services (CMS) has yet to approve the Department's Good Faith exemption request, and the Department has not yet determined when the EVV requirement will apply. Additionally, the Department amended 28.04-3 BCBA Services to add language supporting exceeding policy limits when medically necessary and supported by documentation and prior authorized by the Department or its Authorized Entity. Additional changes were made to the final rule and are outlined in the Summary of Comments and Responses document published with this rulemaking.

Fiscal impact of rule:

Fiscal impact accounted for via PL 2017 ch. 460 rulemaking.

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Rules Adopted January 1, 2019 to December 31, 2019
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; PL 2019 ch. 454
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 45**, Hospital Services
Filing number: **2019-183**
Effective date: 10/28/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule is adopted to comply with PL 2017 ch. 454, *An Act to Require Reimbursement to Hospitals for Patients Awaiting Placement in Nursing Facilities*. Effective January 1, 2019, the Act requires the Department to reimburse acute care non-critical access hospitals for each day after the 10th day that a MaineCare eligible individual is in the care of the hospital while awaiting placement in a nursing facility. The Department will reimburse at the statewide average rate per MaineCare member day for nursing facility services. The statewide average rate will be computed based on the simple average nursing facility rate per MaineCare member day for the applicable state fiscal year or years prorated for the hospital's fiscal year. Reimbursement for days awaiting placement pursuant to this section is limited to a maximum of \$500,000 of combined state General Fund funds and federal funds for each year. The Act further requires this section be repealed on December 31, 2023.

Additionally, this rulemaking clarifies modifier usage by Outpatient Provider-Based Departments (PBDs) when submitting MaineCare claims by informing providers that the CMS created HCPCS "PO" modifier for hospital outpatient claims is not required on MaineCare claims to identify excepted items and services furnished in an excepted off-campus provider-based department of a hospital.

Basis statement:

The Department adopts these rules with the following changes:

Chapter II: In Section 45.07-3(2), the Department updated a reference so that referrals are made to the Office for Family Independence, instead of the Office of Integrated Access and Support, which is outdated.

Chapter III: Section 45.02-8 is added and adopted to comply with PL 2017 ch. 454, *An Act to Require Reimbursement to Hospitals for Patients Awaiting Placement in Nursing Facilities*. The Act requires the Department to reimburse hospitals other than critical access hospitals, beginning January 1, 2019, for each day after the 10th day that a MaineCare eligible member is in the care of the hospital while awaiting placement in a nursing facility. The Department will reimburse at the statewide average rate per MaineCare member day for nursing facility services. The statewide average rate will be computed based on the simple average nursing facility rate per MaineCare member day for the applicable state fiscal year or years prorated for the hospital's fiscal year. Reimbursement for days awaiting placement pursuant to this section is limited to a maximum of \$500,000 of combined state General Fund funds and federal funds for each year. The Department will reimburse quarterly by order of claim date. In the event the cap is expected to be exceeded in any quarter, reimbursement in that quarter will be paid out proportionately, and a notification of total funds expended for that year will be sent out to providers. The Act further requires this law be repealed on December 31, 2023. Note that the proposed rule provided that this reimbursement be provided to acute care non-critical access

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hospitals only. The final rule comports with PL 2017 ch. 454, and ensures that this reimbursement be provided to “hospitals other than critical access hospitals.” The Department is seeking and anticipates receiving CMS approval for this change effective January 1, 2019 through December 31, 2023. Pending approval, the change will be effective retroactive to January 1, 2019.

Additionally, Section 45.03-1(D)(3) identifies the previously referenced modifier used when identifying non-excepted items and services provided by PBDs as the “PN” modifier. The identification was made to distinguish the “PN” modifier from the new “PO” modifier.

Changes to the ICD-10 codes that had been proposed in Ch. III, Appendix B, have been removed from the adopted rule. The Department is delaying this change to allow providers the one-year billing grace period outlined in Ch. I Section 1, of the *MaineCare Benefits Manual* to help prevent any billing issues in association with these changes. The changes that were proposed will be addressed in a future rulemaking.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$49,622 in FY 2019, which includes \$17,690 in state dollars and \$31,932 in federal dollars. The rulemaking will cost approximately \$99,244 in SFY 2020, which includes \$35,390 in state dollars and \$63,854 in federal dollars.

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Rules Adopted January 1, 2019 to December 31, 2019
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; PL 2017 ch. 460 part B-2
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 2**, Adult Family Care Services
Filing number: **2019-252**
Effective date: 12/24/2019
Type of rule: Routine Technical
Emergency rule: No.

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

The Department adopts this 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 and each year thereafter 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 adopted rule effectuates a 3.8 percent cost-of-living rate increase for adult family care services for the fiscal year ending June 30, 2020. Ch. III Section 2, "Adult Family Care Services" increases the unadjusted price from \$53.27 to \$55.29 and the resource-adjusted prices accordingly. In addition, Ch. III Section 2, "Adult Family Care Services" increases the unadjusted price to adult family care homes that satisfy the definition of remote island facilities from \$61.26 to \$63.59 and the resource-adjusted prices accordingly.

The Department is seeking, and anticipates receiving, approval from the federal Centers for Medicare and Medicaid Services (CMS) for this change. Pending approval, the 3.8 percent cost-of-living increase will be effective retroactive to July 1, 2019. A Change in Reimbursement Methodology Notice was posted July 31, 2018 on the Office of MaineCare Services' website.

Fiscal impact of rule:

This rulemaking is estimated to cost the Department \$180,062.89 in SFY 2020, which includes \$64,336.47 in state dollars and \$115,726.89 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: PL 2019 ch. 274; 22 MRS §§ 42, 3173; 5 MRS §8054
Chapter number/title: **Ch. 104**, Maine State Services Manual, **Section 7:** Abortion Services for MaineCare Members
Filing number: **2019-169**
Effective date: 9/19/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

To provide state-funded coverage for abortion services to MaineCare members when those services are not covered by Medicaid.

Basis statement:

This emergency rulemaking implements PL 2019 ch. 274, *An Act to Prevent Discrimination in Public and Private Insurance Coverage for Pregnant Women in Maine* (the "Act"), which requires state-funded coverage for abortion services to MaineCare members when those services are not covered by Medicaid.

Federal law limits Medicaid reimbursement to those abortions necessary to protect the life of the mother, or when the pregnancy results from rape or incest (the "Hyde Exceptions."). See, e.g., 42 CFR §§ 441.200-441.208; 10-144 CMR ch. 101 (the "MaineCare Benefits Manual"), Ch. II Sec. 90.05-2 (MaineCare rule implementing Hyde Exceptions). The Act requires that, for MaineCare eligible women, abortion services that are outside the Hyde Exceptions (i.e., not covered Medicaid services) must be funded separately by using state funds within existing resources. The Legislature appropriated from the General Fund approximately \$227,546 and \$375,843, respectively, for the next two fiscal years to provide these new state only funded abortion services. See the Act, Sec. 10 (Appropriations and allocations). The Department requires providers to identify state-funded abortion services when submitting claims for reimbursement of state funded abortion services. This allows the Department to distinguish the state funded abortion claims from those that are covered under the Hyde Exceptions, in order to maintain compliance with federal Medicaid restrictions and requirements for reimbursement.

Pursuant to the Act, the Legislature provided the Department with rulemaking authority to implement these services on an emergency basis, per 5 MRS §8054, without the necessity of demonstrating that immediate adoption is necessary to avoid a threat to public health, safety, or general welfare. Emergency rules are effective immediately and valid for ninety days. The Department shall hereafter initiate "regular" routine technical proposed rulemaking to implement this rule permanently.

Fiscal impact of rule:

The Legislature appropriated state General Funds to the Department of Health and Human Services in the amounts of \$227,546 in fiscal year 2019-20 and \$375,843 in fiscal year 2020-21. Federal expenditure fund allocations are not required, as these are non-covered services in the Medicaid program and thus are not eligible for federal reimbursement.

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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: PL 2019 ch. 274; 22 MRS §§ 42, 3173
Chapter number/title: **Ch. 104**, Maine State Services Manual, **Section 7:** Abortion Services for MaineCare Members
Filing number: **2019-228**
Effective date: 12/17/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To provide state-funded coverage for abortion services to MaineCare members when those services are not covered by Medicaid.

Basis statement:

The Department adopts this final rule which implements PL 2019 ch. 274, *An Act to Prevent Discrimination in Public and Private Insurance Coverage for Pregnant Women in Maine* (the "Act"), which requires state-funded coverage for abortion services to MaineCare members when those services are not covered by Medicaid.

Federal law limits Medicaid reimbursement to those abortions necessary to protect the life of the mother, or when the pregnancy results from rape or incest (the "Hyde Exceptions."). See, e.g., 42 CFR §§ 441.200-441.208; 10-144 CMR ch. 101 (the "MaineCare Benefits Manual"), Ch. II Sec. 90.05-2 (MaineCare rule implementing Hyde Exceptions). The Act requires that, for MaineCare eligible women, abortion services that are outside the Hyde Exceptions (i.e., not covered Medicaid services) must be funded separately by using state funds within existing resources. The Legislature appropriated from the General Fund approximately \$227,546 and \$375,843, respectively, for the next two fiscal years to provide these new state only funded abortion services. See the Act, Sec. 10 (Appropriations and allocations). The Department requires providers to identify state-funded abortion services when submitting claims for reimbursement of state funded abortion services. This allows the Department to distinguish the state funded abortion claims from those that are covered under the Hyde Exceptions, in order to maintain compliance with federal Medicaid restrictions and requirements for reimbursement.

Pursuant to the Act, the Legislature provided the Department with rulemaking authority to implement these services on an emergency basis, per 5 MRS §8054. The Department filed the emergency rule on September 19, 2019. This routine technical rulemaking permanently adopts the rule.

The Department modified the final rule in Section 7.05, Covered Services, subsections A and D by changing the term "physician" to "Health Care Professional" to comply with PL 2019 ch. 262, as codified in 22 MRS §1596, which broadened the Maine abortion law to include physician assistants and advanced practice registered nurses as qualified professionals authorized to perform abortions.

Fiscal impact of rule:

The Legislature appropriated state General Funds to the Department of Health and Human Services in the amounts of \$227,546 in fiscal year 2019-20 and \$375,843 in fiscal year 2020-21. Federal expenditure fund allocations are not required, as these are non-covered services in the Medicaid program and thus are not eligible for federal reimbursement.

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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, §3173, 7861(4); 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: **2019-040**
Effective date: 2/18/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Concise Summary)

Concise Summary:

The Department of Health and Human Services adopts changes in 10-144 CMR ch. 115, *Principles of Reimbursement for Residential Care Facilities – Room and Board Costs* (“Chapter 115”), in conformance with Public Law 2017 ch. 304, *An Act to Amend Principles of Reimbursement for Residential Care Facilities* (“The First Act”) (now enacted as 22 MRS §7863), to, effectuate 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 were initially implemented via emergency rulemaking (on November 20, 2018) and shall have a retroactive effective date of November 1, 2017.

In addition, this adopted rule complies with 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”), and effectuates 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 shall 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

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

These changes were initially implemented via emergency rulemaking (on November 20, 2018) and shall have a retroactive effective date of August 1, 2018.

The First and Second Acts required the Department to amend Ch. 115 to include ECA, regulatory compliance costs, inflation factor, and the special wage allowance changes for Residential Care Facilities and MaineCare Section 97, "Private Non-Medical Institution (PNMI) Services" - Appendix C providers. Separately, and in addition to the changes required in Chapter 115, the Department made changes in 10-144 CMR ch. 101, *MaineCare Benefits Manual*, ch. III §97 ("Section 97"), and the Section 97 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 sought to implement the Section 97 changes simultaneously with these State Rule changes (in order to treat similar providers equitably), on November 20, 2018, it made changes to both rules through emergency rulemaking.

This rulemaking makes permanent the emergency rule changes.

In addition to the changes required by the First and Second Acts, pursuant to its general broad rulemaking authority set forth in, inter alia, 22 MRS §§ 42 and 3173, the Department also revised the rule requirements regarding when providers may be approved for refinancing (Principle 20.4.3(d)). As a result of comments and legal review by the Office of Attorney General, the Department finds that these changes should have been made solely through "regular" (not emergency) routine technical rulemaking. The changes in Principle 20.4.3(d) shall be applied prospectively only, effective upon final adoption of this rule. The Department shall work with providers to equitably adjust reimbursement if necessary in the event that the Department utilized the language starting on November 20, 2018 through February 18, 2019 (date of final rule).

Other changes to Ch.115 include, but are not limited to:

- Calculating depreciation recapture for residential care facilities that have been sold, the calculation of the credits for buildings and fixed equipment will be from the date the owner began operating the facility with the original license.
- For sales of residential care facilities, moveable equipment will accumulate credits as follows: for the first four years, the asset is placed into service, all but ten percent (10%) per year will be recaptured, and from the fifth (5th) and sixth (6th) years, all but thirty percent (30%) per year will be recaptured, not to exceed one hundred percent (100%). The calculation of the credits for moveable equipment will be from the date the asset is placed into service by the provider.
- Defines moveable equipment credit accumulation and calculation for residential care facilities that have been sold.
- The following definitions have been added or clarified: Licensed Capacity, Proper Interest, Swap Investments, and Remote Island Facility.
- Computer hardware may be considered a capital cost; the Department will not consider software purchase or upgrades as an allowable capital expenditure. Computer software and associated ongoing support costs fall under Routine Costs, 30.1.3.
- Office names have been updated and/or inserted to provide clarity.

Changes were made to the final rule as a result of comments and legal review, as set forth in detail in the Summary of Comments and List of Changes to the Final Rule, including:

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- The Occupancy Level definition has reverted back to its pre-proposed language.
- Remote island facility supplemental payment has been added to Principle 14, Reimbursement Method in conformance s.
- Principle 20.1 language has been reinstated and amended to clarify routine and fixed costs.
- 20.4.3(c)(ii) has been removed as the proposed language was contradictory to Principle 20.2.2.
- Principle 34.7 has been amended to include Extraordinary Circumstance Allowance and Regulatory Compliance Costs administrative hearing and informal review process.
- Principle 34.7.3 has been amended to expand informal review request timeframe to sixty (60) days from thirty (30) days.

Fiscal impact of rule:

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

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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 §1812-G(18)
Chapter number/title: **Ch. 128**, Certified Nursing Assistant and Direct Care Worker
Registry Rule
Filing number: **2019-079**
Effective date: 6/15/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule is intended to comply with the 2015 amendments to 22 MRS §1812-G, “Maine Registry of Certified Nursing Assistants and Direct Care Workers”.

Basis statement:

The Department is repealing and replacing the current rule in force, 10-144 CMR ch. 128, *Rules Governing the Maine Registry of Certified Nursing Assistants*, and adopting new rule, 10-144 CMR ch. 128, *Certified Nursing Assistants and Direct Care Workers Registry Rule*, in order to comply with the requirements of 22 MRS §1812-G, “Maine Registry of Certified Nursing Assistants and Direct Care Workers”, as amended by PL 2015 c. 196, §9, and PL 2015, c 494.

This rule governs the use and operation of the Certified Nursing Assistant and Direct Care Worker Registry. The Registry provides a resource for employers to verify that an individual is eligible for employment as a Certified Nursing Assistant, and also identifies individuals who are ineligible for employment as a Direct Care Worker due to criminal convictions or substantiated complaints of abuse, neglect or misappropriation of property.

The adopted rule updates current rule to reflect the statutory changes to 22 MRS §1812-G, “Maine Registry of Certified Nursing Assistants and Direct Care Workers”, enacted in 2015. The statutory changes expanded the scope of the Registry to include Direct Care Workers, also known as Unlicensed Assistive Persons. In addition, the proposed rule clarifies waiver and appeal processes, clarifies offenses that disqualify an individual from employment as a Certified Nursing Assistant or Direct Care Worker for a specified time period, and updates the content of the Registry to comply with statute.

The adopted rule will repeal and replace the current rule. This is necessary because of extensive revisions to and reorganization of the rule, due to the amendment of §§22 MRS 1812-G. The most substantive changes are listed below:

- The structure of the rule was changed from six sections to four. Sections 2, Eligibility for Placement and Continued Listing on the CNA Registry, 3 Training and Competency Programs for CNAs, and 4 CNA Registry Operation, were merged as new Section 2, Registry Operation and Content.

Changes to the current content of 10-144 CMR, Ch. 128, Rules Governing the Maine Registry of Certified Nursing Assistants were adopted:

- **Section 1, Definitions:** A number of definitions were removed, as they were no longer used in rule, sufficiently clear in rule.
- **Former Section 2, Eligibility for Placement and Continued Listing on the CNA Registry:** Section 2.1, Provider verification of a CNA’s listing, was removed, as it is stated as a requirement in 22 MRS 1812-G(5). Section 2.2.3.1. “Notice of Renewal”, was removed, as it is an internal process, not a requirement for licensees. Sections

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2.4.1, 2.4.1.3, and 2.4.1.3.1 were removed, as the Division determined they were unnecessary requirements. Section 2.6, Excluded from employment restrictions, was removed as it was inconsistent with 22 MRS §1812-G.

- **Former Section 3, Training and Competency Programs for CNAs:** Sections 3.2.1.2, Notice of employment restrictions, and 3.2.1.3, Criminal background check, were removed, as they are requirements for a CNA training program, and thus are not in Registry purview.
- **Former Section 4, CNA Registry Operation:** Section 4.2.5 was removed, as it described a licensing function.
- **Former Section 5, Denial or Removal from the CNA Registry:** An internal reference within 5.2 Nondisclosure of conviction is misrepresentation (to Section 2.3.1.3.1) was removed, as it created a very narrow definition for non-disclosure (limited only to failure to provide requested court records).
- **Former Section 6, Petitions and Appeals:** The wording in Section 6.2, Petition for Removal of a Finding of Neglect, was changed for accuracy (the finding remains on record, but the annotation may be removed from the Registry).

In addition, new content was added in the adopted rule, 10-144 CMR ch. 128, *Certified Nursing Assistants and Direct Care Workers Registry Rule*:

- **Section 1, “Definitions”:** The definitions of abuse, neglect, and misappropriation of property were amended to reflect statutory language. A definition for “annotated” was added. A definition for “Department” was added. A definition for “direct care worker” was added, replacing the definition of Unlicensed Assistive Person. The definition of “non-traditional Certified Nursing Assistant” was clarified. The definition of “CNA Registry” was replaced with a definition of “Registry”. A definition of “substantiated finding” was added. The definition of “training and competency evaluation program” was simplified, to avoid repetition of the content of the rule.
- **Section 2, “Registry Operation and Content”:** The following sections were added, in accordance with the revision of 22 MRS §1812-G: H. D.C.W. Registry administration, and I. D.C.W. Registry content (including all subsections).
- **Section 3, “Work Disqualification and Annotations”:** The following sections were added, in accordance with the revision of 22 MRS §1812-G: A. Disqualifying criminal offenses, B. Other disqualifying offenses, and C. Substantiated Findings.
- **Section 4, “Petitions and Appeals”:** The following sections were added, in accordance with the revision of 22 MRS §1812-G: A. C.N.A. petitions, B. D.C.W. petitions, and C. Any petition for removal of an employment ban due to criminal conviction.
- To comply with 22 MRS Sec. 1812-G(6-A), the rule has a provision requiring that CNA training programs secure or pay for a background check on each individual who applies for enrollment. In addition, the training program must notify individuals, prior to enrollment, that a background check will be conducted and that certain disqualifying offenses, including criminal convictions, may prohibit an individual from working as a CNA.

Earlier versions of the draft rule attempted to include greater measures to register Direct Care Workers (DCWs) for “training, education and compliance purposes” (see 22 MRS 1812-J (4)), and to address due process for the complaint investigations referenced in 22 MRS §1812-J (2). Ultimately, after extensive research on the number and type of DCWs in the state, the range of training programs (and lack of oversight by the Department), and the various rules addressing the investigation and substantiation of allegations of abuse, neglect, and misappropriation of property in the various settings employing DCWs, the Division opted to

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follow the recommendation of the AAG assigned to conduct the pre-review. That recommendation was that the language of 22 MRS §1812-J(4) (“The Department....may register an unlicensed assistive person or direct care worker for training, education and compliance purposes...”) was permissive, and that the rule should therefore put the mandatory requirements of 22 MRS §1812-G(4) (“The Department shall list an unlicensed assistive person employed as a direct care worker with disqualifying offense notation ...”) into rule. Accordingly, the adopted rule includes annotation of DCWs on the Registry only when they are ineligible for employment.

The Department made several changes to the proposed rule, in response to comments and also in response to the Maine State Board of Nursing’s revision of 02-380 CMR ch. 5, *Regulations Relating to Training Programs and Delegation by Registered Professional Nurses of Selected Nursing Tasks to Certified Nursing Assistants*, effective January 30, 2019. That rule eliminated the “bridge course” that was previously required for CNAs trained outside of the state of Maine.

Fiscal impact of rule:

This rule is not anticipated to have a fiscal impact on municipalities, the Department, or registrants.

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Agency name: Department of Health and Human Services, **Maine Center for Disease Control and Prevention (Maine CDC)**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS ch. 160
Chapter number/title: **Ch. 220**, Radiation Protection Rule
Filing number: **2019-080**
Effective date: 5/20/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule applies to all persons who receive, possess, use, transfer, own or acquire any source of radiation in order to protect the health, safety and welfare of the people of Maine. This rule is designed to institute and maintain a regulatory program for sources of ionizing radiation, and to provide for compatibility and equivalency with the standards and regulatory programs of the federal government, an integrated effective system of regulation within the State, and a system consonant insofar as possible with those of other states. These changes to this rule correct errors/omissions and clarify current requirements of this rule. The corrections to this rule were received from the Nuclear Regulatory Commission as comments that are necessary to maintain compatibility of this rule with the federal regulations. The changes proposed clarify references and omissions in the earlier adopted rule.

Basis statement:

The Department of Health and Human Services, Maine Center for Disease Control and Prevention (Department), advertised rulemaking changes for 10-144 CMR ch. 220, the *Radiation Protection Rule*, on December 19, 2018, and held a public hearing on January 8, 2019. The comment period ended on January 18, 2019. No one attended the hearing, and the Department received no comments related to the rulemaking.

The *Atomic Energy Act of 1954*, Section 274, provides the statutory basis under which the U.S. Nuclear Regulatory Commission (NRC) relinquishes portions of its regulatory authority to state agencies to license and regulate byproduct materials (radioisotopes), source materials (uranium and thorium), and certain quantities of special nuclear materials. The mechanism for the transfer of NRC's authority to a state is an agreement signed by the Governor of each state and the Chairman of the NRC Commission, in accordance with section 274b of the Act. As an "agreement state," Maine must remain compliant with the NRC's requirements to regulate sources of ionizing radiation and to maintain the public health and safety with respect to those materials covered in the agreement.

As an agreement state, Maine's regulations must be identical to the NRC's regulations for federal radioactive materials licensees, to achieve compatibility with health and safety categories established in the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedures SA-200.

Therefore, the Department is adopting these changes to the rule, to implement corrections recommended by the NRC via communications dated: August 31, 2006, June 18, 2010 and July 14, 2015. In 2010, the Department amended the Radiation Protection Rule, primarily to change fees. At that time, the Department was unable to address all the NRC's recommendations from its August 31, 2006 correspondence. This current rulemaking implements all corrections not yet addressed from the NRC's 2006 recommendations, as well as all others recommended in the NRC's 2010 and 2015 correspondence to the Department.

These corrections ensure alignment with federal radiation regulations, by correcting errors/omissions and clarifying rule requirements. These rule changes make it easier for the

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regulated entities to comply, due to the correction of errors and greater consistency with federal and state radiation rules outside of Maine. The Department made the following changes:

- Part A: updated text for the definition of Total Effective Dose Equivalent (TEDE) to read, “means the sum of the effective dose equivalent for external exposures and...” to comply with 10 CFR §20.1003;
- Part C(3)(A)(1): added a reference to “C.3.A.(4)” to comply with 10 CFR §30.14;
- Part C(6)(C)(1): updated references in four paragraphs of Parts C(6)(C)(1), (2), (3) and (4) to comply with 10 CFR §31.5;
- Part C(6)(C)(3)(c): added a reference to “C.6.C(3)(b)” to comply with 10 CFR §31.5(c)(3);
- Part C(6)(C)(3)(e): added, “and, in the case of detection of 0.005 microcurie or more removable radioactive material or failure of or damage to a source likely to result in contamination of the premises or the environs, a plan for ensuring that the premises and environs are acceptable for unrestricted use, must be furnished to the Agency” to comply with 10 CFR §31.5;
- Part C(6)(C)(3)(i)(i): removed reference to “10 CMR §31.51” as this regulation does not exist;
- Part C(6)(I)(1): updated the reference from “C.6.B(1)” to “C.6.C.(1)” to comply with 10 CFR §31.6;
- Part C(8)(F)(3): added, “Each applicant for a specific license authorizing the possession and use of more than 100 mCi of source material in a readily dispersible form shall submit a decommissioning funding plan as described in C.8.F(5).” This addition allows Maine to comply with 10 CFR §40.36;
- Part C(8)(F)(4)(a): Added regulations for decommissioning funding plans to come into compliance with 10 CFR 40.36 and 10 CFR §70.25;
- Part C(8)(F)(5): added requirements for cost interval requirements and funding plans to comply with 10 CFR §70.25;
- Part C(11)(A)(1): removed this section to comply with 10 CFR §32.11;
- Part C(11)(A)(2): removed this section to comply with 10 CFR §32.12;
- Part C(11)(J)(2)(5): updated reference to C.11.J.(2)(b)(i) and (iii) to comply with 10 CFR §32.72(b)(5)(vii);
- Part C(11)(L)(3): removed language from this section to comply with 10 CFR §32.74;
- Part D (2006): update this section and added, “waste by any waste generator, waste collector, or waste processor licensee, as defined, who ships low-level waste either directly or indirectly through a waste processor to a licensed low-level waste land disposal facility” to comply with 10 CFR §20.2006;
- Part D (2006)(c): update reference to “Section III of Appendix D” to comply with 10 CFR §20.2006;
- Part D (2006)(D): update reference to “Section IV of Appendix D” to comply with 10 CFR §20.2006;
- Part D Appendix B: add “nitrogen” and “oxygen” to comply with 10 CFR 20 Appendix B.
- Remove Part G (57)(A)(3) as it is a duplicate of Part G(57)(B)(3);
- Part G(190)(C)(1)(b)(ii): change the phrase “Calibrating instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;” to “Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters” to comply with 10 CFR §35.190;
- Part G(290)(A)(1): update references to read, “includes the topics listed in paragraphs G.290.C(1)(a) through G.290.C(1)(b)(viii)” to comply with 10 CFR §32.290;

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- Part G(290)(C)(1)(b) and Part G(290)(C)(2): update references to read, “in G.57, G.290 or G.390 and G(290)(C)(1)(b)(vii)” to comply with 10 CFR §32.290;
- Part G(290)(C)(2): include a reference to “G.290.A.1.” to comply with 10 CFR §32.290.
- Part G(390) update the reference to “G.57” to comply with 10 CFR §35.390;
- Part G(390)(A)(1): change reference to “G.390.B.(1)(b)(vii) and...” to comply with 10 CFR §35.390;
- Part G(390)(B)(2): update reference from “G.390.B.(2)” to G.390.A.(1). and G.390.B.(1)(b)(vii) or G.390.B.(1)” to comply with 10 CFR §35.390;
- Part G(392): update reference from “G.392” to “G.57” to comply with 10 CFR §35.392;
- Part G(392)(C)(3): update reference to read, “as specified in G.390.B(1)(b)(vii)(a) or (b)” instead of “G.390.B(1)(a)(vii)(a) or (b)” to comply with 10 CFR §35.392;
- Part G(396)(A): update reference to read, “for uses listed in G.390.B(1)(b)(vii)(c) and/or G.390.B(1)(b)(vii)(d) to comply with 10 CFR §35.396;
- Part G(396)(D)(2) and (3): update references to read, “as specified in G.390.B(1)(b)(vii)(c) and/or G.390.B(1)(b)(vii)(d) to comply with 10 CFR §35.396;
- Part G(690)(B)(2): update reference to read, “supervised work experience required by G.690.B.(1)(b)” to comply with 10 CFR §35.690;
- Part G(490)(B)(3): include a reference to “G.490.A(1)” to comply with 10 CFR §35.490;
- Part G(491)(B)(3): deleted the reference to “G.491.A.” to comply with 10 CFR §35.491;
- Part G(690)(B)(3): update section to read, “completed the requirements in G.690.A(1) or G.690.B(1) and G.690.B(2) and G.690.B(4)” to comply with 10 CFR §35.690;
- Part L(1)(B): removed reference to 10 CFR §71.22; and
- Non-substantive formatting changes were made throughout.

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Maine Center for Disease Control and Prevention**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §42
Chapter number/title: **Ch. 259** (*Repeal*), Rules Establishing Blind Seroprevalence Surveys for Occurrence of HIV in Newborns
Filing number: **2019-212**
Effective date: 12/4/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The *Rules Establishing Blind Seroprevalence Surveys for Occurrence of HIV in Newborns* originally became effective on July 2, 1998. The rule's intent was to establish procedures for a seroprevalence survey to target public health efforts to control HIV and to ensure the anonymity of all test subjects. The rule provides information on the purpose of the seroprevalence survey; procedures for the survey; and penalties for noncompliance with the rule.

This rule is specific to a study involving newborn bloodspot specimens that occurred between 1988 and 1993. The Department determined there is no impact to the clients served as a result of this rule being repealed. The repeal of this rule does not impact other Departments or Offices and does not result in any additional costs or savings to the Department.

Due to the fact that this rule has never been updated, the survey has long been out of existence and the statute that authorized the Department to adopt this rule has been repealed, 10-144 CMR ch. 259 is no longer necessary and is being repealed.

