

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT
OF THE
SECRETARY OF STATE

SHENNA BELLOWS
SECRETARY OF STATE

February 1, 2023

Suzanne Gresser, Executive Director
Maine State Legislative Council
115 State House Station
Augusta, ME 04333-0115

Dear Executive Director Gresser:

Maine Revised Statutes Title 5, §8053-A, sub-§5, provides that by February 1st of each year, the Secretary of State shall provide the Executive Director of the Legislative Council with lists, by agency, of all rules adopted by each agency in the previous calendar year. I am pleased to present the report for 2022.

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 2022, there were 257 rule adoption filings, 5 fewer than in 2021. 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 | 31 | 30 | 1 | 12 | 19 |
| 02 | Department of Professional and Financial Regulation | 47 | 47 | 0 | 0 | 47 |
| 03 | Department of Corrections | 7 | 7 | 0 | 0 | 7 |
| 05 | Department of Education | 6 | 0 | 6 | 0 | 6 |
| 06 | Department of Environmental Protection | 6 | 5 | 1 | 0 | 6 |
| 09 | Department of Inland Fisheries and Wildlife | 15 | 15 | 0 | 0 | 15 |
| 10, 14 | Department of Health and Human Services | 35 | 30 | 5 | 7 | 28 |
| 12 | Department of Labor | 5 | 4 | 1 | 0 | 5 |
| 13 | Department of Marine Resources | 25 | 25 | 0 | 10 | 15 |
| 15 | Department of Defense, Veterans and Emergency Management | 1 | 1 | 0 | 0 | 1 |

| Umbrella number | Agency | Total Adopt | Routine Technical | Major Substantive | Emergency | Non Emergency |
|-----------------|---|-------------|-------------------|-------------------|-----------|---------------|
| 16 | Department of Public Safety | 21 | 21 | 0 | 0 | 21 |
| 17 | Department of Transportation | 1 | 0 | 1 | 0 | 1 |
| 18 | Department of Administrative and Financial Services | 17 | 16 | 1 | 1 | 16 |
| 29 | Secretary of State | 2 | 2 | 0 | 0 | 2 |
| 65 | Public Utilities Commission | 13 | 13 | 0 | 0 | 13 |
| 90-590 | Maine Health Data Organization | 2 | 1 | 1 | 0 | 2 |
| 94-293 | Baxter State Park Authority | 1 | 1 | 0 | 0 | 1 |
| 94-348 | Maine Human Rights Commission | 4 | 4 | 0 | 0 | 4 |
| 94-411 | Maine Public Employees Retirement System | 6 | 6 | 0 | 0 | 6 |
| 94-457 | Finance Authority of Maine | 3 | 3 | 0 | 0 | 3 |
| 94-649 | Maine Commission on Indigent Legal Services | 3 | 2 | 1 | 0 | 3 |
| 99-346 | Maine State Housing Authority | 6 | 6 | 0 | 1 | 5 |
| | Totals for 2022 | 257 | 239 | 18 | 31 | 226 |

The report is presented in multiple files:

- 1) An Excel spreadsheet, sorted by agency, that includes for each rule -- the agency name, 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 also is 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 624-7736.

Sincerely,



Shenna Bellows
Secretary of State

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|---|----------------|---|-----------------------------|-------------------|-----------|----------------|
| 2022-092 | 01-001 | Department of Agriculture, Conservation and Forestry | Ch. 273 | Criteria for Listing Invasive Terrestrial Plants | 7 MRS ch. 405A §2211 | Routine Technical | No | 5/24/2022 |
| 2022-063 | 01-001 | Department of Agriculture, Conservation and Forestry | Ch. 330 | License Fees to Manufacture and Sell Food and Beverages | 22 MRS §2154 | Routine Technical | No | 4/26/2022 |
| 2022-064 | 01-001 | Department of Agriculture, Conservation and Forestry | Ch. 347 | Birch and Maple Syrup Processing | 22 MRS §2154 | Routine Technical | No | 4/26/2022 |
| 2022-011 | 01-001 | Department of Agriculture, Conservation and Forestry | Ch. 701 | Rules Governing Animal Welfare | 7 MRS §3906-B | Routine Technical | No | 1/24/2022 |
| 2022-015 | 01-015 | Department of Agriculture, Conservation and Forestry, Maine Milk Commission | Ch. 3 | Schedule of Minimum Prices, Order #02-22 | 5 MRS §8054; 7 MRS §2954 | Routine Technical | Yes | 1/30/2022 |
| 2022-026 | 01-015 | Department of Agriculture, Conservation and Forestry, Maine Milk Commission | Ch. 3 | Schedule of Minimum Prices, Order #03-22 | 5 MRS §8054; 7 MRS §2954 | Routine Technical | Yes | 2/27/2022 |
| 2022-048 | 01-015 | Department of Agriculture, Conservation and Forestry, Maine Milk Commission | Ch. 3 | Schedule of Minimum Prices, Order #04-22 | 5 MRS §8054; 7 MRS §2954 | Routine Technical | Yes | 4/3/2022 |
| 2022-068 | 01-015 | Department of Agriculture, Conservation and Forestry, Maine Milk Commission | Ch. 3 | Schedule of Minimum Prices, Order #05-22 | 5 MRS §8054; 7 MRS §2954 | Routine Technical | Yes | 5/1/2022 |
| 2022-097 | 01-015 | Department of Agriculture, Conservation and Forestry, Maine Milk Commission | Ch. 3 | Schedule of Minimum Prices, Order #06-22 | 5 MRS §8054; 7 MRS §2954 | Routine Technical | Yes | 5/29/2022 |
| 2022-122 | 01-015 | Department of Agriculture, Conservation and Forestry, Maine Milk Commission | Ch. 3 | Schedule of Minimum Prices, Order #07-22 | 5 MRS §8054; 7 MRS §2954 | Routine Technical | Yes | 7/3/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
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|----------|-----------------|---|----------------|---|-----------------------------|-------------------|-----------|----------------|
| 2022-138 | 01-015 | Department of Agriculture, Conservation and Forestry, Maine Milk Commission | Ch. 3 | Schedule of Minimum Prices, Order #08-22 | 5 MRS §8054; 7 MRS §2954 | Routine Technical | Yes | 7/31/2022 |
| 2022-156 | 01-015 | Department of Agriculture, Conservation and Forestry, Maine Milk Commission | Ch. 3 | Schedule of Minimum Prices, Order #09-22 | 5 MRS §8054; 7 MRS §2954 | Routine Technical | Yes | 9/4/2022 |
| 2022-191 | 01-015 | Department of Agriculture, Conservation and Forestry, Maine Milk Commission | Ch. 3 | Schedule of Minimum Prices, Order #10-22 | 5 MRS §8054; 7 MRS §2954 | Routine Technical | Yes | 10/2/2022 |
| 2022-211 | 01-015 | Department of Agriculture, Conservation and Forestry, Maine Milk Commission | Ch. 3 | Schedule of Minimum Prices, Order #11-22 | 5 MRS §8054; 7 MRS §2954 | Routine Technical | Yes | 10/30/2022 |
| 2022-230 | 01-015 | Department of Agriculture, Conservation and Forestry, Maine Milk Commission | Ch. 3 | Schedule of Minimum Prices, Order #12-22 | 5 MRS §8054; 7 MRS §2954 | Routine Technical | Yes | 12/4/2022 |
| 2022-255 | 01-015 | Department of Agriculture, Conservation and Forestry, Maine Milk Commission | Ch. 3 | Schedule of Minimum Prices, Order #01-23 | 5 MRS §8054; 7 MRS §2954 | Routine Technical | Yes | 1/1/2023 |
| 2022-123 | 01-015 | Department of Agriculture, Conservation and Forestry, Maine Milk Commission | Ch. 26 | Producer Margins | 7 MRS §2954 | Major Substantive | No | 8/1/2022 |
| 2022-038 | 01-015 | Department of Agriculture, Conservation and Forestry, Maine Milk Commission | Ch. 29 | Dealer Margins | 7 MRS §2954 | Routine Technical | No | 3/19/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
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|----------|-----------------|---|----------------|--|---|-------------------|-----------|----------------|
| 2022-094 | 01-017 | Department of Agriculture, Conservation and Forestry, Maine State Harness Racing Commission | Ch. 21 | General Hearing Procedures <i>(Repeal and replace)</i> | 8 MRS §§ 263-A, 263-C, 264, 267-A, 268, 272-B, 272-C, 279, 279-A, 279-E, 281, 298 | Routine Technical | No | 5/28/2022 |
| 2022-085 | 01-026 | Department of Agriculture, Conservation and Forestry, Board of Pesticides Control | Ch. 20 | Special Provisions | 22 MRS §1471(A-X) | Routine Technical | No | 5/16/2022 |
| 2022-181 | 01-026 | Department of Agriculture, Conservation and Forestry, Board of Pesticides Control | Ch. 41 | Special Restrictions on Pesticides Use | 5 MRS §§ 8051 <i>et seq.</i> ; 7 MRS §§ 601-610; 22 MRS §1471(A-D,M) | Routine Technical | No | 9/20/2022 |
| 2022-013 | 01-670 | Department of Agriculture, Conservation and Forestry, Bureau of Parks and Lands | Ch. 8 | Rules for Snowmobile Club Trail Maintenance Grant-In-Aid Program | 12 MRS §1893(3)(A)(1) | Routine Technical | No | 1/29/2022 |
| 2022-249 | 01-672 | Department of Agriculture, Conservation and Forestry, Land Use Planning Commission | Ch. 2 | Definitions | 12 MRS §§ 685-A(3),(7-A) 685-C(5) | Routine Technical | No | 12/30/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
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|----------|-----------------|--|----------------|---|---------------------------|-------------------|-----------|----------------|
| 2022-018 | 01-672 | Department of Agriculture, Conservation and Forestry, Land Use Planning Commission | Ch. 10 | Land Use Districts and Standards: Land Use Guidance Maps (Amended Zoning Maps): Zoning Petition: ZP 659B (Frenchtown Twp. — Piscataquis County) (Maine Land Use Planning Commission Staff); Zoning Petition: ZP 710B (T1 R8 WELS and T1 R9 WELS — Piscataquis County) (Matthew Polstein – Hammond Ridge Development Corporation, LLC) | 12 MRS §§ 685-A(7-A), 689 | Routine Technical | No | 1/26/2022 |
| 2022-036 | 01-672 | Department of Agriculture, Conservation and Forestry, Land Use Planning Commission | Ch. 10 | Land Use Districts and Standards: Land Use Guidance Maps (Amended Zoning Maps): Zoning Petitions: ZP 776A (Unity Twp. — Kennebec County) (Three Corners Solar, LLC; Michael Alvarez) | 12 MRS §§ 685-A(7-A), 689 | Routine Technical | No | 1/27/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|--|----------------|---|--|-------------------|-----------|----------------|
| 2022-041 | 01-672 | Department of Agriculture, Conservation and Forestry, Land Use Planning Commission | Ch. 10 | Land Use Districts and Standards (Citizen Petition to Prohibit Certain Marijuana Uses in the D-GN2 Subdistrict) | 5 MRS §§ 8052(1), 8055; 22 MRS §§ 2421 <i>et seq.</i> ; 28-B MRS §§ 101 <i>et seq.</i> ; 12 MRS §§ 685-A(1), (8-A) | Routine Technical | No | 3/29/2022 |
| 2022-124 | 01-672 | Department of Agriculture, Conservation and Forestry, Land Use Planning Commission | Ch. 10 | Land Use Guidance Maps (Amended Zoning Maps): Zoning Petitions: ZP 783A, ZP 772A, ZP 787, ZP 786 | 12 MRS §§ 685-A(7-A), 689 | Routine Technical | No | 6/22/2022 |
| 2022-146 | 01-672 | Department of Agriculture, Conservation and Forestry, Land Use Planning Commission | Ch. 10 | Land Use Guidance Maps (Amended Zoning Maps): Zoning Petitions: ZP 224D, ZP 788, ZP 789 | 12 MRS §§ 685-A(7-A), 689 | Routine Technical | No | 7/15/2022 |
| 2022-231 | 01-672 | Department of Agriculture, Conservation and Forestry, Land Use Planning Commission | Ch. 10 | Land Use Guidance Maps (Amended Zoning Maps): Zoning Petition: ZP 790 | 12 MRS §§ 685-A(7-A), 689 | Routine Technical | No | 11/18/2022 |
| 2022-250 | 01-672 | Department of Agriculture, Conservation and Forestry, Land Use Planning Commission | Ch. 10 | Land Use Districts and Standards (Solar Energy) | 12 MRS §§ 685-A(3),(7-A) 685-C(5) | Routine Technical | No | 12/30/2022 |
| 2022-251 | 01-672 | Department of Agriculture, Conservation and Forestry, Land Use Planning Commission | Ch. 10 | Land Use Districts and Standards (Moosehead Regional Planning) | 12 MRS §§ 685-A (1), (7-A), (8-A), 685-C(5) | Routine Technical | No | 12/30/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

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|----------|-----------------|--|----------------|---|---|-------------------|-----------|----------------|
| 2022-145 | 02-031 | Department of Professional and Financial Regulation, Bureau of Insurance | Ch. 130 | Minimum Reserve Standards for Individual and Group Health Insurance Contracts | 24-A MRS §§ 212, 952(3), 959(1) | Routine Technical | No | 8/2/2022 |
| 2022-217 | 02-031 | Department of Professional and Financial Regulation, Bureau of Insurance | Ch. 180 | Insurance Holding Company System Model Rule with Reporting Forms and Instructions | 24-A MRS §§ 212, 222 | Routine Technical | No | 11/6/2022 |
| 2022-070 | 02-031 | Department of Professional and Financial Regulation, Bureau of Insurance | Ch. 365 | Standards for Independent Dispute Resolution of Emergency Medical Service Bills | 24-A MRS §§ 212, 222 | Routine Technical | No | 5/1/2022 |
| 2022-076 | 02-031 | Department of Professional and Financial Regulation, Bureau of Insurance | Ch. 425 | Long-Term Care Insurance | 24 MRS §§ 2316, 2321; 24-A MRS §§ 212, 2412, 2413, 2414, 2736, 5071, 5072, 5073, 5074, 5075, 5077, 5078, 5080, 5083, 5084 | Routine Technical | No | 5/9/2022 |
| 2022-019 | 02-031 | Department of Professional and Financial Regulation, Bureau of Insurance | Ch. 735 | Term and Universal Life Insurance Reserve Financing (<i>New</i>) | 24-A MRS §§ 212, 731-B(2-B),(7) | Routine Technical | No | 2/15/2022 |
| 2022-027 | 02-031 | Department of Professional and Financial Regulation, Bureau of Insurance | Ch. 740 | Credit for Reinsurance | 24-A MRS §§ 212, 731-B; PL 2021 ch. 16 | Routine Technical | No | 3/1/2022 |
| 2022-232 | 02-031 | Department of Professional and Financial Regulation, Bureau of Insurance | Ch. 851 | Clear Choice Designs for Individual and Small Group Health Plans | 24-A MRS §§ 212, 2793 | Routine Technical | No | 12/4/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

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|----------|-----------------|--|----------------|---|---------------------------------------|-------------------|-----------|----------------|
| 2022-012 | 02-031 | Department of Professional and Financial Regulation, Bureau of Insurance | Ch. 856 | Combination of the Individual and Small Business Health Insurance Risk Pools <i>(New)</i> | 24-A MRS §§ 212, 2792(5) | Routine Technical | No | 1/24/2022 |
| 2022-049 | 02-031 | Department of Professional and Financial Regulation, Bureau of Insurance | Ch. 857 | Small Business Health Insurance Premium Support Program <i>(New)</i> | 24-A MRS §212; PL 2021 ch. 483 part C | Routine Technical | No | 4/5/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

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|----------|-----------------|--|----------------|---|--|-------------------|-----------|----------------|
| 2022-182 | 02-041 | Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, American Sign Language Interpreters | Ch. 50 | Definitions | 32 MRS §§ 1522(1), 1424(B), 1524(C), 1528, 1528-A; 10 MRS §§ 8003-H, 8003-5-A(D) | Routine Technical | No | 9/20/2022 |
| 2022-183 | 02-041 | Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, American Sign Language Interpreters | Ch. 51 | Requirements for Initial Licensure and Licensure by Endorsement | 32 MRS §§ 1522(1), 1424(B), 1524(C), 1528, 1528-A; 10 MRS §§ 8003-H, 8003-5-A(D) | Routine Technical | No | 9/20/2022 |
| 2022-184 | 02-041 | Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, American Sign Language Interpreters | Ch. 52 | License Renewal, Inactive Licensure Status and Continuing Education | 32 MRS §§ 1522(1), 1424(B), 1524(C), 1528, 1528-A; 10 MRS §§ 8003-H, 8003-5-A(D) | Routine Technical | No | 9/20/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|--|----------------|--|--|-------------------|-----------|----------------|
| 2022-185 | 02-041 | Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, American Sign Language Interpreters | Ch. 54 | Code of Ethics and Ethical Standards | 32 MRS §§ 1522(1), 1424(B), 1524(C), 1528, 1528-A; 10 MRS §§ 8003-H, 8003-5-A(D) | Routine Technical | No | 9/20/2022 |
| 2022-186 | 02-041 | Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, American Sign Language Interpreters | Ch. 55 | Complaints and Investigations <i>(Repeal)</i> | 32 MRS §§ 1522(1), 1424(B), 1524(C), 1528, 1528-A; 10 MRS §§ 8003-H, 8003-5-A(D) | Routine Technical | No | 9/20/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
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|----------|-----------------|---|----------------|---|--|-------------------|-----------|----------------|
| 2022-160 | 02-280 | Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Accountancy | Ch. 1 | Definitions | 32 MRS §§ 12214(4), 12252; 10 MRS §8003(4) | Routine Technical | No | 8/31/2022 |
| 2022-161 | 02-280 | Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Accountancy | Ch. 6 | Firm License Requirements (<i>Repeal and replace</i>) | 32 MRS §§ 12214(4), 12252; 10 MRS §8003(4) | Routine Technical | No | 8/31/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
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|----------|-----------------|--|----------------|---------------------------------|-------------------------------|-------------------|-----------|----------------|
| 2022-178 | 02-298 | Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Real Estate Appraisers | Ch. 220 | Educational Course Requirements | 32 MRS §§ 14012, 14027, 14039 | Routine Technical | No | 9/18/2022 |
| 2022-179 | 02-298 | Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Real Estate Appraisers | Ch. 230 | Supervising Appraiser Duties | 32 MRS §§ 14012, 14027, 14039 | Routine Technical | No | 9/18/2022 |

Annual List of Rule-making Activity
 Rules Adopted 1/1/2022 to 12/31/2022
 Prepared by the Secretary of State

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|----------|-----------------|--|----------------|---|------------------------|-------------------|-----------|----------------|
| 2022-169 | 02-313 | Maine Board of Dental Practice <i>(Affiliated with the Department of Professional and Financial Regulation)</i> | Ch. 15 | Practice Requirements for Teledentistry Services <i>(New)</i> | 32 MRS §§ 18324, 18394 | Routine Technical | No | 9/7/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

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|----------|-----------------|--|----------------|--|---|-------------------|-----------|----------------|
| 2022-108 | 02-318 | Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Electricians' Examining Board | Ch. 100 | Definitions (New) | 32 MRS §§ 1101, 1102-C(4), 1151, 1153, 1153-A, 1202-A, 1203, 1203-A, 1204; 5 MRS §9001(4); 10 MRS §8007 | Routine Technical | No | 6/7/2022 |
| 2022-109 | 02-318 | Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Electricians' Examining Board | Ch. 110 | Conflict of Interest | 32 MRS §§ 1101, 1102-C(4), 1151, 1153, 1153-A, 1202-A, 1203, 1203-A, 1204; 5 MRS §9001(4); 10 MRS §8007 | Routine Technical | No | 6/7/2022 |
| 2022-110 | 02-318 | Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Electricians' Examining Board | Ch. 115 | Advisory Rulings (New) | 32 MRS §§ 1101, 1102-C(4), 1151, 1153, 1153-A, 1202-A, 1203, 1203-A, 1204; 5 MRS §9001(4); 10 MRS §8007 | Routine Technical | No | 6/7/2022 |
| 2022-111 | 02-318 | Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Electricians' Examining Board | Ch. 130 | Examination and Licensing Requirements | 32 MRS §§ 1101, 1102-C(4), 1151, 1153, 1153-A, 1202-A, 1203, 1203-A, 1204; 5 MRS §9001(4); 10 MRS §8007 | Routine Technical | No | 6/7/2022 |
| 2022-112 | 02-318 | Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Electricians' Examining Board | Ch. 135 | Electrical Permits | 32 MRS §§ 1101, 1102-C(4), 1151, 1153, 1153-A, 1202-A, 1203, 1203-A, 1204; 5 MRS §9001(4); 10 MRS §8007 | Routine Technical | No | 6/7/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

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|----------|-----------------|--|----------------|-------------------------------------|---|-------------------|-----------|----------------|
| 2022-113 | 02-318 | Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Electricians' Examining Board | Ch. 125 | Scope of Practice (<i>Repeal</i>) | 32 MRS §§ 1101, 1102-C(4), 1151, 1153, 1153-A, 1202-A, 1203, 1203-A, 1204; 5 MRS §9001(4); 10 MRS §8007 | Routine Technical | No | 6/7/2022 |
| 2022-114 | 02-318 | Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Electricians' Examining Board | Ch. 140 | Board Fees (<i>Repeal</i>) | 32 MRS §§ 1101, 1102-C(4), 1151, 1153, 1153-A, 1202-A, 1203, 1203-A, 1204; 5 MRS §9001(4); 10 MRS §8007 | Routine Technical | No | 6/7/2022 |
| 2022-115 | 02-318 | Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Electricians' Examining Board | Ch. 170 | Denial Appeals (<i>Repeal</i>) | 32 MRS §§ 1101, 1102-C(4), 1151, 1153, 1153-A, 1202-A, 1203, 1203-A, 1204; 5 MRS §9001(4); 10 MRS §8007 | Routine Technical | No | 6/7/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
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| 2022-139 | 02-373 | Board of Licensure in Medicine (<i>affiliated with the</i> Department of Professional and Financial Regulation) | Ch. 11 | Joint Rule Regarding Telehealth Standards of Practice | 32 MRS §§ 3269(3), 3269(7), 3300-AA to 3300-EE | Routine Technical | No | 7/24/2022 |
| 2022-142 | 02-373 | Board of Licensure in Medicine (<i>affiliated with the</i> Department of Professional and Financial Regulation) | Ch. 12 | Joint Rule Regarding Office Based Treatment of Opioid Use Disorder | 32 MRS §§ 3269(3), 3300-F, 3300-EE | Routine Technical | No | 7/24/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

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|----------|-----------------|---|----------------|--|---|-------------------|-----------|----------------|
| 2022-061 | 02-380 | Maine State Board of Nursing (affiliated with the Department of Professional and Financial Regulation) | Ch. 1 | Collaborative Drug Therapy Management (New) | 32 MRS §2153-A(1) | Routine Technical | No | 4/25/2022 |
| 2022-257 | 02-380 | Maine State Board of Nursing (affiliated with the Department of Professional and Financial Regulation) | Ch. 5 | Regulations Relating to Training Programs and Delegation by Registered Professional Nurses of Selected Nursing Tasks to Certified Nursing Assistants | 22 MRS §§ 1812-G(3); 32 MRS §§ 2102(2)(D) and (8), 2104(4), 2153-A(1) | Routine Technical | No | 1/1/2023 |
| 2022-140 | 02-380 | Maine State Board of Nursing (affiliated with the Department of Professional and Financial Regulation) | Ch. 11 | Joint Rule Regarding Telehealth Standards of Practice | 32 MRS §§ 2102(2-A), 2153-A(1), 2266 to 2270 | Routine Technical | No | 7/24/2022 |
| 2022-143 | 02-380 | Maine State Board of Nursing (affiliated with the Department of Professional and Financial Regulation) | Ch. 12 | Joint Rule Regarding Office Based Treatment of Opioid Use Disorder | 32 MRS §§ 2102(2-A), 2153-A(1), 2210, 2270 | Routine Technical | No | 7/24/2022 |
| 2022-117 | 02-380 | Maine State Board of Nursing (affiliated with the Department of Professional and Financial Regulation) | Ch. 13 | Criminal History Record Information (New) | 32 MRS §§ 21112(2), 2153-A(1) | Routine Technical | No | 6/13/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|---|----------------|--|------------------------------------|-------------------|-----------|----------------|
| 2022-141 | 02-383 | Board of Osteopathic Licensure (affiliated with the Department of Professional and Financial Regulation) | Ch. 11 | Joint Rule Regarding Telehealth Standards of Practice | 32 MRS §§ 2562, 2600-AA to 2600-EE | Routine Technical | No | 7/24/2022 |
| 2022-144 | 02-383 | Board of Osteopathic Licensure (affiliated with the Department of Professional and Financial Regulation) | Ch. 12 | Joint Rule Regarding Office Based Treatment of Opioid Use Disorder | 32 MRS §§ 2562, 2600-C, 2600-EE | Routine Technical | No | 7/24/2022 |