Fiscal impact of rule:

The rule is not expected to have a fiscal impact on municipalities or counties.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Maine Center for Disease Control and Prevention**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 1951, 3173
Chapter number/title: **Ch. 273** (*Repeal*), Rules for the SSI Children's Program of Services
Filing number: **2019-213**
Effective date: 12/4/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The *Rules for the SSI Children's Program of Services* originally became effective on May 19, 1980. The rule's intent was to provide medical and health services to children receiving SSI when referred to the program by the Social Security Administration. The rule provides information on eligibility, services provided and reimbursed through the program, provider reimbursement, confidentiality, and right of appeal.

This rule relates to services that have long been provided through other state agencies and is, therefore, no longer necessary at the Maine CDC. Services are no longer provided pursuant to this rule. The repeal of this rule will not impact other Departments and will not result in any additional costs or savings to the Department. The rule has never been updated. Therefore, the Department is repealing this rule.

Fiscal impact of rule:

The rule is not expected to have a fiscal impact on municipalities or counties.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Maine Center for Disease Control and Prevention**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 2173, 3173
Chapter number/title: **Ch. 282 (Repeal)**, Prenatal Care Program
Filing number: **2019-220**
Effective date: 12/11/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Maine CDC repeals this rule. The Prenatal Care Program rule was originally adopted to define and describe the program standards necessary, that encouraged pregnant adolescent women to obtain prenatal care, including those who lacked healthcare insurance or the financial resources necessary to obtain prenatal care.

Pregnant women 18 years or younger can become eligible for prenatal services under similar eligibility criteria through 10-144 CMR ch. 332, *MaineCare Eligibility Manual* and through the Maine Center for Disease Control and Prevention, Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) program. No services are provided pursuant to this rule. Therefore, the Department has determined that this rule is no longer necessary and is proposing its repeal.

Basis statement:

The Prenatal Care Program Rule had an original effective date of September 27, 1983, which established the Prenatal Care Program. This program provided eligible pregnant adolescent women with a mechanism for payment for routine prenatal care. The rule's intent was to encourage pregnant adolescent women who lacked healthcare insurance or financial resources to obtain prenatal care. The rule established client confidentiality requirements; eligibility criteria; services offered through the program; authorization of services and provider reimbursement guidelines; procedures for closure of client files; and a program appeals process.

The rule was last updated in 1988. The Prenatal Care Program has been out of existence for many years. Pregnant women 18 years or younger can obtain prenatal services under similar eligibility criteria through 10-144 CMR ch. 332, *MaineCare Eligibility Manual* and through the Maine Center for Disease Control and Prevention, Special Supplemental Nutrition Program for Women, Infants and Children (WIC). Services are no longer provided pursuant to 10-144 CMR Ch. 282, and the Prenatal Care Program is no longer funded.

The repeal of 10-144 CMR ch. 282 will have no impact on clients because the Prenatal Care Program no longer exists and is no longer funded. Pregnant women 18 years or younger may be eligible for help with paying for prenatal services through MaineCare and through the Maine CDC WIC program, which use eligibility criteria similar to the Prenatal Care Program's eligibility criteria. The repeal of this rule does not result in any additional costs or savings to the Department. Therefore, the Department has determined that this rule is no longer necessary.

Fiscal impact of rule:

The rule is not expected to have a fiscal impact on municipalities or counties.

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Rules Adopted January 1, 2019 to December 31, 2019
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 §1904
Chapter number/title: **Ch. 287** (*Repeal*), Rules for Family Planning Funding
Filing number: **2019-219**
Effective date: 12/4/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rule was established to ensure that all State contracts for family planning services include assurances that State contractors are in compliance with federal Title X Program Guidelines for Project Grants for Family Planning Services. Recent changes to the federal Title X Program Guidelines would not permit Maine health care providers who receive Title X funding to discuss all possible health care options with its clients. Pursuant to 5 MRS §8054, the Department finds that the emergency adoption and repeal of 10-144 CMR ch. 287 is necessary to avoid an immediate threat to public health, safety or general welfare. The repeal of this rule ensures continued access to a wider variety of health care services by allowing the State to set its own requirements for program standards through contract negotiations with providers. The *Rules for Family Planning Funding* do not contain enforcement mechanisms nor is there a statutory authority cited in the rule.

Basis statement:

The *Rules for Family Planning Funding* do not contain enforcement mechanisms, nor is there any statutory authority for this rule. This rule was established to ensure that all State contracts for family planning services include assurances that State contractors are in compliance with federal Title X Program Guidelines for Project Grants for Family Planning Services.

Recent changes to the federal Title X Program Guidelines would not permit Maine health care providers who receive Title X funding to discuss all available health care options, including abortion services, with their patients. Therefore, pursuant to 5 MRS §8054, the Department finds that the emergency adoption and repeal of 10-144 CMR ch. 287 is necessary to avoid an immediate threat to public health, safety or general welfare. The Department is repealing this rule through the emergency rulemaking process to prevent a disruption in health care service. The repeal of this rule ensures continued access to all health care services in accordance with program standards and requirements established within provider contracts. Providers can continue to treat patients through services as currently offered. The emergency repeal of this rule does not create additional restrictions on providers.

The Department determined that there is no impact to the clients served as a result of this rule being repealed. Clients already benefit from program language and standards within provider contracts. Program requirements are defined by contract on a case-by-case basis. In addition, there is no impact to providers based on the emergency repeal of this rule as providers are already familiar with the service (and are currently providing that service to their contract requirements). Services will continue in the same manner, as program standards and requirements within existing provider contracts remain unchanged.

The emergency repeal of *The Rules for Family Planning*, 10-144 CMR ch. 287, will be effective for 90 days. During this 90-day time period, the Department will propose routine technical rulemaking to permanently repeal this rule.

Fiscal impact of rule:

(No response)

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Maine Center for Disease Control and Prevention**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 1951, 3173
Chapter number/title: **Ch. 288** (*Repeal*), Parenting Education Scholarship Program
Filing number: **2019-115**
Effective date: 7/29/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The program within the Department of Health and Human Services, Maine CDC, is no longer in existence. Therefore, the rule is no longer necessary.

Basis statement:

The Parenting Education Scholarship Program rule was originally adopted on April 22, 1987, due to a program established by Maine CDC (formerly known as the Bureau of Health), to ensure families access to this parenting scholarship type, regardless of a lack of financial resources to purchase such services.

22 MRS §1951 does not require the Department to implement and fund the Parenting Education Scholarship Program. This program went out of existence years ago. Therefore, the rule governing this non-existent program is being repealed.

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.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(1), 3104-A
Chapter number/title: **Ch. 301**, Food Supplement Program, **FS Rule #203A** (State Funded Non-Citizen Hardship), Section FS-111-2
Filing number: **2019-082**
Effective date: 5/28/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Previously this was a limited period exception set to end when funding was exhausted or by June 30, 2015. Per court order, the Department has reinstated this hardship exception.

Basis statement:

Previously, state-funded Food Supplement recipients who were eligible under the waiting for work documentation hardship were closed when they received work documentation. In accordance with the Law Court's decision in *Manirakiza v. Department of Health and Human Services*, 2018 ME 10, those recipients will now be potentially eligible anytime they are unemployed.

This rule allows state-funded Food Supplement recipients (and their children under 18) who were eligible due to the hardship of waiting for work documentation to be potentially eligible once work documentation is received, anytime they are unemployed.

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

Fiscal impact of rule:

It is estimated that this rule will cost the State of Maine \$595,242 per year.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(1), 3104-A
Chapter number/title: **Ch. 301**, Food Supplement Program, **FS Rule #206A** (Simplified Reporting): Introduction, Sections FS-666-6, 999-1
Filing number: **2019-083**
Effective date: 6/1/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this rule is to simplify the reporting requirements for Maine's Food Supplement Program. Maine utilized simplified six-month reporting for the majority of calendar years 2009 through 2015. Under these reporting requirements Maine realized significant administrative efficiencies by reducing the reporting burden for our recipients. These efficiencies will lead to faster application and recertification processing and will improve customer service for all of Maine's programs. Simplified reporting will also have a positive impact on Maine's Payment Error Rate (PER) by more closely aligning our reporting requirements with other states. Changing to simplified reporting requires the addition of a six-month report which is less burdensome on recipients than certifications, but helps ensure program integrity throughout the certification period.

Basis statement:

The current change reporting rules require recipients to report numerous changes including; changes in employment if there is an associated change in income, changes of more than \$50 in the amount of gross monthly unearned income, all changes in household composition, changes in residence and the resulting change in shelter costs, various changes in assets and changes in the legal obligation to pay child support. Under the adopted rule most households will only be required to report if their income exceeds 130% of the federal poverty level (FPL) between certification(s) and their six-month report. A six-month report is required between certifications for many simplified reporting households. Six-month reports require clients to update certain aspects of their case without requiring an interview.

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

Fiscal impact of rule:

None anticipated.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Office for Family Independence**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 42(1), 3104; 7 CFR §273.9(d)(6)(i); *Agriculture Improvement Act of 2018*, PL 115-334

Chapter number/title: **Ch. 301**, Food Supplement Program, **FS Rule #207A** (Homeless Shelter Deduction): **Section FS-555-5**

Filing number: **2019-159**

Effective date: 9/3/2019

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The purpose of this rule is to comply with the *Agriculture Improvement Act of 2018*, PL 115-334, which changed the value of the homeless shelter deduction.

Basis statement:

This rule changes the value of the homeless shelter deduction from \$143 to \$147.55. This value is used in the budgeting of Food Supplement benefits for homeless households which incur or reasonably expect to incur shelter costs during a month, unless higher shelter costs can be verified.

Fiscal impact of rule:

None anticipated.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 5 MRS §8054; 22 MRS §42(1); 7 CFR 273.24(f)
Chapter number/title: **Ch. 301**, Food Supplement Program, **FS Rule #210E** (ABAWD Geographic Exemption)
Filing number: **2019-172**
Effective date: 9/30/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

Federal SNAP (Food Supplement) regulations provide that certain able-bodied adults without dependents (ABAWDs) are subject to a maximum of three months of benefits over a 36-month period, unless they work 20 hours or more per week (averaged monthly) or participate in and comply with requirements of a work program. Individuals who reside in certain geographic areas can qualify for an exception to this time limit under 7 CFR §273.24(f).

The Department proposes to waive these work requirements for certain ABAWDs residing in geographic areas that have unemployment rates at or above 10% or have insufficient jobs for recipients residing in those areas. The geographic areas include 247 qualifying cities, towns, unorganized territories, townships, and reservations that qualify individually or as part of a federally defined labor market area. Upon adoption of these rules, ABAWDs residing in those areas will no longer have to meet the work requirements to receive Food Supplement.

An emergency rule change is necessary to comply with the conditions Food and Nutrition Services (FNS) placed on the waiver. The waiver was approved on August 22, 2019 with the stipulation that the effective date is prior to October 1, 2019. This timeframe does not allow for the rule making process, under 5 MRS §8052, and still implement the waiver by the required date of September 30, 2019. Therefore, the Department is using emergency rulemaking as allowed under 5 MRS §8054 to ensure the health and general welfare of Maine citizens residing in the affected regions.

Basis statement:

The Department is adopting rules that waive work requirements for certain able-bodied adults without dependents (ABAWDs) residing in geographic areas that have unemployment rates at or above 10% or have insufficient jobs for recipients residing in those areas. The geographic areas include 247 qualifying cities, towns, unorganized territories, townships, and reservations that qualify individually or as part of a federally defined labor market area. Upon adoption of these rules, ABAWDs residing in those areas will no longer have to meet the work requirements to receive Food Supplement benefits.

Fiscal impact of rule:

None anticipated.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 5 MRS §8054; 22 MRS §42; 7 CFR 273.9(d)
Chapter number/title: **Ch. 301**, Food Supplement Program, **FS Rule #209E**: COLA SUA FFY 2020
Filing number: **2019-173**
Effective date: 10/1/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

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

Basis statement:

Federal regulation 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 1. 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. This year's FNS directives also included an update to the threshold for required reporting of changes in household income. FNS annually approves utility allowances calculated by states. The utility allowance values were calculated using a methodology specific to Maine energy cost changes from the Federal Fiscal Year (FFY) 2018 to FFY 2019 heating season.

The final income allowance, standard and excess shelter deductions, minimum and maximum benefit levels; and the threshold for required reporting of changes in household income were distributed by FNS on July 24, 2019. The final values for Maine's Standard/heating cooling, non-heat and phone allowances were approved by the USDA Food and Nutrition Service on August 9, 2019. (There was no change in the phone allowance from FFY 2019 to FFY 2020.)

Fiscal impact of rule:

This rule will not have an impact on municipalities 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(1); 7 CFR 273.24(f)
Chapter number/title: **Ch. 301**, Food Supplement Program, **FS Rule #210A:** ABAWD Geographic Waiver
Filing number: **2019-253**
Effective date: 12/29/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Federal SNAP (Food Supplement) regulations provide that certain able-bodied adults without dependents (ABAWDs) are subject to a maximum of three months of benefits over a 36-month period, unless they work 20 hours or more per week (averaged monthly) or participate in and comply with requirements of a work program. Individuals who reside in certain geographic areas can qualify for an exception to this time limit under 7 CFR §273.24(f).

The Department proposes to waive these work requirements for certain ABAWDs residing in geographic areas that have unemployment rates at or above 10% or have insufficient jobs for recipients residing in those areas. The geographic areas include 247 qualifying cities, towns, unorganized territories, townships, and reservations that qualify individually or as part of a federally defined labor market area. Upon adoption of these rules, ABAWDs residing in those areas will no longer have to meet the work requirements to receive Food Supplement.

Basis statement:

The Department is adopting rules that waive work requirements for certain able-bodied adults without dependents (ABAWDs) residing in geographic areas that have unemployment rates at or above 10% or have insufficient jobs for recipients residing in those areas. The geographic areas include 247 qualifying cities, towns, unorganized territories, townships, and reservations that qualify individually or as part of a federally defined labor market area. Upon adoption of these rules, ABAWDs residing in those areas will no longer have to meet the work requirements to receive Food Supplement benefits.

Fiscal impact of rule:

None anticipated. Food Supplement benefits are federally funded. The Department expects some costs in modifying its eligibility system, but also anticipates reduced administrative burden due to a waiver of the time limit.

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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; 7 CFR 273.8
Chapter number/title: **Ch. 301**, Food Supplement Program, **FS Rule #208A:** Removal of the Elderly Disabled Asset Limit
Filing number: **2019-254**
Effective date: 12/24/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule removes asset limits for households that qualify for broad based categorical eligibility and in which all members are either elderly or disabled. The purpose of this rule is to improve program access and allow two of Maine's most vulnerable populations to participate in the Food Supplement Program without liquidating their household assets. Additionally, this rule will reduce administrative burden on the Department and help to improve Maine's Payment Error Rate.

Basis statement:

This rule removes asset limits for select households that qualify for broad based categorical eligibility in which all members are either elderly or disabled. The purpose of this rule is to improve program access and allow many of Maine's most vulnerable residents to participate in the Food Supplement Program without liquidating their household assets. Additionally, this rule will reduce administrative burden on the Department and help to improve Maine's Payment Error Rate.

The rule that implemented the current asset limit of \$5,000 for Broad-Based Categorical Households was put into effect in November 2015. Since that time the Department has witnessed a reduction of Federally Funded Food Supplement participants of the Elderly and Disabled demographic. The intent of this rule is to remove the asset limit for the Elderly and Disabled population which will increase program access and participation.

Fiscal impact of rule:

None anticipated.

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Rules Adopted January 1, 2019 to December 31, 2019
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); 7 CFR 273.89(d)
Chapter number/title: **Ch. 301**, Food Supplement Program, **FS Rule #209A:** COLA SUA FFY 2020
Filing number: **2019-257**
Effective date: 12/29/2019
Type of rule: Routine Technical
Emergency rule: No

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).

Charts are included in this rule to create a historical record. This record will: facilitate accurate eligibility determinations when months in multiple federal fiscal years are calculated at the same time; facilitate more timely calculation of historical benefits in the cases of Quality Assurance reviews and payment errors; and provide a quick reference for recipients and community partners when trying to determine why benefits have fluctuated from one year to another.

Clarification is provided of budgeting for individuals residing in certain approved institutions that provide the majority of meals. This language will provide clarity for our eligibility staff, recipients, community partners, and the Department's administrative hearings unit.

Basis statement:

7 CFR §273.9 requires that Food Supplement Program 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 1. 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. This year, an update to the threshold for required reporting of changes in household income was also included. FNS annually approves utility allowances calculated by states. The utility allowance values were calculated using a methodology specific to Maine energy cost changes from the FFY 2018 to FFY 2019 heating season.

This rule moves these figures from various areas scattered throughout the text to a collection of charts at the end of the Manual. Many points in the Manual reference these figures. For simplicity, the figures will be in charts in a single place and the other sections will reference those charts. Charts are included in this rule to create a historical record. This record will: facilitate accurate eligibility determinations when months in multiple federal fiscal years are being calculated at the same time; facilitate more timely calculation of historical benefits in the cases of Quality Assurance reviews and payment errors; and provide a quick reference for recipients and community partners when trying to determine why benefits have fluctuated from one year to another.

This rule adds verbiage clarifying the calculation of benefits for individuals residing in certain approved institutions that provide the majority of meals, to the extent that those calculations reference these annually updated figures.

The adopted version of this rule varies from the proposed version to incorporate changes that were made by other rules adopted in the interim.

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The organization of the information in section FS-444-8 was revamped for clarity as a result of comments.

Fiscal impact of rule:

Direct costs to the Department include the cost of rulemaking activity, and necessary technology changes such as changes to ACES (all of which are covered by the existing budget for such changes). Food Supplement benefits are 100% federally funded so the benefit changes will not have a direct cost to the Department. Changes to State-funded Food Supplement benefit levels will have a minor impact that will be absorbed with current General Fund budgeting.

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

Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §42(1), 5 MRS §8054
Chapter number/title: **Ch. 323**, General Assistance Program Manual: **GA 22E**, Access for Certain Non-Citizens
Filing number: **2019-124**
Effective date: 7/18/2019
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

This rule amends sections II and IV of the *Maine General Assistance Manual*. The Maine Legislature amended the definition of "eligibility" in the Municipal General Assistance law through PL 2015 ch. 324, codified at 22 MRS §4301(3), by adding the following sentence:

"Beginning July 1, 2015, in accordance with 8 *United States Code*, Section 1621(d), "eligible person" means a person who is lawfully present in the United States or who is pursuing a lawful process to apply for immigration relief, except that assistance for such a person may not exceed 24 months."

These rule changes broaden the scope of the definitions for "lawfully present" and "pursuing a lawful process to apply for immigration relief," in Section II, as well as amend the "Immigration Status" provisions in Section IV, consistent with the 2015 law. As set forth more specifically, below, these changes are necessary and proper for the protection of life, health and welfare, and the successful operation of Maine's health and welfare laws. 22 MRS §42(1).

Pursuant to 5 MRS §8054, the Department finds that emergency rulemaking is necessary to implement these changes as soon as possible given the recent influx of noncitizens, into Maine, who are at the first stages of the asylum-seeking process. Obtaining legal employment while their applications for asylum are pending is often difficult or impossible. These residents thus require immediate assistance with basic needs such as shelter and food. Various Maine municipalities are expending both privately and publicly sourced emergency funds for such care, and have opened emergency shelters to provide temporary housing. Adjacent municipalities have offered assistance of various sorts, but such aid is limited by their own municipal budgetary restrictions. The anticipated exhaustion of local resources will cause a critical problem with the provision of assistance to such migrants, many of them children, including medicine, food and shelter. Pursuant to 22 MRS §4301 (3), these rule changes require municipalities to provide General Assistance to eligible asylum seekers, and allow municipalities to obtain state funding for same. Modification of the usual rulemaking procedures under the *Maine Administrative Procedure Act* is necessary to meet the immediate threat to public health, safety and welfare that would arise if rules addressing this emergency could not be enacted without delay.

This emergency rule will take effect immediately and may be in effect for up to ninety days. 5 MRS §8054. To avoid any lapse in policy, the Department will promptly begin routine technical proposed rulemaking.

The Department does not anticipate any adverse impact to municipalities or small businesses as a result of this rule. Some cities and towns have been providing this assistance

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at a local cost. The Department estimates that this rule change will shift approximately \$732,000.00 of the cost from municipal budgets to the state budget for state fiscal year 2020.

Fiscal impact of rule:

Some cities and towns have been providing this assistance as a local cost. The Department estimates that this rule change will shift approximately \$732,000 of the cost from municipal budgets to the state budget for state fiscal year 2020.

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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**, General Assistance Program Manual: **GA 22**, Access for Certain Non-Citizens
Filing number: **2019-176**
Effective date: 10/16/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

In 2015, the Maine Legislature amended the definition of “eligibility” in the Municipal General Assistance law through PL 2015 ch. 324, codified at 22 MRS §4301(3), by adding the following sentence: “Beginning July 1, 2015, in accordance with 8 *United States Code*, Section 1621(d), “eligible person” means a person who is lawfully present in the United States or who is pursuing a lawful process to apply for immigration relief, except that assistance for such a person may not exceed 24 months.” The terms “lawfully present” and “pursuing a lawful process to apply for immigration relief” were not defined in the statute. In April 2016 the Department adopted regulations defining those terms.

On July 18, 2019, the Department adopted emergency rules, which amended the definition of “lawfully present” and “pursuing a lawful process to apply for immigration relief” in Section II of the regulation. The emergency rule broadened the definitions to include asylum seekers who provide proof that they are taking “reasonable good steps” to apply for immigration relief, including pursuit of asylum or other adjustments of immigration status. The definition of “pursuing a lawful process to apply for immigration relief” also set forth what types of documentation would be required to prove that an individual was taking reasonable, good faith steps to apply for immigration relief with the U.S Citizenship and Immigration Services or before an immigration judge. In addition, the emergency rule made the following changes to Section IV(N): (1) required those individuals provide satisfactory proof to the municipalities, as defined in Section II, that they are either lawfully present or pursuing a lawful process to apply for immigration relief; and (2) required municipalities to provide relevant information to the Department upon request, for purposes of program integrity and coordination and prevention of duplication of services. Pursuant to 5 MRS §8054, the emergency rules can be in effect for up to 90 days.

This rulemaking makes the July 18, 2019 emergency changes permanent. Pursuant to 5 MRS §8052, the Department finds that permanent rulemaking is necessary to conform the General Assistance Program to existing law particularly given the ongoing influx, into Maine, of noncitizens who are at the first stages of seeking asylum or other immigration status. Obtaining legal employment while their applications are pending is often difficult or impossible. These residents thus require immediate assistance with basic needs such as shelter and food. Various Maine municipalities expend both privately and publicly sourced emergency funds for such care, and have opened emergency shelters to provide temporary housing. Adjacent municipalities offer assistance of various sorts, but such aid is limited by their own municipal budgetary restrictions. If the emergency rule is not made permanent, the anticipated exhaustion of local resources will cause a critical problem with the provision of assistance to such migrants, many of them children, including medicine, food and shelter.

In addition to the July 18, 2019 emergency changes, the Department proposes to amend the definition of “eligible person” in Section II, so that it more closely comports with the statutory definition in 22 MRS §4301(3).

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Basis statement:

This rule amends sections II, and IV of the *Maine General Assistance Manual*.

In 2015, the Maine Legislature amended the definition of “eligibility” in the Municipal General Assistance law through PL 2015 ch. 324, codified at 22 MRS §4301(3), by adding the following sentence: “Beginning July 1, 2015, in accordance with 8 United States Code, Section 1621(d), “eligible person” means a person who is lawfully present in the United States or who is pursuing a lawful process to apply for immigration relief, except that assistance for such a person may not exceed 24 months.” The terms “lawfully present” and “pursuing a lawful process to apply for immigration relief” were not defined in the statute. In April 2016 the Department adopted regulations defining those terms.

On July 18, 2019, the Department adopted emergency rules, which amended the definition of “lawfully present” and “pursuing a lawful process to apply for immigration relief” in Section II of the regulation. The emergency rule broadened the definitions to include asylum seekers who provide proof that they are taking “reasonable good steps” to apply for immigration relief, including pursuit of asylum or other adjustments of immigration status. The definition of ‘pursuing a lawful process to apply for immigration relief’ also set forth what types of documentation would be required to prove that an individual was taking reasonable, good faith steps to apply for immigration relief with the U.S. Citizenship and Immigration Services or before an immigration judge. In addition, the emergency rule made the following changes to Section IV(N): (1) required those individuals provide satisfactory proof to the municipalities, as defined in Section II, that they are either lawfully present or pursuing a lawful process to apply for immigration relief; and (2) required municipalities to provide relevant information to the Department upon request, for purposes of program integrity and coordination and prevention of duplication of services.

This rulemaking proposes to make the July 18, 2019 emergency changes permanent.

Fiscal impact of rule:

Some cities and towns were providing this assistance as a local cost. The Department estimates that this rule change will shift approximately \$732,000 of the cost from municipal budgets to the state budget for state fiscal year 2020.

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Rules Adopted January 1, 2019 to December 31, 2019
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 §3790-A
Chapter number/title: **Ch. 330** (*New*), Higher Opportunity for Pathways to Employment (HOPE) Program Rules
Filing number: **2019-256**
Effective date: 1/1/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule implements state law by defining the way the HOPE Program determines program eligibility, and delivers program assistance, supports, and navigation to low-income parents and caregivers who are attending training or education programs.

Basis statement:

The Maine State Legislature enacted PL 2017 ch. 387, codified at 22 MRS §3790-A which authorized the Department to establish a student financial aid program based on need, called the Higher Pathways to Employment (HOPE) Program.

This new rule governs the HOPE program. The rule introduces requirements for HOPE Program services, which are supports to low-income parents and caregivers attending educational institutions, which promote attainment of educational goals. The rule provides for an application process, financial and non-financial eligibility and participation requirements, verification and reporting responsibilities, types of eligible training/education programs, and support services conditions. This rule defines navigation services available to HOPE participants. The rule provides for an appeal process for applicants and participants.

This benefit is a limited one. The Legislature limited the number of participants to 500. The Legislature also authorized the Commissioner to limit or suspend enrollment or program services to the extent necessary to avoid negative effects to services provided under the Temporary Assistance for Needy Families program pursuant to Title 22 ch. 1053-B or from the operation of the Additional Support for People in Retraining and Employment – Temporary Assistance for Needy Families program pursuant to Title 22 ch. 1054-A.

The Department does not anticipate any adverse impact to municipalities or small businesses as a result of this rule. Local school districts may see increased use of adult education offerings as students enroll in short-term occupational trainings or remedial course work required for entry to degree programs.

Fiscal impact of rule:

The estimated fiscal impact is \$2,166,582 in Block Grant spending. The costs for implementing HOPE Program rules are covered under the Temporary Assistance for Needy Families block grant and funds transferred from that block grant to the social services block grant and the Child Care and Development Fund block grant.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §3762(3)(B)(d)
Chapter number/title: **Ch. 331**, Maine Public Assistance Manual (TANF), **Rule #110A** (State Funded Non-Citizen Hardship)
Filing number: **2019-084**
Effective date: 6/1/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule is promulgated to comply with Maine statute that requires the Department to provide cash assistance in certain circumstances to legally admitted aliens who would be eligible for the TANF program but for their status as aliens under PRWORA. The rule adds an eligibility category for legally admitted aliens who have obtained proper work documentation from USCIS but who have not yet obtained employment.

Other Changes:

In addition to the change in policy, this proposed rule also contains the following changes to correct formatting or punctuation errors or to clarify intent:

Section III(b) – Changed “An” to “a”

Section III(b)(3) – Corrected bullet list type

Section IV-Corrected Section number.

Section IV(a)(E) – Corrected citations

Section IV(a)(2) – Clarified that eligibility for a Pregnant Woman grant is dependent on whether there are other TANF otherwise eligible children in the home.

Section IV(b)(2)(B)(v)-Made wording consistent with prior paragraph.

Section IV(b)(2)(B)(iii) – Corrected punctuation

Section V(b)(3) – Corrected citation

Section V(b)(1) – Clarified policy when a caretaker relative opts off the TANF grant and claims the TANF children as tax dependents. This was left out in error during the recent repeal and replace of Ch. II.

Section V(d)- Clarified that an SSI or State Supplement individual must receive a benefit in order to opt out of the TANF AG.

Section V(d)(1) and (2)-Clarified when an otherwise eligible caretaker relative of an SSI child may receive TANF while excluding the other eligible children in the household.

Fiscal impact of rule:

Costs associated with the rule are anticipated to be \$393,582 annually.

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

Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 5 MRS §8054; 22 MRS §§ 42(1), 3769-C
Chapter number/title: **Ch. 331**, Maine Public Assistance Manual (TANF), **Rule #113E** (TANF Max Benefit 2019)
Filing number: **2019-174**
Effective date: 10/1/2019
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(1)(D).

Basis statement:

This rule is promulgated to comply with Maine statute 22 MRS §3769-C(1)(D), which requires the Department to increase the Temporary Assistance for Needy Families (TANF) maximum benefit on an annual basis by the amount of the cost of living allowance as determined by the Social Security Administration. The statute also requires the Department to make a related increase to the standard of need, provided the funds are available.

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

Fiscal impact of rule:

Based on the level of benefits issued in SFY19, the impact of a 2.8% COLA increase is estimated to be \$545,097 annually. This impact would be in the TANF Block Grant (015) funding.

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Rules Adopted January 1, 2019 to December 31, 2019
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), **Rule #113A** (TANF Max Benefit 2019)
Filing number: **2019-243**
Effective date: 12/30/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

A rule change is necessary to comply with 22 MRS §3769-C(1)(D).

Basis statement:

This rule is promulgated to comply with Maine statute 22 MRS §3769-C(1)(D), which requires the Department to increase the Temporary Assistance for Needy Families (TANF) maximum benefit on an annual basis by the amount of the cost of living allowance as determined by the Social Security Administration. The statute also requires the Department to make a related increase to the standard of need, provided the funds are available.

Fiscal impact of rule:

Based on the level of benefits issued in SFY19, the impact of a 2.8% COLA increase is estimated to be \$545,097 annually. This impact would be in the TANF Block Grant (015) funding.