Annual List of Rule-making Activity
 Rules Adopted 1/1/2022 to 12/31/2022
 Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|--|----------------|--|---------------------|-------------------|-----------|----------------|
| 2022-060 | 02-392 | Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine Board of Pharmacy | Ch. 39-A | Collaborative Drug Therapy Management (<i>New</i>) | 32 MRS §13720 | Routine Technical | No | 4/25/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|--|----------------|------------------------|-----------------------------------|-------------------|-----------|----------------|
| 2022-022 | 02-395 | Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Plumbers' Examining Board | Ch. 4 | Installation Standards | 32 MRS §§ 3403-A, 3403-B(1), 3302 | Routine Technical | No | 2/23/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|---|----------------|---|-------------------------------|-------------------|-----------|----------------|
| 2022-196 | 02-416 | Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Social Worker Licensure | Ch. 10 | Definitions <i>(Repeal and replace)</i> | 32 MRS §§ 7030(2), 7053, 7060 | Routine Technical | No | 10/11/2022 |
| 2022-197 | 02-416 | Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Social Worker Licensure | Ch. 11 | Advisory Rulings <i>(Repeal and replace)</i> | 32 MRS §§ 7030(2), 7053, 7060 | Routine Technical | No | 10/11/2022 |
| 2022-198 | 02-416 | Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Social Worker Licensure | Ch. 12 | Licensure by Endorsement <i>(formerly Application for Licensure) (Repeal and replace)</i> | 32 MRS §§ 7030(2), 7053, 7060 | Routine Technical | No | 10/11/2022 |
| 2022-199 | 02-416 | Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Social Worker Licensure | Ch. 13 | Licensure <i>(Repeal and replace)</i> | 32 MRS §§ 7030(2), 7053, 7060 | Routine Technical | No | 10/11/2022 |
| 2022-200 | 02-416 | Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Social Worker Licensure | Ch. 14 | Continuing Professional Education <i>(Repeal and replace)</i> | 32 MRS §§ 7030(2), 7053, 7060 | Routine Technical | No | 10/11/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|---|----------------|--|-------------------------------|-------------------|-----------|----------------|
| 2022-201 | 02-416 | Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Social Worker Licensure | Ch. 15 | Scope of Practice (<i>Repeal and replace</i>) | 32 MRS §§ 7030(2), 7053, 7060 | Routine Technical | No | 10/11/2022 |
| 2022-202 | 02-416 | Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Social Worker Licensure | Ch. 16 | Code of Ethics and Grounds for Discipline (<i>formerly</i> Enforcement and Disciplinary Procedures) (<i>Repeal and replace</i>) | 32 MRS §§ 7030(2), 7053, 7060 | Routine Technical | No | 10/11/2022 |
| 2022-203 | 02-416 | Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Social Worker Licensure | Ch. 17 | Record Retention Requirements (<i>Repeal and replace</i>) | 32 MRS §§ 7030(2), 7053, 7060 | Routine Technical | No | 10/11/2022 |
| 2022-204 | 02-416 | Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Social Worker Licensure | Ch. 18 | Telehealth (<i>New</i>) | 32 MRS §§ 7030(2), 7053, 7060 | Routine Technical | No | 10/11/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|---------------------------|----------------|---|-----------------------------------|-------------------|-----------|----------------|
| 2022-080 | 03-201 | Department of Corrections | Ch. 4 | Line of Duty Death Benefits for Corrections Officers <i>(New)</i> | 25 MRS §1612 | Routine Technical | No | 5/18/2022 |
| 2022-005 | 03-201 | Department of Corrections | Ch. 10 | Policy 27.2: Supervised Community Confinement | PL 2021 ch. 376 | Routine Technical | No | 1/10/2022 |
| 2022-239 | 03-201 | Department of Corrections | Ch. 10 | Policy 27.2: Supervised Community Confinement <i>(Repeal and replace)</i> | PL 2021 ch. 376; 34-A MRS §3036-A | Routine Technical | No | 12/21/2022 |
| 2022-240 | 03-201 | Department of Corrections | Ch. 10 | Policy 27.3: Community Transition Program <i>(Repeal and replace)</i> | 34-A MRS §3035 | Routine Technical | No | 12/21/2022 |
| 2022-241 | 03-201 | Department of Corrections | Ch. 10 | Policy 27.4: Furlough Program <i>(Repeal and replace)</i> | 34-A MRS §3035 | Routine Technical | No | 12/21/2022 |
| 2022-028 | 03-201 | Department of Corrections | Ch. 10 | Policy 29.1: Adult Resident Grievance Process, General | 34-A MRS §1402(5) | Routine Technical | No | 3/8/2022 |
| 2022-029 | 03-201 | Department of Corrections | Ch. 10 | Policy 29.2: Adult Resident Grievance Process, Health Care | 34-A MRS §1402(5) | Routine Technical | No | 3/8/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|--|----------------|--|--|-------------------|-----------|----------------|
| 2022-057 | 05-071 | Department of Education | Ch. 40 | Rule for Medication Administration in Maine Schools | 20-A MRS §254(5)(A-C); PL ch. 115 | Major Substantive | No | 5/12/2022 |
| 2022-089 | 05-071 | Department of Education | Ch. 60 | New School Siting Approval | PL 1999 ch. 776 §21 | Major Substantive | No | 6/10/2022 |
| 2022-090 | 05-071 | Department of Education | Ch. 61 | Rules for Major Capital School Construction Projects | 20-A MRS §3; 20-A MRS §405(3)(J); 20-A MRS §15905 sub-§4; PL 2001 c. 439 Part 0000 §0000-3; PL 2007 c. 240 Part MM, Ch. 103-A; PL 2008 c.223 | Major Substantive | No | 6/10/2022 |
| 2022-088 | 05-071 | Department of Education | Ch. 115 | The Credentialing of Education Personnel | 20-A MRS §13006-A; PL 2021 ch. 228 | Major Substantive | No | 6/10/2022 |
| 2022-091 | 05-071 | State Board of Education and Department of Education | Ch. 125 | Basic Approval Standards | 20-A MRS §4504(3) | Major Substantive | No | 6/10/2022 |
| 2022-058 | 05-071 | Department of Education | Ch. 132 | Learning Results: Parameters for Essential Instruction | 20-A MRS | Major Substantive | No | 5/12/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|--|----------------|--|--------------------------------|-------------------|-----------|----------------|
| 2022-205 | 06-096 | Department of Environmental Protection | Ch. 169 | Stationary Generators <i>(New)</i> | 38 MRS §§ 585, 585-A | Routine Technical | No | 10/9/2022 |
| 2022-121 | 06-096 | Department of Environmental Protection | Ch. 170 | Degassing of Petroleum Storage Tanks, Marine Vessels, and Transport Vessels <i>(New)</i> | 38 MRS §§ 585, 585-A | Routine Technical | No | 6/27/2022 |
| 2022-206 | 06-096 | Department of Environmental Protection | Ch. 180 | Appliance Efficiency Standards <i>(New)</i> | PL 2021 ch. 433; 38 MRS §576-A | Major Substantive | No | 11/3/2022 |
| 2022-256 | 06-096 | Department of Environmental Protection | Ch. 305 | Natural Resources Protection Act: Permit by Rule | 38 MRS §344(7) | Routine Technical | No | 12/27/2022 |
| 2022-208 | 06-481 | Board of Underground Storage Tank Installers | Ch. 3 | Certification of Underground Oil Tank Installers | 32 MRS §10004 | Routine Technical | No | 10/18/2022 |
| 2022-209 | 06-481 | Board of Underground Storage Tank Installers | Ch. 6 | Certification of Underground Oil Storage Tank Inspectors | 32 MRS §10004 | Routine Technical | No | 10/18/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|---|----------------|--|---------------------------------|-------------------|-----------|----------------|
| 2022-227 | 09-137 | Department of Inland Fisheries and Wildlife | Ch. 1 | Open Water and Fishing Regulations | 12 MRS §§ 10104, 12452, 12461 | Routine Technical | No | 1/1/2023 |
| 2022-228 | 09-137 | Department of Inland Fisheries and Wildlife | Ch. 1-A | State Heritage Fish Waters | 12 MRS §§ 10104, 12452, 12461 | Routine Technical | No | 1/1/2023 |
| 2022-025 | 09-137 | Department of Inland Fisheries and Wildlife | Ch. 13 | <i>Watercraft rules (Boating Events)</i> | 12 MRS §§10104, 13061 | Routine Technical | No | 5/1/2022 |
| 2022-116 | 09-137 | Department of Inland Fisheries and Wildlife | Ch. 16 | Hunting: 16.05, Possession, Transport and Labeling of Big Game; 16.07, Deer Hunting | 12 MRS §§ 10104, 11152 | Routine Technical | No | 8/8/2022 |
| 2022-128 | 09-137 | Department of Inland Fisheries and Wildlife | Ch. 16 | Hunting: 16.06(1.E), Submission of Teeth | 12 MRS §§ 10053, 10104, 12301-A | Routine Technical | No | 7/16/2022 |
| 2022-225 | 09-137 | Department of Inland Fisheries and Wildlife | Ch. 16 | Hunting: 16.06, Registration, Data Collection and Tagging of Big Game and Furbearing Animals | 12 MRS §§ 10104, 12301-B | Routine Technical | No | 11/22/2022 |
| 2022-127 | 09-137 | Department of Inland Fisheries and Wildlife | Ch. 16 | Hunting: 16.07, Deer Hunting (Antlerless Deer Permit Allocations and Expanded Archery Areas) | 12 MRS §§ 10104, 11152, 11402 | Routine Technical | No | 8/8/2022 |
| 2022-093 | 09-137 | Department of Inland Fisheries and Wildlife | Ch. 16 | Hunting: 16.08, Moose Hunting (Permit Allocations) | 12 MRS §§ 11151, 11552 | Routine Technical | No | 5/25/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|---|----------------|---|-------------------------------|-------------------|-----------|----------------|
| 2022-053 | 09-137 | Department of Inland Fisheries and Wildlife | Ch. 16 | Hunting: 16.09, Bear Hunting | 12 MRS §§ 10104, 11251, 11351 | Routine Technical | No | 4/18/2022 |
| 2022-102 | 09-137 | Department of Inland Fisheries and Wildlife | Ch. 16 | Hunting: 16.10, Wild Turkey Hunting (Fall Season) | 12 MRS §§ 10104, 11701 | Routine Technical | No | 6/5/2022 |
| 2022-103 | 09-137 | Department of Inland Fisheries and Wildlife | Ch. 16 | Hunting: 16.11, Migratory Game Bird Hunting | 12 MRS §§ 10104, 11855 | Routine Technical | No | 6/5/2022 |
| 2022-129 | 09-137 | Department of Inland Fisheries and Wildlife | Ch. 17 | Trapping | 12 MRS §§ 10053, 10104, 12251 | Routine Technical | No | 7/16/2022 |
| 2022-054 | 09-137 | Department of Inland Fisheries and Wildlife | Ch. 17 | Bear Trapping | 12 MRS §§ 10104, 11351 | Routine Technical | No | 4/18/2022 |
| 2022-104 | 09-137 | Department of Inland Fisheries and Wildlife | Ch. 28 | Educational Trip Leader Rules | 12 MRS §§ 10104, 12863 | Routine Technical | No | 6/5/2022 |
| 2022-024 | 09-137 | Department of Inland Fisheries and Wildlife | Ch. 29 | Species of Special Concern (<i>New</i>) | 12 MRS §§ 10105, 12152 | Routine Technical | No | 2/27/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|---|----------------|--|--|-------------------|-----------|----------------|
| 2022-101 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | MaineCare Benefits Manual: Ch. I Section 1 , General Administrative Policies and Procedures | 22 MRS §§ 42, 42(7)(H), 3173; 42 CFR §§ 431.108, 455.434, 447.56, 431.224, 431.12; 42 CFR Parts 1001 and 1003; Bipartisan Budget Act of 2018, Sec. 53102, P.L. No. 115-123 | Routine Technical | No | 5/29/2022 |
| 2022-010 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | MaineCare Benefits Manual: Ch. I Section 6 , Global HCBS Waiver Person-Centered Planning and Settings Rule | 22 MRS §§ 42, 3173; 42 CFR §441.301(c) | Routine Technical | No | 1/19/2022 |
| 2022-087 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | MaineCare Benefits Manual: Ch. II Section 21 , Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder | 22 MRS §§ 42, 42(8), 3173, 42 CFR Sec. 441.301(c), 42 USC §1396b(l) | Routine Technical | No | 5/22/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|---|----------------|---|---|-------------------|-----------|----------------|
| 2022-044 | 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 (<i>Repeal</i>) | 22 MRS §§ 42, 42, 3173; 5 MRS §8073; PL 2019 ch. 616 part A §A-7; PL 2021 ch. 398 | Major Substantive | Yes | 3/23/2022 |
| 2022-045 | 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; 5 MRS §8054; PL 2021 ch. 398 | Routine Technical | Yes | 3/23/2022 |
| 2022-119 | 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 and 42(8), 3173; PL 2021 ch. 398 | Routine Technical | No | 6/15/2022 |
| 2022-125 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | MaineCare Benefits Manual: Ch. II & III Section 25 , Dental Services and Reimbursement Methodology | 22 M.R.S. §§ 42, 3173; PL 2021, Ch. 398, Sec. A-17, Part CCC and Part GGGG | Routine Technical | Yes | 7/1/2022 |
| 2022-193 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | MaineCare Benefits Manual: Ch. II Section 25 , Dental Services and Reimbursement (<i>Repeal and replace</i>) | 22 MRS §§ 42, 3173; PL 2021, Ch. 398 Sec. A-17, Part CCC and Part GGGG | Routine Technical | No | 9/28/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|---|----------------|--|---|-------------------|-----------|----------------|
| 2022-194 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | MaineCare Benefits Manual: Ch. III Section 25 , Dental Services and Reimbursement (<i>Repealed</i>) | 22 MRS §§ 42, 3173; PL 2021, Ch. 398 Sec. A-17, Part CCC and Part GGGG | Routine Technical | No | 9/28/2022 |
| 2022-046 | 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 (<i>Repeal</i>) | 22 MRS §§ 42, 3173; 5 MRS §8072; PL 2019 ch. 616 part A §A-7; PL 2021 ch. 398 | Major Substantive | Yes | 3/23/2022 |
| 2022-047 | 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, 42(8), 3173; 5 MRS §8054; PL 2021 ch. 398 | Routine Technical | Yes | 3/23/2022 |
| 2022-118 | 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, 42(8), 3173; PL 2021 ch. 398 | Routine Technical | No | 6/15/2022 |
| 2022-212 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | MaineCare Benefits Manual: Ch. II Section 45 , Hospital Services, and Ch. III Section 45 , Principles of Reimbursement for Hospital Services | 22 MRS §§ 42, 42(8), 3173 | Routine Technical | No | 10/24/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|---|----------------|---|---|-------------------|-----------|----------------|
| 2022-219 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | MaineCare Benefits Manual: Ch. II Section 65 , Behavioral Health Services | 22 MRS §§ 42, 3173; 42 CFR Part 8; PL 2019 ch. 407; PL 2021 ch. 398 | Routine Technical | No | 11/9/2022 |
| 2022-220 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | MaineCare Benefits Manual: Ch. III Section 65 , Behavioral Health Services (<i>Repeal and replace</i>) | 22 MRS §§ 42, 42(8), 3173; 42 CFR Part 8; PL 2019 ch. 407; PL 2021 ch. 398; PL 2021 ch. 635 | Routine Technical | No | 11/9/2022 |
| 2022-079 | 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; PL 2021 ch. 398 sec. A-17; PL 2021 ch. 348 | Routine Technical | No | 5/14/2022 |
| 2022-084 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | MaineCare Benefits Manual: Ch. II & III Section 91 , Health Home Services, Community Care Teams | 22 MRS §§ 42, 3173; PL 2021 ch. 398 sec. A-17; sec. 2703 of the <i>Affordable Care Act</i> ; LD 1318 (129th Legislature 2019) | Routine Technical | No | 6/21/2022 |
| 2022-147 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | MaineCare Benefits Manual: Ch. II Section 93 , Opioid Health Home Services, <i>and</i> Ch. III Section 93 , Reimbursement for Opioid Health Home Services | 22 MRS §§ 42(1), 3173; PL 2017 ch. 407 | Routine Technical | No | 8/21/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|--|----------------|--|---|-------------------|-----------|----------------|
| 2022-083 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | MaineCare Benefits Manual: Ch. VI Section 3 , Primary Care Plus (<i>replaces</i> Ch. VI Section 1, Primary Care Case Management) | 22 MRS §§ 42, 3173; <i>Social Security Act</i> §1905(t)(1); 42 USC §1396d(t)(1) | Routine Technical | No | 6/21/2022 |
| 2022-020 | 10-144 | Department of Health and Human Services, Office of MaineCare Services, Division of Policy | Ch. 101 | MaineCare Benefits Manual: Ch. VII Section 5 , Estate Recovery | 22 MRS §§ 42, 42(8), 3173; P 2021 ch. 398 | Routine Technical | No | 2/20/2022 |
| 2022-210 | 10-144 | Department of Health and Human Services, Maine Center for Disease Control and Prevention (Maine CDC) | Ch. 220 | Radiation Protection Rule | 22 MRS §674(4)(D) | Routine Technical | No | 10/23/2022 |
| 2022-168 | 10-144 | Department of Health and Human Services, Maine Center for Disease Control and Prevention (Maine CDC) | Ch. 252 | Syringe Services Program Rule | 22 MRS §1341(2) | Routine Technical | Yes | 9/1/2022 |
| 2022-229 | 10-144 | Department of Health and Human Services, Maine Center for Disease Control and Prevention (Maine CDC) | Ch. 252 | Syringe Services Program Rule | 22 MRS §1341(2) | Routine Technical | No | 11/30/2022 |
| 2022-037 | 10-144 | Department of Health and Human Services, Maine Center for Disease Control and Prevention (Maine CDC) | Ch. 283 | Newborn Bloodspot Screening Rule | 22 MRS §§ 42, 1531 - 1533; 22-A MRS §210 | Major Substantive | No | 4/13/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|---|----------------|---|---|-------------------|-----------|----------------|
| 2022-031 | 10-144 | Department of Health and Human Services, Office for Family Independence | Ch. 301 | Supplemental Nutrition Assistance Program, SNAP Rule #224E: Section 999-3, Charts | 22 MRS §§ 42(1), 3104; 5 MRS §8054 | Routine Technical | Yes | 3/1/2022 |
| 2022-086 | 10-144 | Department of Health and Human Services, Office for Family Independence | Ch. 301 | Supplemental Nutrition Assistance Program, SNAP Rule #224A: Section 999-3, Charts | 22 MRS §§ 42(1), 3104 | Routine Technical | No | 5/30/2022 |
| 2022-157 | 10-144 | Department of Health and Human Services, Office for Family Independence | Ch. 323 | General Assistance Rule #24, Recovery Residences | 22 MRS §§ 42(1) and (8) and 1161 and PL 2021 ch. 472 §4 | Routine Technical | No | 9/1/2022 |
| 2022-062 | 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 §§ 42(1) and (8), 3790-A(6) | Routine Technical | No | 4/25/2022 |
| 2022-234 | 10-144 | Department of Health and Human Services, Office for Family Independence | Ch. 331 | Maine Public Assistance Manual (TANF - Temporary Assistance for Needy Families) | 22 MRS §42; 3762(3)(A) and (8)(B), 3769-A, 3769-C(1)(D), and 3786 | Routine Technical | No | 12/10/2022 |
| 2022-218 | 10-144 | Department of Health and Human Services, Office for Family Independence | Ch. 332 | MaineCare Eligibility Manual, Parts 2, 3 and 5: MaineCare Rule #300, Changes to Post-Partum Coverage, and Coverage for Young Adults | 22 MRS §42; 3762(3)(A) and (8)(B), 3769-A, 3769-C(1)(D), and 3786 | Routine Technical | No | 11/6/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|--|----------------|--|--|-------------------|-----------|----------------|
| 2022-069 | 10-148 | Department of Health and Human Services, Office of Child and Family Services | Ch. 33 | Family Child Care Provider Licensing Rule | 22 MRS §§ 7702-B(11), 7703(6), 7704, 7707(3), 7802(7), 8301(8), 8302-A(2), 8303-A(I) | Major Substantive | No | 5/27/2022 |
| 2022-059 | 10-148 | Department of Health and Human Services, Office of Child and Family Services | Ch. 34 | Child Care Provider (Child Care Facilities and Family Child Care Providers Background Check Licensing Rule) | 22 MRS §§ 42(1), 8302-A(1)(J),(2)(K); 42 USC §9858f(b) | Major Substantive | No | 5/12/2022 |
| 2022-030 | 10-148 | Department of Health and Human Services, Office of Child and Family Services | Ch. 201 | Procedures for the Child Abuse or Neglect Findings, Appeals from Findings, and Appeals from Denial of Access in Certain Confidential Records | 22 MRS §§ 42, 4008(7), 5601-5610; PL 2015 ch. 501 | Routine Technical | No | 2/28/2022 |
| 2022-223 | 14-197 | Department of Health and Human Services, Office of Aging and Disability Services | Ch. 1 | Rights and Basic Protections of Persons with an Intellectual Disability, Autism Spectrum Disorder or Acquired Brain Injury (<i>New</i>) | PL 2021 ch. 284; 22 MRS §3089(3); 34-B MRS §5605 | Routine Technical | No | 11/18/2022 |
| 2022-224 | 14-197 | Department of Health and Human Services, Office of Aging and Disability Services | Ch. 8 | Grievance Process for Persons with an Intellectual Disability, Autism Spectrum Disorder or Acquired Brain Injury | 22-A MRS §206(4); 34-B MRS §5604(3) | Routine Technical | No | 11/18/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|-----------------|------------------------|--|-----------------------|--|----------------------------|---------------------|------------------|-----------------------|
| 2022-177 | 12-170 | Department of Labor, Bureau of Labor Standards | Ch. 9 | Rules Governing Administrative Civil Money Penalties | 26 MRS §§ 42, 53 | Major Substantive | No | 9/21//2022 |
| 2022-081 | 12-170 | Department of Labor, Bureau of Labor Standards | Ch. 13 | Rules Governing the Establishment and Use of Fair Minimum Wage Rates on State Construction Projects | 26 MRS §42 | Routine Technical | No | 5/4/2022 |
| 2022-006 | 12-170 | Department of Labor, Bureau of Labor Standards | Ch. 19 | Rules Governing Apprenticeship in Construction of Energy Generation Facilities | 26 MRS §3502 | Routine Technical | No | 1/15/2022 |
| 2022-130 | 12-181 | Department of Labor, Bureau of Labor Standards, Maine Apprentiship Program | Ch. 1 | Rules Relating to Labor Standards for Registration of Apprenticeship Programs | 26 MRS §3212 | Routine Technical | No | 7/19/2022 |
| 2022-131 | 12-181 | Department of Labor, Bureau of Labor Standards, Maine Apprentiship Program | Ch. 2 | Rules Pertaining to Equal Opportunity for Employment in Registered Apprenticeship Programs in the State of Maine | 26 MRS §3212 | Routine Technical | No | 7/22/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|--------------------------------|----------------|---|--------------------------------|-------------------|-----------|----------------|
| 2022-033 | 13-188 | Department of Marine Resources | Ch. 2 | Aquaculture Lease Regulations | 12 MRS §§ 6072, 6072-A, 6072-C | Routine Technical | No | 3/13/2022 |
| 2022-065 | 13-188 | Department of Marine Resources | Ch. 8 | Landings Program: Halibut Reporting | 12 MRS §6171 | Routine Technical | No | 4/26/2022 |
| 2022-213 | 13-188 | Department of Marine Resources | Ch. 8 | Landings Program: Scallop, Herring, Lobster, and Pelagic and Anadromous | 12 MRS §6173 | Routine Technical | No | 11/1/2022 |
| 2022-001 | 13-188 | Department of Marine Resources | Ch. 11 | Scallops: 11.08, Targeted Closures: (9), Gouldsboro & Dyers Bay LAA; (10) Wahoo Bay & West Moosabec Reach LAA | 12 MRS §6171(3)(A) | Routine Technical | Yes | 1/2/2022 |
| 2022-016 | 13-188 | Department of Marine Resources | Ch. 11 | Scallops: 11.08, Targeted Closures: (11), Johnson Bay & Eastport Breakwater | 12 MRS §6171(3)(A) | Routine Technical | Yes | 2/6/2022 |
| 2022-023 | 13-188 | Department of Marine Resources | Ch. 11 | Scallops: 11.08, Targeted Closures: (9), Gouldsboro & Dyers Bay LAA; (11) Cobscook, Whiting & Denny's Bays; (12) Upper Machias RA; (13) West Vinalhaven Islands | 12 MRS §6171(3)(A) | Routine Technical | Yes | 2/20/2022 |
| 2022-214 | 13-188 | Department of Marine Resources | Ch. 11 | Scallops: 2022-23 Season | 12 MRS §§ 6171, 6722 | Routine Technical | No | 11/1/2022 |
| 2022-071 | 13-188 | Department of Marine Resources | Ch. 25 | Lobster Trawl Limits: Hancock County | 12 MRS §6171 | Routine Technical | No | 5/1/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|--------------------------------|----------------|---|----------------------|-------------------|-----------|---------------------------------------|
| 2022-148 | 13-188 | Department of Marine Resources | Ch. 25 | Lobster Trawl Limits: Technical Corrections (Linekin Bay, Lobster/Crab Bait Dealer) | 12 MRS §§ 6171, 6526 | Routine Technical | No | 8/16/2022 |
| 2022-149 | 13-188 | Department of Marine Resources | Ch. 26 | Sea Urchin Harvesting Season (2022-2023 Season) | 12 MRS §6749 | Routine Technical | No | 8/16/2022 |
| 2022-034 | 13-188 | Department of Marine Resources | Ch. 32 | Eel Regulations: 32.35, Elver Quota System for the 2022 Season) | 12 MRS §6505-A | Routine Technical | No | 3/13/2022 |
| 2022-163 | 13-188 | Department of Marine Resources | Ch. 34 | Emergency Rulemaking to Adjust Recreational Groundfish Measures for Cod and Haddock | 12 MRS §6171(3)(C) | Routine Technical | Yes | 9/1/2022 |
| 2022-215 | 13-188 | Department of Marine Resources | Ch. 34 | Groundfish Measures for Cod and Haddock | 12 MRS §6171 | Routine Technical | No | 11/1/2022 |
| 2022-105 | 13-188 | Department of Marine Resources | Ch. 36 | Atlantic Herring | 12 MRS §6171(3)(C) | Routine Technical | Yes | 5/31/2022 |
| 2022-195 | 13-188 | Department of Marine Resources | Ch. 36 | Atlantic Herring | 12 MRS §6171(C)(3) | Routine Technical | Yes | 9/29/2022 |
| 2022-066 | 13-188 | Department of Marine Resources | Ch. 41 | Atlantic Menhaden: 2022 Harvest Start Date | 12 MRS §6171 | Routine Technical | No | 4/26/2022 (corrected to 5/15/2022) |
| 2022-106 | 13-188 | Department of Marine Resources | Ch. 41 | Menhaden: State Allocation Harvest Rules | 12 MRS §6171(3)(A) | Routine Technical | Yes | 5/31/2022 |
| 2022-120 | 13-188 | Department of Marine Resources | Ch. 41 | Menhaden: Modified 2022 Episodic Fishery Harvest Schedule | 12 MRS §6171(3)(A) | Routine Technical | Yes | 6/21/2022 |
| 2022-164 | 13-188 | Department of Marine Resources | Ch. 41 | Menhaden: 2022 Menhaden Commercial Fishery Closed | 12 MRS §6171(3)(A) | Routine Technical | Yes | 8/28/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|--------------------------------|----------------|--|---------------------|-------------------|-----------|----------------|
| 2022-073 | 13-188 | Department of Marine Resources | Ch. 50 | Spiny Dogfish: 50.02(A), Harvest, Possession, and Landing | 12 MRS §6171(3)(C) | Routine Technical | Yes | 5/1/2022 |
| 2022-150 | 13-188 | Department of Marine Resources | Ch. 50 | Spiny Dogfish: 50.02(A), Harvest, Possession, and Landing Restrictions | 12 MRS §6171 | Routine Technical | No | 8/16/2022 |
| 2022-216 | 13-188 | Department of Marine Resources | Ch. 52 | Atlantic Mackerel | 12 MRS §6171 | Routine Technical | No | 11/1/2022 |
| 2022-072 | 13-188 | Department of Marine Resources | Ch. 75 | Protected Resources | 12 MRS §6171 | Routine Technical | No | 5/1/2022 |
| 2022-035 | 13-188 | Department of Marine Resources | Ch. 100 | Grievance Procedure for the Handicapped (<i>Repeal</i>) | PL 2021 ch. 348 §58 | Routine Technical | No | 5/13/2022 |
| 2022-067 | 13-188 | Department of Marine Resources | Ch. 115 | <i>Vibrio parahaemolyticus</i> Control Plan | 12 MRS §6171-A | Routine Technical | No | 4/26/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|--|----------------|---|---------------------|-------------------|-----------|----------------|
| 2022-077 | 15-210 | Department of Defense, Veterans and Emergency Management | Ch. 1 | Grievance Procedure for the Handicapped (<i>Repeal</i>) | Federal mandate | Routine Technical | No | 5/10/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|--|----------------|---|------------------------|----------------------|-----------|----------------|
| 2022-243 | 16-163 | Department of Public Safety, Maine Emergency Medical Services | Ch. 2 | Definitions | 32 MRS §§ 81-A, 84, 88 | Routine Technical | No | 12/24/2022 |
| 2022-244 | 16-163 | Department of Public Safety, Maine Emergency Medical Services | Ch. 5 | Personnel Licenses | 32 MRS §§ 81-A, 84, 88 | Routine Technical | No | 12/24/2022 |
| 2022-245 | 16-163 | Department of Public Safety, Maine Emergency Medical Services | Ch. 5B | Emergency Medical Services Ambulance Operator Licenses | 32 MRS §§ 81-A, 84, 88 | Routine Technical | No | 12/24/2022 |
| 2022-246 | 16-163 | Department of Public Safety, Maine Emergency Medical Services | Ch. 17 | Minimum Equipment Lists for Maine EMS Services and Regional EMS Radio Frequencies | 32 MRS §§ 81-A, 84, 88 | Routine Technical | No | 12/24/2022 |
| 2022-132 | 16-163 | Department of Public Safety, Maine Emergency Medical Services | Ch. 21 | Immunization Requirements for EMS Personnel | 32 MRS §§ 81-A, 84, 88 | Routine Technical | No | 8/7/2022 |
| 2022-247 | 16-163 | Department of Public Safety, Maine Emergency Medical Services | Ch. 22 | Emergency Medical Services Data | 32 MRS §§ 81-A, 84, 88 | Routine Technical | No | 12/24/2022 |
| 2022-248 | 16-163 | Department of Public Safety, Maine Emergency Medical Services | Ch. 23 | Registry of Automated External Defibrillators | 32 MRS §§ 81-A, 84, 88 | Routine Technical | No | 12/24/2022 |
| 2022-170 | 16-219 | Department of Public Safety, Office of State Fire Marshal | Ch. 10 | Stationary Combustion Engines and Gas Turbines | 25 MRS §2452 | Routine Technical | No | 8/23/2022 |
| 2022-171 | 16-219 | Department of Public Safety, Office of State Fire Marshal | Ch. 14 | National Fuel Gas Code | 25 MRS §2452 | Routine Technical | No | 8/23/2022 |
| 2022-008 | 16-219 | Department of Public Safety, Office of State Fire Marshal | Ch. 15 | Fire Protection for Medical Facilities and Equipment | 25 MRS §2452 | Routine Technical | No | 1/18/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|---|----------------|--|--|-------------------|-----------|----------------|
| 2022-172 | 16-219 | Department of Public Safety, Office of State Fire Marshal | Ch. 16 | Storage and Handling of Liquefied Petroleum Gases | 25 MRS §§ 2452, 2482 | Routine Technical | No | 8/23/2022 |
| 2022-009 | 16-219 | Department of Public Safety, Office of State Fire Marshal | Ch. 19 | Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations | 25 MRS §2452 | Routine Technical | No | 1/18/2022 |
| 2022-173 | 16-219 | Department of Public Safety, Office of State Fire Marshal | Ch. 21 | Tents, Grandstands, Air Supported Structures for Places of Assembly | 25 MRS §2452 | Routine Technical | No | 8/23/2022 |
| 2022-174 | 16-219 | Department of Public Safety, Office of State Fire Marshal | Ch. 22 | Chimneys, Fireplaces, Vents and Solid Fuel Burning Appliances | 25 MRS §§ 2452, 2465 | Routine Technical | No | 8/23/2022 |
| 2022-175 | 16-219 | Department of Public Safety, Office of State Fire Marshal | Ch. 25 | Rules for the Display of Fireworks | 8 MRS §236 | Routine Technical | No | 8/23/2022 |
| 2022-176 | 16-219 | Department of Public Safety, Office of State Fire Marshal | Ch. 26 | Standard for the Use of Pyrotechnics Before a Proximate Audience | 8 MRS §236 | Routine Technical | No | 8/23/2022 |
| 2022-152 | 16-219 | Department of Public Safety, Office of State Fire Marshal | Ch. 27 | Rules and Regulations Governing the Tents and Equipment of Circuses and Traveling Amusement Shows <i>(Repeal)</i> | 8 MRS §502 | Routine Technical | No | 8/23/2022 |
| 2022-014 | 16-222 | Department of Public Safety, Maine State Police | Ch. 1 | Maine Motor Vehicle Inspection Manual | 29-A MRS §1769 | Routine Technical | No | 1/31/2022 |
| 2022-162 | 16-633 | Department of Public Safety, Gambling Control Board/Unit | Ch. 13 | Exclusion | 8 MRS §§ 1003(1)(B),(1)(L),(2)(U), 1071-1072 | Routine Technical | No | 8/29/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|---|----------------|-----------------------------------|--|----------------------|-----------|----------------|
| 2022-039 | 16-633 | Department of Public Safety, Gambling Control Board/Unit | Ch. 32 | Rules Relating to Games of Chance | 17 MRS ch. 62 §§ 317, 1843 | Routine Technical | No | 3/20/2022 |
| 2022-189 | 16-633 | Department of Public Safety, Gambling Control Board/Unit | Ch. 32 | Rules Relating to Games of Chance | PL 2021 ch. 636 §4; 17 MRS §§ 1837(C), 1843 | Routine Technical | No | 9/26/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|--------------|------------------------|------------------------------|-----------------------|--|----------------------------|---------------------|------------------|-----------------------|
| 2022-040 | 17-229 | Department of Transportation | Ch. 305 | Rules and Regulations Pertaining to Traffic Movement Permits | 23 MRS §704(A) | Major Substantive | No | 4/14/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|--|----------------|--|--------------------------------|-------------------|-----------|----------------|
| 2022-050 | 18-125 | Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services - MRS) | Ch. 202 | Tree Growth Tax Law Valuations - 2022 | 36 MRS §576 | Routine Technical | No | 4/6/2022 |
| 2022-153 | 18-125 | Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services - MRS) | Ch. 207 | Controlling Interest Transfers (<i>Repeal and replace</i>) | 36 MRS §§ 4641(1-A)(C), 4641-E | Routine Technical | No | 8/24/2022 |
| 2022-154 | 18-125 | Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services - MRS) | Ch. 208 | Guidelines for Professional Assessing Firms that Provide Revaluation Services to Municipalities (<i>Repeal and replace</i>)(formerly Revaluation Guidelines) | 36 MRS §§ 112, 328, 330, 331 | Routine Technical | No | 8/24/2022 |
| 2022-017 | 18-125 | Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services - MRS) | Ch. 210 | Telecommunications Excise Tax (<i>New</i>) | 36 MRS §§ 112, 305, 457 | Routine Technical | No | 2/13/2022 |
| 2022-075 | 18-125 | Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services - MRS) | Ch. 211 | Deferred Collection of Homestead Property Taxes (<i>New</i>) | 36 MRS §§ 112, 305, 6250 | Routine Technical | Yes | 5/9/2022 |
| 2022-155 | 18-125 | Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services - MRS) | Ch. 211 | Deferred Collection of Homestead Property Taxes | 36 MRS §§ 112, 305, 6250 | Routine Technical | No | 8/24/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|--|----------------|---|----------------------------------|-------------------|-----------|----------------|
| 2022-055 | 18-125 | Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services - MRS) | Ch. 801 | Apportionment | 36 MRS §112 | Routine Technical | No | 4/20/2022 |
| 2022-051 | 18-125 | Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services - MRS) | Ch. 803 | Income Tax Withholding Reports and Payments | 36 MRS §112 | Routine Technical | No | 4/6/2022 |
| 2022-052 | 18-125 | Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services - MRS) | Ch. 805 | Composite Filing | 36 MRS §112 | Routine Technical | No | 4/6/2022 |
| 2022-078 | 18-125 | Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services - MRS) | Ch. 808 | Corporate Income Tax Nexus | 36 MRS §112 | Routine Technical | No | 5/10/2022 |
| 2022-056 | 18-125 | Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services - MRS) | Ch. 810 | Maine Unitary Business Taxable Income, Combined Reports and Tax Returns | 36 MRS §112 | Routine Technical | No | 4/20/2022 |
| 2022-082 | 18-125 | Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services - MRS) | Ch. 813 | Property Tax Fairness Credit | 36 MRS §112 | Routine Technical | No | 5/8/2022 |
| 2022-032 | 18-125 | Department of Administrative and Financial Services, Bureau of Revenue Services (Maine Revenue Services - MRS) | Ch. 818 | Renewable Chemicals Tax Credit (New) | 36 MRS §§ 112, 5219- XX(5) | Routine Technical | No | 3/7/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|--|----------------|--|--|-------------------|-----------|----------------|
| 2022-126 | 18-553 | Department of Administrative and Financial Services, Bureau of Alcoholic Beverage and Lottery Operations (BABLO) / Maine State Liquor and Lottery Commission | Ch. 80 | Lotto America Rules | 8 MRS §§ 372 sub-§2, 374 | Routine Technical | No | 7/18/2022 |
| 2022-107 | 18-691 | Department of Administrative and Financial Services, Office of Cannabis Policy | Ch. 1 | Adult Use Cannabis Program Rule | Title 28-B PL 2021 ch. 226, 314 | Major Substantive | No | 7/1/2022 |
| 2022-165 | 18-691 | Department of Administrative and Financial Services, Office of Cannabis Policy | Ch. 1 | Adult Use Cannabis Program Rule | Title 28-B; PL 2021 ch. 558, 612, 667, 669 | Routine Technical | No | 9/8/2022 |
| 2022-166 | 18-691 | Department of Administrative and Financial Services, Office of Cannabis Policy | Ch. 5 | Rules for the Certification of Cannabis Testing Facilities | Title 28-B; PL 2021 ch. 558, 612, 667, 669 | Routine Technical | No | 9/8/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|--|----------------|--|------------------------|-------------------|-----------|----------------|
| 2022-221 | 29-250 | Secretary of State, Bureau of Motor Vehicles | Ch. 15 | Rules Governing Acceptable Documents to Establish Legal Presence (<i>Repeal and replace</i>) | 29-A MRS §153 | Routine Technical | No | 11/13/2022 |
| 2022-190 | 29-250 | Secretary of State, Bureau of Motor Vehicles | Ch.172 | Rules Governing the Issuance of Vanity Registration Plates (<i>New</i>) | 29-A MRS §453 sub-§3-C | Routine Technical | No | 10/1/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|-----------------------------------|----------------|---|---|-------------------|-----------|----------------|
| 2022-133 | 65-407 | Maine Public Utilities Commission | Ch. 305 | Licensing Requirements, Annual Reporting, Enforcement and Consumer Protection Provisions for Competitive Provision of Electricity | 35-A MRS §§ 104, 111, 3203 | Routine Technical | No | 7/13/2022 |
| 2022-207 | 65-407 | Maine Public Utilities Commission | Ch. 313 | Customer Net Energy Billing | 35-A MRS §§ 104, 111, 1301, 3209-B | Routine Technical | No | 10/17/2022 |
| 2022-096 | 65-407 | Maine Public Utilities Commission | Ch. 314 | Statewide Low-income Assistance Plan | 35-A MRS §§ 104, 111, 704, 1308, 3214 | Routine Technical | No | 5/28/2022 |
| 2022-158 | 65-407 | Maine Public Utilities Commission | Ch. 320 | Electric Transmission and Distribution Utility Service Standards | 35-A MRS §§ 104, 111, 301 (1-A), 2305-A, 3104-A, 3106 | Routine Technical | No | 8/27/2022 |
| 2022-002 | 65-407 | Maine Public Utilities Commission | Ch. 324 | Small Generator Interconnection Procedures | 35-A MRS §§ 104, 111, 3482 | Routine Technical | No | 1/9/2022 |
| 2022-167 | 65-407 | Maine Public Utilities Commission | Ch. 420 | Safety Standards for Natural Gas and Liquefied Natural Gas Facility Operators | 35-A MRS §§ 111, 4508, 4515, 4516-A, 4705-A | Routine Technical | No | 9/5/2022 |
| 2022-252 | 65-407 | Maine Public Utilities Commission | Ch. 615 | Exemptions from Regulatory Requirements for Consumer-Owned Water Utilities | 35-A MRS §6114 | Routine Technical | No | 12/26/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|-----------------------------------|----------------|---|--|-------------------|-----------|----------------|
| 2022-253 | 65-407 | Maine Public Utilities Commission | Ch. 616 | Specific Exemptions from Regulatory Requirements for Consumer-Owned Water Utilities | 35-A MRS §6114 | Routine Technical | No | 12/26/2022 |
| 2022-254 | 65-407 | Maine Public Utilities Commission | Ch. 620 | Service Standards for Water Utilities | 35-A MRS §111 | Routine Technical | No | 12/26/2022 |
| 2022-003 | 65-407 | Maine Public Utilities Commission | Ch. 815 | Consumer Protection Standards for Electric and Gas Transmission and Distribution Utilities | 35-A MRS §§ 104, 111, 704, 1308; PL 2021 ch. 347 | Routine Technical | No | 1/9/2022 |
| 2022-159 | 65-407 | Maine Public Utilities Commission | Ch. 850 | Regulatory Proceeding Expenses | 35-A MRS §111 | Routine Technical | No | 8/27/2022 |
| 2022-095 | 65-407 | Maine Public Utilities Commission | Ch. 870 | Late Payment Charges, Interest Rates to be Paid on Customer Deposits, and Charges for Returned Checks | 35-A MRS §§ 101, 104, 111, 301, 304, 705(3) | Routine Technical | No | 5/28/2022 |
| 2022-226 | 65-407 | Maine Public Utilities Commission | Ch. 886 | Energy Infrastructure Corridors <i>(Repeal)</i> | 35-A MRS §§ 104, 111, 122 | Routine Technical | No | 11/26/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|--------------------------------|----------------|--|--|-------------------|-----------|----------------|
| 2022-074 | 90-590 | Maine Health Data Organization | Ch. 120 | Release of Data to the Public | PL 2021 ch. 423; 22 MRS 8704(4); 22 MRS ch. 1683 | Major Substantive | No | 5/28/2022 |
| 2022-242 | 90-590 | Maine Health Data Organization | Ch. 247 | Uniform Reporting System for Non-Claims Based Primary Care Payments and Other Supplemental Health Care Data Sets | 22 MRS §§ 8703(1), 8704(1)&(4); 24-A §6951 | Routine Technical | No | 12/20/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|-----------------|------------------------|-----------------------------|-----------------------|---|----------------------------|----------------------|------------------|-----------------------|
| 2022-042 | 94-293 | Baxter State Park Authority | Ch. 1 | Baxter State Park Rules and Regulations | 12 MRS §903.1 | Routine Technical | No | 3/27/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|-----------------|------------------------|-------------------------------|-----------------------|--|----------------------------|---------------------|------------------|-----------------------|
| 2022-235 | 94-348 | Maine Human Rights Commission | Ch. 2 | Procedural Rule | 5 MRS §4566(7) | Routine Technical | No | 12/10/2022 |
| 2022-236 | 94-348 | Maine Human Rights Commission | Ch. 3 | Employment Regulations of the Maine Human Rights Commission | 5 MRS §4566(7) | Routine Technical | No | 12/10/2022 |
| 2022-237 | 94-348 | Maine Human Rights Commission | Ch. 7 | Accessibility Regulations of the Maine Human Rights Commission | 5 MRS §4566(7) | Routine Technical | No | 12/10/2022 |
| 2022-238 | 94-348 | Maine Human Rights Commission | Ch. 8 | Housing Regulations of the Maine Human Rights Commission | 5 MRS §4566(7) | Routine Technical | No | 12/10/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|--|----------------|--|---|-------------------|-----------|----------------|
| 2022-098 | 94-411 | Maine Public Employees Retirement System | Ch. 202 | Medical Board (<i>Repeal</i>) | 5 MRS §17103(4) | Routine Technical | No | 5/30/2022 |
| 2022-151 | 94-411 | Maine Public Employees Retirement System | Ch. 414 | Required Minimum Distributions | 5 MRS §§ 17103(4), 17603(9) | Routine Technical | No | 8/20/2022 |
| 2022-187 | 94-411 | Maine Public Employees Retirement System | Ch. 509 | Determination of Inability to Perform the Essential Functions of the Employment Position | 5 MRS §§ 17103(4), 17921, 18521 | Routine Technical | No | 9/20/2022 |
| 2022-099 | 94-411 | Maine Public Employees Retirement System | Ch. 512 | Independent Medical Examinations (<i>New</i>) | 5 MRS §17103(4) | Routine Technical | No | 5/31/2022 |
| 2022-188 | 94-411 | Maine Public Employees Retirement System | Ch. 702 | Appeals of Decisions of the Chief Executive Officer | 5 MRS §§ 9052-9064, 17103(4), 17106-A, 17106-B, 17451 | Routine Technical | No | 9/20/2022 |
| 2022-137 | 94-411 | Maine Public Employees Retirement System | Ch. 803 | Participating Local District Consolidated Retirement Plan | 5 MRS §§ 17103(4), 18801 | Routine Technical | No | 7/23/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|----------------------------|----------------|---|--|-------------------|-----------|----------------|
| 2022-192 | 94-457 | Finance Authority of Maine | Ch. 601 | The Maine State Grant Program, <i>Amendment 12</i> | 20-A MRS §§ 11616(2); PL 2019 ch. 343; PL 2019 ch. 654), 18801 | Routine Technical | No | 10/10/2022 |
| 2022-004 | 94-457 | Finance Authority of Maine | Ch. 619 | Foreign Credentialing and Skills Recognition Revolving Loan Program, <i>Amendment 1</i> | 10 MRS §969-A, 1100-AA | Routine Technical | No | 1/9/2022 |
| 2022-043 | 94-457 | Finance Authority of Maine | Ch. 620 | Maine Health Care Provider Loan Repayment Pilot Program | 20-A MRS §12953; PL 2021 ch. 483(H) | Routine Technical | No | 3/29/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|---|----------------|--|--|-------------------|-----------|----------------|
| 2022-007 | 94-649 | Maine Commission on Indigent Legal Services (<i>Hybrid</i>) | Ch. 301 | Fee Schedule and Administrative Procedures for Payment of Commission Assigned Counsel | 4 MRS §§ 1804(2)(F), (3)(B), (3)(F), (4)(D); PL 2021 ch. 398 §A-22 | Routine Technical | No | 1/17/2022 |
| 2022-100 | 94-649 | Maine Commission on Indigent Legal Services | Ch. 301 | Fee Schedule and Administrative Procedures for Payment of Court or Commission Assigned Counsel | 4 MRS §§ 1804(2)(F), (3)(B), (3)(F), (4)(D); PL 2021 ch. 398 §A-22 | Major Substantive | No | 6/23/2022 |
| 2022-222 | 94-649 | Maine Commission on Indigent Legal Services | Ch. 303 | Procedures Regarding Legal Research Access and Materials (<i>New</i>) | 4 MRS §§ 1804(2)(G), (3)(A) and (4)(D) | Routine Technical | No | 11/12/2022 |