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

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Rules Adopted January 1, 2019 to December 31, 2019
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, 42(8), 3174-G(1)(H); 42 CFR §435.119

Chapter number/title: **Ch. 332**, MaineCare Eligibility Manual, **MC Rule #290E** (Medicaid Expansion): **Part 3**, Eligibility Groups Requirements; **Part 4**, Budgeting - MAGI

Filing number: **2019-015**

Effective date: 1/18/2019

Type of rule: Routine Technical

Emergency rule: Yes

Principal reason or purpose for rule:

These emergency rule changes implement the MaineCare expansion as set forth in 22 MRS §3174-G(1)(H), which was enacted through a citizens' initiative on November 7, 2017 (the "Expansion Act"). The Expansion Act requires the Department to provide covered MaineCare services to adults ages 19 through 64 who satisfy the eligibility requirements as set forth more specifically below and in the *MaineCare Eligibility Manual* (the "Expansion Population"). The Expansion Act requires the Department to submit a State Plan Amendment ("SPA") to the Centers for Medicare and Medicaid Services ("CMS") and engage in rulemaking to implement coverage for the Expansion Population.

Basis statement:

On April 30, 2018, a lawsuit was filed in Superior Court under M.R. Civ. P. 80C challenging the Department's failure to submit a SPA to begin coverage for the Expansion Population. *Maine Equal Justice Partners vs. Commissioner, Department of Health and Human Services*, BCD-AP-18-02. On June 4, 2018, the Court entered an order requiring the Department to submit a SPA by June 11, 2018. The Department timely appealed that order to the Law Court. On August 23, 2018, the Law Court dismissed the appeal as interlocutory and directed that the matter be remanded to the Superior Court for expedited review and analysis of the facts and law.

Given this development, and the requirements of the June 4, 2018 order, on September 4, 2018, the Department filed SPA #s 18-006 and 18-007 with CMS. On or about October 24, 2018, CMS informed the Department that, in addition to the first two SPAs, it must file an Alternative Benefit Plan ("ABP") SPA. The Department began working on the ABP SPA and continued its communications with CMS regarding the two other pending SPAs.

On November 21, 2018, the Superior Court entered an order finding, among other things, that the effective date of the Expansion Act is January 3, 2018, and thus 180 days from the effective date is July 2, 2018; the Court ordered that July 2, 2018 should be the date of implementation of the Expansion Act. It ordered that the Department amend the eligibility SPA (#18-006) to reflect an effective date of July 2, 2018, and ordered that, by December 5, 2018, the Department must adopt rules retroactive to July 2, 2018.

The Department appealed the November 21, 2018 order, requesting clarification and a partial stay. On December 6, 2018, the Superior Court denied the Department's motion for clarification/partial stay, but changed the deadline for adopting rules from December 5, 2018 to February 1, 2019. On December 10, 2018, the Department appealed the November 21, 2018 order to the Law Court and filed a motion to expedite the appeal. On December 18, 2018, the Law Court denied the motion to expedite.

On December 21, 2018, the Department filed its ABP SPA with CMS.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

On January 3, 2019, Governor Mills sent a letter to U.S. DHHS Secretary Azar and CMS Administrator Seema Verma attaching an amendment to the three outstanding SPAs to amend the effective date to July 2, 2018, and also submitting responses to CMS's Requests for Additional Information on SPA #s 18-0006 and 18-0007. Similarly, on January 3, 2019, Governor Mills issued EXECUTIVE ORDER #01-FY 19/20 ordering the Department to take all steps to implement the Expansion Act, including working with CMS as well as the Legislature in order to ensure financial sustainability.

Expansion Act Rule

The rule updates Parts 3 and 4 of the *MaineCare Eligibility Manual* to establish an eligibility category for adults age 19 through 64 who meet the following requirements: are not pregnant; are not eligible for or currently receiving Medicare Part A or Medicare Part B; are not otherwise eligible for Medicaid in the State of Maine; and have income less than or equal to 133% of the federal poverty level ("FPL"). The rule also distinguishes between two types of parent/caretaker relatives: those with income under 133% FPL who do not meet the current qualifications for parent/caretaker relatives under Part 3, Section 2.2; and those with income between 100-133% FPL who do meet the qualifications for parent/caretaker relatives under Sec. 2.2. The Department makes this distinction for purposes of receipt of the proper amount of federal matching funds. Pursuant to 42 CFR 435.119(c), if a parent/caretaker relative has a dependent child living in the home under the age of 21, the child must be receiving benefits under Medicaid, CHIP or otherwise be enrolled in minimum essential health coverage as defined in 42 CFR §435.4.

The referendum provides authority to adopt rules on an emergency basis if necessary to implement the program in a timely manner. Pursuant to 5 MRS §8054, the Department further finds that emergency rulemaking is necessary to implement the Expansion Act as soon as possible, particularly given the background set forth, above. Members of the Expansion Population may need covered health services urgently, and thus this rule should take effect immediately to further public health and safety.

Individuals who are eligible and who applied for coverage between July 2, 2018 and January 2, 2019, may be eligible for coverage back to the first day of the month of application, and if requested up to three months retroactive, but no earlier than July 2, 2018.

Fiscal impact of rule:

An estimated \$525 million federal dollars will enter Maine's economy annually, in payments to healthcare providers.

Approximately 70,000 Mainers will be newly eligible for MaineCare. Interest groups and hospitals have increased staff volume to assist those newly eligible with the application process. There is no expected impact on other Maine businesses.

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Rules Adopted January 1, 2019 to December 31, 2019
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, 42(8), 3174-G(1)(H); 42 CFR §435.119
Chapter number/title: **Ch. 332**, MaineCare Eligibility Manual, **MC Rule #290A** (Medicaid Expansion): **Part 3**, Eligibility Groups Requirements; **Part 4**, Budgeting – MAGI; **Part 18**, Presumptive Eligibility Determined by Hospitals
Filing number: **2019-063**
Effective date: 4/17/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule change implements the MaineCare expansion as set forth in 22 MRS §3174-G(1)(H), which was enacted through a citizens’ initiative on November 7, 2017 (the “Expansion Act”). The Expansion Act requires the Department to provide covered MaineCare services to adults ages 19 through 64 who satisfy the eligibility requirements as set forth more specifically below and in the *MaineCare Eligibility Manual* (the “Expansion Population”). The Expansion Act requires the Department to submit a State Plan Amendment (“SPA”) to the Centers for Medicare and Medicaid Services (“CMS”) and engage in rulemaking to implement coverage for the Expansion Population.

The Department initially made these changes through emergency rulemaking pursuant to 5 M.R.S. §8054. Those changes were effective January 18, 2019 and shall expire after ninety days. The Department files this rule to finally adopt the changes required for MaineCare expansion.

Background

On April 30, 2018, a lawsuit was filed in Superior Court under M.R. Civ. P. 80C challenging the Department’s failure to submit a SPA to begin coverage for the Expansion Population. *Maine Equal Justice Partners vs. Commissioner, Department of Health and Human Services*, BCD-AP-18-02. On June 4, 2018, the Court entered an order requiring the Department to submit a SPA by June 11, 2018. The Department timely appealed that order to the Law Court. On August 23, 2018, the Law Court dismissed the appeal as interlocutory and directed that the matter be remanded to the Superior Court for expedited review and analysis of the facts and law.

Given this development, and the requirements of the June 4, 2018 order, on September 4, 2018, the Department filed SPA #s 18-006 and 18-007 with CMS. On or about October 24, 2018, CMS informed the Department that, in addition to the first two SPAs, it must file an Alternative Benefit Plan (“ABP”) SPA. The Department began working on the ABP SPA and continued its communications with CMS regarding the two other pending SPAs.

On November 21, 2018, the Superior Court entered an order finding, among other things, that the effective date of the Expansion Act is January 3, 2018, and thus 180 days from the effective date is July 2, 2018; the Court ordered that July 2, 2018 should be the date of implementation of the Expansion Act. It ordered that the Department amend the eligibility SPA (#18-006) to reflect an effective date of July 2, 2018, and ordered that, by December 5, 2018, the Department must adopt rules retroactive to July 2, 2018.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

The Department appealed the November 21, 2018 order, requesting clarification and a partial stay. On December 6, 2018, the Superior Court denied the Department's motion for clarification/partial stay, but changed the deadline for adopting rules from December 5, 2018 to February 1, 2019. On December 10, 2018, the Department appealed the November 21, 2018 order to the Law Court and filed a motion to expedite the appeal. On December 18, 2018, the Law Court denied the motion to expedite.

On December 21, 2018, the Department filed its ABP SPA with CMS.

On January 3, 2019, Governor Mills sent a letter to U.S. DHHS Secretary Azar and CMS Administrator Seema Verma attaching an amendment to the three outstanding SPAs to amend the effective date to July 2, 2018, and also submitting responses to CMS's Requests for Additional Information on SPA #s 18-0006 and 18-0007. Similarly, on January 3, 2019, Governor Mills issued EXECUTIVE ORDER #01-FY 19/20 ordering the Department to take all steps to implement the Expansion Act, including working with CMS as well as the Legislature in order to ensure financial sustainability.

On April 3, 2019, CMS approved all three of Maine's Medicaid expansion SPAs, effective July 2, 2018.

Expansion Act Rule

The rule updates Parts 3 and 4 of the MaineCare Eligibility Manual to establish an eligibility category for adults age 19 through 64 who meet the following requirements: are not pregnant; are not eligible for or currently receiving Medicare Part A or Medicare Part B; are not otherwise eligible for Medicaid in the State of Maine; and have income less than or equal to 133% of the federal poverty level ("FPL"). Part 3 Section 2.4 of the rule also distinguishes between two types of parent/caretaker relatives for purposes of receipt of the proper amount of federal matching funds. Maine previously provided MaineCare coverage to parent/caretaker relatives with income under 100% FPL, pursuant to Part 3, Section 2.2. Maine continues to offer this coverage for parent/caretakers under 100% FPL. In addition, Maine now provides coverage under Medicaid expansion to parent/caretakers with income between 100% and 133% FPL. Pursuant to 42 CFR 435.119(c) and 2.4, if a parent/caretaker relative with income between 100% and 133% FPL has a dependent child living in the home under the age of 21, the child must be receiving benefits under Medicaid, CHIP or otherwise be enrolled in minimum essential health coverage as defined in 42 CFR §435.4.

As a result of comments, the Department made some changes to improve the clarity of Part 3, Section 2.4 with regard to the parent/caretaker group distinctions. The Department also updated Part 4, Section 4 to reflect the changes made in Part 3, Section 2.4. Those changes are specifically set forth in the Summary of Comments and Responses and List of Changes to the Final Rule.

Furthermore, as a result of legal review by the Office of the Attorney General, the Department finds that it must update Part 18 of the MaineCare Eligibility Manual to add the Expansion Group to the list for hospital presumptive eligibility determinations.

Individuals who are eligible and who applied for coverage between July 2, 2018 and January 2, 2019, may be eligible for coverage back to the first day of the month of application, and if requested up to three months retroactive, but no earlier than July 2, 2018.

Finally, the Department also added reference to, "*Types of countable income are described in Part 17*" in various provisions in order to improve clarity of the manual.

Fiscal impact of rule:

To be determined.

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

Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173; 42 USC §1396a *et seq.*
Chapter number/title: **Ch. 332**, MaineCare Eligibility Manual, **MC Rule #291A** (SBW Premium Rule)
Filing number: **2019-229**
Effective date: 1/1/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The increase of monthly premiums, required under certain circumstances for enrollment in the Special Benefits Waiver (SBW) program, is necessary to comply with the waiver agreement (Maine Section 1115 Health Care Reform Demonstration for Individuals with HIV/AIDS, Part V, Paragraph 21) between The Department of Health and Human Services (DHHS) and The Centers for Medicare and Medicaid Services (CMS).

Basis statement:

This rule makes changes to Chart 3.8 - Premiums for Special Benefit Waiver of the MaineCare Eligibility Manual. It sets the monthly premium for individuals enrolled in the Special Benefits Waiver [10-144 CMR ch. 101, *MaineCare Benefits Manual*, ch. X section 1, "Benefit for People Living with HIV/AIDS"]. For persons with income equal to or less than 150% of the Federal Poverty Level (FPL) the monthly premium remains at zero. The current monthly premium is \$35.93 for people with income between 150.1% of the FPL up to and including 200% of the FPL, and \$71.85 for people with income between 200.01% and 250% of the FPL. The chart details the annual 5% increases to these premiums, beginning with the current figures for 2019 and providing prospective figures through the year 2028.

The changes are necessary to comply with federal law and the waiver agreement between the Maine Department of Health and Human Services (DHHS) and the Centers for Medicare and Medicaid Services (CMS), through which this initiative is operated (See Maine Section 1115 Health Care Reform Demonstration for Individuals with HIV/AIDS, Part V, Paragraph 21).

The rule will not be implemented until it has been adopted, properly filed with the Secretary of State and becomes effective in accordance with 5 MRS §§ 8001, 8052, *Maine Administrative Procedure Act*.

Fiscal impact of rule:

The Department does not anticipate an adverse impact on small businesses or municipalities. Direct costs to the Department include the cost of rulemaking activity and necessary technology changes (which are covered by existing budget for such things). Based on current participation at each premium level of the SBW program, the Department anticipates a gross increase in revenue from these premiums of three thousand six hundred thirty-one dollars and ninety-two cents (\$3,631.92) for state fiscal year 2020, and three hundred seventy-four thousand, six hundred fifty-four dollars and sixty-four cents (\$374,654.64) for the duration of the rule (January 1, 2020 through December 31, 2028).

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Rules Adopted January 1, 2019 to December 31, 2019
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 ch. 418 §2140; 5 MRS §§ 8054, 8073
Chapter number/title: **Ch. (New).** Death with Dignity Act Reporting Rule
Filing number: **2019-170**
Effective date: 9/19/2019
Type of rule: Major Substantive
Emergency rule: Yes

Principal reason or purpose for rule:

The Department is adopting this emergency major substantive rule to comply with the Maine Death with Dignity Act ("Act"), 22 MRS §2140, and to exercise the Department's authority to collect certain data from healthcare providers related to patient-directed care at the end of life and to establish criteria for witnesses to patients making written requests for life-ending medications when the patients reside at long-term care facilities.

Basis statement:

The Department of Health and Human Services ("Department") is adopting this new rule pursuant to PL 2019 ch. 271, *An Act to Enact the Maine Death with Dignity Act* (effective September 19, 2019), codified at 22 MRS §2140 (the "Act"); pursuant to the Department's emergency rulemaking authority under 5 MRS §§ 8054 and 8073; and in response to the Governor's Executive Order 9 FY 19/20, "An Order Implementing the Death with Dignity Act" (June 12, 2019).

The underlying legislation establishes criteria for when a physician may prescribe medication to certain qualified patients for the purpose of the patient self-administering the medication to end the patient's life in a humane and dignified manner. 22 MRS §2140. In addition to setting forth numerous requirements for the patient, the attending physician, other health care providers, and others, the law requires the Department to collect and review documentation related to patient-directed care at the end of life for compliance purposes and for use in compiling an annual report to the Legislature. *Id.* §2140(17). The Department is also tasked with establishing criteria for one of the two witnesses to the patient's written request for medication if the patient is residing at a long-term care facility. *Id.* §2140(5)(E). To meet these requirements, the Department is adopting this rule which sets forth protocol for healthcare providers involved in patient end-of-life decisions to produce documentation and information to the Department, describes the data to be collected through Department-generated forms, and advises providers on reporting deadlines.

The terms of the rule are consistent with those set forth in the Act. In addition, the adoption of this rule will address the concerns outlined in the Governor's Executive Order about the implementation of the Act by providing clear guidance through rulemaking to healthcare providers so as to help prevent the potential for abuse. Consistent with the Executive Order, the rule also contemplates that the Department will act within the scope of its authority to collect additional data not prescribed in the Act so as to ensure provider compliance and to aid in the Department's production of a useful and meaningful statistical report that monitors the impact of the Act. To that end, the Department has consulted with stakeholders with expertise in end-of-life care to solicit input pertaining to data elements, form accessibility, and witness qualifications, and will continue to do so.

Findings of Emergency: The Department is adopting this major substantive rule on an emergency basis to coincide with the September 19, 2019 effective date of the Act. Although the Act requires the Department to adopt rules within six months, 22 MRS §2140(17)(C), the

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Department believes that immediate adoption of the rule is necessary to avoid an immediate threat to public health, safety, or general welfare. 5 MRS §8054(1) and §8073. Consistent with the Governor's Executive Order, the Department finds there is a potential for abuse and inappropriate pressure on patients facing end-of-life decisions which could be exacerbated by the rule - which serves as a means of ensuring compliance with the Act - not being in place at the time the Act takes effect.

In conjunction with this emergency rulemaking, the Department will be engaging in the major substantive rulemaking process to permanently adopt the rule following legislative review. 5 MRS §5072. In the meantime, this emergency major substantive rule adoption will be effective for up to 12 months or until the Legislature has completed its review of the rule the Department intends to permanently adopt.

Fiscal impact of rule:

No significant fiscal impact.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Office of Child and Family Services**
Umbrella-Unit: **10-148**
Statutory authority: 22 MRS §42
Chapter number/title: **Ch. 6**, Child Care Subsidy Program Rules
Filing number: **2019-206**
Effective date: 11/26/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule clarifies program definitions and program eligibility standards. The rule repeals and replaces the existing rule and will implement the federal regulations at 45.CFR.98.11. The rule incorporates current best practices and federal requirements under the *Child Care and Development Block Grant (CCDBG) Act of 2014* in the operation of the Child Care Subsidy Program.

Basis statement:

The Department repeals the previous rule and replaces it with this adopted rule to update and clarify program definitions and eligibility standards, as well as to ensure Maine's Child Care Subsidy Program complies with updated federal rules that went into effect September 23, 2016 governing the Department's administration of Child Care and Development Block Grant funds. 45 CFR §98. The Department adopts these rules with the following changes:

Section 9(F)(G): The Department added Emergency Preparedness and Response Planning to comply with 45 CFR §98.16(aa) and 98.41(a)(1)(vii). The adopted rule requires the Department to have a statewide child care disaster plan and all child care providers have in place an emergency preparedness and response plan.

Section (1)(10),(79): The Department updated the rule pursuant to 45 CFR §98.21(a)(5) to add conditions of eligibility to the child care subsidy award on re-determination period of no less than 12 months. This includes a new definition of "Temporary Change".

Section 9(G): The Department added Health and Safety Standards to comply with 45 CFR. §98.41 and §98.42(b)(2)(iv)(A). The rule requires the Department to set health and safety standards on the ten (10) health and safety requirements provided for in 45 CFR §98.41. All Providers must complete the health and safety training within ninety (90) calendar days of beginning their work with children.

Section 9(E): The Department added Health and Safety Standards to comply with 45 CFR §98.43. The rule requires the Department to have policies and procedures in place for Providers to have a criminal background check prior to beginning work with a child. The background check must include; Child Protective Services (CPS), State Bureau of Identification (SBI) with fingerprints, Department of Motor Vehicle (DMV), State Sex Offender Registry, National Crime Information Center National Sex Offender Registry, and FBI fingerprint check using Next Generation Identification.

Various technical, non-substantive changes relating to section numbers, spelling, formatting, and grammar have been made throughout the rules.

Fiscal impact of rule:

No fiscal impact anticipated.

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

Agency name: Department of Health and Human Services, **Office of Substance Abuse and Mental Health Services**
Umbrella-Unit: **14-118**
Statutory authority: 22 MRS §§ 42, 2353; 5 MRS §8054
Chapter number/title: **Ch. 19** (*New*). Rules Governing Community-Based Drug Overdose Prevention Programs
Filing number: **2019-078**
Effective date: 5/16/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Department is adopting this new rule pursuant to 22 MRS §2353(4). This emergency rulemaking will also further the Department's efforts to address the ongoing opioid crisis and the directives of the Governor's Executive Order 2 FY 19/20, *An Order to Implement Immediate Responses to Maine's Opioid Epidemic*.

Basis statement:

The Department of Health and Human Services ("Department") is adopting this new rule pursuant to PL 2015 ch. 351 §2, *An Act To Expand Access To Lifesaving Opioid Overdose Medication* (effective July 12, 2015), codified at 22 MRS §2353(2); pursuant to the Department's emergency rulemaking authority under 5 MRS §8054; and in response to the Governor's Executive Order 2 FY 19/20, *An Order To Implement Immediate Responses to Maine's Opioid Epidemic* (effective February 6, 2019).

The underlying legislation allows for the establishment of community-based drug overdose prevention programs. 22 MRS §2353(4). Acting under the standing order of a licensed health care professional, a community-based agency may acquire the opioid antagonist naloxone hydrochloride for the dual purpose of dispensing the medication to certain populations and of distributing the medication to individuals who have successfully completed training to possess and administer the medication. To implement this legislation, the Department is adopting this emergency rule to establish various policies and procedures, including on: standing orders to community-based agencies; the storage of naloxone hydrochloride; to whom the medication can be dispensed under the standing order; minimum training requirements for when the medication can be distributed to an individual who seeks to be able to possess and administer naloxone in an overdose situation; and what written documentation and recordkeeping is required of the community-based agency.

The adoption of this emergency rule will coincide with other initiatives by the Department already underway pursuant to the Governor's Executive Order. This includes the Department contracting with and providing funding to community-based agencies with overdose prevention programs so that naloxone hydrochloride can be readily and widely available to individuals at risk of an opioid-related drug overdose as well as to friends, family, and others in a position to assist individuals who may be experiencing an opioid-related drug overdose.

The Department is adopting this rule on an emergency basis pursuant to 5 MRS §8054. There is an ongoing opioid epidemic in the State which claimed the lives of 418 individuals in 2017 alone. Given the urgent need to address this public health crisis, the Department has determined that immediate adoption of this rule is necessary in order to further avoid an immediate threat to public health, safety or general welfare.

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This emergency rule will take effect immediately upon adoption and will be in effect for ninety days. 5 MRS §8054. To avoid any lapse in policy, the Department is concurrently engaging in the routine technical rulemaking process.

Fiscal impact of rule:

There are no expected fiscal impacts of this rule. This rule will only clarify policies and procedures regarding distribution and administration.

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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 Substance Abuse and Mental Health Services**
Umbrella-Unit: **14-118**
Statutory authority: 22 MRS §§ 42, 2353; 5 MRS §8054
Chapter number/title: **Ch. 19** (*New*). Rules Governing Community-Based Drug Overdose Prevention Programs
Filing number: **2019-144**
Effective date: 8/13/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department is adopting this new rule pursuant to 22 MRS §2353(4). This rulemaking will also further the Department's efforts to address the ongoing opioid crisis and the directives of the Governor's Executive Order 2 FY 19/20, *An Order to Implement Immediate Responses to Maine's Opioid Epidemic*.

Basis statement:

The Department of Health and Human Services ("Department") is adopting this new rule pursuant to PL 2015 ch. 351 §2, *An Act To Expand Access To Lifesaving Opioid Overdose Medication* (effective July 12, 2015), codified at 22 MRS §2353(2); pursuant to the Department's emergency rulemaking authority under 5 MRS §8054; and in response to the Governor's Executive Order 2 FY 19/20, *An Order To Implement Immediate Responses to Maine's Opioid Epidemic* (effective February 6, 2019).

The underlying legislation allows for the establishment of community-based drug overdose prevention programs. 22 MRS §2353(4). Acting under the standing order of a licensed health care professional, a community-based agency may acquire the opioid antagonist naloxone hydrochloride for the dual purpose of dispensing the medication to certain populations and of distributing the medication to individuals who have successfully completed training to possess and administer the medication. To implement this legislation, the Department adopted an emergency rule on May 16, 2019 that established various policies and procedures, including on: standing orders to community-based agencies; the storage of naloxone hydrochloride; to whom the medication can be dispensed under the standing order; minimum training requirements for when the medication can be distributed to an individual who seeks to be able to possess and administer naloxone in an overdose situation; and what written documentation and recordkeeping is required of the community-based agency. This routine technical rule adopts those same policies and procedures on a permanent basis

The adoption of this rule will coincide with other initiatives by the Department already underway pursuant to the Governor's Executive Order. This includes the Department contracting with and providing funding to community-based agencies with overdose prevention programs so that naloxone hydrochloride can be readily and widely available to individuals at risk of an opioid-related drug overdose as well as to friends, family, and others in a position to assist individuals who may be experiencing an opioid-related drug overdose.

Fiscal impact of rule:

There are no expected fiscal impacts of this rule. This rule will only clarify policies and procedures regarding distribution and administration.

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

Agency name: Department of Labor, Bureau of Labor Standards, **Board of Occupational Safety and Health**
Umbrella-Unit: **12-179**
Statutory authority: 26 MRS §570
Chapter number/title: **Ch. 8**, Occupational Safety and Health Standards for Whistleblowers / Discrimination in the Public Sector
Filing number: **2019-110**
Effective date: 7/7/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this chapter is to incorporate by reference where applicable rules governing Occupational Safety and Health as promulgated by the Federal Occupational Safety and Health Administration at 29 CFR Part 1977 as of June 1, 2018.

Basis statement:

Adoption of this work rule establishes procedures and standards to prohibit discrimination against public employee(s) reporting unsafe and unhealthful working conditions.

Fiscal impact of rule:

(No response)

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Labor, Bureau of Labor Standards, **Board of Occupational Safety and Health**
Umbrella-Unit: **12-179**
Statutory authority: 26 MRS §571
Chapter number/title: **Ch. 9**, Occupational Safety and Health Standards for Issuing Variances in the Public Sector
Filing number: **2019-111**
Effective date: 7/7/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this chapter is to incorporate by reference where applicable rules governing Occupational Safety and Health as promulgated by the Federal Occupational Safety and Health Administration at 29 CFR Part 1905 as of June 1, 2018.

Basis statement:

Adoption of this work rule establishes procedures and standards for application, review and issuance of variance(s) that ensure safe and healthful working conditions for public employees.

Fiscal impact of rule:

(No response)

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Labor, Bureau of Labor Standards, **Board of Occupational Safety and Health**
Umbrella-Unit: **12-179**
Statutory authority: 26 MRS §565
Chapter number/title: **Ch. 10**, Occupational Safety and Health Standards for Section 108 Consultation Guidelines in the Public Sector
Filing number: **2019-112**
Effective date: 7/7/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this chapter is to incorporate by reference where applicable rules governing Occupational Safety and Health as promulgated by the Federal Occupational Safety and Health Administration at 29 CFR Part 1908 as of June 1, 2018.

Basis statement:

Adoption of this work rule establishes procedures and standards outlining consultation guidelines for public employers/employees.

Fiscal impact of rule:

(No response)

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

Agency name: Department of Labor, Bureau of Labor Standards, **Board of Occupational Safety and Health**
Umbrella-Unit: **12-179**
Statutory authority: 26 MRS §565
Chapter number/title: **Ch. 6**, Recording of Occupational Injuries and Illnesses in the Public Sector
Filing number: **2019-225**
Effective date: 12/15/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The purpose of Work Rule ch. #6 is to incorporate by reference rules governing the recording of occupational injuries and illnesses as promulgated by the Federal Occupational Safety and Health Administration (OSHA) at 29 CFR Part 1904; this chapter was most recently amended on September 5, 2019.

Fiscal impact of rule:
(No response)

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Rules Adopted January 1, 2019 to December 31, 2019
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:
West Vinalhaven
Filing number: 2019-005
Effective date: 1/6/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to implement conservation closure west of Vinalhaven within Lower Penobscot 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 inside islands west of Vinalhaven within the Lower Penobscot Bay Rotational Area.

Basis statement:

The Department is taking emergency rulemaking action to implement a targeted conservation closure in the inside islands west of Vinalhaven to restrict harvest and preserve the remaining legal sized scallop resource for resource rebuilding. This area closure is within Zone 2.

West of Vinalhaven

This area opened for harvest on December 1st, 2018 with approximately 25 boats concentrated within the islands west of Vinalhaven. Effort was strong during the first week, as Zone 1 was not yet open. By week 2, the number of boats in the area dropped to 15 or so, as some boats returned to Zone 1. By week four effort remains around 20 boats that have now spread from the inner islands to west and south of the area.

Spring survey stations were concentrated inside the islands. This also represents where most the effort has taken place. This area will have been open to harvest for 21 days. Information denotes the relative abundance of harvestable biomass, shown as size frequency of scallops present in the rotational area prior to the season opening and after the first ten days of harvest. The overall decrease in available harvestable biomass was approximately 46%. The additional 11 days of harvest opportunity were not fully utilized due to weather and tides; however, resource extraction continued at a reduced level such that a closure is now warranted.

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 West Vinalhaven portion within the Lower Penobscot 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).

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Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)
Chapter number/title: Ch. 11, Scallops: Targeted Scallop Conservation Closures: Wohoa Bay within the Wohoa/ Western Bay Rotational Area; Cobscook Bay including Whiting and Denny's Bay
Filing number: 2019-022
Effective date: 1/27/2019
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 Wohoa Bay within the Wohoa/Western Bay Rotational Area. Additionally, the Zone 3 harvesting calendar in Cobscook Bay will be reduced to one day only for drag (Monday, January 28, 2019) and dive (Saturday, February 2, 2019), followed by a conservation closure in Cobscook Bay including Whiting and Denny's bay on Sunday, February 3, 2019. These closures are required 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 these areas 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. Immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in Wohoa Bay in Zone 2 and Whiting, Denny and Cobscook Bays in Zone 3.

Basis statement:

The Department is taking emergency rulemaking action to implement targeted conservation closures in Wohoa Bay within Zone 2 and Cobscook, Whiting and Denny's Bays within Zone 3 to restrict harvest and preserve the remaining legal sized scallop resource for resource rebuilding.

Wohoa Bay

This area opened for harvest on December 1st, 2018 with approximately 20 boats concentrated within the upper portion of the rotational area in the first week, spread between Moosabec Reach over to Tibbett Narrows. By week 2, the number of boats in the area dropped to a dozen or so, with reports that the effort within Moosebec Reach was greatly reduced. At the end of December, less than 10 boats were in the area, searching between Little Pond Head and Western Way. All reports received during January indicate that 1 to 4 boats occasionally enter the area, and have not been able to reach a daily limit.