Annual List of Rule-making Activity
Rules Adopted 1/1/2022 to 12/31/2022
Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|-------------------------------|----------------|---|--|-------------------|-----------|----------------|
| 2022-134 | 99-346 | Maine State Housing Authority | Ch. 16 | Low Income Housing Tax Credit Rule <i>(Repeal and replace)</i> | 30-A MRS §§ 4741(1) and (14), Section 42 of the Internal Revenue Code of 1986 as amended | Routine Technical | No | 7/13/2022 |
| 2022-233 | 99-346 | Maine State Housing Authority | Ch. 19 | Homeless Solutions Rule <i>(Repeal and replace)</i> | 30-A MRS §§ 4741(1) and (18), Section 42 USCA §§ 11301 et seq. | Routine Technical | No | 12/7/2022 |
| 2022-021 | 99-346 | Maine State Housing Authority | Ch. 24 | Home Energy Assistance Program Rule | 30-A MRS §§ 4722(1)(W), 4741(1) and (15), 4991 et seq ; 42 USCA §§ 8621 et seq. | Routine Technical | Yes | 2/15/2022 |
| 2022-135 | 99-346 | Maine State Housing Authority | Ch. 24 | Home Energy Assistance Program Rule <i>(Repeal and replace)</i> | 30-A MRS §§ 4722(1)(W), 4741(1) and (15), 4991 et seq ; 42 USCA §§ 8621 et seq. | Routine Technical | No | 7/13/2022 |
| 2022-180 | 99-346 | Maine State Housing Authority | Ch. 29 | Multi-family Mortgage Loans <i>(Repeal and replace)</i> | 30-A MRS §§ 4741(1) and 4722(1)(L) | Routine Technical | No | 9/19/2022 |

Annual List of Rule-making Activity
 Rules Adopted 1/1/2022 to 12/31/2022
 Prepared by the Secretary of State

| Log # | Umbrella / unit | Agency name | Chapter number | Rule title | Statutory authority | Type of rule | Emergency | Effective date |
|----------|-----------------|-------------------------------|----------------|--|---|-------------------|-----------|----------------|
| 2022-136 | 99-346 | Maine State Housing Authority | Ch. 35 | State Low Income Housing Tax Credit Rule <i>(Repeal and replace)</i> | 30-A MRS §§ 4722 and 4741(1), 36 MRS §5219-WW | Routine Technical | No | 7/13/2022 |

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry
Umbrella-Unit: **01-001**
Statutory authority: 7 MRS chg. 405A §2211
Chapter number/title: **Ch. 273**, Criteria for Listing Invasive Terrestrial Plants
Filing number: **2022-092**
Effective date: 5/24/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

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

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

Basis statement:

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

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

In 2016, the Department proposed banning the sale and import of 33 terrestrial invasive plants and provided a process for nominating new plants as well as a petition process to remove plant varieties that are demonstrated not to be invasive. The rule also required periodic review and amendment of the list on a five-year basis. On January 1, 2018 the first list of 33 plants became officially banned.

The Department began the five-year review of Ch. 273 in the spring of 2021 and on March 30, 2022, the Secretary of State published a notice regarding the resulting proposed rule which added 30 new plants to the do-not-sell list and created a new watch list and a species of special concern category for plants that are not banned but may be invasive in very limited habitats. By this date well over 2000 companies and individuals representing the horticulture industry and environmental interests in the state had been notified electronically through the Department's GovDelivery lists and on many social media sites. A public hearing was held in Augusta on April 22, 2022 with three people representing horticulture businesses and two representing themselves. Four spoke in favor of the proposed rule and one spoke neither for nor against. Most of the comments were in support of the proposed listed plants. There were suggestions to move a few of the watch list plants to the do-not-sell list and one nursery owner spoke about the listing of *Rosa rugosa* as a species of special concern. This owner was concerned that adding signs or tags to the plants would effectively ban the plants since customers will be turned off by the labeling.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

The comment period ended on May 6, 2022. There were 7 email comments that registered concerns about plants on the proposed watch list because they are considered food plants. One email comment was from a grower that testified at the hearing and she wanted to clarify her concerns about the labeling of *Rosa rugosa* and reiterate the potential problems with also regulating the many antique hybrid roses that contain *Rosa rugosa* genes. She also suggested that Option 2 be adopted for Section IX requiring signs as opposed to labeling of individual *Rosa rugosa* plants. Five commenters supported the proposed rule but wanted to ban additional plants from the watch list. Three comments came from DACF employees who wanted to amend the Species of Special Concern category to Invasive Terrestrial Plant Species of Special Concern since that category was already utilized by Maine IF&W regarding endangered species. One person recommended adopting the option 1 in Section IX to require labels on *Rosa rugosa* and one other commenter wrote just in support of the rule as proposed.

The Department's staff reviewed the hearing record on May 10, 2022 and noted there were a few minor word changes requested which have been implemented. Because of a lack of comments regarding which option to adopt for Section IX, the Department suggests allowing nurseries that sell *Rosa rugosa* to choose which option best fits their business model.

The rule was adopted with the following changes. In Section I, item J, renamed "Species of Special Concern" to "Invasive Terrestrial Plant Species of Special Concern" and in item K, added the words "in wetlands or" following "...plants that are able to grow". The word "one" was changed to "all" in Section V as this was an oversight and Section II requires all the criteria to be met for a species to be listed as regulated. Finally, both options for signage and labeling of Invasive Terrestrial Plant Species of Special Concern were retained to allow plant sellers to choose which option best fits their business model.

Fiscal impact of rule:

There will be no significant change in the inspection process so there will be no fiscal impact to the Plant Health Program.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry
Umbrella-Unit: **01-001**
Statutory authority: 22 MRS §2154
Chapter number/title: **Ch. 330**, License Fees to Manufacture and Sell Food and Beverages
Filing number: **2022-063**
Effective date: 4/26/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The principal reason for this amendment is in response to “Emergency Legislation” enactment by the 130th Legislature “LD 416, An Act Regarding the Production and Sale of Birch Syrup and Birch Syrup Products” which sets forth standards for processing and labeling of birch syrup and birch products. The updated rule provides for good manufacturing practices and labeling requirements for the processing of birch syrup and birch products to be equal to maple syrup processing requirements. As Birch Syrup and Birch Syrup Products have been added to the rule, DACF is updating the fee structure to include the cost of a Birch Syrup processing license to be the same as Maple Syrup processing.

Basis statement:

The principal reason for rule amendments to Chapter 330: License Fees to Manufacture and Sell Food & Beverages is in response to “Emergency Legislation” enactment by the 130th Legislature.

“LD 416, An Act Regarding the Production and Sale of Birch Syrup and Birch Syrup Products” sets forth standards for processing and labeling of birch syrup and birch products. The updated rule provides for good manufacturing practices and labeling requirements for the processing of birch syrup and birch products to be equal to maple syrup processing requirements.

As Birch Syrup and Birch Product processing is being added to the rule, the department is updating the fee structure to include the licensing fee for Birch Syrup processing be the same as Maple Syrup processing.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry
Umbrella-Unit: **01-001**
Statutory authority: 22 MRS §2154
Chapter number/title: **Ch. 347**, Birch and Maple Syrup Processing
Filing number: **2022-064**
Effective date: 4/26/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The principal reason for rule amendments to Chapter 347 Maple Syrup Processing is in response to “Emergency Legislation” enactment by the 130th Legislature “LD 416, An Act Regarding the Production and Sale of Birch Syrup and Birch Syrup Products” which sets forth standards for processing and labeling of birch syrup and birch products. The updated rule provides for good manufacturing practices and labeling requirements for the processing of birch syrup and birch products to be equal to maple syrup processing requirements.

Basis statement:

Chapter 347 Birch and Maple Syrup Processing of the Maine Department of Agriculture, Conservation & Forestry, Division of Quality Assurance establishes rules that are consistent with enactment by the 130th Legislature of “LD 416, An Act Regarding the Production and Sale of Birch Syrup and Birch Syrup Products” These amendments are necessary to incorporate good manufacturing practices and labeling standards for the processing of birch and maple syrup and birch and maple products into the rule.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry
Umbrella-Unit: **01-001**
Statutory authority: 7 MRS §3906-B
Chapter number/title: **Ch. 701**, Rules Governing Animal Welfare
Filing number: **2022-011**
Effective date: 1/24/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The revisions proposed to these rules will improve accountability for animal facilities importing animals for sale or adoption and also improve standards of care all animal facilities. All other revisions represent typical rule maintenance.

Basis statement:

The revisions proposed to these rules will improve accountability for animal facilities importing animals for sale or adoption and also improve standards of care at all animal facilities. All other revisions represent typical rule maintenance.

Section I changes. Over the past several years, there have been many changes to the way people acquire pets and the level of care needed to maintain healthy animals. These proposed changes are the result of investigations of complaints to the department and the result of inspections of licensed facilities. These changes also remove the redundant civil violations that already exist in current law.

Section VI changes. These proposed changes improve and clarify the requirements for horse shelter and care of horses that are in poor health to ensure that they will receive proper care.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 #02-22**

Filing number: **2022-015**

Effective date: 1/30/2022

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 2022** minimum Class I price is **\$24.89/cwt. plus \$1.04/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 **\$28.23/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$4.27.**

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 **\$18.36/cwt.** and a Class IV price of **\$19.88/cwt.** for **December 2021.**

The Class II price for **December 2021** is **\$19.84/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$24.89/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 21, 2022 and therefore should be passed on in minimum prices effective January 30, 2022. 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 **\$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, 2022 to December 31, 2022
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 #03-22**

Filing number: **2022-026**

Effective date: 2/27/2022

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 2022** minimum Class I price is **\$26.13/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$29.42/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$4.39**.

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 **\$20.38/cwt.** and a Class IV price of **\$23.09/cwt.** for **January 2022**.