Spring survey stations were spread throughout the rotational area, with many station tows resulting in 0 observations of scallops. Wohoa/Western Bay Rotational Area had the lowest mean harvestable density of all the surveyed rotational areas in April 2018. While weather has been a factor to limit activity in this area, all reports indicate that scallop resource extraction occurred mostly during the month of December. What legal scallop resource remains needs to be conserved as broodstock.

Cobscook Bay

Effort within Cobscook Bay in December was estimated at 60 to 70 boats, and quickly ramped up to 85 harvest vessels by the end of December and has leveled out at 100 boats for the last several weeks of January. This season, the harvest effort was not clustered like previous years; boats were spread out into all sections of Cobscook Bay. There has been a steady effort of 20-25 boats harvesting in the Whiting/Denny's Bay Limited Access Area on Mondays.

Two in-season surveys have been completed within the Cobscook and Whiting/Denny's Bay areas to monitor resource removals levels, occurring first on December 28-30, 2018 and second survey on January 15-17, 2019. Results from the first survey indicated that most harvest effort

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was occurring in Johnson Bay, coinciding with harvester and marine patrol reports. While the survey did not warrant conservation closures after 10 harvest days, results from the second in-season survey, after 20 days of harvesting, indicate the overall scallop density in Cobscook Bay has decreased by 36%, with both Johnson Bay and South Bay slightly exceeding the target; 42% and 44% respectively. However, Whiting and Denny's Bay has experienced a decrease in harvestable density of 19% only. There has been little change in density in the Breakwater sites, yet the density has been lower than previous years.

The comparison of harvestable densities between Johnson Bay (8.06 g/m² in 2018 vs 5.97 g/m² 2017) and the Breakwater (9.17 g/m² in 2018 vs 3.24 g/m² 2019) is an important indicator that overall scallop legal biomass has declined from previous season (see Table 1 & 2). Thus, in addition to there being a relative decline by 40%, there is also a broad scale decrease in the available biomass of scallops within Cobscook Bay. However, there is a very strong year class of just below legal scallops available for the future season.

Qualitative information from both marine patrol and active harvesters in the area have observed that sublegal sized cut shells have been coming up in commercial tows. These reports that small scallop product is being harvested is also observed in the science survey size frequency data in which scallops below legal size experienced a decline in density over the course of the two in-season surveys. This information also factored into the rationale for this closure. Cobscook Bay has high proportions of both seed and sublegal product that would incur damage, if harvest continued with the existing 100 boats in the area.

General comments from harvesters this season indicate smaller meats overall, when compared to the last two previous seasons. Additionally, there were less hotspots with high densities of scallops; the resource was also spread out more evenly. These observations from harvesters are also shown within the data; the annual fall scallop surveys, occurring annually in November, with the starting densities of individual areas being lower than in previous years.

Considering that there is still available legal product to be harvested within the Whiting/Denny's Bay Limited Access Area, and additionally effort has been minimal in the East Bay portion, we are allowing one additional harvest day to occur for each the drag and dive sector of the scallop fishery prior to the closing of Cobscook, Whiting and Denny's Bays. Harvest may occur on Monday, January 28, 2018 for the drag sector with the ability to access either Cobscook Bay or Whiting Denny's Limited Access Area. Hand harvest may occur on Saturday, February 2, 2019 with access in either Cobscook Bay or Whiting Denny's Limited Access area. On Sunday, February 3, 2019, Cobscook, Whiting and Denny's Bays will close while the St Croix remains open for harvesting until further notice. This arrangement will allow for the harvesting of scallops in areas that have not yet reached maximum yield prior to the conservation closure occurring.

In summary, the Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in these areas 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. Immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in Wohoa Bay in Zone 2 and Whiting, Denny and Cobscook Bays in Zone 3. 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: Gouldsboro / Dyers Bays Rotational Area; Upper Machias Bay Rotational Area; Vinalhaven Islands in the Lower Penobscot Bay Rotational Area
Filing number: 2019-039
Effective date: 2/10/2019
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 Gouldsboro Dyers Bay Rotational Area, Upper Machias Rotational Area and Vinalhaven Islands in the Lower Penobscot Bay Rotational Area. These closures are required 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 will further reduce the abundance of remaining broodstock that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource.

Basis statement:

The Department is taking emergency rulemaking action to expand the targeted conservation closure in Vinalhaven Islands, Upper Machias and Gouldsboro Dyers Bay Rotational Area within Zone 2.

Vinalhaven Islands

This area opened for harvest on December 1, 2018 with approximately 25 boats concentrated within the islands west of Vinalhaven. Effort was strong during the first week, as Zone 1 was not yet open. By week two, the number of boats in the area dropped to 15 or so, as some boats returned to Zone 1. By week four effort remained around 20 boats that had spread from the inner islands to west and south of the area. This range of 15 – 20 boats, depending on weather, has maintained effort in the open portion of the Lower Penobscot Bay rotational area for the duration of January with vessels harvesting around islands outside the closure and other areas within the rotational zone down to Matinicus.

Survey stations were concentrated inside the inner islands. This also represents where most the effort had taken place during December and where the initial closure took place. This area was opened to harvest for 21 days prior to the first in-season survey; the overall decrease in available harvestable biomass at all stations was approximately 46%. While the additional 11 days of harvest opportunity were not fully utilized due to weather and tides, resource extraction continued at a reduced level such that a closure was warranted on January 6, 2019.

A second in-season survey was conducted on January 26, 2019 in which the relative change in legal density of scallops was calculated at 65% (5.76 g/m² to 1.98 g/m²) as is demonstrated by the decrease in the size frequencies of legal scallops. While this survey commenced after 34 days of total harvest, approximately 12 of the 20 survey stations were within the closed area and represent a significant proportion of the decrease in legal density of scallops. Approximately four stations that remained in harvestable waters exhibited higher proportions of legal sized scallops to harvest, albeit at lower densities. Due to continued poor weather following the week of the survey, and forecasted for week ahead, the delay to expand the closure until this coming weekend was to allow access on the best weather days to provide harvest opportunity prior to this area closing until the 2021-22 season.

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Machias and Little Machias Bays

This area opened for harvest on December 1, 2018 with approximately 15 boats concentrated within Little Machias Bay. This area experienced a partial closure on December 30, 2018 that closed Machias and Little Machias Bays because of information received from the first in-season survey as described in a previous action. Harvest continued outside of this closure line with activity of 12-15 boats ranging from Cross Island to Old Man; harvesting has been inconsistent due to the poor weather conditions during January.

A second in-season survey was conducted on February 3, 2019 in which the relative change in legal density of scallops was calculated at 74% ((4.30 g/m² to 1.14 g/m²) as is demonstrated by the decrease in the size frequencies of legal scallops. This survey took place after 38 days of total harvest, with ¼ of the survey stations having already been within an existing partial closure. Rate of effort has been variable in this area due to ongoing poor weather conditions, as conditions did not allow for prospecting and harvesting further from shore. As such, the area closest to shore contained most vessels during opportune harvest days, resulting in the decreased density of legal scallops. This proposed closure encompasses most of the survey stations for continued conservation.

Gouldsboro Dyers Bay Rotational Area

This area opened for harvest on December 3rd, 2018 with approximately 40 boats concentrated within Gouldsboro Bay and was partially closed on December 16, 2018 in the upper portion of Gouldsboro and Dyers Bays after 10 days of intense fishing pressure. After the initial closure, many boats left the area. However, several local scallop boats remained fishing near Prospect Harbor and the outer portion of the area searching deeper waters for scallops. Recent reports indicate 4-6 boats have been steadily in the area during January on pleasant weather days. However, over the last two weeks of harvesting, vessels have not been able to reach a daily limit and a closure is needed to protect the remaining legal product for rebuilding purposes.

In summary, Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in these areas 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. Immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in Gouldsboro & Dyers Bay, Vinalhaven, and Machias 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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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: Cobscook Bay including Whiting and Denny's Bays and St. Croix River; Blue Hill Bay / Union River Rotational Area; West Lower Jericho Bay; Upper Damariscotta River
Filing number: 2019-041
Effective date: 2/24/2019
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 St. Croix River, Blue Hill Bay/Union River Rotational Area, West Lower Jericho Bay and Upper Damariscotta River. The Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in these areas 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. Immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in St. Croix River, Blue Hill Bay/Union River Rotational Area, West Lower Jericho Bay and Upper Damariscotta River.

Basis statement:

The Department is taking emergency rulemaking action to expand the targeted conservation closure in Cobscook Bay area to include St. Croix River, Upper Blue Hill Bay/Union River, West Lower Jericho Bay in Zone 2 and Upper Damariscotta River Limited Access Area within Zone 1.

St. Croix

This area has been open to harvest for 35 days, within Zone 3, but the primary focus of effort has been in the most recent 9 days of the calendar after Cobscook Bay closed. Beginning February 4, 2019, no more than 10 scallop fishing vessels were actively harvesting within the St. Croix River, from Kendall Head northward. Most reports from participants observed medium to large meat counts and scattered low to medium densities of scallops over variable depth ranges. In the previous season, this area was targeted for 12 days after Cobscook closed. Observations from harvesters this year indicate catch rates were lower than the previous year, but meat size was comparable. Initially, daily limits were being reached between around 10-12pm, depending on tide cycles. However, boat activity greatly decreased by the week of February 11th, 2019 and harvesters suggested that closing it may allow for moderate rebuilding for next year. DMR's fall scallop survey also observed low densities of legal scallops in the area. Thus, based on reduced catch rates, and harvester input, it was recommended to close this area to reduce repeated effort and allow for a longer period of recovery.

Upper Blue Hill Bay/Union River Rotational Area

This area opened for harvest on December 1, 2018 with approximately 10 boats; prospecting in Union River, Morgan Bay. Initial reports indicated there were large scallops in the area with large meats. Boats had variable catch rates around the 2nd week of December but most vessels had their daily limit before noon time.

At the end of December and into January, boat counts ranged from 5-7 vessels with some boats choosing to go harvest in Jericho on good weather days and save Upper Blue Hill Bay for bad weather days. Harvest rates were decreasing as more effort was needed to search

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for smaller scallop beds. By the end of January, most of the drag fleet moved over to Jericho, but diving harvesters remained active with 6-7 divers in the area.

Harvesters observed small sublegal scallops around Alley Island that was not caught during the April 2018 Spring scallop survey. Other general comments reported by harvesters in the area indicated there were few sublegal scallops showing up in tows otherwise. At the start of February, Marine Patrol indicated that drag vessels were not able to reach limits. Harvesters and Patrol reported renewed dragging activity during mid-February, with little success at reaching daily limits. It is recommended the area close after 50 days of open harvest to allow the remaining seed and broodstock to replenish the area.

West Lower Jericho Bay Rotational Area

This area opened for harvest on December 1st, 2018 with approximately 15 to 20 boats focused around Lazy Guts on southward toward Fog and York Islands, sticking to the western side of the Rotational Area in shallow waters. Daily limits were being reached around noon.

As the season progressed, boat counts increased to 25-30 at the end of December. Effort was still focused around the York Island area, with reports of good meat sizes being caught. Daily limits were reached by noon.

By January, boats began spreading, prospecting other parts of the bay and harvesting in deeper waters. The area is heavily dependent on weather and as such activity fluctuated; vessels opting for areas in the lee. The area around York and Fog Islands had a return of activity as it is moderately protected. By the end of January, harvesters were taking longer to reach their daily limit; but this was also a factor of longer steam time, continued prospecting in the area as well as lower densities of scallops.

Currently, harvester reports indicate that little activity is still occurring in the proposed closure area, with the shallow waters having been harvested since the opening of the area (50 calendar days). Marine Patrol also indicates that several harvesters are not reaching daily limits. Of the 28 survey stations in the spring scallop survey, there were observations of seed scallops in the shallow waters between Fog and York Islands. Harvesting has been occurring in this area since the beginning of the season, with catch rates decreasing over the last month. It is recommended the area close after 50 days of open harvest to allow the remaining seed and broodstock to replenish the area.

Upper Damariscotta River Limited Access Area

This area has been alternating between closed and open as a limited access area (LAA) with the area having been closed in the 2015-2016 season, open LAA for 2016-2017, closed 2017-2018 and open for this current season. Reports from harvesters have all been positive and it appears this schedule is working to sustain a moderate harvest for local vessels in the area. Meat size has been in the U10-U15 range and also good quality.

Divers had access to the area beginning on December 7th, 2018 while the drag fleet began harvest on January 7th, 2019. As with the previous open season, the effort from the drag fleet focused on the area west and north of Jones Point to Fort Point. Over the last available 7 harvest days within this LAA, a range of 4-6 boats have been steadily working and catching their limits by noon to early afternoon. In comparing effort to the previous open season, this area had upwards of 8 or more boats for 5 harvest days prior to closing. This would result in a similar removal estimates between the two open seasons. Harvesters have reported that this upper portion has slowed down, and it would be best to repeat the closure line from the previous open season.

Therefore, the recommendation is for an immediate conservation closure of the upper portion of the river to allow for the remaining broodstock to rebuild in time for the next open season. The lower section of the river south of Jones Point and Farnham Point shall remain open for continued harvest as it has not been heavily targeted and will provide additional opportunity.

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The last day of harvesting for scallop draggers will be Monday, February 18, 2019. The final day of harvesting for scallop divers will be Friday, March 15, 2019. These specific days allow for equal harvest opportunity of seven days. This action stems from a recommendation from the Scallop Advisory Council during their July 2018 meeting that requested parity of harvest opportunity when possible during emergency closures.

In summary, Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in these areas 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. Immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in Gouldsboro & Dyers Bay, Vinalhaven, and Machias areas. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by 12 M.R.S. §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. 8, Landings Program: 8.20, Harvester Reporting
Filing number: 2019-045
Effective date: 3/13/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule updates reporting requirements for halibut, shrimp, and scallop harvesters to remove outdated references to Loran stations and bearings as options for reporting harvesting locations. It requires halibut harvesters to report landings numbers rather than license numbers and would add a new component to the halibut harvester reporting requirements to include total number of hooks fished.

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this agency.

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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)
Chapter number/title: Ch. 25, Lobster and Crab: 25.04, Lobster Trawl Limits
Filing number: 2019-046
Effective date: 3/13/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

In October 2018, a new trawl limit area was established at the request of the Zone B Council. DMR was aware that there was potential to refine the area described by the new trawl limit to better meet the needs of Zone B and Zone C fishermen fishing there. The Department held meetings with fishermen from Zone B and Zone C to determine what changes to the area were advisable. At their January 2019 meeting, the Zone B Council supported the Department's proposal to amend this area in accordance with the changes proposed through the meetings that were held. The rule represents the amended area and eliminates the sunset on the original area.

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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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, Eels (Elver Quota System for the 2019 Season)
Filing number: 2019-047
Effective date: 3/13/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Annually the Department must conduct rulemaking to establish the individual quotas for the upcoming elver season. In addition, the Department is adopting changes for the 2019 pertaining to the activities of elver dealers and elver exporters to curtail the illegal activity that occurred during the 2018 elver season.

Basis statement:

This rule establishes the elver quota allocations for the 2019 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. 2019 allocations for individuals who held a license in 2018 will be the same as their 2018 allocations, plus any quota associated with licenses not renewed in 2018, or licenses suspended for the duration of the 2019 season, which will be distributed evenly to all license holders. This rule also prohibits more than one elver dealer from engaging in the licensed activities at the same physical address and requires that transfers from vehicles to permanent facilities include all the contents of the vehicle. Finally, the rule establishes a process by which Maine Marine Patrol will monitor and seal the packing of elvers for export. Based on the comments received, the Department is not recommending any changes to what was originally proposed.

Fiscal impact of rule:

No fiscal impact is anticipated.

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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*) (Atlantic Halibut Size Limit)
Filing number: 2019-048
Effective date: 3/13/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Charter and party boats often catch Atlantic halibut on excursions offshore while fishing for groundfish species such as haddock and cod. Possession for Atlantic halibut is limited to one fish per boat. Often, these charter boats have many customers and there is a desire and willingness to share the harvest of halibut among fishing participants. The current rule does not allow fisherman or charter/party boat captains to fillet Atlantic halibut on a vessel in transit. This rule is in place to ensure the fish can be measured and is greater than the minimum size limit of 41 inches or 32 inches to the pectoral fin if the head is removed. However, Department Marine Patrol officers have indicated that accurate measurements can be taken from a halibut carcass with the fillets removed. This change would allow charter/party boat captains the ability to fillet Atlantic halibut at sea if the halibut carcass remains in possession on the vessel through transit until the fishing customers have departed the boat. This change will allow a single Atlantic halibut to be shared with several fishing customers instead of one customer retaining the entire fish. Marine patrol officers would still be able to enforce Atlantic halibut minimum size and possession limits.

Basis statement:

This rule allows charter and party boat operators to fillet Atlantic halibut at sea. Possession for Atlantic halibut is limited to one fish per boat. This rule ensures the fish can be measured and is greater than the minimum size limit of 41 inches total length or 32 inches from the pectoral fin if the head is removed. This rule allows charter/party boat captains to fillet Atlantic halibut at sea if the halibut carcass (rack) remains in their possession until all customers have landed on shore. This rule allows a single Atlantic halibut to be shared with several fishing customers instead of one customer retaining the entire fish. Marine patrol officers will be able to measure Atlantic halibut carcasses (racks) to ensure fish of legal sizes are possessed.

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. 36, Atlantic Herring (2019 Season)
Filing number: 2019-049
Effective date: 3/13/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule clarifies the reporting requirement such that all directed herring trips must report daily using the herring.dmr@maine.gov landings email. Additionally, this regulation implements a weekly limit on state only permitted vessels directing on Atlantic herring of 25,000 pounds. State waters fishing may occur from Sunday at 6:00 p.m. to Thursday at 6:00 p.m. Fixed gear harvesting in state waters is except from the weekly harvest schedule, but is also subject to a weekly landing limit of 25,000 pounds.

Basis statement:

This rule clarifies the reporting requirement such that all directed herring trips must report daily using the herring.dmr@maine.gov landings email. Additionally, this regulation implements a weekly limit on state only permitted vessels directing on Atlantic herring of 25,000 pounds. State waters fishing may occur from Sunday at 6:00 p.m. to Thursday at 6:00 p.m. Fixed gear harvesting in state waters is exempt from the weekly harvest schedule, but is also subject to a weekly landing limit of 25,000 pounds.

Specifications for the Atlantic herring fishery for the 2019 fishing year have been set by the Greater Regional Atlantic Office (GARFO) of NOAA Fisheries and were effective on February 8, 2019. The annual catch limit (ACL) for domestic harvest is 15,065 mt; the sub-ACL allotted to Herring Management Area 1A is 4,354 mt with a fixed gear set aside (FGSA) of 39 mt. This represents an 84% decrease from the 2018 sub-ACL of 27,743 mt for Area 1A.

A reduction in harvest limits will be experienced by all permit holders directing on Atlantic herring. Specific effort restrictions pertaining to Federal Limited Access Atlantic Herring Category A and C permits will not be finalized until the Days Out Conference Meeting of the Atlantic Herring Board commissioners that is scheduled annually in the spring.

Several commenters suggested that transitioning to a weekly landing limit, as opposed to a daily landing limit, would be more practical and economical for those participating in the mobile state waters fishery. These comments, in conjunction with the enforcement challenges associated with a weekly limit, factored into the Department's decision to adopt a weekly landings limit, but to reduce harvest days from seven days a week to four days a week. This will still maintain harvest opportunity while providing Maine Marine Patrol an effective enforcement schedule.

Based on comments received during the rulemaking process and discussion at the DMR Advisory Council, the Department has made the following changes:

- Fishing weirs, stop seines and pound nets will be exempt from the harvest schedule and may operate seven days a week. Fixed gear harvesting is subject to a weekly limit of 25,000 lbs.
- Harvesting of Atlantic herring by state permit holders will be limited to a weekly landing limit of 25,000 pounds, instead of a daily limit of 6600 lbs. Additionally, the harvest schedule is restricted to Sunday at 6:00 p.m. through to Thursday at 6:00 p.m.

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The discussion at the DMR Advisory Council meeting on March 6, 2019 highlighted additional details that contributed to the final rulemaking. These details included anticipated increase in landed value for Atlantic herring, the exceptional need for bait products at smaller wharves and a greater understanding of mobile state Atlantic herring participation and landings over the previous several years. With the understanding that the Atlantic herring resource is in a depleted state, this is the appropriate timeframe to maintain historical participation while conservatively allowing harvest to occur within state waters. The result of this discussion, the DMR Advisory Council passed a motion to accept the Ch. 36 rulemaking conditional on amending the weekly landing limit to 25,000 lbs. Based on 2018 landings information, and the projected value of bait, the Advisory Council concluded that this weekly limit would minimally reduce harvesting opportunity weekly for the 2019 fishing year but not seasonally. That is, a weekly limit may result in lower catches when compared to 2018, but still would allow ample opportunity for the duration of the Atlantic herring season when the fish are present in state waters.

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. 41, Menhaden (2019 Menhaden Fishery Program)
Filing number: 2019-050
Effective date: 3/13/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rulemaking clarified the reporting requirements for all Atlantic menhaden fishery operations. Components of the fishery that are quota managed (state and episodic) require daily reporting, while the small incidental/small scale fishery requires monthly reporting.

This rulemaking updates 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 by separating out the restrictions placed on the fixed gear sector. Fixed gear harvesting may occur seven days a week in both the state allocated fishery and the episodic event fishery; however, the fixed gear fishery will maintain the same daily and weekly landing limits as previously set for the mobile fishery programs.

This rule re-instates a personal use regulation for hook and line harvest. Recreational harvest by hook and line for 25 fish per day is permitted seven days a week.

Basis statement:

This rulemaking clarifies the reporting requirements for all Atlantic menhaden fishery operations. Components of the fishery that are quota managed (state and episodic) require daily reporting, while the incidental/small scale fishery requires monthly reporting.

This rulemaking updates 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 by separating out the restrictions placed on the fixed gear sector. Fixed gear harvesting may occur seven days a week in both the state allocated fishery and the episodic event fishery; however, the fixed gear fishery will maintain the same daily and weekly landing limits as previously set for the mobile fishery programs.

This rule re-instates a personal use regulation for hook and line harvest. Recreational harvest by hook and line for 25 fish per day is permitted seven days a week.

Both the state allocation fishery and the episodic event fishery will continue to 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 is required for both the state allocated and the episodic event fisheries within 24 hours of landing. 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. 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. 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:

- The exemption for fixed gear operations were clarified to allow for a seven day harvest schedule, but maintain the same daily and weekly limits as described for the state allocated and episodic fisheries.

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. 115, *Vibrio parahaemolyticus* Control Plan
Filing number: 2019-051
Effective date: 3/13/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule incorporates the Sheepscot River into the existing *Vibrio parahaemolyticus* (*Vp*) control plan in order to reduce the likelihood that American and European oysters (*Crassostrea virginica* and *Ostrea edulis*) and hard clams (*Mercenaria mercenaria*) harvested from the Sheepscot River will cause *Vp* infections in consumers.

Basis statement:

This rule incorporates the Sheepscot River, north of Route 1, into the existing *Vibrio parahaemolyticus* (*Vp*) control plan. The addition of the Sheepscot River is intended to reduce the likelihood that American and European oysters (*Crassostrea virginica* and *Ostrea edulis*) and hard clams (*Mercenaria mercenaria*) harvested from the Sheepscot River will cause *Vp* infections in consumers. In 2018, DMR received an illness report of a laboratory confirmed case of *Vp* that implicated oysters from the Sheepscot River as the sole source. The Maine Department of Marine Resources recognizes that the portion of the Sheepscot River north of Route 1 has the environmental characteristics (primarily water and air temperature and salinity) that potentially pose a threat to public health with regard to *Vp* infections. Research indicates that the most reliable way to minimize potential *Vp* illnesses is to utilize time and temperature controls.

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:
Damariscotta River
Filing number: 2019-053
Effective date: 3/17/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to expand the conservation closure in the Damariscotta River. The Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in this area will greatly reduce the abundance of the remaining broodstock as well as sub legal scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. Immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion of the Damariscotta River Limited Access Area.

Basis statement:

The Department is taking emergency rulemaking action to expand the targeted conservation closure in the Damariscotta River Limited Access Area within Zone 1.

Upper Damariscotta River Limited Access Area

This area has been alternating between closed and open as a limited access area (LAA) with the area having been closed in the 2015-2016 season, open LAA for 2016-2017, closed 2017-2018 and open for this current season. Reports from harvesters have all been positive and it appears this schedule is working to sustain a moderate harvest for local vessels in the area. Meat size has been in the U10-U15 range and good quality.

Divers had access to the area beginning on December 7th, 2018 while the drag fleet began harvest on January 7th, 2019. A partial closure occurred in the Damariscotta River after 7 drag harvest days in the area west and north of Jones Point to Fort Point (mid-river). The 4-5 vessels in the area then shifted focus to outer portion of the river, south of the closure line. There has been three additional calendar days of harvest within this portion of the river. Reports by both harvesters and Marine Patrol indicate that of the three remaining vessels, they were no longer able to achieve their daily limited and suggested it was time to close the area for recovery.

The last day of harvesting for scallop draggers was Monday, March 11, 2019. The final day of harvesting for scallop divers will be Saturday, March 23, 2019. These specific dates allow for equal harvest opportunity of ten days; hand harvesting of scallops tends to occur in the northern portion of the river not accessed by the drag fleet. This action stems from a recommendation from the Scallop Advisory Council during their July 2018 meeting that requested parity of harvest opportunity when possible during emergency closures.

In summary, Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in this area will deplete the remaining broodstock as well as damage any sublegal scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. Immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in Damariscotta River Limited Access 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, 6072-A, 6072-B
Chapter number/title: Ch. 2, Aquaculture Lease Regulations
Filing number: 2019-057
Effective date: 4/1/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of the rule is to clarify the aquaculture leasing regulations, including the elimination of redundant language from 12 MRS §§ 6072, 6072-A, and the *Maine Administrative Procedures Act*. It would also eliminate duplicative references to the *National Shellfish Sanitation Program (NSSP) Model Ordinance* which was adopted by reference in 2017. The rule clarifies and establishes additional minimum lease maintenance standards. It would also establish lease expansion application procedures in accordance with 12 MRS §6072(12-C).

Basis statement:

This rule clarifies the aquaculture leasing regulations, including the elimination of redundant language from 12 MRS §§ 6072, 6072-A, and the *Maine Administrative Procedure Act*. It eliminates duplicative references to the *National Shellfish Sanitation Program (NSSP) Model Ordinance*, and includes the addition or modification of provisions based on the NSSP including maintenance of a lease operation plan, preventing the accumulation of animal waste on structures, proper disposal of human waste, and the activities that an authorized representative of an aquaculture license holder, in accordance with 12 MRS §6810-B, may engage in. It makes several changes to the leasing procedures for standard and limited-purpose aquaculture leases, including the adjustment of the timing for the scoping session, the information required to be submitted regarding an applicant's financial capability, and a prohibition on the siting of leases within the 300:1 dilution zone around a wastewater treatment plant. It enacts lease expansion application procedures in accordance with 12 MRS §6072(12-C). The rule restricts the number of pending limited-purpose lease applications any one applicant could have in process to two applications. It clarifies that an emergency lease could be utilized when the safety of the consumer is threatened, as well as that of the shellfish or animal. The rule also clarifies and establishes additional minimum lease maintenance standards.

In consideration of the comments received, the Department has made the following changes:

- Kept the term "Experimental" in reference to limited purpose aquaculture leases.
- Allow up to two tracts to 1) accommodate site rotation/fallowing or 2) to site around geographic feature, navigation corridor or existing uses so long as the tracts are no more than one half mile apart
- Removed the provision allowing other proposals for same site to be accepted if an applicant is required to hold a second scoping session.
- Clarified that assessment of both discharge and non-discharge leases must consider existing and potential uses in application
- Clarified requirements of oil spill prevention and control plan
- Clarified that riparian permission is only needed for use of intertidal lands if the riparian owns the intertidal lands that will be used by the applicant

Fiscal impact of rule:

Enforcement of this amendment 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; Resolves 2019 ch. 23
Chapter number/title: Ch. 25, Lobster and Crab: 25.02, Definitions
Filing number: 2019-117
Effective date: 7/17/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

In Resolves 2019 ch. 23, the Legislature directed the Commissioner of Marine Resources to adopt regulations to define this area to ensure the boundaries of this area are clearly delineated for the purpose of allowing lobster license holders authorized to fish in this area.

Basis statement:

This regulation defines the area in the Bay of Fundy referred to as the “gray zone” that encompasses approximately 210 square miles around Machias Seal Island where there are overlapping claims of sovereignty by the United States and Canada. In Resolves 2019 ch. 23, the Legislature directed the Commissioner of Marine Resources to adopt regulations to define this area to ensure the boundaries of this area are clearly delineated.

Fiscal impact of rule:

There is no fiscal impact of the rule.

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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 §6749
Chapter number/title: Ch. 26, Sea Urchins (Sea Urchin 2019-2020 Season)
Filing number: 2019-118
Effective date: 7/17/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This regulation would establish open harvest days and tote limits for the taking of sea urchins by divers, rakers, trappers, and draggers in Zones 1 and 2 for the 2019-2020 season. For Zone 1, seasons are proposed for divers, trappers, rakers and draggers in 2019-2020, from which harvesters may only fish up to 15 days of their choosing, the same number of days allowed during the 2018-2019 season, while the number of opportunity days is increased. For Zone 1, the proposed daily tote limit is nine (9) which is 3 totes lower than the 2018-2019 season. For Zone 2, 40-day seasons are proposed for divers, trappers, rakers and draggers in 2019-2020, from which harvesters may only fish up to 30 days of their choosing. This proposal reduces the fishing days by eight days and opportunity days by five days from the 2018-2019 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 2019-2020. For Zone 2, the proposed daily tote limit is six (6) which is one fewer than the 2018-2019 season.

Based on comments received during the proposed rulemaking, the Department has made the following modifications:

- Errors between the text and the calendars were addressed per the comment supplied by Margaret Hunter.