The Class II price for **January 2022** is **\$22.83/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 **\$26.13/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on February 17, 2022 and therefore should be passed on in minimum prices effective February 27, 2022. 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, 2022 to December 31, 2022
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 #04-22**

Filing number: **2022-048**

Effective date: 4/3/2022

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 2022** minimum Class I price is **\$27.63/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$30.92/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$4.63.**

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 **\$20.91/cwt.** and a Class IV price of **\$24.00/cwt.** for **February 2022.**

The Class II price for **February 2022** is **\$23.79/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 **\$27.63/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on March 24, 2022 and therefore should be passed on in minimum prices effective April 3, 2022. 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, 2022 to December 31, 2022
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 #05-22**

Filing number: **2022-068**

Effective date: 5/1/2022

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 2022** minimum Class I price is **\$28.70/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$31.99/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$4.73.**

Basis statement:

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

Federal Order One Northeast Market Administrator announced a Class III price of **\$22.45/cwt.** and a Class IV price of **\$24.82/cwt.** for **March 2022.**

The Class II price for **March 2022** is **\$24.76/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 **\$28.70/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on April 21, 2022 and therefore should be passed on in minimum prices effective May 1, 2022. 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, 2022 to December 31, 2022
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 #06-22**

Filing number: **2022-097**

Effective date: 5/29/2022

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 2022** minimum Class I price is **\$29.12/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$32.21/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$4.77.**

Basis statement:

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

Federal Order One Northeast Market Administrator announced a Class III price of **\$24.42/cwt.** and a Class IV price of **\$25.31/cwt.** for **April 2022.**

The Class II price for **April 2022** is **\$25.71/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$29.12/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on May 19, 2022 and therefore should be passed on in minimum prices effective May 29, 2022. 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, 2022 to December 31, 2022
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 #07-22**

Filing number: **2022-122**

Effective date: 7/3/2022

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 2022** minimum Class I price is **\$29.12/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$32.41/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$4.77.**

Basis statement:

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

Federal Order One Northeast Market Administrator announced a Class III price of **\$25.21/cwt.** and a Class IV price of **\$24.99/cwt.** for **May 2022.**

The Class II price for **May 2022** is **\$25.87/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 **\$29.12/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on June 23, 2022 and therefore should be passed on in minimum prices effective July 3, 2022. 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, 2022 to December 31, 2022
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 #08-22**

Filing number: **2022-138**

Effective date: 7/31/2022

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 2022** minimum Class I price is **\$28.38/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$31.67/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$4.71**.

Basis statement:

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

Federal Order One Northeast Market Administrator announced a Class III price of **\$24.33/cwt.** and a Class IV price of **\$25.83/cwt.** for **June 2022**.

The Class II price for **June 2022** is **\$26.65/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 **\$28.38/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on July 21, 2022 and therefore should be passed on in minimum prices effective July 31, 2022. 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, 2022 to December 31, 2022
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 #09-22**

Filing number: **2022-156**

Effective date: 9/4/2022

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 2022** minimum Class I price is **\$26.87/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$30.16/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$4.58.**

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 **\$22.52/cwt.** and a Class IV price of **\$25.79/cwt.** for **July 2022.**

The Class II price for **July 2022** is **\$26.66/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$26.87/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on August 18, 2022 and therefore should be passed on in minimum prices effective September 4, 2022. 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, 2022 to December 31, 2022
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 #10-22**

Filing number: **2022-191**

Effective date: 10/2/2022

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 2022** minimum Class I price is **\$25.96/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$29.25/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$4.50**.

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 **\$20.10/cwt.** and a Class IV price of **\$24.81/cwt.** for **August 2022**.

The Class II price for **August 2022** is **\$26.91/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 **\$25.96/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on September 22, 2022 and therefore should be passed on in minimum prices effective October 2, 2022. 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, 2022 to December 31, 2022
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 #11-22**

Filing number: **2022-211**

Effective date: 10/30/2022

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 2022** minimum Class I price is **\$27.34/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$30.63/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$4.62.**

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 **\$19.82/cwt.** and a Class IV price of **\$24.63/cwt.** for **September 2022.**

The Class II price for **September 2022** is **\$26.51/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 **\$27.34/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on October 20, 2022 and therefore should be passed on in minimum prices effective October 30, 2022. 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, 2022 to December 31, 2022
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 #11-22**
Filing number: **2022-230**
Effective date: 12/4/2022
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 2022** minimum Class I price is **\$25.83/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$29.12/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$4.49**.

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 **\$21.81/cwt.** and a Class IV price of **\$24.96/cwt.** for **October 2022**.

The Class II price for **October 2022** is **\$25.73/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 **\$25.83/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on November 23, 2022 and therefore should be passed on in minimum prices effective December 4, 2022. 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, 2022 to December 31, 2022
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 #01-23**

Filing number: **2022-255**

Effective date: 1/1/2023

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 2023** minimum Class I price is **\$25.66/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$38.95/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$4.47.**

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 **\$21.01/cwt.** and a Class IV price of **\$23.30/cwt.** for **November 2022.**

The Class II price for **November 2022** is **\$24.67/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 **\$25.66/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on December 22, 2022 and therefore should be passed on in minimum prices effective January 1, 2023. 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, 2022 to December 31, 2022
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. 26**, Producer Margins
Filing number: **2022-123**
Effective date: 8/1/2022
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

The principal reason for this rule is the need to establish producer margins for milk sold within the State of Maine in accordance with 7 M.R.S. Section 2954.

Basis statement:

I. BACKGROUND AND STATUTORY FRAMEWORK

Pursuant to the Maine Milk Commission Law 7 M.R.S.A., Section 2951 *et seq.* the Commission entered into an agreement with the University of Maine's Department of Resource Economics and Policy to investigate the cost of milk production under Maine conditions. Section 2954 (2)(A) of the Milk Commission law gives us our direction for setting producer prices. Because of its importance to these proceedings in enacting a rule recognizing the cost of production for producers, the provision is set forth below:

"The minimum wholesale prices paid to producers are based on the prevailing Class I, Class II and Class III prices in southern New England except that, after investigation, the Maine Milk Commission may set different minimum wholesale prices paid to producers to reflect the costs of producing milk in this State."

In 1990, when Chapter 26 was first adopted, the statute read as below:

"The minimum wholesale price paid to producers shall be based on the prevailing Class I and Class II prices in southern New England and after investigation by the Maine Milk Commission, shall reflect as accurately as possible the increased costs of production".

The changes to the statute adopted in 1994 removed the mandatory language for this adjustment, giving the Commission discretion to recognize (or not) the full cost of producing milk in Maine, but only after investigating these costs.

Changes to the statute by Public Law Chapter 648 adopted in 2004, instruct the Commission to adopt target prices with production ranges for three different levels of production at their breakeven cost of production when a new Maine producer cost-of-production study is completed.

In this rulemaking the Commission is repealing and replacing Chapter 26 to recognize as instructed by statute, the cost of production and target prices with production ranges for four different levels of production at their breakeven cost of production.

In using this rule in the future to set prices, the Commission will also weigh other factors. For example, section 2954 (2) requires the Commission to consider public health and welfare in insuring an adequate supply of milk; prevailing prices in neighboring states; seasonality and other conditions affecting costs of production, transportation and marketing, including a reasonable return to producer, dealer and retailer; taking into consideration the public need for the establishment of retail milk prices at the lowest practicable levels. And, in

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

section 2954 (2)(D) of the Milk Commission law the Commission must also consider, among other things, the effect of pricing decisions on the ability of the Maine dairy industry to compete in supplying milk to Maine consumers, including the extent of any social and economic benefits of maintaining processing plants in different geographic regions or natural marketing areas of the State.

II. PRODUCER MARGIN

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

III. CONCLUSIONS OF THE STUDY OF PRODUCING MILK IN MAINE

This project has derived a representative cost of production estimate for Maine dairy farmers. This estimate is based upon responses from the 2019 Cost of Production survey implemented by the University of Maine Cooperative Extension, The University of Maine School of Economics and the Maine Milk Commission. This survey was used to develop typical farm units to represent the dairy farming population as a whole. From these characteristic farms, economic engineering budgeting approaches were applied to value all factors used in dairy production following best practice budgeting approaches.

Overall, when all factors of production are accounted for, including variable operating expenses, overhead, depreciation and interest, the average long-run cost of producing milk is estimated at \$21.94/cwt for Maine dairy producers.

Based on information provided at public hearing on April 22, 2021 and a subsequent 30 day written comment period which ended May 24, 2021 and based on the most recent updates to the 2019 Cooperative Extension/University of Maine Determining the current cost of producing milk in Maine study, the Commission hereby adopts the following 4 levels of target prices, each representing a range of annual production. These are based on the findings of the most recent study conducted in accordance with 7 M.R.S.A. Section 2952-A subsection 3 to estimate the short-run break-even point within each tier.

| Tier: | Annual Production Range: | Target Price: |
|----------------|--|----------------------|
| One | 0 - 16,790 hundredweight | \$23.05 |
| Two | Over 16,790 to 49,079 hundredweight | \$21.44 |
| Three | Over 49,079 to 76,800 hundredweight | \$20.93 |
| Four | Over 76,800 hundredweight | \$20.21 |
| Average | | \$21.94 |

Fiscal impact of rule:

Estimated increase of \$6,985,591 in FY22 and \$7,676,522 in FY23 to the general fund.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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** (*Repeal and Replace*), Dealer Margins

Filing number: **2022-038**

Effective date: 3/19/2022

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 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 2021, 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 sixteenth 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, 2022 to December 31, 2022
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. 21**, General Hearing Procedures

Filing number: **2022-094**

Effective date: 5/28/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To establish that Commission has the authority to modify a Judge's decision brought before them in the form of an appeal hearing. There also is clarification regarding the definition of an appeal hearing.

Basis statement:

The Commission proposed several revisions to Chapter 21. The revisions were extensive and encompassed a large portion of the chapter, and as such a repeal and replace proposal was initiated. In total, 16 sections were repealed due to redundancy and/or conflict with the Maine Administrative Procedures Act, Title 5, Chapter 375. A few other sections were partially repealed with the same justification. Additionally, a couple of other edits were proposed to improve clarity and align Chapter 21 with the language present in the statute. No comments were submitted to the Commission regarding the proposed amendments.

After review and deliberation, the Commission voted to adopt the amendments on April 19, 2022 after finding that the amendments best serve the public interest.

Fiscal impact of rule:

None

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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: Chapter 20—22 MRSA §§ 1471 A-X

Chapter number/title: **Ch. 20**, Special Provisions

Filing number: **2022-085**

Effective date: 5/16/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The proposed rules amendments were sought to address the directives in LD 264 passed by the 130th Maine Legislature. This resolve directs the Maine Board of Pesticides Control to amend rules regarding registration of pesticide products. The proposed amendments were written to incorporate these changes.

Chapter 20 – Three amendments are proposed:

1. Define “Perfluoroalkyl and Polyfluoroalkyl Substances” or “PFAS”.
2. Add a requirement for registrants to submit a confidential statement of formula to register their product with the state of Maine.
3. Add two affidavit requirements; one affidavit that asks registrants to disclose if their pesticide product has ever been stored in a fluorinated container and a second affidavit asking registrants to disclose if the formulation of the pesticide product contains any perfluoroalkyl or polyfluoroalkyl substances.

Basis statement:

Three amendments to Chapter 20 were proposed by the Board:

1. Define “Perfluoroalkyl and Polyfluoroalkyl Substances” or “PFAS”.
2. Add a requirement for registrants to submit a confidential statement of formula to register their product with the state of Maine.
3. Add two affidavit requirements; one affidavit that asks registrants to disclose if their pesticide product has ever been stored in a fluorinated container and a second affidavit asking registrants to disclose if the formulation of the pesticide product contains any perfluoroalkyl or polyfluoroalkyl substances.

The amendments to the proposed rule are in response to Public Law Chapter 83 and recent legislation from the 130th Maine Legislature LD 264: Resolve, Directing the Board of Pesticides Control To Gather Information Relating to Perfluoroalkyl and Polyfluoroalkyl Substances in the State. This law directs the Board of Pesticides Control to amend rules to require affidavits that disclose if Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) are present in pesticide product formulations or containers at the time of product registration with the State of Maine. Many of these substances (PFAS) have been identified as substances that many break down very slowly and can build up in people, animals, and the environment over time. Amending these rules would allow the Board to identify these substances in pesticide products at the time of registration from the company.

Thirteen comments were received. Several people agreed with the Board’s definition of PFAS. Other comments included: making affidavits publicly available, including contaminant reporting with the confidential statement of formula, and inquired about expanding the container requirements to all fluorinated containers. The Board responded that affidavits will

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

be publicly available, contamination of pesticides is handled at the federal level, and some members indicated that all fluorinated containers should be considered. Additionally, the Board also had comments about clarifying that affidavits were public and including all fluorinated containers in the rule.

Fiscal impact of rule:

Amendments in CMR 01-026 Chapter 20, the Board of Pesticides Control must incorporate annual affidavit submission into the existing pesticide product registration process. The expected fiscal impact of this effort is \$75,000 to integrate PFAS reporting into existing pesticide product registration software (MEPRLS).

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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: 5 MRS §§ 8051 *et seq.*; 7 MRS §§ 601-610; 22 MRS §1471(A-D,M)

Chapter number/title: **Ch. 41**, Special Restrictions on Pesticides Use

Filing number: **2022-181**

Effective date: 9/20/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The proposed rules amendments were sought to address the directives in the following bills passed by the 130th Maine Legislature: LD 316 and LD 155. These resolves direct the Maine Board of Pesticides Control to amend rules regarding the list of State of Maine restricted use pesticides. The proposed amendments were written to incorporate these changes.

Chapter 41 – Two amendments are proposed:

1. Add a new section pertaining to neonicotinoids (dinotefuran, clothianidin, imidacloprid or thiamethoxam) to restrict registration and prohibit use in outdoor residential landscapes for the purposes of managing pests in turf and ornamental vegetation. Add an allowance for management of invasive invertebrate pests in ornamental vegetation and an emergency permitting process.
2. Add a new section prohibiting the use of chlorpyrifos, except for licensed applicators who obtain a use permit from the Board to apply chlorpyrifos products purchased prior to December 31, 2022.

Basis statement:

The amendments to the proposed rule are in response to Public Law Chapter 33 and recent legislation from the 130th Maine Legislature LD 155: Resolve, Directing the Board of Pesticides Control To Prohibit the Use of Certain Neonicotinoids for Outdoor Residential Use and Public Law Chapter 105 and LD 316: An Act To Prohibit the Use of Chlorpyrifos. These laws direct the Board of Pesticides Control to amend rules to make four active ingredients of neonicotinoid pesticides and all chlorpyrifos products restricted use. Neonicotinoid substances have been attributed to pollinator decline and are widely used in Maine for ornamental and turf management. The US EPA has revoked the food tolerances for all chlorpyrifos products, citing several concerns for human health and safety. Exemptions laid out in this chapter include allowing certified applicators to use neonicotinoid products for invasive species management in ornamental vegetation and allowing growers to apply for use permits from the Board to use up existing stock of chlorpyrifos.

Zero comments were received, however the current proposed language incorporates significant public comment regarding Section 6 from the previous rulemaking hearing on January 14, 2022. The Board responded by considering these comments and incorporating them into the newly proposed rules. No significant comments were received for Section 7 of the rule, regarding chlorpyrifos.

Fiscal impact of rule:

State restrictions of products in CMR 01-026 Chapter 41 will likely have fiscal impacts for applicators that seek replacements to the four neonicotinoid chemistries that will no longer be permitted in residential landscapes. Pesticide products selected to replace the now prohibited chemistries may be more expensive. The dollar value of this impact is unknown but is thought to be less than \$1,000,000. EPA recently cancelled food tolerances for one of the active

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

ingredients (chlorpyrifos) newly restricted in Chapter 41. This federal cancellation and subsequent national prohibition of use create a potential fiscal impact that is unrelated to the proposed rule amendments.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Bureau of Parks and Lands

Umbrella-Unit: **01-670**

Statutory authority: 12 MRS §1893(3)(A)(1)

Chapter number/title: **Ch. 8**, Rules for Snowmobile Club Trail Maintenance
Grant-In-Aid Program

Filing number: **2022-013**

Effective date: 1/29/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The amendment will change the snowmobile club grant application filing deadline from December 31st to December 1st and change the deadline for club grant reimbursement filing from April 30th to May 15th to align with the municipal grant deadlines in Chapter 7. Also, update all references to the “Off Road Vehicle Division” to “Off Road Recreational Vehicle Office”.

Basis statement:

The Bureau of Parks and Lands, Off Road Recreational Vehicle Office, administers a Snowmobile Club Grant Program and a Snowmobile Municipal/County Grant Program. The grant application and grant reimbursement submission deadlines for these two programs do not match. This causes confusion for volunteers administering these separate grants. Bringing the due dates in alignment with each other will eliminate this confusion.

The Office proposes changing the snowmobile club grant filing deadline date from December 31st to December 1st and changing the deadline for grant reimbursement filing from April 30th to May 15th this will align the due dates with the Municipal/County grant deadlines in chapter 7.

Also, the Bureau intends to change all references to the “Off Road Vehicle Division” to the “Off Road Recreational Vehicle Office”; this change corrects the title of the program.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

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

Umbrella-Unit: **01-672**

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

Chapter number/title: **Ch. 2, Definitions**

Filing number: **2022-249**

Effective date: 12/30/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The Land Use Planning Commission is proposing these amendments to improve efficiency and clarity in siting, evaluating, and permitting solar energy generation facilities, in response to increased solar development across the Commission's service area. The primary objectives of this rulemaking are to define size classes for solar energy generation facilities, and to specify which Land Use Subdistricts will allow solar energy generation facilities. Revisions also clarify existing definitions and standards related to solar energy facilities that qualify as accessory structures.

Basis statement:

The primary objective of this rulemaking was to revise the Commission's rules regarding solar energy generation facilities. These amendments help improve efficiency and clarity in siting, evaluating, and permitting solar energy generation facilities. Key changes in this rulemaking include the creation of defined size classes for solar energy generation facilities in Chapter 2, and specifying which Land Use Subdistricts will allow solar energy generation facilities in Chapter 10. Revisions also clarify existing definitions and standards related to solar energy development qualifying as accessory structures.

Over the course of 2021 and early 2022, Commission staff conducted research and outreach on solar development in Maine. Efforts included review of certain municipal ordinances and current regulatory approaches in Maine, analysis of LUPC permitting records, discussions with regional staff and Maine DEP staff, and outreach to conservation organizations and the solar development industry. Staff have also followed the outcomes of statewide stakeholder processes and legislative changes.

Fiscal impact of rule:

Revisions to Chapter 2, Definitions will not have a fiscal impact. Pursuant to 12 M.R.S. §695-A(7-A)(B), this provision does not apply to Chapter 10, Land Use Districts and Standards.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 659B** (Frenchtown Twp. — Piscataquis
County) (Maine Land Use Planning Commission Staff);
Zoning Petition: **ZP 710B** (T1 R8 WELS and T1 R9 WELS —
Piscataquis County) (Matthew Polstein – Hammond Ridge
Development Corporation, LLC)

Filing number: **2022-018**

Effective date: 1/26/2022

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 659B | Maine Land Use Planning Commission Staff | Frenchtown Twp Piscataquis County |
| ZP 710B | Matthew Polstein, Hammond Ridge Development Corp. LLC | T1 R8 WELS Penobscot County |
| | | T1 R9 WELS Piscataquis County |

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 776A** (Unity Twp. – Kennebec County) (Three
Corners Solar, LLC; Michael Alvarez)
Filing number: **2022-036**
Effective date: 1/27/2022
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 776A

**PETITIONER OR
COPETITIONER**

Three Corners Solar, LLC
Michael Alvarez

LOCATION

Unity Twp.,
Kennebec County

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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: 5 MRS §§ 8052(1), 8055; 22 MRS §§ 2421 *et seq.*; 28-B MRS §§ 101
et seq.; 12 MRS §§ 685-A(1), (8-A)

Chapter number/title: **Ch. 10**, Land Use Districts and Standards (Citizen Petition to
Prohibit Certain Marijuana Uses in the D-GN2 Subdistrict)

Filing number: **2022-041**

Effective date: 3/29/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

This rulemaking is in direct response to the citizen petition filed with the Maine Land Use Planning Commission pursuant to 5 MRS §8055.

Basis statement:

On February 26, 2021, the Commission received a citizens' petition to prohibit certain marijuana related businesses from the D-GN2 subdistrict. Pursuant to 5 MRS §8055 and as certified by each applicable municipal registrar, the petition contains signatures of 191 registered voters of the State. Key proposed changes to the rules include the prohibition of most medical marijuana and adult use marijuana development involving cultivation, extraction, processing, manufacturing, testing, or sale, within D-GN2 subdistricts.

On May 4, 2021, Commission staff met with the petition representative to correct or otherwise confirm staff interpretation of the redlined revisions submitted as part of the petition. Consequently, the revisions posted to rulemaking include the original revisions proposed by the petition (option 1) and text offered by the Maine land Use Planning Commission staff as a clearer alternative approach (option 2) that would have the same outcomes as proposed by the petition. The staff provided alternative was neither in support of, nor in opposition to the petition or its intended outcomes.

The revisions adopted as part of this rule amendment are not intended and will not be construed to grant local authorization pursuant to 28-B MRS §403 to operate adult use marijuana establishments in the DGN2 subdistrict or in any of the related townships or plantations.

PUBLIC NOTICE OF RULEMAKING

At a meeting held on April 14, 2021, pursuant to 5 MRS §8055, the Commission directed staff to post the rulemaking petition and the staff's alternatively worded option to initiate rulemaking on the proposal. Pursuant 5 MRS §8052(1), the Commission directed staff to include and schedule a public hearing.

Notice of the rulemaking was provided in the Secretary of State's consolidated rulemaking notice on May 26, 2021. The Secretary of State's notice appeared in the *Bangor Daily News*, *Kennebec Journal*, *Portland Press Herald*, **Lewiston Sun-Journal**, and the *Central Maine Morning Sentinel*. Email notice was also provided to approximately 1,867 individuals subscribing to one or more of the Commission's GovDelivery lists regarding: rulemaking, public hearings, Franklin County, marijuana, and the prospective zoning plan for the Rangeley Lakes Region, Pursuant to the *Maine Administrative Procedure Act* (5 MRS §§ 8001 *et seq.*), the same notice was provided to the petition representative; officials of Dallas Plantation, Rangeley Plantation, and Sandy River Plantation; to the sole existing marijuana business in the Rangeley Plan area; and to each identifiable trade or industry

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

group (i.e., Maine Office of Marijuana Policy, Maine Cannabis Industry Association, Medical Marijuana Caregivers of Maine, and Maine Cannabis Consultants). The notice of the rulemaking and the proposed revisions were also posted on the Commission's web site.

On June 8, 2021, staff submitted information and questions for public consideration. The information provided context and posed questions, the answers to which would be particularly valuable to the Commission in considering the rulemaking petition and the intended outcomes. The information and questions were provided to the petition representative, were posted on the Commission's website with the draft rule revisions, and were posted in the chat at the start of the public hearing.

The public hearing was held on June 16, 2021. Due to the 2019 coronavirus (COVID-19) pandemic, Public Law 2019 ch. 617, this hearing was conducted through virtual means (i.e., via audio & video conferencing, including a phone-in option).

The record remained open until July 19, 2021 to allow interested persons to file written statements with the Commission, and for an additional 14 days until August 2, 2021 to allow interested persons to file written statements in rebuttal of statements filed during the comment period.

At a meeting held on October 13, 2021, staff offered the Commission a draft basis statement and draft rule revisions, both responding to comments and materials submitted during the hearing and comment process. At that meeting, the Commission directed staff to reopen the hearing record to post the staff recommended revisions (dated October 6, 2021) to a 30-day comment period, and that notice of the opportunity need only be provided through digital means. On October 19, 2021, notice of the comment opportunity was provided to the petition representative, and the 1,913 individuals subscribing to one or more of the Commission's GovDelivery lists regarding: rulemaking, public hearings, Franklin County, marijuana, and the prospective zoning plan for the Rangeley Lakes Region.

The record remained open until November 22, 2021 to allow interested persons to file written statements with the Commission.

Changes to Chapter 10 after Petition Submitted

This rulemaking petition was submitted on February 26, 2021, and it, along with an alternative option provided by Commission staff, was submitted for public comment on May 26, 2021. On November 1, 2021, extensive revisions to ch. 10 became effective. Among those revisions, most subdistricts listed in section 10.21 through 10.23, including the D-GN2 subdistrict, were revised to relocate special exception criteria and lake management classification provisions to other sections of the rule. These changes affected introductory provisions in each subdistrict regarding uses allowed by permit and uses allowed by special exception, and the alpha-numeric designations of certain sub-sections. While the larger ch. 10 rulemaking and this Citizens' Petition rulemaking were on separate yet parallel tracks, they were poised to become effective concurrently. After the Commission elected, at its October 13, 2021 meeting, to extend the process for the Citizens' Petition rulemaking to facilitate additional public review and comment, this Citizens' Petition rulemaking became out of sync with the separate ch. 10 revisions. The petition, as initially proposed, now contains citations, formatting, and language that is outdated and inconsistent with the current structure of ch. 10 following the November 1, 2021 revisions. Accordingly, the Commission finds that minor changes in language, citations, and formatting to the rule as initially proposed are necessary in order to maintain consistency and coherency within the Commission's rules and obtain the desired result of the rule change in light of the subsequent changes to ch. 10 as a whole.

Fiscal impact of rule:

Not applicable.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 783A, ZP 772A, ZP 787, ZP 786**
Filing number: **2022-124**
Effective date: 6/22/2022
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 783A | Cross Road Solar, LLD Bradfield and Judith Lyon | Greenfield Twp. Penobscot County |
| ZP 772A | Three Rivers Solar, LLC Elliot Jordan & Sons, Inc. | T16 MD BPP Hancock County |
| ZP 787 | Jestin & Carrie Merchant | Connor Twp. Aroostook County |
| ZP 786 | Jeff Carr | Lakeville Plt. Penobscot County |

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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: **ZP224D, ZP788, ZP789**
Filing number: **2022-146**
Effective date: 7/15/2022
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 224D | Pingree Associates | Big Ten Twp Somerset County T11 R16 WELS Aroostook County |
| ZP 788 | Scott Harding, Brian Thornton, David & Leah Gelbar | Sapling Twp Somerset County |
| ZP 789 | Weeks Leen's Lodge Corp. | Grand Lake Stream Plt Washington County |

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 790**
Filing number: **2022-231**
Effective date: 11/18/2022
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 790

Brian & Amanda Steans

Albany Twp
Oxford County

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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: 5 MRS §§ 8052(1), 8055; 22 MRS §§ 2421 *et seq.*; 28-B MRS §§ 101
et seq.; 12 MRS §§ 685-A(1), (8-A)

Chapter number/title: **Ch. 10**, Land Use Districts and Standards (Solar Energy)

Filing number: **2022-250**

Effective date: 12/30/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The Land Use Planning Commission is proposing these amendments to improve efficiency and clarity in siting, evaluating, and permitting solar energy generation facilities, in response to increased solar development across the Commission's service area. The primary objectives of this rulemaking are to define size classes for solar energy generation facilities, and to specify which Land Use Subdistricts will allow solar energy generation facilities. Revisions also clarify existing definitions and standards related to solar energy facilities that qualify as accessory structures.

Basis statement:

The primary objective of this rulemaking was to revise the Commission's rules regarding solar energy generation facilities. These amendments help improve efficiency and clarity in siting, evaluating, and permitting solar energy generation facilities. Key changes in this rulemaking include the creation of defined size classes for solar energy generation facilities in Chapter 2, and specifying which Land Use Subdistricts will allow solar energy generation facilities in Chapter 10. Revisions also clarify existing definitions and standards related to solar energy development qualifying as accessory structures.

Over the course of 2021 and early 2022, Commission staff conducted research and outreach on solar development in Maine. Efforts included review of certain municipal ordinances and current regulatory approaches in Maine, analysis of LUPC permitting records, discussions with regional staff and Maine DEP staff, and outreach to conservation organizations and the solar development industry. Staff have also followed the outcomes of statewide stakeholder processes and legislative changes.

Fiscal impact of rule:

Revisions to Chapter 2, Definitions will not have a fiscal impact. Pursuant to 12 M.R.S. §695-A(7-A)(B), this provision does not apply to Chapter 10, Land Use Districts and Standards.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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), (7-A), (8-A), 685-C(5)

Chapter number/title: **Ch. 10**, Land Use Districts and Standards (Moosehead Regional Planning)

Filing number: **2022-251**

Effective date: 3/29/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The Maine Land Use Planning Commission has adopted amendments to Chapter 10, *Land Use Districts and Standards*, to implement actions stemming from the 2020-2022 Moosehead Regional Planning Process. The amendments allow for the modification of Location of Development criteria resulting from regional planning processes addressing the location of development through a balanced and comprehensive process. Specifically, the changes refine the Commission's application of the Location of Development criteria in the Moosehead region by providing for the removal of ten minor civil divisions from primary and secondary locations, and for the removal of primary locations around certain Management Class 3 lakes in the region. The amendments also reorganize and clarify the section to better distinguish the primary and secondary locations designated based on application of the adjacency principle versus changes made as the result of a balanced and comprehensive regional planning process.

Basis statement:

FACTUAL AND POLICY BASIS FOR THE RULE AMENDMENT:

Overview

The primary objective of this rulemaking is to implement actions stemming from the 2020-2022 Moosehead Regional Planning Process. The amendments allow for the modification of Primary and Secondary Locations, which are part of the Commission's application of the Location of Development policy (also called the adjacency principle), resulting from a balanced and comprehensive regional planning process. The proposed revisions also remove Primary and Secondary Locations in the Moosehead Region (thereby limiting the potential for rezoning for certain types of commercial and residential development) in ten minor civil divisions and in certain shorefront areas around Management Class 3 (MC-3) lakes. The amendments also reorganize and clarify the section to better distinguish the Primary and Secondary Locations designated based on application of the Location of Development policy, versus changes made as the result of a balanced and comprehensive regional planning process.

Key changes to the rules include:

- Primary and Secondary Locations. The revisions modify Section 10.08-A of Chapter 10 to allow for adjustments to the locational factors that apply to adoption or amendment of land use district boundaries through a comprehensive regional planning process. Examples of regional planning processes include prospective zoning or community guided planning and zoning as described in the Comprehensive Land Use Plan and applicable Commission guidance documents.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

- Moosehead Region. The revisions remove Primary and Secondary Locations from the following minor civil divisions (MCDs) and Management Class 3 lakes in the Moosehead Region:
 - Big Moose Township (entire MCD)
 - Bowdoin College Grant West (entire MCD) - Lily Bay Township (entire MCD)
 - Long Pond Township (entire MCD)
 - Misery Township (entire MCD)
 - Misery Gore Township (entire MCD)
 - Rockwood T2R1 NBKP (entire MCD)
 - Sandwich Academy Grant (entire MCD)
 - Sapling Township (entire MCD)
 - Taunton and Raynham Academy Grant (entire MCD excluding the Primary Location around the portion of Brassua Lake within the township)
 - Indian Pond (entire shoreline)
 - Brassua Lake (Portions of the shoreline in Brassua Township, Rockwood Strip T2 R1 NBKP, and Sandwich Academy Grant)
 - Long Pond (Portion of shoreline in Long Pond Township)

This rulemaking implements the Location of Development component of the revised Moosehead Regional Planning Package proposed in September 2022. Zoning Petition 791 implements the companion prospective zoning component of the proposal and includes information and public comments related to the specific areas proposed to be rezoned for development as a result of the planning process.

Background on the Location of Development Rules

The Location of Development policy provides an initial screen for where new zones for development of a residential subdivision or commercial businesses¹ can be proposed. The policy guides most 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 Location of Development policy changed fundamentally with the 2019 Adjacency and Subdivision Rulemaking. It shifted to a new system that:

- Pre-identifies locations (called Primary and Secondary Locations) suitable for most types of development near a town where services can be provided based on distance from rural hubs and public roads; and
- Allows for recreation-dependent or resource-dependent development to locate farther from town (and outside of Primary or Secondary Locations).

During the 2019 Adjacency and Subdivision Rulemaking process, Primary and Secondary Locations were added or removed in specific places based on local or regional input about service provision, access, and other topics. When the 2019 Location of Development rule changes were adopted, the Commission recognized that further refinement would likely be necessary in some regions, and if undertaken should be based on a community planning process.

The Moosehead Regional Planning Project has been a community-guided planning process resulting from the unexpected termination of the Moosehead Lake Region Concept Plan, which encompassed over 400,000 total acres. The Plan and accompanying permanent conservation easement were influential in economic development and other planning efforts in the region in recent years. At the time of the 2019 Adjacency rulemaking, the Concept Plan was in place. When the Concept Plan was terminated, a large amount of acreage formerly

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

designated for future development became available for consideration in a regional planning process. Regional planning was possible because the acreage was no longer pre-determined for development, and because the landowner agreed not to submit any development proposals to allow for the Commission to complete a regional planning and zoning process.