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 34, Groundfish Regulations
Filing number: 2019-119
Effective date: 7/17/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

In order to be consistent with the National Marine Fisheries Service (NMFS) federal proposed rulemaking anticipated to be finalized shortly, this rule allows harvesters to take or possess one cod per day in state waters. Cod may not be possessed on board a charter, party or recreational fishing vessel from October 1 through April 14 inclusive, and May 1 through September 14 inclusive. For cod, a minimum size limit of 21" (53.3 cm) is established. The rule also implements increased recreational possession limits for haddock from 12 to 15 fish. Finally, seasonal restrictions on recreational haddock possession are reduced, so that haddock may not be possessed on board a recreational fishing only from March 1 through April 14. In addition to complying with federal law, the rule will increase fishing opportunity in Maine State waters.

Fiscal impact of rule:

This change is anticipated to provide a modest increase in economic opportunity for charter vessels and the recreational fishing sector.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 36, Atlantic Herring
Filing number: 2019-120
Effective date: 7/17/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rulemaking is intended to align State of Maine regulations with those set forth by the Atlantic States Marine Fisheries Commission. The harvest control rules were determined by the Commissioners at the Days Out meeting held April 3, 2019. Additionally, Addendum II to Amendment 3 of the Interstate Fisheries Management Plan for Atlantic herring amended the requirements surrounding the protection of spawning herring; this proposed rule reflects final action taken by the Atlantic Herring Board on April 30, 2019.

Basis statement:

This rule amends the existing seasonal spawning closures in accordance with the recently approved Addendum II of Amendment 3 to the Interstate Fishery Management Plan for Atlantic herring: the initial closure period is extended from 28 days to 42 days; the default closure date for both the Western Closure and the Massachusetts/New Hampshire Closure has been modified from October 4 to September 23; and, the re-closure protocol may be initiated with a lower percentage of spawning fish present in the population, from 25% to 20%.

This rule amends the start date for the mobile Atlantic herring fishery to commence on Sunday, July 14, 2019 and also sets harvest parameters for the Atlantic Herring fishery as determined at the Days Out meeting held April 3, 2019. The Days Out Commissioners designated zero landing days for Period 1 (June 2019). The Days Out Commissioners designated four consecutive landing days, beginning at 6:00 p.m. Sunday to 6:00 p.m. Thursday for vessels issued an Atlantic Herring Limited Access Category A Permit for Period 2 (July – August 2019. These vessels are limited to landing 160,000 lbs. (4 trucks) weekly). The Days Out Commissioners designated five consecutive landing days, beginning at 6:00 p.m. Sunday to 6:00 p.m. Friday for vessels issued an Atlantic Herring Limited Access Category C Permit. Limited access harvester vessels may transfer Atlantic herring at-sea to other limited access harvester vessels. All harvester vessels are prohibited from at-sea transfers of Atlantic herring to carrier 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.).

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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Rules Adopted January 1, 2019 to December 31, 2019
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 Fishery Management Program
Filing number: 2019-121
Effective date: 7/14/2019
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

The fishery for Atlantic menhaden is managed through the Atlantic States Marine Fisheries Commission (ASMFC). Maine's allocated quota share for 2019 of 2,438,677 pounds was reached by final week of June. During the State Allocated fishery, 87 harvesters declared into the fishery and 56 of those harvesters were active with daily reporting. The estimated 234 trips completed during the state fishery were predominantly trips landing less than 6,000 lbs. (107 trips) or trips landing more than 6,000 lbs. but less than 30,000 lbs. (90 trips). Trips that had landings between 30,000 and 60,000 lbs. or were greater than 60,000 lbs. were 10.2 % and 5.6% of the fishery, respectively. Preliminary estimates for landings indicate that the state quota was exceeded by 1.5 million pounds and landing reports are still being received. The bulk of landings occurred during the final four days of June.

The Department requested, and received, approval to enter the Episodic Event Set Aside (EESA) fishery at the beginning of July. However, with the nearly 4 million lbs. already landed during the state fishery, in conjunction with the summer lobster shed not yet occurring, the demand for bait was low compared to the available supply. As such, the Department was made aware of the dumping of fish that harvesters could not sell and did not have available storage arrangements. This practice was unacceptable and also factored into the delay of opening the EESA until there was a demonstrated need for fresh bait once again.

Currently, there are over 528 active Commercial Pelagic and Anadromous license permits issued, with over 100 of those individuals declared into the fishery for the onset of the EESA. With the understanding that the harvest capacity of this fleet is above 2 million lbs. weekly, it was imperative to reduce the weekly harvest limit by one truck to avoid the depletion of the menhaden supply at a time when it may not be readily used. Menhaden have now been observed in state waters from Kittery through to the Penobscot Bay.

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 limit remains at 120,000 pounds while the weekly landing limit is reduced by this emergency regulation from 160,000 lbs. to 120,000 pounds. Harvesting and landings are restricted to Maine territorial waters and may occur once per calendar day. 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 opening the EESA fishery to implement the reduction of the weekly limit from 160,000 lbs. to 120,000 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.

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Rules Adopted January 1, 2019 to December 31, 2019
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. 41, Menhaden (Menhaden Fishery Management Program)
Filing number: 2019-136
Effective date: 7/21/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The fishery for Atlantic menhaden is managed through the Atlantic States Marine Fisheries Commission (ASMFC). Maine's allocated quota share for FY2019 was 2,438,677 pounds, which was fully consumed by June 30, 2019. Additionally, Department of Marine Resources (DMR) was granted access to the Episodic Event Set Aside program (EESA); it is projected that 80% of the 4.7 million lbs. EESA has been consumed by Thursday, July 18, 2019. The Commissioner has secured several transfers of menhaden quota that will allow for the DMR to re-open the directed state allocated fishery. Beginning July 22, 2019, harvest may occur between 12:01 a.m. on Monday and 11:59 p.m. Thursday each week; daily landing limit is 120,000 lbs. and this regulation reduces the weekly limit to 120,000 lbs. as well. Harvesting and landings are restricted to Maine territorial waters; only one landing may occur per calendar day. 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 to implement the reduction of the weekly limit 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 2019 of 2,438,677 pounds was reached by final week of June. During the State Allocated fishery, 87 harvesters declared into the fishery and 56 of those harvesters were active with daily reporting. Preliminary estimates for landings indicate that the state quota was exceeded by 2 million pounds. The bulk of landings occurred during the final four days of June.

The Department opened the Episodic Event Set Aside (EESA) fishery on Monday, July 15, 2019. Currently, there are over 560 active Commercial Pelagic and Anadromous license permits issued, with over 180 of those individuals declared into the fishery for the onset of the EESA. To date, there are 118 active harvesters reporting landings for menhaden during the BESA fishery with preliminary landing estimates at 2.4 million lbs. after two days of open harvest. The number of trips reported peaked on Monday, July 15 at 107, with preliminary data indicating less trips for the remainder of the open harvest days. Projections indicate that with an additional two days of harvest, approximately 80% of the quota will be consumed by the end of the harvest week.

The Commissioner has acquired several transfers of menhaden quota from partner States; these transfers rectified the overage that occurred during the initial directed fishery and the remaining allotment will allow for the reopening of the directed State allocated fishery. With the understanding that the harvest capacity of this fleet is now nearing 3 million lbs. weekly, it was imperative to reduce the weekly harvest limit within the directed State allocated fishery by one truck to avoid the depletion of the menhaden supply at a time when it may not be readily used as was the case for the EESA. Menhaden have now been observed in state waters from Kittery through to the Mount Desert Island.

As was the case under the EESA fishery, harvest may occur only between 12:01 a.m. on Monday and 11:59 p.m. Thursday each week. The daily limit remains at 120,000 pounds while

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the weekly landing limit is reduced by this emergency regulation from 160,000 lbs. to 120,000 pounds. Harvesting and landings are restricted to Maine territorial waters and may occur once per calendar day. 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 re-opening the directed State allocated fishery to implement the reduction of the weekly limit from 160,000 lbs. to 120,000 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)(8).

Fiscal impact of rule:

No fiscal impact anticipated.

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

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 36, Atlantic Herring (Period 2 Closes; Open Date Period 3)
Filing number: 2019-151
Effective date: 8/17/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rulemaking is intended to align State of Maine regulations with those set forth by the Atlantic States Marine Fisheries Commission. The harvest control rules were determined by the Commissioners at the Days Out meeting held April 3, 2019.

Basis statement:

As of August 13, 2019, the Herring Management Area (HMA) 1A fishery has harvested 92% of the Period 2 (July – August) allocation. The Atlantic States Marine Fisheries Commission (ASMFC) has designated zero landing days for the remainder of Period 2, starting Sunday, August 18 through August 31, 2019.

Period 3 (September – October) Atlantic herring fishery will commence on Sunday, September 1, 2019. At the Days Out meeting on April 3, 2019, the Commissioners designated four consecutive landing days, beginning at 6:00 p.m. Sunday to 6:00 p.m. Thursday for vessels issued an Atlantic Herring Limited Access Category A Permit with a weekly landing limit of 160,000 lbs. (4 trucks). The Commissioners designated five consecutive landing days, beginning at 6:00 p.m. Sunday to 6:00 p.m. Friday for vessels issued an Atlantic Herring Limited Access Category C Permit. Limited access harvester vessels may transfer Atlantic herring at-sea to other limited access harvester vessels. All harvester vessels are prohibited from at-sea transfers of Atlantic herring to carrier 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 prevent the imminent depletion of the supply of Atlantic herring and to comply with the changes to the interstate management of the Atlantic herring resource. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3).

Fiscal impact of rule:

Enforcement of these amendments will 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, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 36, Atlantic Herring (Period 3 Closes)
Filing number: 2019-166
Effective date: 9/14/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rulemaking is intended to align State of Maine regulations with those set forth by the Atlantic States Marine Fisheries Commission. The harvest control rules were determined by the Commissioners at the Days Out meeting held April 3, 2019.

Basis statement:

Landings data indicate 92% of the Period 3 (September – October) allocation for the Herring Management Area (HMA) 1A fishery has been harvested. The Atlantic States Marine Fisheries Commission (ASMFC) has designated zero landing days for the remainder of Period 3, starting 12:01 a.m. Sunday, September 15 through Thursday, October 31, 2019 at 11:59 p.m.

The Commissioner has determined that it is necessary to take emergency action to implement these limitations to prevent the imminent depletion of the supply of Atlantic herring and to comply with the changes to the interstate management of the Atlantic herring resource. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3).

Fiscal impact of rule:

Enforcement of these amendments will 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, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 36, Atlantic Herring (Period 3 Closes; Open Date Period 4)
Filing number: 2019-191
Effective date: 10/31/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rule-making is intended to align State of Maine regulations with those set forth by the Atlantic States Marine Fisheries Commission. The Atlantic States Marine Fisheries Commission (ASMFC) scheduled a Days Out Conference Call on Wednesday, October 23, 2019 to determine effort controls for Quota Period 4 (November – December) in the Herring Management Area (HMA) 1A. The Commissioners designate one landing day per week for Quota Period 4 to begin Sunday, November 3, 2019 at 6:00 p.m. Quota Period 4 opens at 12:01 a.m. on November 1, 2019.

Basis statement:

The Atlantic States Marine Fisheries Commission (ASMFC) scheduled a Days Out Conference Call on Wednesday, October 23, 2019 to determine effort controls for Quota Period 4 (November – December) in the Herring Management Area 1A. The Commissioners designate one landing day per week for Quota Period 4 to begin Sunday, November 3, 2019 at 6:00 p.m. Quota Period 4 opens at 12:01 a.m. on November 1, 2019.

On Monday, October 28, 2019, NOAA Fisheries announced adjustments to the 2019 Atlantic Herring Specifications; the action increased the HMA 1A sub-ACL for the 2019 season by 1,000 mt. This was a result of the New Brunswick weir fishery landing below 4,000 mt through October 1 and thereby decreasing the management uncertainty buffer and re-allocating it to the HMA 1A sub-ACL.

The Commissioner has determined that it is necessary to take emergency action to implement these limitations to prevent the imminent depletion of the supply of Atlantic herring and to comply with the changes to the interstate management of the Atlantic herring resource. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3).

Fiscal impact of rule:

Enforcement of this amendment 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 §6173
Chapter number/title: Ch. 8, Landings Program
Filing number: 2019-195
Effective date: 11/13/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The principal reason for proposing the change to the lobster reporting requirements is to comply with ASMFC requirements that must in place for the 2020 licensing year. The principal reason for proposing the changes to the IVR herring permit and requiring a menhaden permit is to facilitate in season reporting for those fisheries.

Basis statement:

This rule updates reporting requirements for lobster license holders to replace “distance from shore” with a 10-minute square, and also require the reporting of the number of endlines fished. Based on the comment received supporting these data elements in compliance with Addendum XXVI to Amendment 3 of the American Lobster Fishery Management Plan, DMR has modified the reporting requirement for the number of endlines for clarity that the data element is the number of endlines the individual has in the water. This is the piece of information that would be most useful in understanding potential interactions with right whales. The rule also replaces references to the IVR herring permit in Ch. 8 and 36 with a herring permit. Finally, it requires individuals intending to participate in the menhaden fishery to obtain a menhaden permit on their commercial pelagic and anadromous license, to facilitate proper reporting in that fishery as required in Ch. 41.

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, 2019 to December 31, 2019
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 §6173
Chapter number/title: Ch. 36, Atlantic Herring (Herring Permit)
Filing number: 2019-196
Effective date: 11/13/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The principal reason for proposing the change to the lobster reporting requirements is to comply with ASMFC requirements that must in place for the 2020 licensing year. The principal reason for proposing the changes to the IVR herring permit and requiring a menhaden permit is to facilitate in season reporting for those fisheries.

Basis statement:

This rule updates reporting requirements for lobster license holders to replace “distance from shore” with a 10-minute square, and also require the reporting of the number of endlines fished. Based on the comment received supporting these data elements in compliance with Addendum XXVI to Amendment 3 of the American Lobster Fishery Management Plan, DMR has modified the reporting requirement for the number of endlines for clarity that the data element is the number of endlines the individual has in the water. This is the piece of information that would be most useful in understanding potential interactions with right whales. The rule also replaces references to the IVR herring permit in Ch. 8 and 36 with a herring permit. Finally, it requires individuals intending to participate in the menhaden fishery to obtain a menhaden permit on their commercial pelagic and anadromous license, to facilitate proper reporting in that fishery as required in Ch. 41.

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, 2019 to December 31, 2019
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 §6173
Chapter number/title: Ch. 41, Menhaden (2019 Menhaden Fishery Program - Menhaden Permit)
Filing number: 2019-197
Effective date: 11/13/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The principal reason for proposing the change to the lobster reporting requirements is to comply with ASMFC requirements that must in place for the 2020 licensing year. The principal reason for proposing the changes to the IVR herring permit and requiring a menhaden permit is to facilitate in season reporting for those fisheries.

Basis statement:

This rule updates reporting requirements for lobster license holders to replace “distance from shore” with a 10-minute square, and also require the reporting of the number of endlines fished. Based on the comment received supporting these data elements in compliance with Addendum XXVI to Amendment 3 of the American Lobster Fishery Management Plan, DMR has modified the reporting requirement for the number of endlines for clarity that the data element is the number of endlines the individual has in the water. This is the piece of information that would be most useful in understanding potential interactions with right whales. The rule also replaces references to the IVR herring permit in Ch. 8 and 36 with a herring permit. Finally, it requires individuals intending to participate in the menhaden fishery to obtain a menhaden permit on their commercial pelagic and anadromous license, to facilitate proper reporting in that fishery as required in Ch. 41.

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, 2019 to December 31, 2019
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, **Section 10.05:** Taking of Quahogs in the Sub-Tidal Waters of the New Meadows Lakes, Brunswick and West Bath
Filing number: **2019-198**
Effective date: 11/13/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule would maintain closed periods for the taking of quahogs in the New Meadows Lakes to protect the resource from depletion.

Basis statement:

This rule maintains the winter closed period for the harvest of quahogs from the New Meadows Lakes, which ended on April 1, 2019. The sunset provision has been removed from the regulation, so that the winter closed period remains in effect. Maintaining the winter closed period is intended to reduce fishing pressure on the quahog resource and to minimize mortality associated with winter fishing.

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §§ 6171, 6722
Chapter number/title: Ch. 11, Scallops (2019-20 Season)
Filing number: 2019-199
Effective date: 11/13/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Scallop regulations must be updated for each new season to adjust the schedules and closure lines based on data from the previous season.

Basis statement:

This rule-making establishes the 2019-2020 scallop fishing season. Daily possession limits of 15 gallons for Zone 1 and Zone 2, and 10 gallons for Zone 3 remain unchanged. For Zone 1, a 60-day season for draggers begins on December 9, 2019 and the last day of the season is March 26, 2020. For Zone 1, a 60-day season for divers starts on November 14, 2019 and the last day of the season is April 30, 2020. For Zone 2, a 70-day season for draggers starts on December 2, 2019 and the last day of the season is March 31, 2020. For Zone 2, a 70-day season for divers starts on November 18, 2019 and the last day of the season is April 18, 2020. For Zone 3, a 50-day season for draggers begins on December 2, 2019 and the last day of the season is March 25, 2020. For Zone 3, a 50-day season for divers begins on December 5, 2019 and the last day of the season is March 28, 2020.

In Zone 1, Casco Bay, Sheepscot 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 December 2019, in addition to open Zone 2 calendar days throughout the season.

DMR maintains 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 drag size gear restriction in the Blue Hill Bay area (currently 8'6") allowing harvesters to utilize any drag size, provided it does not exceed the State maximum of 10' 6". Additionally, this rule amends the boundary for the Cutler Shore Rotational Area by moving the western boundary eastward to Western Head and extending south to the three nautical mile junction.

In consideration of the public comments, the Department has made the following changes:

- The proposed amendment to the harvest start and stop time to be a set time was struck and the rule remains as originally written; harvest will commence at sunrise and cease at sunset, as defined in 12 MRS 6001 45 and 46.
- Zone 2 dive calendar was modified to re-distribute days from April into December, 2019, January and February, 2020.
- The open month for Machias Seal Island and North Rock state waters was moved to December 2nd through 31st, 2019 from the proposed January 1st through 30th 2020, to accommodate the request for additional harvest opportunity in the month of December.

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, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 34, Groundfish Regulations
Filing number: 2019-200
Effective date: 11/13/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

In order to be consistent with the National Marine Fisheries Service (NMFS) federal regulations, the Department implemented this rule change for charter, party and recreational fishing vessels operating in state waters targeting cod. For the recreational fishery, this rule eliminates the April 15 to April 30 opening for cod adopted earlier this year. The April opening was originally proposed in federal rulemaking but was not ultimately adopted.

Fiscal impact of rule:

This change is required to comply with federal regulations.

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Rules Adopted January 1, 2019 to December 31, 2019
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. 75, Protected Resources
Filing number: 2019-201
Effective date: 11/13/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This regulation is intended to replace an existing gear mark (red) used only in the sliver area and federal waters with a Maine specific gear mark (purple) that will be used in all Maine coastal waters, and an additional mark in the top two fathom of endline beginning by April 1, 2020. It will also require any gear fished within the Exemption area to have an additional green mark.

Basis statement:

There is an existing regulatory requirement for persons fishing lobster gear and trap/pot gear to mark their buoy lines with specific red marks in the sliver area and in federal waters. This regulation removes the requirement for the red marks and instead requires persons fishing lobster gear and trap/pot gear in all Maine coastal waters to mark their buoy line with purple marks. The purpose of changing the color of the marking is to implement a Maine-only gear mark. Inside the Exemption Area, fishermen are required to have three purple marks: a 36-inch mark in the top two fathom of their endline, and a 12-inch mark in the middle and at the bottom of their endline. Outside the Exemption Area, fishermen are required to have 4 purple marks: a 36-inch mark in the top two fathom of endline, and three 12-inch marks at the top, middle, and bottom of their endline. Finally, all lobster gear and trap/pot gear fished outside the Exemption Area is required to have an additional green mark of 6-inches in the top two fathom of buoy line. Lobster gear fished inside the Exemption Area is prohibited from having a green mark. The new marking requirements are required to be in place by September 1, 2020.

Based on the comments received, DMR made the following changes to the proposed rule prior to the adoption:

- The requirement to mark gear inside the Exemption Area was changed from 4 marks to 3 marks, with the requirement that the top mark be 36-inches, and located in the top two fathom of the buoy line; and
- The requirement for the additional 6-inch green mark in the top two fathom of the buoy line was moved from within the Exemption Area to outside the Exemption Area and it was clarified that a fisherman may not maintain a green mark on gear fished inside the Exemption Area; and
- The implementation date was moved from April 1, 2020 to September 1, 2020.

Fiscal impact of rule:

Persons fishing lobster and trap/pot gear in Maine's coastal waters will bear the costs associated with marking their gear as the regulation requires.

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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, 6856
Chapter number/title: Ch. 94, Sanitary Control of Molluscan Shellfish
Filing number: 2019-202
Effective date: 11/13/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This adoption amends the chapter to specify the current version of the Model Ordinance.

Basis statement:

This rule amends ch. 94 to specify the current version of the *National Shellfish Sanitation Program Model Ordinance* (Model Ordinance). The previous version of the rule specified the 2015 Model Ordinance, whereas this rule specifies the 2017 Model Ordinance, which is the most current version.

Fiscal impact of rule:

No fiscal impact is anticipated.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 36, Atlantic Herring (HMA 1A Closes)
Filing number: 2019-218
Effective date: 11/30/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rule-making is intended to align State of Maine regulations with those set forth by the Atlantic States Marine Fisheries Commission and NOAA Fisheries. GARFO announced on Tuesday, November 26, 2019 that the sub-ACL for HMA 1A was projected to have reached its 92% threshold with the addition of landing reports from the harvest on Monday, November 25, 2019. The area will be closed to directed harvesting for the remainder of the calendar year.

Basis statement:

NOAA Fisheries' Greater Atlantic Regional Fisheries Office (GARFO) has moved to close Herring Management Area (HMA) 1A. GARFO has been projected the sub-ACL for HMA 1A to reach the 92% threshold with the inclusion of reported landings from Monday, November 25, 2019. Directed fishery for Atlantic herring will remain closed through to December 31, 2019.

The Commissioner has determined that it is necessary to take emergency action to implement these limitations to prevent the imminent depletion of the supply of Atlantic herring and to comply with the changes to the interstate management of the Atlantic herring resource. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3).

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)
Chapter number/title: Ch. 11, Scallops: 11.08, Targeted Scallop Conservation Closures;
(8) Moosabec Reach
Filing number: 2019-223
Effective date: 12/8/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to establish a scallop conservation closure in Moosabec Reach within the Chandler Bay/Head Harbor Island Rotational Area in Zone 2. The Department is concerned that continued harvesting for the remainder of the 2019-2020 fishing season in this area will reduce scallop broodstock further, as well as jeopardize sublegal scallop abundance that was observed in the 2019 Spring Scallop survey 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 Moosabec Reach area.

Basis statement:

Amendment to ch. 11.08 Targeted Closures for closure of (8) Moosabec Reach within the Chandler Bay/Head Harbor Island Rotational Area.

The Department is taking emergency rulemaking action to expand the targeted conservation closure in the Moosabec Reach area of Chandler Bay/Head Harbor Island Rotational Area within Zone 2.

Moosabec Reach Area

Moosabec Reach area opened on December 2, 2019 with the beginning of the Zone 2 scallop season and was available to harvest for four dragging days and four diving days as indicated on the 2019-2020 Zone 2 harvest calendar. This area was previously open to harvest during the 2016-2017 Scallop Season as a limited access area beginning on January 2, 2017 and closing on January 22, 2017, allowing three dragging days and eight diving days of harvest opportunity.

On opening day, DMR science staff observed the area and boarded vessels along with Marine Patrol staff to assess harvest rates, catch composition, meat size and also discards. Initially, approximately 15 vessels were observed in Moosabec Reach with some vessels choosing to leave the area mid-morning for better scallop catches. The observed tows were of mixed content; containing majority of legal shellstock, some sublegal shellstock in addition to cut shells from the previous open season. Additionally, drags were observed to be kelp covered in a few instances and the majority of scallops did appear to be covered with barnacles.

General comments from harvesters in the area indicated the area wasn't as plentiful as expected, with several harvesters suggesting an early closure was warranted.

DMR science staff along with Marine Patrol staff followed up with a second day of field observations. Only one vessel was observed within Moosabec Reach with the majority of boats having moved out of the area for better scallop grounds and cleaner tows.

In summary, the Department is concerned that continued harvesting for the remainder of the 2019-2020 fishing season in this area will reduce scallop broodstock further, as well as jeopardize sublegal scallop abundance that was observed in the 2019 Spring Scallop survey that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. An

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in the Moosabec Reach 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).

In accordance with 5 MRS §8052 sub-§5-A, a statement of the impact on small business has been prepared. Information is available upon request from the DMR Commissioner's Office, State House Station #21, Augusta, Maine 04333-0021, telephone (207) 624-6553.

Fiscal impact of rule:

Enforcement of this amendment 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, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Defense, Veterans and Emergency Management,
Military Bureau

Umbrella-Unit: **15-213**

Statutory authority: 37-B MRS §§ 352, 352-A, 353-B, 367

Chapter number/title: **Ch. 2 (New)**, Registration of Private Educational Institutions to Participate in the Maine National Guard Education Assistance Program

Filing number: **2019-075**

Effective date: 5/13/2019

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

This rule would establish the process to govern the approval by the Military Bureau of private, non-profit postsecondary education institutions to participate in the tuition benefit program for eligible members of the Maine National Guard as established and recently amended pursuant to Title 37-B M.R.S. §§ 352, 352-A, 353-B and 357. The program was previously only available at public state post-secondary institutions.

Basis statement:

This rule establishes the process to govern the registration by the Military Bureau of private, non-profit, post-secondary education institutions to participate in the tuition benefit program for eligible members of the Maine National Guard, as established and recently amended pursuant to Title 37-B M.R.S. §§ 352, 352-A, 353-B and 357. The program was previously available only for attendance at public post-secondary institutions in Maine.

The rule will enhance access for eligible members of the Maine National Guard to higher education as a benefit of their service. The rule will help ensure that students attending both public and private schools in Maine receive the same tuition benefits as intended by law. Clarification of the use of the Post 9/11 GI Bill is included in the rule to minimize the possibility of overpayment by either state or federal sources such as the Post 9/11 GI Bill.

Fiscal impact of rule:

The rule will have no financial impact on the Military Bureau of the Department of Defense, Veterans and Emergency Management. Funds for this program have been allocated through the regular budget and appropriation process of state government and pursuant to 37-B M.R.S. §353-A.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Defense, Veterans and Emergency Management,
Bureau of Maine's Veterans Services

Umbrella-Unit: **15-215**

Statutory authority: 37-B MRS §505

Chapter number/title: **Ch. 2 (New)**, Administration of the Veteran's Emergency
Financial Assistance Program

Filing number: **2019-165**

Effective date: 9/16/2019

Type of rule: Routine Technical

Emergency rule: No

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

Basis statement:

This rule establishes the process to govern the administration of the Veterans Emergency Financial Assistance Program pursuant to Title 37-B M.R.S. §505. The program will assist veterans in need and provide a resource that may have not otherwise been available. The fixed program cost set by the Legislature is currently \$250,000 per year. The Bureau or its contracted provider(s) may provide a grant of temporary assistance not to exceed \$2,000 annually to a veteran currently a resident of this State who has filed a valid claim for a veteran's pension, pending notification of the award of such a pension, as well as to veterans with emergency needs for assistance as defined in the statute. The rule will help ensure that the State of Maine is assisting the veterans in the appropriate manner and within the guidelines and intent of the law. Conditions which would make a Veteran eligible for a grant under this fund for emergency assistance would include but are not limited to:

- a. Damage to that veteran's place of primary residence due to any fire, flood, hurricane or other natural disaster, or technological or human caused incident that is not fully compensable by the veteran's insurance coverage;
- b. A sudden or sustained illness of the veteran or of the veteran's immediate family member that is causing financial hardship; or
- c. Any financial hardship that in the absence of assistance would result in the veteran becoming homeless.

The Director of the Bureau of Maine Veterans Services may also determine eligibility for temporary financial assistance on a case-by-case basis.

The rule also outlines the application procedure for the grant, reporting requirements and procedures to remedy any misuse of the funds.

Fiscal impact of rule:

The rule governs the disbursement of funds that have been allocated through the regular budget and appropriation process of the Maine Legislature and pursuant to 37-B MRS §505.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Public Safety, **Maine Emergency Medical Services**
Umbrella-Unit: **16-163**
Statutory authority: 32 MRS §84(4)
Chapter number/title: **Ch. 19** (*New*), Community Paramedicine
Filing number: **2019-096**
Effective date: 6/7/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

Promulgation of this rule through emergency rulemaking is necessary to ensure for the continued wellbeing of the current patients enrolled with the original community paramedicine pilot programs. By allowing these EMS agencies to keep providing this service, we can prevent unnecessary visits to the emergency room and provide a service that may otherwise go unmet in terms of these patient's healthcare. Adding this rule will allow these EMS agencies to continue as was the intent of the legislature when the establishment of Community Paramedicine services was added to the statute in 2017. This rule will allow the Board of Emergency Medical Services to establish the requirements and application and approval process of community paramedicine services.

Basis statement:

This chapter – which applies to Community Paramedicine services, the application and approval process for community paramedicine services, and the minimum requirements for community paramedicine services – will ensure that the Board of Emergency Medical Services and the Maine Emergency Medical Services Staff will be able to issue Community Paramedicine designations to services wishing to provide Community Paramedicine services to Maine residents.

Fiscal impact of rule:

Not applicable.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Public Safety, **Maine Emergency Medical Services**
Umbrella-Unit: **16-163**
Statutory authority: 32 MRS §84(4)
Chapter number/title: **Ch. 19** (*New*), Community Paramedicine
Filing number: **2019-158**
Effective date: 8/31/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule is intended to establish guidelines under which the Emergency Medical Services Board may issue a Community Paramedicine designation to an entity that is applying for such a designation under 32 MRS ch. 2-B §84(4) Establishment of community paramedicine services. The board may establish community paramedicine services. As used in this subsection, "community paramedicine" means the practice by an emergency medical services provider primarily in an out-of-hospital setting of providing episodic patient evaluation, advice and treatment directed at preventing or improving a particular medical condition, within the scope of practice of the emergency medical services provider as specifically requested or directed by a physician.

The board shall establish by rule the requirements and application and approval process of community paramedicine services established pursuant to this subsection. At a minimum, an emergency medical services provider, including, but not limited to, an ambulance service or nontransporting emergency medical service, that conducts community paramedicine services shall work with an identified primary care medical director, have an emergency medical services medical director and collect and submit data and written reports to the board, in accordance with requirements established by the board. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5 ch. 375 sub-ch, 2-A.

Fiscal impact of rule:

There is no anticipated fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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**
Umbrella-Unit: **16-219**
Statutory authority: 25 MRS §§ 2450, 2453; 32 MRS §1374
Chapter number/title: **Ch. 1**, Fee Schedules for Plans Examination
Filing number: **2019-181**
Effective date: 10/28/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

Updates the fee schedule for the review of plans on construction, reconstruction, repairs and renovations so they will reflect the fee structure listed in Maine statute 25 MRS §2450.

Fiscal impact of rule:
No fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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**
Umbrella-Unit: **16-219**
Statutory authority: 25 MRS §2452
Chapter number/title: **Ch. 3**, Fire Prevention Code
Filing number: **2019-207**
Effective date: 11/27/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule is amended to adopt the 2018 edition of NFPA #1, *Uniform Fire Code*, and is critical to the general fire safety in and around buildings in the State of Maine. It includes Ch. 38, which covers fire safety for marijuana grow and extraction facilities. This code also addresses new technology that will allow for compliance with the code and in some situations allow for equivalences.

Fiscal impact of rule:

There is not expected to be a significant fiscal impact with the adoption of this code. The fire protection industry is already instituting many of the requirements.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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**
Umbrella-Unit: **16-219**
Statutory authority: 25 MRS §§ 2396, 2452
Chapter number/title: **Ch. 17**, National Fire Alarm and Signaling Code, **NFPA #72**
Filing number: **2019-208**
Effective date: 11/27/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule is amended to adopt the 2019 edition of NFPA 72, which includes recognition of new technology such as Voice over Internet Protocol and Ethernet communications and allows technology available for years to be used in the fire alarm and signaling industry. The adoption of the 2019 edition of NFPA 72 also incorporates the subject matter of the State Fire Marshal's rule Ch. 18, which is being repealed. The rule is intended to allow companies to use newer equipment and provide building owners with more options for compliance with the standard.

Fiscal impact of rule:

There should be no fiscal impact from adoption of this code.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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**
Umbrella-Unit: **16-219**
Statutory authority: 25 MRS §2398
Chapter number/title: **Ch. 18** (*Repeal*), Carbon Dioxide Alarms
Filing number: **2019-209**
Effective date: 11/27/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule is being repealed because the adoption of the 2019 edition of NFPA 72 in Ch. 17 will incorporate the subject matter of the State Fire Marshal's rule Ch. 18.

Fiscal impact of rule:
No fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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**
Umbrella-Unit: **16-219**
Statutory authority: 25 MRS §2452; 8 MRS §236
Chapter number/title: **Ch. 20**, Fire Safety in Buildings and Structures
Filing number: **2019-210**
Effective date: 11/27/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule is amended to adopt NFPA #101, Life Safety Code, to align our state adopted code with several federal codes that we enforce. It adopts updated versions of NFPA # 80, 220 and 221: all of these standards work in unison with NFPA # 101 to provide a minimum safety standard in and around all buildings in the State of Maine. Adoption of NFPA # 241 was needed as it is now a standalone standard instead of being part of a larger standard, It will allow our office and municipalities to ensure safety during the construction of buildings.

Fiscal impact of rule:
No fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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: 25 MRS §4201(2), (1-A), (1-B)
Chapter number/title: **Ch. 70**, Regulation Establishing Critical Incident Stress Management Team Training Standards
Filing number: **2019-244**
Effective date: 11/27/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The principal reason for proposing this amendment to the existing regulation is to ensure that the regulation is consistent with the statutes amended by PL 2019 ch. 89, An Act To Amend the Laws Governing Critical Incident Stress Management Teams.

Basis statement:

The amendment of the existing regulation – which amendment, during its development, was reviewed by the leader of the Maine State Police Critical Stress Management Team – ensures that the regulation is consistent with applicable Maine law. DPS does not anticipate that the amended rule will have any impact on either businesses or the environment.

Fiscal impact of rule:

No additional fiscal impact is anticipated as a result of the proposed amendments that would be made to the existing regulation..

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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) & (C)
Chapter number/title: **Ch. 2**, Licenses and Applications
Ch. 4, License Records
Ch. 5, Internal Controls (*including Appendix A*, Minimum Internal Controls)
Filing number: **2019-125, 126, 127**
Effective date: 7/22/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule package repeals the identification of coins, tokens, hoppers and drop buckets for use in slot machines. There are none and have not been any use of these since inception. All slot machines today are considered ticket in and ticket out which accepts tickets and/or currency only.

Basis statement:

This rule package removes the use of the outdated terms coins, tokens, hoppers, drop buckets, and slot booths. Coins, tokens, hoppers, and drop buckets have not been used since the inception of slot machine facilities and casinos in the State. All slot machines today are considered ticket in and ticket out, which means the machines accept tickets and/or currency only. Slot booths are satellite areas used to complete the same transactions that the main cage does. There are no slot booths in either facility as of the date of these changes and neither facility anticipates adding any.

Fiscal impact of rule:

Not applicable.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053 sub-§5

Agency name: Department of Transportation (DOT)
Umbrella-Unit: 17-229
Statutory authority: 23 MRS §§ 52, 4404; Resolves 2015 ch. 86 §2
Chapter number/title: Ch. 602 (*New*), Rules Relating to Maine Ferry Service Tolls
Filing number: 2019-168
Effective date: 10/2/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department of Transportation adopts Ch. 602 to set toll rates for the Maine State Ferry Service (the “MSFS”) to meet the funding requirements in 23 MRS §4210-C.

Basis statement:

This rule established tolls for the Maine State Ferry Service pursuant to 23 MRS §4404. The toll rates in the rule are anticipated to generate sufficient revenue to pay for the continued operation of the Ferry Service in light of the limitation on State support contained in 23 MRS §4210-C.

Fiscal impact of rule:

This rule will have no fiscal impact on the State of Maine General Fund.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053 sub-§5

Agency name: Department of Transportation (DOT)
Umbrella-Unit: 17-229
Statutory authority: 23 MRS §§ 52, 4404; Resolves 2015 ch. 86 §2
Chapter number/title: **Ch. 308**, Rules to Establish Seasonal Load Restrictions on Certain State and State Aid Highways
Filing number: **2019-190**
Effective date: 11/5/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The amendment is to update Section 4, “Exemption – Frozen Highways”, to further clarify the restrictions on highways that are considered to be “frozen”.

Basis statement:

This rule was amended to update Section 1, “Definitions”, sub-Section 6, “Special Commodity”, to include a new letter k), “United States mail”. Section 4 was amended to update the definition of “frozen” highways.

Fiscal impact of rule:

Minimal.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Administrative and Financial, Services, **Bureau of Revenue Services (Maine Revenue Services – MRS)**
Umbrella-Unit: **18-125**
Statutory authority: 36 MRS §576
Chapter number/title: **Ch. 202**, Tree Growth Tax Law Valuations - 2019
Filing number: **2019-070**
Effective date: 5/11/2019
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.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Administrative and Financial, Services, **Bureau of Revenue Services (Maine Revenue Services – MRS)**
Umbrella-Unit: **18-125**
Statutory authority: 36 MRS §112
Chapter number/title: **Ch. 302**, Sales to Government Agencies and Exempt Organizations
Filing number: **2019-148**
Effective date: 8/19/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

Rule 302 establishes administrative rules regarding tax-exempt sales and explains the circumstances under which a retailer or service provider will be relieved of its burden of proving that sales to an entity described in 36 MRS §§ 1760 or 2557, including an agency or instrumentality of the federal government or of the State of Maine, are exempt from Maine sales, use, or service provider tax.

Rule 302 is being amended to include references to the service provider tax, and to update the references to the GSA SmartPay program.

Fiscal impact of rule:
None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Administrative and Financial, Services, **Bureau of Revenue Services (Maine Revenue Services – MRS)**
Umbrella-Unit: **18-125**
Statutory authority: 36 MRS §112
Chapter number/title: **Ch. 304**, Sales Tax Returns and Payments
Filing number: **2019-149**
Effective date: 8/19/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

Rule 304 is being amended to reflect that the supplemental reports that Maine Revenue Services formerly required retailers of vehicles, watercraft, and manufactured housing to file are no longer required; instead, the completed supplemental report must be maintained in the records of the retailer and made available for inspection by the assessor.

Rule 304 establishes requirements for the filing of sales and use tax returns and the payment of taxes due pursuant to Title 36 ch. 219, of the *Maine Revised Statutes*.

Fiscal impact of rule:
None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Administrative and Financial, Services, **Bureau of Revenue Services (Maine Revenue Services – MRS)**
Umbrella-Unit: **18-125**
Statutory authority: 36 MRS §112
Chapter number/title: **Ch. 318**, Instrumentalities of Interstate or Foreign Commerce
Filing number: **2019-150**
Effective date: 8/19/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

Maine Revenue Services is repealing and replacing Rule 318 because the controlling statutory provision, 36 MRS §1760(41), which provides an exemption from sales and use tax for certain instrumentalities of interstate or foreign commerce, was repealed (LD 1805, PL 2017 c. 375 part I) and replaced with 36 MRS §1760(41-A). Under 36 MRS §1760(41-A), the sales and use tax exemption is expanded by specifying that, in certain situations, property waiting to be loaded or unloaded is considered to be placed in use in interstate or foreign commerce. Also, 36 MRS §1760(41-A) provides that a trailer, semitrailer, or tow dolly being used by an entity other than the owner is eligible for the exemption if there is a written interchange agreement between the owner and the other entity and the transportation is interstate in nature. The expanded exemption is effective for purchases made on or after January 1, 2012.

Fiscal impact of rule:
None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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 (BABLO)/ Maine State Liquor and Lottery Commission**

Umbrella-Unit: **18-553**

Statutory authority: 28-A MRS §453-D

Chapter number/title: **Ch. 4 (New)**, Agency Liquor Store Relocation: Rules Governing the Process to Provide Input by Agency Liquor Stores in the Same Municipality of a Relocation Request

Filing number: **2019-029**

Effective date: 2/9/2019

Type of rule: Routine Technical

Emergency rule: No

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

Basis statement:

This new rule establishes a process to provide input by agency liquor stores in the same municipality of a relocation requested by an agency liquor store in that municipality.

Fiscal impact of rule:

There is no known fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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 (BABLO)/ Maine State Liquor and Lottery Commission**

Umbrella-Unit: **18-553**

Statutory authority: 8 MRS §§ 372 sub-§2 ¶1, 374

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

Filing number: **2019-071**

Effective date: 5/8/2019

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

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

Basis statement:

This amendment updates the existing rules governing the jackpot draw game Powerball. This amendment makes necessary changes to update current ticket cancellation rules, technical changes to clarify language, and fix typographical errors.

Fiscal impact of rule:

There is no known fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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 (BABLO)/ Maine State Liquor and Lottery Commission**

Umbrella-Unit: **18-553**

Statutory authority: 8 MRS §§ 372 sub-§2 ¶1, 374

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

Filing number: **2019-072**

Effective date: 5/8/2019

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

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

Basis statement:

This amendment updates the existing rules governing the jackpot draw game Mega Millions. This amendment makes necessary changes to update current ticket cancellation rules, technical changes to clarify language, and fix typographical errors.

Fiscal impact of rule:

There is no known fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Administrative and Financial, Services, **Office of Marijuana Policy**
Umbrella-Unit: **18-691**
Statutory authority: Title 22 ch. 558-C
Chapter number/title: **Ch. 4 (New)**, Marijuana Manufacturing Facilities
Filing number: **2019-140**
Effective date: 8/1/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

In 2018, the 128th Legislature passed LD 238 and LD 1539. Both pieces of legislation made changes to Maine's medical use of marijuana program statutes regarding the manufacturing of marijuana, marijuana concentrates, and marijuana products.

Basis statement:

The Office of Marijuana Policy (hereinafter "OMP"), within the Department of Administrative and Financial Services (hereinafter the "Department"), has completed final adoption of a rule to establish standards and procedures related to manufacturing marijuana, marijuana concentrate, and marijuana products.

In 2018, the 128th Legislature passed LD 238 and LD 1539. Both pieces of legislation made changes to Maine's medical use of marijuana program statutes regarding manufacturing. Until the effective date of this rule, facilities conducting these activities will have been doing so in the absence of departmental rule.

This rule implements requirements of Title 22 ch. 558-C, including a marijuana track and trace system, and establishes minimum standards for manufacturing marijuana and marijuana products for medical use, including requirements for facility registration, requirements for engaging in marijuana extraction using inherently hazardous substances, staff qualifications, and security and testing. This rule protects public health and assures safe practices related to marijuana manufacturing, requiring a level of competency of facility personnel and appropriate equipment to process and extract marijuana.

The work of OMP benefited significantly from input provided by the public during our public comment period. For example, due to feedback provided by the public, we aligned several definitions more closely with the governing statute, including the addition of carbon dioxide to the definition of inherently hazardous substance. Further, the sections of the proposed rule on criminal history were amended to reflect language in Title 22 ch. 558-C. Finally, in response to practices already employed by the industry, OMP has modified language contained in the finally adopted rule to allow for the use of reusable containers.

Pursuant to Title 5 §8052(5)(B), the Department determines that the finally adopted rules are not substantially different from and are consistent with the terms of the proposed routine technical rules.

Fiscal impact of rule:

Unknown additional licensing fees received by the Office of Marijuana Policy's Maine Medical Use of Marijuana Program.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Administrative and Financial, Services, **Office of Marijuana Policy**
Umbrella-Unit: **18-691**
Statutory authority: 24-B MRS ch. 1; 22 MRS §569
Chapter number/title: **Ch. 5**, Marijuana Manufacturing Facilities
Filing number: **2019-161**
Effective date: 9/4/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

To protect the public health and safety by establishing a process for certifying marijuana testing facilities that will test marijuana and marijuana products and provide information to marijuana establishments and consumers regarding contaminants in marijuana and marijuana products as well as information regarding the potency of cannabinoids found in marijuana and marijuana products.

Basis statement:

The Office of Marijuana Policy (hereinafter "OMP"), within the Department of Administrative and Financial Services (hereinafter the "Department"), has completed emergency adoption of a rule to establish minimum qualifications, education and training for marijuana testing facility personnel and staff; identifies the testing equipment necessary to test samples of marijuana and marijuana products for mandatory testing; identifies detection limits for mandatory testing of various contaminant types; and identifies other requirements for a marijuana testing facility to become certified to operate as a marijuana testing facility by the Maine Center for Disease Control and Prevention (CDC).

On June 18, 2019, PL 2019 ch. 354 was enacted on an emergency basis, establishing within the CDC the Marijuana Testing Facility Certification Program. These rules are promulgated on an emergency basis to protect the public health and safety following that emergency action, and in anticipation of mandatory testing of all marijuana and marijuana products sold to consumers in Maine's adult use marijuana market.

This rule implements requirements of Title 28-B ch. 1 and 22 MRS §569 establishing the role of marijuana testing facility certification within the overall marijuana testing facility accreditation and licensing process, identifying minimum standards for education and qualification of key marijuana testing facility personnel and analysts, requiring standard operating procedures for conducting tests and collecting samples of marijuana and marijuana products, and indicating batch sizes and contaminant detection limits for mandatory testing of marijuana and marijuana products. This rule protects public health and assures that the public is aware of the tests to which adult use marijuana is subject prior to retail sale.

OMP consulted with staff of the Maine Board of Pesticide Control in identifying the list of prohibited pesticides to be tested for by marijuana testing facilities, and benefited greatly from a partnership with Maine CDC in drafting these rules.

Fiscal impact of rule:

Minor increase in revenue to the State due to receipt of certification fees by the Maine CDC.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Administrative and Financial, Services, **Office of Marijuana Policy**
Umbrella-Unit: **18-691**
Statutory authority: Title 28-B
Chapter number/title: **Ch. 1 (New)**, Adult Use Marijuana Program
Filing number: **2019-194**
Effective date: 12/4/2019
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

The Office of Marijuana Policy (OMP) is proposing to introduce a rule to establish a regulatory framework governing adult use, also known as recreational, marijuana in Maine.

On November 8, 2016, Maine voters approved Question 1 and legalized the recreational use, retail sale and taxation of marijuana. On January 27, 2017, the legislature placed a moratorium on certain parts of the law regarding retail sales and taxation until February 2018, while a 17-member legislative committee worked to overhaul the Marijuana Legalization Act (MLA). The moratorium expired on February 1, 2018, after a legislative effort to pass a short-term extension was unsuccessful. However, retail sales are unable to take place until the Department of Administrative and Financial Services (DAFS) completes rulemaking and those rules are approved by the 129th Legislature.

In February 2019, DAFS created OMP to oversee all aspects of legalized marijuana. Since that time, OMP has been conducting the rulemaking activity required by the MLA. The Office formally proposed rules to the 129th Legislature on June 5, 2019. Governor Mills signed LD 719 (PL 2019, ch. 491)—*An Act To Amend the Adult Use Marijuana Law*—on June 27, 2019, with the legislation going into effect on September 19, 2019. LD 719 made several changes to the MLA and, most importantly, authorized OMP to proceed with final adoption of adult use rules.

Basis statement:

The Office of Marijuana Policy (hereinafter "OMP"), within the Department of Administrative and Financial Services (hereinafter the "Department"), has adopted a rule to establish a regulatory framework governing adult use, also known as recreational, marijuana in Maine.

The *Marijuana Legalization Act* (MLA) includes both mandatory and discretionary rulemaking concerning DAFS. Broadly, Title 28-B, Section 104(3), states that the Department shall "adopt all rules necessary to implement, administer and enforce" the MLA. In addition, the statute specifies rulemaking in areas including, but not limited to, tracking marijuana plants and product, health and safety data, labeling and packaging, and licensing and fees. Pursuant to Section 104 of the law, all rules, except where specifically provided, must be adopted as major substantive rules.

Final adoption of this rule will allow OMP to license and regulate adult use marijuana-related businesses in Maine. The general classes of licenses for marijuana establishments are cultivation facility, testing facility, products manufacturing facility, and marijuana store. Examples of regulatory work include, but are not limited to, tracking marijuana plants and product, managing health and safety data, labeling and packaging, and ensuring licensee compliance with statute and rule. The licensing and operation of marijuana-related businesses will generate tax revenue to the General Fund, will support a public health and education campaign, will support a law enforcement training program, and will provide revenue to support the ongoing operation of OMP.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

The work of OMP benefited significantly from input provided by the public during the public comment period. For example, due to feedback provided by the public, the residency requirements contained in the proposed rules has been simplified to reflect legislative direction and clarify the burden of proof regarding majority ownership. Further, testing facilities may now be located adjacent to other marijuana establishments, provided they have separate entrances accessible from public rights of way. Finally, OMP adjusted some of the reporting requirements for other interested parties to exclude banks, credit unions, or state or federally chartered financial institutions.

Pursuant to Title 5 Section 8052(5)(B), the Department determines that the final adopted rules are not substantially different from the proposed major substantive rules and are consistent with the terms of the proposed rules.

The Department will file these final adopted rules with the Legislature for its review and authorization for final adoption.

Fiscal impact of rule:

Tax Revenue:

	Fiscal Year 2020	Fiscal Year 2021
Sales and Excise Tax Revenue	\$4.4 million	\$16.8 million

Once fully operational, it is estimated that OMP will generate more than \$1.2 million in Other Special Revenue licensing fees each year.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Administrative and Financial, Services, **Office of Marijuana Policy**
Umbrella-Unit: **18-691**
Statutory authority: Title 28-B
Chapter number/title: **Ch. 1, Adult Use Marijuana Program**
Filing number: **2019-205**
Effective date: 11/22/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The *Marijuana Legalization Act* requires the Department of Administrative and Financial Services (DAFS) to conduct both major substantive and routine technical rulemaking. The Office of Marijuana Policy (OMP), within DAFS, is emergency adopting a routine technical rule to establish a regulatory framework governing the licensing of testing facilities in the adult use marijuana industry to protect the health and safety of the public in Maine.

Basis statement:

These additions are promulgated on an emergency basis to amend and add to the Adult Use Marijuana Program Rule promulgated by the Maine Department of Administrative and Financial Services (the Department) specific licensing criteria and additional requirements for the operation of marijuana testing facilities following action by the Legislature in PL 2019 ch. 491 §3, clarifying the scope of the Department's routine technical rulemaking authority regarding marijuana testing facilities. This law went into effect on September 19, 2019.

It is critical that amendments to this rule are adopted on an emergency basis to protect public health and safety by establishing a mandatory testing system prior to the launch of the full adult use marijuana market by December 31, 2019, to ensure that consumers of adult use marijuana have information regarding the contents of the marijuana and marijuana products they are consuming, and further, to provide adequate notice and information to adult marijuana cultivators and manufacturers regarding the mandatory tests required for all products cultivated or manufactured for adult use.

This rule is promulgated to ensure the independence, professional responsibility and operational capacity of marijuana testing facilities responsible for mandatory testing of all marijuana and marijuana products for retail sale by licensees of the Department's Adult Use Marijuana Program. This rule is promulgated after consultation with the Department of Health and Human Services, Maine Center for Disease Control and Prevention, and the Department of Agriculture, Conservation and Forestry.

These additions are intended to protect public health by establishing licensing criteria for marijuana testing facilities and to provide clarity regarding mandatory testing for contaminants and the process by which the Department may require tested marijuana and marijuana to be destroyed due to failure of such mandatory testing.

Fiscal impact of rule:

(Left blank on Fact Sheet.)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Administrative and Financial, Services, **Office of Marijuana Policy**
Umbrella-Unit: **18-691**
Statutory authority: 24-B MRS ch. 1; 22 MRS §569
Chapter number/title: **Ch. 5**, Certification of Marijuana Testing Facilities
Filing number: **2019-224**
Effective date: 12/16/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To protect the public health and safety by establishing a process for certifying marijuana testing facilities that will test marijuana and marijuana products and provide information to marijuana establishments and consumers regarding contaminants in marijuana and marijuana products as well as information regarding the potency of cannabinoids found in marijuana and marijuana products.

Basis statement:

On September 4, 2019, the Office of Marijuana Policy (OMP) published 18-691 Code of Maine Rules (CMR) ch. 5, *Emergency Rules for the Certification of Marijuana Testing Facilities*. Those rules were drafted in consultation with representatives from the Department of Health and Human Services, Maine Center for Disease Control and Prevention's Marijuana Testing Facility Certification Program (CDC) and the Department of Agriculture, Conservation and Forestry (DACF), Bureau of Pesticide Control.

The Department of Administrative and Financial Services, Office of Marijuana Policy, is adopting this routine technical rule to establish minimum qualifications, education and training for marijuana testing facility personnel and staff; identify recommended technologies and methods for the conduct of mandatory testing of adult marijuana, marijuana concentrate and marijuana products; identify detection limits for mandatory testing of various contaminant types; and identify other requirements for a marijuana testing facility to become certified to operate as a marijuana testing facility by the Maine Center for Disease Control and Prevention's Marijuana Testing Facility Certification Program (Maine CDC).

This rule implements requirements of Title 28-B ch. 1 and 22 MRS §569 establishing the role of marijuana testing facility certification within the overall marijuana testing facility accreditation and licensure process, including establishing minimum education and qualifications of key marijuana testing facility personnel and analysts, requiring standard operating procedures for conducting tests and collecting samples of marijuana, marijuana concentrate and marijuana products, and indicating batch sizes and contaminant detection limits for mandatory testing of marijuana, marijuana concentrate and marijuana products. This rule protects public health and assures that the public is aware of the tests that adult use marijuana is subject to prior to retail sale.

OMP consulted with staff of the Department of Agriculture, Conservation and Forestry's Board of Pesticide Control in identifying the list of prohibited pesticides to be tested for by marijuana testing facilities and benefited greatly from a partnership with the Maine CDC.

OMP uses several different terms in its rule in referring to a "best practices" or "sampling guide" to be published by OMP on its website at the same time it finally adopts this rule. The guide, Best Practice Guide for the Sample Collection of Adult Use Marijuana/or Mandatory Testing, provides basic guidance to marijuana testing facilities regarding techniques to be used by sample collectors for mandatory testing of adult use marijuana. It is posted on OMP's website at www.maine.gov/dafs/omp .

Fiscal impact of rule:

(Left blank on Fact Sheet.)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Economic and Community Development
Umbrella-Unit: 19-100
Statutory authority: PL 2009 ch. 337
Chapter number/title: Ch. 100, Pine Tree Development Zone Program
Filing number: 2019-097
Effective date: 6/17/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

In 2018 the Pine Tree Development Zone Program was extended for an additional three years. The extension legislation also incorporated significant changes to the certification process, annual reporting requirements, and administrative oversight.

Basis statement:

The Pine Tree Development Zone Program was established by the Legislature in 2003 and has been amended in 2005, 2009 and in 2018. The most recent amendment extended the program an additional three years and also made significant changes to the administrative and certification processes of the program. The Department of Economic and Community Development administers the program. This rule establishes criteria to determine eligibility for the Pine Tree Development Zone program, the process used by businesses to apply for certification and the requirements that must be met and maintained to claim benefits available to a certified business.

The revised rule will provide guidance to businesses participating in the program, relative to certification, the requirements a business must meet and maintain to claim program benefits and remain in program compliance. It will also provide guidance to DECD in the oversight and administration of the program.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Secretary of State, **Bureau of Motor Vehicles**
Umbrella-Unit: **29-250**
Statutory authority: 29-A MRS §204
Chapter number/title: **Ch. 119**, Non-Governmental Registration Agent and Resident Agent Requirements
Filing number: **2019-003**
Effective date: 1/9/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is being amended to clarify the definitions of Non-governmental Registration Agent and Resident Agent, to clarify certain training requirements, and to clarify certain office security requirements. The rule also is being amended to allow Non-governmental Agents to develop their own compute processing systems with the permission of the Bureau of Motor Vehicles.

Basis statement:

This rule establishes the requirements for Non-governmental Registration Agents and Resident Agents pursuant to 29-A MRS §204. (Collectively, “registration agents.”) The rule sets forth requirements for training, equipment and software, reporting, inventory control, audit, and suspension and hearings for registration agents. A Non-governmental Registration Agent may be authorized to collect registration, title and related taxes and fees, and to issue registration credentials and indicia. A Non-governmental Registration Agent is authorized and required to transmit registration data to the Bureau of Motor Vehicles. A registration agent may be authorized to process motor vehicle registrations, and annual and long term trailer registrations. A registration agent may be authorized to have plate and validation inventory, and to issue motor vehicle credentials.

The rule is being amended to clarify the definitions of Non-governmental Registration Agent and Resident Agent, to clarify certain training requirements, and to clarify certain office security requirements. The rule also is being amended to allow Non-governmental Registration Agents to develop their own computer processing systems with the permission of the Bureau of Motor Vehicles.

Fiscal impact of rule:

(No response)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: **Maine Public Utilities Commission (PUC)**
Umbrella-Unit: **65-407**
Statutory authority: 35-A MRS §§ 111, 314, 315
Chapter number/title: **Ch. 395**, Construction Standards, Ownership, Cost Allocation, and Customer Charges Rules for Electric Distribution Line Extensions and Service Drops
Filing number: **2019-018**
Effective date: 2/3/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopts amendments to the Commission's *Construction Standards, Ownership, Cost Allocation, and Customer Charges Rules for Electric Distribution Line Extensions and Service Drops* rule (Ch. 395). These amendments clarify the responsibility for installation, ownership and maintenance of both above-ground and underground service drops. The adopted rule specifies that transmission and distribution (T&D) utilities shall install, own and maintain above-ground service drops, and that customers shall install, own and maintain underground service drops.

Basis statement:

The factual and policy basis for this rule is set forth in the Commission's Order Amending Rule and Statement of Factual and Policy Basis, Docket No. 2018-00202, issued on January 18, 2019. Copies of this Statement and Order will be 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.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: **Maine Public Utilities Commission (PUC)**
Umbrella-Unit: **65-407**
Statutory authority: 35-A MRS §§ 104, 111, 1301, 3203(9), 3209-A, 3210; PL 2011 ch. 262 §2; PL 2019 ch. 16 §2
Chapter number/title: **Ch. 313**, Consumer Net Energy Billing
Filing number: **2019-066**
Effective date: 4/22/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

On April 2, 2019, the Governor signed into law PL 2019 ch. 16, "An Act To Eliminate Gross Metering" (Act). The Act directs the Commission to amend its NEB rules to be substantively equivalent to the rules in effect on January 1, 2017, and, further, that the amended rules must apply retroactively to all NEB customers that entered into a net energy billing arrangement between March 29, 2017 and the effective date of the rules adopted pursuant to the Act.

The Act will not become effective until 90 days after the end of the current legislative session. However, because the reductions in nettable energy pursuant to the rule were to be phased-in gradually over time, in the initial few years of the phase-in period, the costs to ratepayers for the second meter would be likely to exceed the cost reduction benefits ratepayers would realize through the reductions in nettable energy.

Accordingly, the Commission finds that the continued operation of Ch. 313 in its current form creates an immediate threat to the general welfare that allows the Commission to proceed pursuant to the emergency rulemaking provisions of the *Administrative Procedure Act*, 5 MRS §8054.

Basis statement:

The factual and policy basis for this rule is set forth in the Commission's Order Adopting Emergency Rule, Docket No. 2019-00075, issued on April 12, 2019.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: **Maine Public Utilities Commission (PUC)**
Umbrella-Unit: **65-407**
Statutory authority: 35-A MRS §§ 104, 111, 3205-A, 3104-A
Chapter number/title: **Ch. 320**, Electric Transmission and Distribution Utility Service Standards
Filing number: **2019-098**
Effective date: 7/14/2019
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission finally adopts Ch. 320 regarding electric transmission and distribution (T&D) utility service as directed by the Legislature pursuant to recently enacted legislation, Resolves 2019 ch. 19.

Basis statement:

The factual and policy basis for this chapter is set forth in the Commission's Order Adopting Final Rule and Statement of Factual and Policy Basis, Docket No. 2018-00311, issued on June 7, 2019. 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.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Maine Public Utilities Commission (PUC)
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: 2019-141
Effective date: 8/4/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopts amendments to Ch. 285 - *Maine Telecommunications Education Access Fund* (MTEAF) of the Commission's rules. The amendments are intended to harmonize the definitions and provisions of the rule with Ch. 288 - *Maine Universal Service Fund* (MUSF). The Commission is also making other, non-substantive editorial amendments.

Basis statement:

The factual and policy basis for this rule is set forth in the Commission's Order Amending Rule and Statement of Factual and Policy Basis, Docket No. 2019-00034, issued on July 15, 2019. Copies of the Order have been filed with this chapter at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 18 State House Station, Augusta, Maine 04333-0018.

Fiscal impact of rule:

No fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: **Maine Public Utilities Commission (PUC)**
Umbrella-Unit: **65-407**
Statutory authority: 35-A MRS §§ 104, 111, 7104
Chapter number/title: **Ch. 288**, Maine Universal Service Fund
Filing number: **2019-142**
Effective date: 8/4/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopts amendments to Ch. 288 – *Maine Universal Service Fund* (MUSF) of the Commission’s rules. The amendments are intended to harmonize the contribution mechanism of Ch. 285 - *Maine Telecommunications Education Access Fund* (MTEAF) of the Commission’s rules and the Maine E911 Fund. The Commission is also making other, non-substantive editorial amendments.

Basis statement:

The factual and policy basis for this chapter is set forth in the Commission's Order Amending Rule and Statement of Factual and Policy Basis, Docket No. 2019-00022, issued on July 15, 2019. Copies of the Order have been filed with this chapter at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 18 State House Station, Augusta, Maine 04333-0018.

Fiscal impact of rule:

No fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: **Maine Public Utilities Commission (PUC)**
Umbrella-Unit: **65-407**
Statutory authority: 35-A MRS § 104, 111, 1301, 3203(9), 3210; PL 2019, ch. 16 §2
Chapter number/title: **Ch. 313**, Customer Net Energy Billing
Filing number: **2019-145**
Effective date: 8/12/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopts amendments to Ch. 313 – Customer *Net Energy Billing* (NEB) of the Commission’s rules. The amendments are intended to make the NEB rules substantively equivalent to the rules in effect on January 1, 2017, pursuant to PL 2019 ch. 16, *An Act to Eliminate Gross Metering*. The Commission is also making other, non-substantive amendments to the rule.

Basis statement:

The factual and policy basis for this Chapter is set forth in the Commission's Order Adopting Rule, Docket No. 2019-00076 issued on July 31, 2019. 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, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: **Maine Public Utilities Commission (PUC)**
Umbrella-Unit: **65-407**
Statutory authority: 35-A MRS §§ 104, 111, 704, 1308
Chapter number/title: **Ch. 32 (Repeal)**, Electric Utilities Service Standards
Filing number: **2019-154**
Effective date: 8/27/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement / Summary:

In this Order, the Commission repeals Ch. 32 of the Commission's rules (65-407 CMR ch. 32), which sets forth rules establishing service standards for electric transmission and distribution utilities. Ch. 32 has been replaced by Ch. 320, which was adopted by the Commission on June 7, 2019.

Fiscal impact of rule:
Minimal.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: **Maine Public Utilities Commission (PUC)**
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: **2019-203**
Effective date: 11/23/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopts amendments to Ch. 880 of the Commission's rules regarding attachments to joint use utility poles. The Commission amends the portions of Ch. 880 that concern rate formulae and allocation of costs. The Commission also amends other portions of Ch. 880 for purposes of clarifying previous changes to the rule, and other, non-substantive editorial amendments.

Basis statement / Summary:

The factual and policy basis for this rule is set forth in the Commission's Order Amending Rule and Factual and Policy Basis, Docket No. 2019-00028, issued on November 6, 2019. 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, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Maine Public Utilities Commission (PUC)
Umbrella-Unit: 65-407
Statutory authority: 35-A MRS §§ 104, 111, 1301,3203(9), 3210, 3210-B; PL 2019 ch. 477
Chapter number/title: Ch. 311, Portfolio Requirement
Filing number: 2019-216
Effective date: 12/7/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopts amendments to Ch. 311, the PUC portfolio requirement rule, to implement recently enacted legislation (Public Law 2019 ch. 477 – *An Act to Reform Maine’s Renewable Portfolio Standard*). (The Commission also provisionally adopts amendment to Section 4(B).)

Basis statement / Summary:

The factual and policy basis for this rule is set forth in the Commission's Order Amending Rule and Statement of Factual and Policy Basis, Docket No. 2019-00177, issued on November 8, 2019. 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.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: **Maine Public Utilities Commission (PUC)**
Umbrella-Unit: **65-407**
Statutory authority: 35-A M.R.S.A. §§ 104, 111, 1301, 3203(9), 3209-A, 3210; Public Law 2019 ch. 16 §2
Chapter number/title: **Ch. 313**, Consumer Net Energy Billing
Filing number: **2019-217**
Effective date: 12/7/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopts amendments to its net energy billing (NEB) rules (ch. 313). These amendments implement changes to NEB contained by recently legislation.

Basis statement / Summary:

The factual and policy basis for this rule is set forth in the Commission's Order Adopting Rule and Statement of Factual and Policy Basis, Docket No. 2019-00197, issued on November 22, 2019; the Commission's Order Adopting Rule and Statement of Factual and Policy Basis, Docket No. 2019-00076, issued on July 31, 2019; the Commission's Order Adopting Emergency Rule, Docket No. 2019-00075, issued on April 9, 2019; the Commission's Order Adopting Final Rule, Docket No. 2011-00398, issued on January 11, 2012 ; the Commission's Order Adopting Final Rule, Docket No. 2008-00410, issued on June 9, 2009; the Commission's Statement of Factual and Policy Basis and Order Adopting Rule, Commission Docket No. 98-621, issued on December 10, 1998; and Order Adopting Provisional Rule and Statement of Factual and Policy Basis, Commission Docket No. 2008-410, issued on January 8, 2009. Copies of this Statement and Order have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 101 Second Street, Hallowell, Maine 04347; 18 State House Station, Augusta, Maine 04333-0018.

Fiscal impact of rule:

No fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: **Maine Public Utilities Commission (PUC)**
Umbrella-Unit: **65-407**
Statutory authority: 35-A MRS §§ 104, 111; Resolve 2007 ch. 183; PL 2019 ch. 478
Chapter number/title: **Ch. 324**, Small Generator Interconnection Procedures
Filing number: **2019-230**
Effective date: 12/11/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Public Utilities Commission amends its Small Generator Interconnection Rule (ch. 324) pursuant to emergency rulemaking procedures set forth in 5 MRS §8054. The purpose of the amendments is to ensure the timeliness of the small generator interconnection process under Ch. 324 as directed by the Legislature through *An Act to Promote Solar Energy Projects and Distributed Generation Resources in Maine*, Public Law 2019 ch. 478 (the Act). The emergency amendments to the rules are the result of a consensus reached among both investor-owned transmission and distribution (T&D) utilities and distributed generation developers. Accordingly, the Commission will complete a rulemaking process regarding Ch. 324 within that timeframe.

Basis statement / Summary:

The factual and policy basis for this rule is set forth in the Commission's Order Adopting Emergency Rule, Docket No. 2019-00303, issued on November 27, 2019. Copies of this Statement and Order have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 101 Second Street, Hallowell, Maine 04347; 18 State House Station, Augusta, Maine 04333-0018.

Fiscal impact of rule:

No fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: **Maine Public Utilities Commission (PUC)**
Umbrella-Unit: **65-407**
Statutory authority: 35-A MRS §§ 104, 111, 1301, 3488; PL 2019 ch. 478
Chapter number/title: **Ch. 312** (*New*), Distributed Generation Procurement
Filing number: **2019-271**
Effective date: 12/29/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopts a new rule, Ch. 312 - *Distributed Generation Procurement*, that contains provisions governing the periodic procurement of distributed renewable resources. The Commission adopts this rulemaking as a result of recently enacted legislation.

Basis statement / Summary:

The factual and policy basis for this chapter is set forth in the Commission's Order Adopting Rule, Docket No. 2019-00219 issued on December 11, 2019. Copies of the Statement and Order have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 18 State House Station, Augusta, Maine 04333-0018.

Fiscal impact of rule:

No fiscal impact.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: **Maine Health Data Organization**
Umbrella-Unit: **90-590**
Statutory authority: 22 MRS §§ 8704 sub-§4, 8708-A, 8712, 8761; 24-A MRS §6951(2),(3)
Chapter number/title: **Ch. 270**, Uniform Reporting System for Quality Data Sets
Filing number: **2019-081**
Effective date: 6/22/2019
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

These changes will eliminate duplicative reporting by Maine hospitals; improves access to Healthcare Associated Infection (HAI) outcome measures and all other Centers for Medicare & Medicaid Services (CMS) mandated reporting requirements to National Healthcare Safety Network (NHSN); and updates/clarifies provisions in the rule as needed.

In accordance with the provisions of 22 MRS §8708-A, the modification of the rules must be coordinated with the Maine Quality Forum and the Maine Quality Forum Advisory Council.

Basis statement:

Ch. 270 is a major substantive rule and requires legislative approval prior to final adoption. The Maine Health Data Organization is authorized by statute to collect quality data from health care practitioners and health care facilities to support the set of quality measures adopted by the Maine Quality Forum with the goal to improving the quality of healthcare in Maine.

The MHDO Board met on June 7, 2018 and authorized the MHDO to initiate major substantive rulemaking to Ch. 270. The proposed rule was publicly noticed on August 15, 2018 and a public hearing was held on September 6, 2018 in Augusta. No public comments were received at the public hearing or by the 10-day comment period deadline of September 17, 2018. The Board provisionally adopted the major substantive rule on December 6, 2018. Subsequently, the Board submitted the provisionally adopted rule to the Maine State Legislature for its review, in accordance with 5 MRS Sec. 8072.

The Maine State Legislature authorized final adoption of the December 6, 2018 provisionally adopted rule, with no changes. Resolves 2019, ch 9. On May 23, 2019, the Board finally adopted this rule.

Fiscal impact of rule:

There is no fiscal impact on state municipalities, counties or businesses.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: **Maine Health Data Organization**
Umbrella-Unit: **90-590**
Statutory authority: 22 MRS ch. 1683 §8704 sub-§4, §8708
Chapter number/title: **Ch. 241**, Uniform Reporting System for Hospital Inpatient Data Sets and Hospital Outpatient Data Sets
Filing number: **2019-245**
Effective date: 12/22/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The changes contain deletions that result from converting from the *International Classification of Disease (ICD-9-CM)* to ICD 10-CM edition *Coding Manual*. Adding elements that are in the current national standards which will enhance the quality of MHDO data for those using the data for analysis. Lastly, several of the changes align with the national standards.

Basis statement:

The Maine Health Data Organization is authorized by statute to collect health care data. This chapter governs the provisions for filing hospital inpatient data sets and hospital data outpatient data service sets. The provisions include identification of the organizations required to report; requirements for the content, form, medium, and time for filing the data; standards for the data reported; and compliance provisions.

The MHDO Board met on May 23, 2019 and authorized the MHDO to initiate rulemaking to ch. 241. The proposed rule was publicly noticed on August 14, 2019 and a public hearing was held on September 5, 2019 in Augusta. No oral comments were received at the public hearing but the MHDO provided a written comment by the September 16, 2019 deadline that adds clarifying language to the proposed rule.

Fiscal impact of rule:

There is no fiscal impact on state municipalities, counties or businesses.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: **Maine Health Data Organization**
Umbrella-Unit: **90-590**
Statutory authority: 22 MRS §§ 8704(1), 8704(4), 8708(6-A), 8712(2)
Chapter number/title: **Ch. 243**, Uniform Reporting System for Health Care Claims Data Sets
Filing number: **2019-246**
Effective date: 12/22/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule change will add data fields for the Plan Begin Date (Member Effective Date) and Plan End Date (Member Cancellation Date), which will be used as an internal check for calculating member months. Also, field length for Type of Bill is increased to capture the billing frequency, the fields Date of Service - From and Date of Service - Thru are remapped to the ASC X12N 837, and the specifications of several quantity and currency fields are clarified.

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.

The MHDO Board met on May 23, 2019 and authorized the MHDO to initiate rulemaking to ch. 243. The proposed rule was publicly noticed on August 14, 2019 and a public hearing was held on September 5, 2019 in Augusta. No public comments were received at the public hearing or by the 10-day comment period of September 16, 2019. The Board adopted the routine technical rule on November 21, 2019.

Fiscal impact of rule:

There is no fiscal impact on state municipalities, counties or businesses.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: Commission on Governmental Ethics and Election Practices
Umbrella-Unit: 94-270
Statutory authority: 1 MRS §§ 1003(1), 1016-G(4); 5 MRS §19(5)
Chapter number/title: Ch. 1, Procedures
Filing number: 2019-068
Effective date: 5/7/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Commission wishes to clarify procedures for disclosing debts in campaign finance reports and to require officials to disclose in their annual income statements a category or type for any gift received, such as transportation or conference fees.

Basis statement:

Chapter 1, §7(3) - Reporting Debts and Unpaid Obligations

The Commission on Governmental Ethics and Election Practices receives campaign finance reports from candidates, political action committees (PACs), party committees and others that are spending money to influence candidate and ballot question elections. In 2005, the Commission adopted a rule (Ch. 1, §7(3)) specifying that certain actions not involving a payment of money (*e.g.*, ordering campaign goods or services from a vendor) constitute an expenditure that must be disclosed in a campaign finance report. Under the Commission's longstanding reporting forms and electronic filing website, when candidates and political committees disclose an unpaid debt, it appears on Schedule D which is separate from Schedule B (payments of money).

A July 2018 enforcement matter brought to light some confusing aspects of Ch. 1, §7(3). In December 2018 (following the general election), the Commission invited public comment on some amendments to the rule that were intended to provide greater clarity and avoid duplicative financial reporting.

Under the proposed amendments, candidates and political committees would disclose the following actions as an unpaid debt or obligation in campaign finance reports:

- placing an order for a good or service
- signing a contract for a good or service
- accepting a vendor's delivery of goods or performance of a service
- making a promise or agreement to pay a vendor in exchange for a good or service.

Under the proposed rule, if a candidate or political committee incurs a debt *and* pays off the debt during the same report period, the filer would report only the payment, but not the debt. This is consistent with the Commission staff's longstanding advice that debts should be reported on Schedule D only if they remain unpaid at the end of the report period, and also consistent with the design of the Commission's online e-filing system.

The proposed rule also contained an exception to the requirement for candidates and political committees to file an accelerated campaign finance report within 24 hours of making a large expenditure in the last 13 days before an election. The proposed rule stated that if a candidate or committee reports a debt in the last regularly scheduled pre-election campaign finance report and pays the debt in the last 13 days before the election, the candidate or committee would *not* need to disclose the payment in a 24-Hour Report.

Comments received: In a February 11, 2019 email, Darcy Peyser expressed her general support for more disclosure of campaign expenses, and stated that full disclosure of debts and gifts received by Maine candidates would bring integrity to our state elections. Lobbyist Robert

Annual List of Rule-Making Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Howe attended a public hearing held during the Commission's March 6, 2019 meeting, and commented that he viewed the debt-reporting amendments to be helpful. He said that the changes would reduce burdens on candidates and might avoid some late-filing penalties without decreasing transparency. He clarified that these were his personal observations and they were not authorized by his lobbying clients. Mr. Howe did not submit written comments.

In email comments submitted February 11, 2019, Maimoona Imroz stated that she neither supported nor opposed the changes to the debt reporting rule. With respect to §7(3)(D) (concerning a debt that was both incurred and paid within the same report period), Ms. Imroz commented that she did not see a rationale for reporting only the payment, and not the debt.

Ms. Imroz asked a question concerning a circumstance in which a candidate or committee paid off *only part* of a debt. She asked whether the candidate or committee would be required to continue disclosing the unpaid portion of the debt.

Commission's response to comments: The Commission considered the comments submitted, and determined to adopt the rule amendment as proposed.

If a candidate or committee orders campaign goods or services on one date within a report period and pays for those goods or service some days or weeks later within the same report period, the Commission wishes to continue its current procedure that only the payment is disclosed, not the debt. This procedure is simpler for the candidates and committees that are required to file financial reports. Moreover, if the Commission were to change procedures and require that an order of campaign goods and services be disclosed in the same financial report that includes the payment for those goods or services, the dual entries might confuse the public into thinking that the candidate or committee made two different orders.

Under the design of the Commission's e-filing system, when a candidate or committee enters a debt and subsequently pays off part of that debt, the unpaid portion of the debt continues to be displayed in the candidate's or committee's campaign finance reports until the debt is paid off.

Chapter 1, §12 - Officials' Disclosure of Travel Costs or Other Gifts Received

Constitutional officers, the Governor, Legislators and other state officials file annual statements of the sources of their personal income. In the statements, the officials are required to disclose the sources of any gifts received. (1 MRS §1016-G(1)(F); 5 MRS §19(2)(K))

Gifts are defined as anything of value, with some exceptions such as gifts from relatives or gifts from a single source during a calendar year with a total value of \$300 or less. If the official has received travel expenses (such as accommodations or reimbursement for conference fees) worth more than \$300, the official must disclose those as gifts in the annual statement.

Under the Commission's current disclosure procedures, the annual statement requires only the disclosure of the donor's name, which provides the public with no information concerning the nature of the travel costs or gift received. In order to provide greater information to the public, the Commission adopted a rule amendment that would require officials to specify a category for gifts or travel costs received (e.g., "conference fees" or "accommodations") or to provide a short description of the gift or travel cost.

Comments received: In her February 11, 2019, email, Maimoona Imroz expressed her support for the disclosure of a category or description, stating that the rule would increase transparency and raise accountability of government officials. In her February 11, 2019 email comments, Daicy Peyser commented in favor of broad disclosure of gifts received by officials.

Commission's response to comments: The Commission considered the comments submitted, and determined to adopt the rule amendment as proposed.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Fiscal impact of rule:

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

Annual List of Rule-Making Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State, pursuant to 5 MRSA, §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: 2019-069
Effective date: 6/1/2019
Type of rule: Major Substantive
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:

The Commission undertook a rule-making on an emergency basis to mitigate confusion and uncertainty among candidates in the 2018 elections concerning how they could fund campaign activities and involvement in potential litigation during recounts of the June 12, 2018 primary elections and litigation concerning the results of the primary elections.

Chapter 3, § 9 - Recounts, Vacancies, Write-In Candidates, Special Elections

Under the *Maine Clean Election Act* (MCEA), the Commission typically makes the initial payment to participating candidates for the general election in June, soon after the primary elections are held. The Commission amended Ch. 3 §9(1) of the Commission Rules to clarify that the Commission will make the general election payment no later than three days after the Secretary of State submits the tabulation of primary election results to the Governor. (The existing Ch. 3 §9(1) has addressed whether an MCEA candidate could spend a general election payment if a recount proceeding was pending to determine the result of the candidate's primary election.)

The Commission also amended Ch. 3 §9(1) to incorporate the policies set out in 21-A MRSA §1018-A concerning recounts:

- candidates may not spend MCEA funds to pay for the costs of a recount (*e.g.*, hiring an attorney), but
- candidates may receive donations of goods or services for purposes of a recount, with some limitations.

Comments: The Commission received no comments specifically addressed to this rule, but it did receive an email question from the manager of the Garrett Mason for Governor campaign committee inquiring how the campaign could finance litigation services if it were involved in a post-primary court proceeding relating to the procedures for counting election ballots. (Because Sen. Mason is participating in the MCEA program, he is generally not allowed to accept campaign contributions to promote his election.)

Commission's response to comments: To address this question, the Commission adopted Ch. 3 §9(6), which was not among the amendments proposed on March 28th. This provision states that if the results of an election are challenged in a court proceeding, an MCEA candidate may solicit and accept donations to finance attorneys fees or other litigation costs, with the same limitations and exceptions that the Legislature enacted in 21-A MRS §1018-A applicable to recounts. (The contribution limits would apply to donated cash and services, except no limits would apply to donations from the political parties and caucus PACs, or to attorneys or consultants who are donating their services.)

Annual List of Rule-Making Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

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, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: **Baxter State Park Authority**
Umbrella-Unit: **94-293**
Statutory authority: 12 MRS §903.1
Chapter number/title: **Ch. 1, Baxter State Park Rules and Regulations:**
Rule 1.3, All Persons Entering the Park b Road or Trail... (moving text from Rule 5.6 to 1.3)
Rule 4.11, The Removal from, or Introduction of, Natural Objects, Materials, Plants, or Animals...
Rule 4.12, Research Studies and Commercial Media Projects within the Park...
Rule 5.4, No Persons May Operate Any Vehicle within the Park...
Filing number: **2019-010**
Effective date: 1/19/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Rule 1.3: This is a revision to a section of the existing rule. Rule 5.6 reads: *Persons landing aircraft on permitted waters in the Park must register with Park HQ or a gatehouse in advance.* Removing this text from Rule 1.3 simply removes redundancy and focuses aircraft-related information in Rule 5.

Rule 4.11: This is a revision to the existing rule and restricting the personal harvest of wild foods to fiddleheads and berries is unnecessarily specific and restrictive. We do not currently enforce the fact that it is not permitted to harvest mushrooms and wild plants other than fiddleheads.

Rule 4.12: This is a revision to the existing rule and will create an enforceable standard that mandates that those using the Park for commercial purposes shall be required to have a permit, and it will enable the Park to gather data regarding this type of Park use. This is consistent with most natural areas in the US.

Rule 5.4: This is a proposal to eliminate this rule. BSPA Rule 5.4 suggests that BSP has the authority to summons for traffic violations in a manner inconsistent with 29-A MRS §2601(3).

Basis statement / summary:

Rule 1.3 (All persons entering the Park by road or trail...) Removing this text from Rule 1.3 removes redundancy and focuses aircraft-related information in Rule 5. Rule 5.6 reads: *Persons landing aircraft on permitted waters in the Park must register with Park Headquarters or a gatehouse in advance.*

Rule 4.11 (The removal from, or introduction of natural objects, materials, plants, or animals...) Restricting the personal harvest of wild foods to fiddleheads and berries is unnecessarily specific and restrictive. It is difficult to enforce this level of specificity within the rules and therefore rarely does this rule enjoy enforcement attention. This change brings our rules in line to our enforcement norms. While this rule retains the enforcement right to protect Park resources, it allows a reasonable interaction with the natural world that is consistent with most other US wilderness areas.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Rule 4.12 (Research Studies and Commercial Media Projects within the Park...)

This rule is revised to create an enforceable standard that mandates that those using the Park for any commercial purpose (not just research studies and commercial media projects) shall be required to have a permit and enables Park Staff to gather data regarding this type of Park use. This is consistent with most other natural areas in the U.S.

Rule 5.4 (No person may operate any vehicle within the Park...) Confusion over the proper channels to cite violators of this rule have led BSP LE Rangers to cite violators based on the larger fee incurred, whether BSP Rule or state traffic law. According to 29-A MRS §2601(.3), *Every law enforcement agency in this State shall use traffic summonses for traffic infractions in the form known as the **Violation Summons and Complaint**, which must be uniform throughout the State and must be issued in books with summonses in no less than quadruplicate and meeting the requirements of this chapter.* BSPA Rule 5.4 suggests that BSP has the authority to summons for traffic violations in a manner inconsistent with Title 29-A, MRS §2601(3). Deleting rule 5.4 would ensure that our Law Enforcement Rangers summons violators through the appropriate channels.

Fiscal impact of rule:

N/A

Annual List of Rule-Making Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: Wells National Estuarine Research Reserve Management Authority
Umbrella-Unit: 94-335
Statutory authority: P & SL 1989 Ch. 108: §2; §3 sub-§§ 1-7; §5 sub-§§ 8, 9
Chapter number/title: Ch. 1, Rules for Public Use of Wells Reserve
Filing number: 2019-004
Effective date: 1/19/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To clarify language relating to the places where the public can access the Reserve property and paying entry fees, add a prohibited activity that will ensure visitor safety and privacy and maintain property use in keeping with the Reserve's purpose, and more specificity about the one location on our property where smoking is permitted.

Basis statement:

The Wells National Estuarine Research Reserve was established under 15 *Code of Federal Regulations*, Part 921. It is maintained to provide undisturbed areas as a natural field laboratory and educational site. This includes the protection of the area for short and long-term research, education, and interpretation. The Wells National Estuarine Research Reserve is also maintained to protect fish, wildlife, and plant communities. Multiple uses including low intensity recreational uses are allowed to the extent that they do not conflict with the operation of the Reserve for research and education.

The Wells National Estuarine Research Reserve Management Authority (the Authority) was established by the State legislature through passage of *Private and Special Law* #108 in 1990. The legislation was amended in 2003 by LD #777 and in 2013 by LD #987. The purpose of the Authority is to manage and sustain the coastal lands and other resources within the reserve, further coordination and cooperation among state agencies, the Town of Wells and the United States Fish and Wildlife Service, and the Laudholm Trust, develop and implement programs for estuarine research, education, and stewardship, and provide public access and opportunities for public enjoyment compatible with the protection of the reserve's natural resources. The Authority, in compliance with the Reserve Management Plan approved by the National Oceanic and Atmospheric Administration, is responsible for management of the Reserve lands for which the Authority holds a license, lease or other interest or lands that are under agreement with a cooperating agency. The Authority has overall jurisdiction over the establishment and coordination of research, education, and resource protection policies for the Reserve. A violation of the rules of the Reserve is a Class E crime.

The Authority is revising its rules that govern public use of the Reserve to enhance visitor safety, health, and privacy and to clarify language relating to places where the public can assess Reserve property and pay entry fees.

Fiscal impact of rule:

None

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: **Maine Municipal Bond Bank, jointly with 06-096, Department of Environmental Protection (DEP)**
Umbrella-Unit: **06-096**
Statutory authority: 30-A MRS §5959
Chapter number/title: **Ch. 595, State Revolving Fund**
Filing number: **2019-060**
Effective date: 3/27/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Ch. 595 contains eligibility requirements for the funding of planning, design, and/or construction of municipal wastewater treatment works and other water pollution control facilities or practices under the State Revolving Fund. The amendments will allow for awarding construction contracts based on three additional delivery methods: Construction Management At-Risk (CMAR), Progressive Design-Build (PDB), & Fixed-Price Design-Build (FPDB). When the rules were first written, most municipal projects were designed to 100% by an engineering firm, bid, then awarded to the construction contractor for building, known as Design-Bid-Build (DBB). Since then, municipalities have seen the advantage of awarding construction contracts based on other delivery methods that allow for contractor input into the design or to compress the design/construction schedule. These changes allow eligible applicants of Maine's SRF program to use these additional construction delivery methods that have become common practice in the construction industry and are utilized by other state SRF's nationally. The amendments also update the rule in accordance with current procedures at the Maine Municipal Bond Bank, and bring the rule into consistency with current Federal requirements.

Basis statement:

Ch. 595 contains eligibility requirements for the funding of planning, design, and/or construction of municipal wastewater treatment works and other water pollution control facilities or practices under the State Revolving Fund (SRF). Ch. 595 is being amended to allow eligible applicants of Maine's SRF program to use construction delivery methods that have become common practice in the construction industry and are utilized by other state SRF's nationally. The amendments also update the rule in accordance with current procedures at the Maine Municipal Bond Bank, and bring the rule into consistency with current Federal requirements contained in the *Water Resources Reform and Development Act* (June 10, 2014) (WRRDA), amending Titles I, II, V, and VI of the *Federal Water Pollution Control Act* (FWPCA), and the *Federal Funding Accountability and Transparency Act of 2010*.

Fiscal impact of rule:

The amendments are largely procedural and are not expected to have any significant fiscal impact. Greater flexibility in construction delivery methods may provide cost savings in some cases.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: Maine Public Employees Retirement System (MainePERS)
Umbrella-Unit: 94-411
Statutory authority: 5 MRS §17103(4)
Chapter number/title: Ch. 414, Required Minimum Distributions
Filing number: 2019-065
Effective date: 4/17/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rule establishes the date when a member must begin to receive a service retirement benefit or withdraw accumulated contributions under a retirement program pursuant to *Internal Revenue Code*.

Basis statement:

The rule was amended on an emergency basis on April 11, 2019, to remove a retirement effectiveness date restriction that is not required by federal law and that is inconsistent with the determination of that date outside of the required minimum distribution context.

Findings of Emergency

Immediate adoption of this amendment is necessary to protect the general welfare. Adoption of this amendment using non-emergency rulemaking would result in members with an April 1, 2019 Required Beginning Date being forced to retire with a later retirement effectiveness date than they would with this amendment. This would cause these members unnecessary financial harm that is avoided by emergency adoption.

At the Board's regular meeting held on April 11, 2019, Kenneth Williams made the motion, seconded by Shirrin Blaisdell, to adopt the amended rule on an emergency basis. The motion was unanimously approved by those Board members present.

Fiscal impact of rule:

None

Annual List of Rule-Making Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: **Maine Public Employees Retirement System (MainePERS)**
Umbrella-Unit: **94-411**
Statutory authority: 5 MRS §17103(4)
Chapter number/title: **Ch. 414**, Required Minimum Distributions
Filing number: **2019-100**
Effective date: 6/24/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule establishes the date when a member must begin to receive a service retirement benefit or withdraw accumulated contributions under a retirement program pursuant to *Internal Revenue Code*.

Basis statement:

The amendment removes a retirement effectiveness date restriction that is not required by federal law and that is inconsistent with the determination of that date outside of the requirement minimum distribution context.

Fiscal impact of rule:

None

Annual List of Rule-Making Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: **Maine Public Employees Retirement System (MainePERS)**
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: **2019-101**
Effective date: 6/24/2019
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 clarify recently adopted amendments to the Plan by further amending provisions relating to the allocation of costs between employers and employees, earnable compensation, service credit and retire/rehire. The amendments also include some adjusted wording on an unrelated technical provision of the rule.

Basis statement:

The Participating Local District (“PLD”) Advisory Committee and MainePERS staff proposed several substantive changes to Chapter 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 recommended changes were adopted by the Board of Trustees at its May 10, 2018 and September 13, 2018 meetings.

Several of the adopted changes are effective July 1, 2019. While preparing to implement the changes, MainePERS staff determined that further refinement of some of the changes might be beneficial to the Plan. These additional changes were considered by the PLD Advisory Committee, and the Committee recommended that the amendments be brought to the Board of Trustees for their consideration.

Notice of this proposed amendment and public hearing was published in accordance with 5 MRS §8053 on April 17, 2019. Additionally, a notice of public hearing was sent to PLD employers for distribution to employee/members on April 17, 2019. This notice included information about the public hearing as well as the deadline for written comments.

The amended rule: (1) removes the option for a retiree who returns to work to re-enter the plan to avoid potential plan qualification issues; (2) changes the rate split between employers and employees to 58%/42% from 55%/45% for consistency with the rate caps and current rates; (3) excludes disability retirees from the requirement that a retiree must have at least 20-years of service credit in order to use paid accrued leave for earnable compensation or unpaid accrued leave for service credit; (4) clarifies that special plan members who do not satisfy the special plan requirements may retire under regular plan provisions; and (5) corrects an erroneous reference to a special plan as a regular plan.

A public hearing on the proposed amended rule was held on May 9, 2019, before the MainePERS Board of Trustees. Three members of the public attended the hearing. Comments were made at the hearing by two individuals. One commenter spoke on his own behalf, as a stated member of local boards.¹ This individual opined that the rate splits and accrued leave provisions were too favorable to employees. The second commenter was a member of the PLD Advisory Committee² who commented that the effectiveness date for the accrued leave provisions, and the language used to describe the effectiveness date, would adversely impact

¹ Albert Hodsdon, Fairfield

² Rick Cailler, Professional Firefighters of Maine

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PLD plan members who work for schools (e.g., cafeteria workers) who would like to complete the school year before retiring. Written comments were received by one PLD employer³ by the comment deadline of May 20, 2019. The one written comment was generally supportive of the proposed changes.

The PLD Advisory Committee was provided with a summary of the comments received on May 29, 2019 along with the MainePERS staff recommendation that, based on the comments received, the effectiveness date of the accrued leave provisions be delayed one month. MainePERS staff also suggested one additional amendment to correct an outdated statutory reference in another part of the rule. The Committee raised no objections to MainePERS staff recommending these additional amendments to the Board of Trustees.

After considering the comments, the Board adopts the proposed changes, with additional modifications as follows: (1) the retirement effectiveness date for the inclusion of unused sick or vacation leave is amended so that those who retire on or after August 1, 2019 must have 20-years of creditable service to include unused leave in the calculation of their retirement benefit. This modification allows PLD plan members who work for schools to complete the school year before retiring and (2) the outdated statutory reference is corrected.

In conclusion, the Board adopts the proposed amended rule as it pertains to the retire-rehire provisions, the rate split between employers and employees, the clarification of benefits for members who do not satisfy special plan requirements, and the correction of the erroneous reference to a special plan as a regular plan. The Board adopts the proposed amended rule as it pertains to the inclusion of unused sick or vacation leave and the correction of a statutory reference as outlined above. These modifications do not substantially change the rule as proposed.

Fiscal impact of rule:

None

³ Brenda Fox-Howard, Town of Kittery

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Rules Adopted January 1, 2019 to December 31, 2019
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Agency name: **Maine Public Employees Retirement System (MainePERS)**
Umbrella-Unit: **94-411**
Statutory authority: 5 MRS §17103(4)
Chapter number/title: **Ch. 101**, Earnable Compensation and Calculation of Average Final Compensation
Filing number: **2019-187**
Effective date: 11/4/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule sets forth the computation of average final compensation used in the calculation of retirement benefits paid by the Maine Public Employees Retirement System. The amendments to the rule clarify the inclusion of paid time off, sick and vacation leave payments for Participating Local District Plan members, and certain arbitration awards, judgments and written settlement agreements as earnable compensation. The amendments also correct some minor formatting issues.

Basis statement:

Notice of this proposed amendment and public hearing was published in accordance with 5 MRS §8053 on August 21, 2019.

The amended rule: (1) addresses the recent changes to ch. 803, the rule that governs the Participating Local District Consolidated Retirement Plan, on the use of payment for accrued leave in determining earnable compensation; (2) clarifies that “paid time off” is considered to be vacation/sick leave; and (3) provides guidance on the treatment of certain amounts paid pursuant to an arbitration award, judgment, or written settlement agreement.

A public hearing was held on September 12, 2019. Five members of the public attended the hearing. No members of the public offered comments at the hearing. One written comment was received by an employee group⁴ by the comment deadline of September 23, 2019. The written comment was generally supportive of the proposed amendments and suggested additional clarifications to the rule. Specifically, that the rule be further amended to include (1) retroactive reallocations, (2) other types of back pay awards, and (3) flexibility in determining an arbitrator’s intent.

MainePERS staff also recommended one additional amendment to correct the cross-reference used to determine when a participating local district member is eligible to include paid vacation and sick leave as earnable compensation.

After considering the comments, the Board adopts the proposed changes, with additional modifications as follows: (1) the arbitration awards, judgments, and written settlement agreements section is amended to include reallocations and other agreements that require back pay, and (2) the cross-reference for participating local district members is corrected. These modifications do not substantially change the rule as proposed. The Board did not make changes in response to the comment on arbitrator intent because the amended rule as proposed appropriately provides for reference to the arbitration award to determine the nature of the dispute and the payments made to resolve it.

At the Board’s meeting held on October 15, 2019, Richard Metivier made the motion, seconded by Shirrin Blaisdell, to adopt the amended rule. Voted unanimously by those Board members present.

Fiscal impact of rule:

None

⁴ Tom Feeley, General Counsel, Maine State Employees Association, SEIU Local 1989

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

Agency name: **Maine Public Employees Retirement System (MainePERS)**
Umbrella-Unit: **94-411**
Statutory authority: 5 MRS §17103(4)
Chapter number/title: **Ch. 406**, Payment or Repayment of Contributions and Interest for the Purchase of Creditable Service
Filing number: **2019-188**
Effective date: 11/4/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule sets forth the requirements for members to purchase or repurchase creditable service. The amendments to the rule incorporate recent changes made in the law to permit the purchase of prior law enforcement officer service. The amendments also correct some minor formatting issues.

Basis statement:

Notice of this proposed amendment and public hearing was published in accordance with 5 MRS §8053 on August 21, 2019.

The proposed amended rule: (1) incorporates a new statute that permits the purchase of credit for prior law enforcement service earned with a federal, state, county or local law enforcement agency before becoming a MainePERS member, and (2) makes unrelated technical changes to how statutes are cited.

A public hearing was held on September 12, 2019. Five members of the public attended the hearing. One member of the public representing law enforcement offered comments in support of the proposed changes.⁵ This individual commented that the change would be beneficial to employers' abilities to recruit and retain law enforcement officers. No members of the public submitted written comments prior to the comment deadline of September 23, 2019.

After considering the comments, the Board adopts the proposed changes, without modification.

At the Board's meeting held on October 15, 2019, Richard Metivier made the motion, seconded by Philip Brookhouse, to adopt the amended rule. Voted unanimously by those Board members present.

Fiscal impact of rule:

None

⁵ Jessica Laliberte, Laliberte Strategies on behalf of Maine Association of Police

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

Agency name: **Maine Public Employees Retirement System (MainePERS)**
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: **2019-189**
Effective date: 11/4/2019
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 incorporate recent changes made in the laws that govern benefit provisions for participating local districts. The amendments also include some adjusted wording on unrelated technical provisions of the rule.

Basis statement:

Notice of this proposed amendment and public hearing was published in accordance with 5 MRS §8053, on August 21, 2019. Additionally, a notice of public hearing was sent to PLD employers for distribution to employee/members on August 21, 2019. This notice included information about the public hearing as well as the deadline for written comments.

The proposed amended rule: (1) incorporates a new statute on purchasing prior law enforcement service credit; (2) incorporates a new statute that permits participating local districts to adopt a special plan for dispatchers; and (3) makes technical corrections and clarifications to existing language unrelated to the statutory changes.

A public hearing was held on September 12, 2019. Five members of the public attended the hearing. One member of the public representing law enforcement offered comments in support of the proposed changes.⁶ This individual commented that the proposed changes would provide equality for dispatchers and would also be beneficial to employers' abilities to recruit and retain employees. No members of the public submitted written comments prior to the comment deadline of September 23, 2019.

MainePERS staff recommended one additional amendment to remove language that permits employers to elect a special plan with a 20-year, no-age requirement for all employees. As is the case with dispatchers, permitting these employees to participate in a plan that permits retirement with an unreduced benefit before 25 years of service at any age raises a potential Internal Revenue Service (IRS) plan compliance issue. The IRS proposed regulations in 2016 that provide governmental retirement plans with certain safe harbors for normal retirement age. A plan with a 20-year, no age requirement would be a safe harbor only for employees who provide "police protection, firefighting services, or emergency medical services." For other employees, the proposed regulations require at least 25 years of service for no age requirement plans. The IRS has not (yet) adopted the proposed regulations. MainePERS recommends this change in order to avoid possible future plan compliance issues.

The PLD Advisory Committee was provided with a summary of the proposed changes and the one comment received. No member of the Committee raised an objection to MainePERS staff recommending these amendments to the Board of Trustees.

After considering the comments, the Board adopts the proposed changes, with one additional modification to remove the ability for employers to elect a special plan with a 20-year, no-age requirement for all employees. This modification is consistent with the proposed

⁶ Jessica Laliberte, Laliberte Strategies, on behalf of Maine Association of Police

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rule as it relates to plan coverage for dispatchers, and it does not substantially change the rule as proposed.

At the Board's meeting held on October 15, 2019, Richard Metivier made the motion, seconded by Philip Brookhouse, to adopt the amended rule. Voted unanimously by those members present.

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: Saco River Corridor Commission
Umbrella-Unit: 94-412
Statutory authority: 38 MRS §954-C
Chapter number/title: Ch. 102, Standard Conditions of Approval
Filing number: 2019-106
Effective date: 7/1/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

This amendment involves changes to allow for a path or walkway (not to exceed 10 feet in width), pursuant to an application and issuance of a permit, along the river without the need for a variance. This standard will only apply in areas designated as a General Development District prior to September 1, 1983. The changes also include the requirement that applicants record any permit received from the Saco River Corridor Commission with the Registry of Deeds and that all permits must be conveyed with the property in the event of transfer. This will provide protection for future property owners by ensuring they are aware their property is in the Saco River Corridor Commission's jurisdiction and will also provide the record of all permits for development granted on the property.

Fiscal impact of rule:

None.

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Agency name: Saco River Corridor Commission
Umbrella-Unit: 94-412
Statutory authority: 38 MRS §954-C
Chapter number/title: Ch. 107, Performance Standards Governing Expansions of Existing Nonconforming Uses, Including Structures
Filing number: 2019-107
Effective date: 7/1/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To bring certain provisions of the *Saco River Corridor Act*, related to expansions of existing nonconforming structures, into closer alignment with certain provisions of the *DEP Mandatory Shoreland Zoning Act*.

Basis statement:

This amendment will allow for the reconstruction or replacement of existing nonconforming structures by permit if the reconstruction or replacement meets certain criteria. Currently, Ch. 107 restricts all development within the shoreland zone (250 feet from the normal or mean high water line of the rivers) to one 30% expansion during the lifetime of the structure. However, this 30% expansion is only permitted to connect directly to the existing primary structure. This means that if someone wants to demolish their structure and erect a new one, they are currently unable to do so without a hardship variance as we have no standard in place to allow for the reconstruction of an existing nonconforming structure. The Maine DEP Ch. 1000 *Mandatory Shoreland Zoning Act* allows for the reconstruction or replacement of nonconforming structures, conforming to the greatest extent practical as determined by the board or its designee, without a variance within 100 feet of the water under various circumstances. These changes will provide standards to allow for the reconstruction of existing nonconforming structures in certain circumstances, without a variance, such as the Maine DEP Ch. 1000 ordinance allows.

Shoreland zoning does not restrict the expansion of existing nonconforming structures when 100 feet back from the water, unless they are within a Resource Protection District. Sections 4.A. and 4.B. will allow the commission to continue to restrict expansions to 30% (now, per floor area and height) within 250 feet from the normal or mean high water line, again with the added ability to demolish the structure and erect a new one with the issuance of a permit, as long as the new structure will not increase nonconformity and is set back to the greatest practical extent to meet necessary frontage and setback requirements. Existing nonconforming structures within areas of the corridor designated as a General Development District prior to September 1, 1983, may be reconstructed in their existing locations. This is to allow for improved consistency with respect to the 25-foot setback allowable in GD1 and CFMA districts per the *DEP Mandatory Shoreland Zoning Act* requirements. When at odds, the more restrictive ordinance (SRCA, municipal shoreland zoning, etc.) shall always apply.

Within the 100–250 foot buffer, the 30% expansion criteria will no longer apply in areas of the corridor designated as a General Development District prior to September 1, 1983. Revegetation requirements for the removal, reconstruction, or replacement of such structures are also included and consistent with the Ch. 1000 *Shoreland Zoning Ordinance*.

Other updates include prohibiting a change from one existing nonconforming use to another nonconforming use unless it is determined that the new use will not result in an increased adverse impact on the lands and waterways of the corridor.

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: Finance Authority of Maine (FAME)
Umbrella-Unit: 94-457
Statutory authority: 10 MRS §969-A; 20-A MRS §11485
Chapter number/title: Ch. 611, Maine College Savings Program, *Amendment 17*
Filing number: 2019-009
Effective date: 1/15/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The rule amendment is necessary to conform the rule to recent changes to the federal and Maine state tax codes permitting (a) limited withdrawals from Section 529 accounts for tuition expenses for attendance or enrollment at elementary or secondary public, private, or religious schools; and (b) limited rollovers from Section 529 accounts to Section 529A (ABLE) accounts. The rule amendment also conforms the rule to recent changes to the Act, changing the name of the program and the advisory committee in keeping with the tax code changes. The rule amendment makes other minor modifications to the rule.

Fiscal impact of rule:

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

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Agency name: Finance Authority of Maine (FAME)
Umbrella-Unit: 94-457
Statutory authority: 10 MRS §§ 969-A(14), 1026-A
Chapter number/title: Ch. 101, Loan Insurance Program, *Amendment 7*
Filing number: 2019-182
Effective date: 10/29/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Conforming to legislative changes and streamlining agency processing of applications.

Basis statement:

The amendment changes calculation of maximum insurance available, from a fixed percentage of capital to a limit set by board credit policy, within statutory limits. The amendment also increases maximum leveraged insurance available from \$2.5 million per borrower to \$3 million. Finally, the amendment allows the Chief Executive Officer (rather than the board) to waive personal guaranty requirements for loans when FAMS's exposure is less than \$500,000, if other requirements are met.

Fiscal impact of rule:

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

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Finance Authority of Maine (FAME)
Umbrella-Unit: 94-457
Statutory authority: 20-A MRS §§ 12501 *et seq.*; PL 2019-ch. 303
Chapter number/title: Ch. 610, Rules for the Conduct of the Educators for Maine Program, *Amendment 5*
Filing number: 2019-226
Effective date: 12/15/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule amendments conform the rule to certain provisions of PL 2019 ch. 303, "An Act to Amend the Laws Governing the Educators for Maine Program". The Act (a) permits the Authority to increase the amount of loans to undergraduate and post-baccalaureate students as funds permit; (b) modifies the definitions of teachers and schools where borrowers may be employed for loan forgiveness; and (c) allows employment as a teacher in an underserved geographic area to qualify for loan forgiveness.

Basis statement:

The rule amendments conform the rule to certain provisions of PL 2019 ch. 303, *An Act to Amend the Laws Governing the Educators for Maine Program* (the "Act"). The Act (a) permits the Authority to increase the amount of loans to undergraduate and post-baccalaureate students as funds permit; (b) modifies the definitions of teachers and schools where borrowers may be employed for loan forgiveness; and (c) allows employment as a teacher in an underserved geographic area to qualify for loan forgiveness. The Act also permits the Authority to implement a program of repayment of student loan debt to persons teaching in underserved geographic areas of Maine, as funds permit; however, these rule amendments do not address a loan repayment program, pending further agency development.

No comments were received during the written comment period.

In accordance with 5 MRS §8052(4) and Executive Order No. 4 FY 19/20, the Authority has considered:

1. the environmental and social impacts of the rule, with the goal of prioritizing the health safety and welfare of Maine people, and find that the rule will have no negative environmental or social impacts requiring such prioritization; and
2. the economic and fiscal impacts of the rule, including the extent to which other laws and regulations address the rule subject matter and the impact on employers in retaining and attracting a skilled workforce, and find that (a) the rule will have no adverse economic or fiscal impact; (b) no other laws or regulations address the rule subject matter; and (c) the rule will have no adverse effect on employers' ability to retain and attract a skilled workforce.

Fiscal impact of rule:

None anticipated, although the increase in loan amounts, and the enhanced opportunity to receive loan forgiveness could, over time, stress available funds and result in fewer awards or awards of the minimum allowable amounts.

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Agency name: Finance Authority of Maine (FAME)
Umbrella-Unit: 94-457
Statutory authority: 10 MRS §12305; PL 2019 ch. 102
Chapter number/title: Ch. 612, Maine Dental Education Loan and Loan Repayment Programs, *Amendment 4*
Filing number: 2019-227
Effective date: 12/15/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule amendments conform the rule to PL 2019 ch. 102, "An Act to Amend the Maine Dental Education Loan Program", which repealed the Advisory Committee on Dental Education, modified the definition of "underserved population area", increased the amounts available (beginning in 2020) to students for loans and to practicing dentists for loan repayment, and modified certain eligibility requirements to receive a loan repayment agreement or loan forgiveness. In addition, the rule amendments modify the criteria applicable to prioritizing applications received for a loan repayment agreement and clarify how the Authority determines financial need.

Basis statement:

The rule amendments largely conforms the rule to PL 2019 ch. 102, "An Act to Amend the Maine Dental Education Loan Program", which repealed the Advisory Committee on Dental Education, modified the definition of "underserved population area", increased the amounts available (beginning in 2020) to students for loans and to practicing dentists for loan repayment, and modified certain eligibility requirements to receive a loan repayment agreement or loan forgiveness. In addition, the rule amendments also modify the criteria applicable to prioritizing applications received for a loan repayment agreement and clarify how the Authority determines financial need.

No comments were received during the written comment period.

In accordance with 5 MRS §8052(4) and Executive Order No. 4 FY 19/20, the Authority has considered:

1. the environmental and social impacts of the rule, with the goal of prioritizing the health safety and welfare of Maine people, and find that the rule will have no negative environmental or social impacts requiring such prioritization; and
2. the economic and fiscal impacts of the rule, including the extent to which other laws and regulations address the rule subject matter and the impact on employers in retaining and attracting a skilled workforce, and find that (a) the rule will have no adverse economic or fiscal impact; (b) no other laws or regulations address the rule subject matter; and (c) the rule will have no adverse effect on employers' ability to retain and attract a skilled workforce.

Fiscal impact of rule:

None anticipated, although the increase in loan amounts and loan repayment amounts, and the enhanced opportunity to receive loan forgiveness could, over time, stress available funds and result in fewer awards.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Maine State Housing Authority (MSHA)
Umbrella-Unit: 99-346
Statutory authority: 30-A MRS §§ 4722(1)(W), 4741(15)
Chapter number/title: Ch. 25, Weatherization Assistance Program Rule
Filing number: 2019-016
Effective date: 1/23/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The replacement rule: (i) removes MaineHousing from the definitions; (ii) provides that priority ranking will be established in the State Plan; (iii) modifies the scope of permissible weatherization expenditures to align with industry standards; and (iv) makes minor technical edits and clarifications.

Basis statement:

This rule replaces in its entirety the current Weatherization Assistance Program Rule for the following purposes: to remove MaineHousing from the definitions; to provide that priority ranking will be established in the State Plan; to modify the scope of permissible weatherization expenditures to align with industry standards; and to make minor technical edits and clarifications.

Fiscal impact of rule:

None.

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

Agency name: **Maine State Housing Authority (MSHA)**
Umbrella-Unit: **99-346**
Statutory authority: 30-A MRS §§ 4741.1, 4973, 4722(1)(L)
Chapter number/title: **Ch. 29**, Multi-family Mortgage Loans
Filing number: **2019-026**
Effective date: 2/3/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Maine State Housing Authority (MaineHousing) is repealing and replacing this rule to conform to statutory changes regarding construction lending and make other updates.

Basis statement:

This rule provides the framework and basic requirements for MaineHousing's multi-family lending programs. MaineHousing is repealing and replacing this rule to conform to statutory changes regarding construction lending and make other updates.

Fiscal impact of rule:

None.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: **Maine State Housing Authority (MSHA)**
Umbrella-Unit: **99-346**
Statutory authority: 30-A MRS §§ 4741.1, 4973, 4976.1, 4977
Chapter number/title: **Ch. 34** (*New*), Preservation and Relocation Rule
Filing number: **2019-027**
Effective date: 2/3/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

Under the *Maine Housing Authorities Act*, a landlord who plans to take an action that would result in the termination of financial assistance for tenants in low income housing must give notice to the tenants, to MaineHousing, and to any local housing authority; and give a right of first refusal to MaineHousing. This rule sets forth the required content of the notices, a mechanism for determining MaineHousing's purchase price, and the terms of relocation assistance to help displaced tenants.

Fiscal impact of rule:
None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: **Maine State Housing Authority (MSHA)**
Umbrella-Unit: **99-346**
Statutory authority: 30-A MRS §§ 4741(1) and (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: **2019-113**
Effective date: 7/8/2019
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 2020, 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 the above-referenced 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.
- TDC scoring (keep Index and Caps) and penalty for past rounds deleted.
- Maximum number of applications per developer deleted.
- Points adjusted to accommodate removal or addition of criteria and slightly greater/lessor focus in specific areas.
- Service center communities list updated.
- Certified Business Friendly Community point deleted.
- Developer Fee Contribution points eliminated.
- Owner Performance – positive points instead of negative. Notice to Proceed deadline penalty and TDC rescoring penalty deleted.
- Management Performance – positive points instead of negative.
- Smart Growth points increased and rebalanced.
- Service Center Needs points increased.
- Telemedicine plan requirement eliminated. Instead broadband capacity using ConnectME Authority build-to-standard at owner's expense required.
- Property Tax Relief years adjusted.
- Maximum Developer Fee and Net Developer Fee simplified.
- Community Revitalization redefined.
- Below Market Capital points no longer attached to TDC scoring criterion.

Fiscal impact of rule:

The 2020 State of Maine ceiling of federal low-income housing tax credits is projected to raise approximately \$35,250,000 of private investor capital. The private investor capital generated by the federal low-income housing tax credits will be used to develop affordable housing for low-income persons. Additionally, it is estimated that 1,400 jobs will be created with this investment. The rule will not impose any costs on municipalities or counties for implementation or compliance.

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

Agency name: **Maine State Housing Authority (MSHA)**
Umbrella-Unit: **99-346**
Statutory authority: 30-A MRS §§ 4722(1)(W), 4741(15), 6991 *et seq.*;
42 USCA §§ 8621 *et seq.*
Chapter number/title: **Ch. 24**, Home Energy Assistance Program Rule
Filing number: **2019-114**
Effective date: 7/8/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule repeals and replaces in its entirety the current Home Energy Assistance Program Rule. The rule establishes standards for administering fuel assistance, emergency fuel assistance, TANF Supplemental Benefits, weatherization, and heating system repair and replacement funds to low-income households in the State of Maine. The replacement rule: (i) removes the “Discount Off Retail” \$0.07 reduction a Vendor’s Retail Cash Price for all Home Energy deliveries for the fuel type listed on the Vendor Voucher Report or the Credit Notification; (ii) amends the definition of “priority applicant” to include children 72 months (6 years) or younger; (iii) amends language throughout the rule to accommodate pre-delivery payment and post-delivery payment for fuel; and (iv) allows Vendors to return remaining balances for Clients with balances less than \$25 at the time of the Annual Consumption Reporting rather than throughout the year.

Fiscal impact of rule:
None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Maine State Housing Authority (MSHA)
Umbrella-Unit: 99-346
Statutory authority: 30-A MRS §§ 4741(1) and (18); 42 USCA §§ 11301 *et seq.*
Chapter number/title: Ch. 19, Homeless Solutions Rule
Filing number: 2019-185
Effective date: 11/3/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule repeals and replaces the current *Homeless Solutions Rule* in order to (i) revise and update language where appropriate; (ii) address concerns regarding bed utilization; and (iii) make changes to the funding formula allocation.

Basis statement:

This rule replaces in its entirety the current *Homeless Solutions Rule*. MaineHousing uses funds from certain federal and state resources to give grants to agencies for a variety of activities to assist people who are experiencing homelessness or the risk of becoming homeless. The rule governs MaineHousing's allocation of resources for such programs. The new rule (i) revises and updates language where appropriate; (ii) addresses concerns regarding bed utilization; and (iii) makes changes to the funding formula allocation.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: **Maine State Housing Authority (MSHA)**
Umbrella-Unit: **99-346**
Statutory authority: 30-A MRS §§ 4722(1)(W), 4741(1) and (15), 4991
et seq.; 42 USCA §§ 8621 *et seq.*
Chapter number/title: **Ch. 24**, Home Energy Assistance Program Rule
Filing number: **2019-186**
Effective date: 11/3/2019
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, TANF Supplemental Benefits, weatherization, and heating system repair and replacement funds to low-income households in the State of Maine. This replacement rule is needed to implement a heat pump installation initiative in response to PL 2019 ch. 306 §3., “An Act To Transform Maine’s Heat Pump Market To Advance Economic Security and Climate Objectives.” Other changes correct errors or provide clarification to the previous version of the rule.

Fiscal impact of rule:
None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: ConnectME Authority
Umbrella-Unit: 99-639
Statutory authority: 35-A MRS ch. 93
Chapter number/title: Ch. 101, ConnectME Authority
Filing number: 2019-091
Effective date: 6/30/2019
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

To address statutory changes made to 35-A MRS ch. 93 in the 127th session of the Maine State Legislature.

Basis statement:

- Ch. 101 is a revision to the existing ch. 101 promulgated in 2007.
- This rule is a refinement and clarification of the duties of the ConnectME Authority and includes:
 - o changes in definitions and terms used in the chapter;
 - o changes in data filing requirements;
 - o the elimination of the Infrastructure Grant program challenge process; and
 - o the addition of the Planning Grant program and associated processes.
- The basis for the rule change is statutory changes made in the 127th Legislature (2015).

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: **ConnectME Authority**
Umbrella-Unit: **99-639**
Statutory authority: 35-A MRS ch. 93
Chapter number/title: **Ch. 101**, ConnectME Authority
Filing number: **2019-215**
Effective date: 12/2/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

PL 2019 ch. 343 part SSSS directed the ConnectME Authority to add an additional surcharge of 10 cents per line or number to fund the ConnectME fund and to plainly identify the surcharge on a bill. This rule amends Section 7 of the ConnectME rule to implement that statute.

Fiscal impact of rule:
None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Combat Sports Authority of Maine
Umbrella-Unit: 99-650
Statutory authority: 8 MRS §523
Chapter number/title: Part I: Mixed Martial Arts: Ch. 1 to 11
Filing number: 2019-231 to 241
Effective date: 12/16/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Authority has determined that amendments to these routine technical rules are necessary to correct certain errors, ambiguities, and omissions; to ensure internal consistency; and, to ensure compliance with current governing law and generally accepted practices. The amendments strengthen requirements for certification of fighters and promoters, procedures for medical assessments of fighters, and regulation of fighters' use of performance-enhancing and other prohibited substances. This rulemaking does not include changes to any fees due for certification of participants.

Basis statement:

These rules repeal and replace present texts, correct errors, clarify terminology, and provide greater guidance to authorized participants as to permissible activities. The Authority's experience to date revealed the necessity to address more comprehensively concerns including regulation of the use of prohibited substances by competitors and pre- and post-fight medical checks for fighters. The Authority will enforce the rules through certification, i.e., the licensing process, and maintenance of a presence at events.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: **Combat Sports Authority of Maine**
Umbrella-Unit: **99-650**
Statutory authority: 8 MRS §523
Chapter number/title: **Part II: Boxing: Ch. 1 to 12**
Filing number: **2019-258 to 269**
Effective date: 12/25/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Authority has determined that amendments to these routine technical rules are necessary to correct certain errors, ambiguities, and omissions; to ensure internal consistency; and, to ensure compliance with current governing law and generally accepted practices. The amendments strengthen requirements for certification of fighters and promoters, procedures for medical assessments of fighters, and regulation of fighters' use of performance-enhancing and other prohibited substances. The rules make bonding requirements for boxing promoters identical to those for missed martial arts promoters. This rulemaking does not include changes to any fees due for certification of participants.

Basis statement:

These routine technical rules repeal and replace present texts, correct errors, clarify terminology, and provide greater guidance to authorized boxing participants. They add requirements resulting from the Authority's experience to date, which has revealed the necessity to address more comprehensively concerns including regulation of the use of prohibited substances by competitors and pre- and post-fight medical checks for fighters. The Authority will enforce the rules through certification, i.e., the licensing process, and maintenance of a presence at events.

Fiscal impact of rule:

None.