Planning Process Summary

When the Moosehead Lake Region Concept Plan was terminated in July of 2020, the entire area subject to the Concept Plan, including identified development areas, was rezoned to the General Management Subdistrict, or to a range of protection subdistricts based on resources present such as streams, shorefront, steep slopes, wetlands, and wildlife habitat. As part of the termination process, Weyerhaeuser Company and Weyerhaeuser NR Company, the property owner, agreed to provide an opportunity for residents and stakeholders to participate in planning for future land uses in these areas. The goal was to seek input about what types of development would be suitable in certain areas and to ensure adequate protections for highly valued natural resources. LUPC staff, with stakeholder input, designed and led a regional planning process with a goal of final Commission approval of any zoning changes or rule revisions by the end of 2022.

Staff first obtained feedback from the community on the proposed regional planning process, including geographic scope, community concerns, and areas appropriate for conservation or development. This feedback was used to develop a map-based online survey to gather more in-depth information from the public and other stakeholders about locations that matter to them. The initial feedback and survey data were used to develop four Discussion Scenario Maps of future land use scenarios involving zoning changes and/or rule changes (e.g., removal of Primary or Secondary Locations). In the fall of 2021, staff sought community feedback on the Discussion Scenario Maps by posting them to the project website and hosting both in person and virtual public meetings in the Moosehead Region.

Feedback on the Discussion Scenario Maps from written comments and public meetings, combined with additional research and deliberation, were all synthesized to develop a draft Maine Land Use Planning Commission Moosehead Regional Planning Package that was presented to the Commission at its regular business meeting on May 11, 2022. With Commission input, during the summer of 2022, staff sought community feedback on the draft package through written comments, public meetings, and targeted outreach to potentially affected landowners, and then used this feedback to refine the proposals. At its regular business meeting on September 12, 2022, the Commission posted the revised Moosehead Regional Planning Package to a 30-day public comment period.

Changes to the Location of Development Policy in the Moosehead Region

Removing Primary and Secondary Locations from minor civil divisions (MCDs) in the Moosehead Region was broadly supported as a strategy through public and stakeholder comments on the Discussion Scenarios. Many commenters recommended locations in additional MCDs be removed beyond those suggested in the Scenarios. Based on this feedback, and on subsequent community outreach, the rule revisions remove Primary and Secondary Locations in ten MCDs, along with shorefront areas on several lakes in the region. The goal is to minimize the intensity and rate of future residential and commercial development in these locations.

To balance removal of Primary and Secondary Locations in the region, the Commission will simultaneously consider rezoning six locations to development subdistricts to accommodate future growth and help concentrate development near Rural Hubs as desired by stakeholders. By taking this balanced approach, the Commission is guiding development to

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

pre-identified locations in the region, and limiting the types, intensity, and rate of development that can occur outside of those locations.

The minor civil divisions and the factors considered/basis for removal for the Moosehead Region are described in Table 1 below.

Table 1. Minor Civil Divisions Removed from Primary and Secondary Locations

| Minor Civil Division | Resources Present | Factors Considered/Basis for Removal |
|-----------------------------|---|---|
| Big Moose Township | Moosehead Lake, Big Moose Mountain, Burnham Pond, Indian Pond, Mountain View Pond, East Outlet, Eagle Rock Trail, Big Moose Trail | <ul style="list-style-type: none"> • Broad public support for removal • Current Primary and Secondary Locations include sensitive resources • Existing and proposed development zones can accommodate growth near Greenville, and which may allow for businesses serving visitors to the ski area • Limits the intensity of any future development on portions of the back side of the mountain • Some rezoning options remain available for the ski area (e.g., expanding the D-GN or rezoning to D-PD) |
| Bowdoin College Grant West | Upper Wilson Pond | <ul style="list-style-type: none"> • No public road access in existing Secondary Location • Limited area available for development |
| Lily Bay Township | Moosehead Lake, Lily Bay State Park, Burgess Brook, North Brook, Lily Bay Brook, Tussle Lagoon | <ul style="list-style-type: none"> • Broad public support for removal • Broad support for limiting development potential in Lily Bay Township |
| Long Pond Township | Long Pond, Moose River, Mountain Brook, Twelvemile Bog, Fogg Pond, Churchill Stream, Northern Forest Canoe Trail | <ul style="list-style-type: none"> • Support for limiting development on the southeastern portion of Long Pond • Current Primary and Secondary Locations include sensitive resources (e.g., rare plants, and an extensive complex of wetlands) • Limited area available for development |
| Misery Township | North Branch Stream, Misery Stream, Misery Ridge | <ul style="list-style-type: none"> • Broad public support for removal • Limited area available for development |
| Misery Gore Township | West Outlet, Misery Stream, Misery Ridge | <ul style="list-style-type: none"> • Broad public support for removal • Limited area available for development |
| Rockwood T2R1 NBKP | Brassua Lake, Demo Pond, Twelvemile Bog, Stony Brook | <ul style="list-style-type: none"> • Limited access to existing Secondary Location • Remote location • Area unavailable for development |
| Sandwich Academy Grant | Brassua Lake, Moose River, Long Pond Mountain | <ul style="list-style-type: none"> • Removal of Primary and Secondary Locations in adjacent townships • Limited area available for development |

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

| | | |
|-----------------------------------|---|---|
| Sapling Township | Moosehead Lake, East Outlet, Indian Pond, West Outlet, Misery Ridge, Churchill Stream | <ul style="list-style-type: none"> • Broad public support for removal • Limited area available for development |
| Taunton and Raynham Academy Grant | Blue Ridge, Brassua Lake, Moosehead Lake, West Outlet, Misery Stream | <ul style="list-style-type: none"> • Broad public support for removal • Current Primary and Secondary Locations include sensitive resources (Blue Ridge, West Outlet) • Development zones added to focus new development near Rockwood |

This amendment to Section 10.08-A,C of Chapter 10 also removes Primary Locations around certain MC-3 lakes, or around portions of certain MC-3 lakes within designated MCDs, as a result of the formal regional planning process. The Lakes Management Program, which was adopted by the Commission in the early 1990’s after extensive public input, is intended to provide comprehensive protection for lakes (2010 CLUP, pg. 288), and applies jurisdiction-wide. Part of providing comprehensive protection for lakes includes guiding development toward suitable waterbodies, and away from unsuitable waterbodies. Management classifications assigned to specific lakes were intended to be permanent and stable over time and are one of the mechanisms that implement this goal.

The establishment of Primary Locations around MC-3 lakes is a result of the 2019 Adjacency and Subdivision Rulemaking and was intended to implement the “adjacency waiver” described in the Commission’s Comprehensive Land Use Plan (CLUP) for proposals to rezone for development if certain criteria can be met (e.g., soils must be suitable and the proposal must not result in water quality impacts). This concept was broadly applied to all MC-3 lakes throughout the jurisdiction, including Indian Pond, Long Pond, and Brassua Lake in the Moosehead Region.

Based on the more detailed information about these waterbodies obtained during the planning process, this rulemaking removes the Primary Locations around all or portions of these MC-3 lakes and is an appropriate fine-tuning of the Location of Development policy based on a robust regional planning process. Specific information about changes for each of these lakes is presented in Table 3 below.

Table 3. Certain MC-3 Lake Shorefront Removed from Primary Locations

| Lake | MCDs included | Factors Considered/Basis for Removal |
|--------------------------------------|---|---|
| Indian Pond (entire waterbody) | Big Moose Township, Chase Stream Township, Indian Stream Township, Sapling Township | <ul style="list-style-type: none"> • Critically important resource for remote recreational tourism • East and West Outlets converge in northeastern end • Limited area available for development • Wildlife value and diverse riparian area |
| Brassua Lake (portions of waterbody) | Brassua Township, Rockwood Strip T2 R1 NBKP, Sandwich Academy Grant | <ul style="list-style-type: none"> • Part of undeveloped “western room” • Wildlife habitat value • Limited area available for development |

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

| | | |
|---|--------------------|--|
| Long Pond (portion of waterbody in LUPC jurisdiction) | Long Pond Township | <ul style="list-style-type: none">• Remote recreation value• Current Primary Location includes sensitive resources (rare plants)• Wildlife habitat value• Limited area available for development. |
|---|--------------------|--|

Fiscal impact of rule:
Not applicable.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Professional and Financial Regulation,
Bureau of Insurance

Umbrella-Unit: **02-031**

Statutory authority: 24-A M.R.S. §§ 212, 952(3), and 959(1)

Chapter number/title: **Ch. 130**, Minimum Reserve Standards for Individual & Group Health Insurance Contracts

Filing number: **2022-145**

Effective date: 8/2/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The proposed amendment updates the rule to address inconsistencies with the current version of the National Association of Insurance Commissioners Model Rule MO-010, Health Insurance Reserves Model Regulation, resulting from revisions to the disability insurance actuarial tables.

Basis statement:

Acting Superintendent of Insurance Timothy N. Schott hereby adopts amendments to rule Chapter 130, “Minimum Reserve Standards for Individual and Group Health Insurance Contracts,” pursuant to 24-A M.R.S. §§ 212, 952(3), and 959(1). These amendments update Chapter 130 to make it consistent with the National Association of Insurance Commissioners Health Insurance Reserves Model Regulation. The changes include the implementation of revisions to the disability insurance actuarial tables and Maine’s adoption of the statutory Valuation Manual pursuant to 24-A M.R.S. § 959.

Fiscal impact of rule:

None

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Professional and Financial Regulation,
Bureau of Insurance

Umbrella-Unit: **02-031**

Statutory authority: 24-A M.R.S. §§ 212 and 222

Chapter number/title: **Ch. 180**, Insurance Holding Company System Model Rule with Reporting Forms and Instructions

Filing number: **2022-217**

Effective date: 11/6/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The proposed amendment updates the rule to implement amendments to the Maine Insurance Holding Company Act, 24-A M.R.S. § 222, enacted by P.L. 2021, ch. 521. These changes are based on amendments to the NAIC Insurance Holding Company System Model Rule (Model # 450) adopted in 2020 and 2021, addressing the Group Capital Calculation and the continuity of essential services provided by affiliates.

Basis statement:

Acting Superintendent of Insurance Timothy N. Schott hereby adopts amendments to rule Chapter 180, "Insurance Holding Company System Model Rule with Reporting Forms and Instructions," pursuant to 24-A M.R.S. §§ 212 and 222. These amendments update Chapter 180 to implement amendments to the Maine Insurance Holding Company Act, 24-A M.R.S. § 222, enacted by P.L. 2021, ch. 521. These changes are based on amendments to the NAIC Insurance Holding Company System Model Rule (# 450) adopted in 2020 and 2021, addressing the Group Capital Calculation and the continuity of essential services provided by affiliates.

Fiscal impact of rule:

None

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Professional and Financial Regulation,
Bureau of Insurance

Umbrella-Unit: **02-031**

Statutory authority: 24-A M.R.S. §§ 212, 4303-C, and 4303-E

Chapter number/title: **Ch. 365**, Standards for Independent Dispute Resolution of
Emergency Medical Service Bills

Filing number: **2022-070**

Effective date: 5/1/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The purpose of the proposed rulemaking is to conform the current rule to changes enacted by PL 2021, c. 222 (LD 46, An Act To Further Protect Consumers from Surprise Medical Bills), repealing the \$750 threshold for requesting dispute resolution of a bill, and prohibiting a provider from requesting resolution of a health care service for 90 days after a IDR entity has determined a fee for the same service; and to eliminate the IDR ambulance exclusion consistent with the October 1, 2021 repeal of 24-A M.R.S. § 4303-C(2)(D).

Basis statement:

Chapter 365 has been amended pursuant to the Notice of Rulemaking issued December 3, 2021. A public hearing was convened via audio-visual link on January 5, 2022, and the public comment period deadline was January 17, 2022. Chapter 365 was originally adopted on October 24, 2020.

The amendments are proposed in accordance with 24-A M.R.S. §§ 212, 4303-C, and 4303-E.

The purpose of the proposed amendments is to conform the current rule to the October 1, 2021 repeal of 24-A M.R.S. § 4303-C(2)(D), which formerly governed reimbursement for out-of-network emergency ambulance services, and to the changes to the Insurance Code enacted by PL 2021, c. 222 (LD 46, An Act To Further Protect Consumers from Surprise Medical Bills), repealing the requirement for carriers to pay billed charges that do not exceed the 80th percentile rate if the amount in dispute is less than \$750.

Fiscal impact of rule:

No fiscal impact on state government

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Professional and Financial Regulation,
Bureau of Insurance

Umbrella-Unit: **02-031**

Statutory authority: 24 M.R.S. §§ 2316 and 2321, and 24-A M.R.S. §§ 212, 2412, 2413, 2414, 2736, 5071, 5072, 5073, 5074, 5075, 5077, 5078, 5080, 5083, and 5084

Chapter number/title: **Ch. 425**, Long-Term Care Insurance

Filing number: **2022-076**

Effective date: 5/9/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To increase the notice to policyholders of rate increases from 60 to 90 days prior to the approved rate increase, to amend reporting requirements and to reflect changes in rating standards consistent with June 2014 amendments to the National Association of Insurance Commissioners Model Regulation. The proposal also makes changes to insurers' annual reporting requirements. Several other minor clarifying changes are proposed.

Basis statement:

Chapter 425 has been amended pursuant to the Notice of Rulemaking issued October 22, 2021. A public hearing was convened via audio-visual link on November 23, 2021, and the public comment period was held open until December 6, 2021. Rule 425 was originally adopted on July 1, 2004. The rule was previously amended in 2007 and 2015.

The primary purposes of the proposed 2021 amendments are to increase the notice to policyholders of rate increases from 60 to 90 days prior to the approved rate increase, to amend reporting requirements, and to reflect changes in rating standards consistent with June 2014 amendments to the National Association of Insurance Commissioners Model Regulation. The proposal also makes changes to insurers' annual reporting requirements. Several other minor clarifying changes are proposed.

This rule is proposed in accordance with 24 M.R.S. §§ 2316 and 2321, and by 24-A M.R.S. §§ 212, 2412, 2413, 2414, 2736, 5071, 5072, 5073, 5074, 5075, 5077, 5078, 5080, 5083, and 5084.

Fiscal impact of rule:

None

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Professional and Financial Regulation,
Bureau of Insurance

Umbrella-Unit: **02-031**

Statutory authority: 24-A MRS §§ 212, 731-B(2-B),(7)

Chapter number/title: **Ch. 735** (*New*), Term and Universal Life Insurance Reserve
Financing

Filing number: **2022-019**

Effective date: 2/15/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The purposes of the rule are to implement uniform national standards governing reserve financing arrangements pertaining to life insurance policies containing guaranteed nonlevel gross premiums, life insurance policies containing guaranteed nonlevel benefits, and universal life insurance policies with secondary guarantees; and to ensure that there is adequate security as to each such financing arrangement as set out in the rule.

Basis statement:

Superintendent of Insurance Eric Cioppa hereby adopts rule chapter 735, “Term and Universal Life Insurance Reserve Financing.” This rule implements in Maine uniform national standards, based on the National Association of Insurance Commissioners Actuarial Guideline XLVIII, for reserve financing arrangements pertaining to life insurance policies with guaranteed nonlevel gross premiums, life insurance policies with guaranteed nonlevel benefits, and universal life insurance policies with secondary guarantees. The rule ensures that all such financing arrangements are adequately secured, including adequate Primary Security as defined in sub-section 4(7).

Fiscal impact of rule:

No fiscal impact on state government.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Professional and Financial Regulation,
Bureau of Insurance
Umbrella-Unit: **02-031**
Statutory authority: 24-A MRS §§ 212, 731-B; PL 2021 ch. 16
Chapter number/title: **Ch. 740**, Credit for Reinsurance
Filing number: **2022-027**
Effective date: 3/1/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

Superintendent of Insurance Eric Cioppa hereby adopts amendments to chapter 740, “Credit for Reinsurance.” These amendments implement the revisions made to 24-A MRS §731-B by PL 2021 ch. 16, *An Act To Revise Certain Financial Regulatory Provisions of the Maine Insurance Code*. The relevant provisions of chapter 16 clarify the confidentiality of copies of regulatory filings that are confidential in the reinsurer’s country of domicile, and allow credit for reinsurance ceded to reinsurers domiciled in reciprocal jurisdictions, thereby bringing state laws into conformity with the Covered Agreements between the federal government and the European Union and United Kingdom. These amendments to the Insurance Code and to the rule are based on recent amendments to the National Association of Insurance Commissioners Credit for Reinsurance Model Law and Model Regulation. These amendments also make various technical and editorial corrections to the rule.

Pursuant to a Notice of Rulemaking issued on September 20, 2021, Superintendent Cioppa held a public hearing on October 21, 2021, and the public comment period was open until November 1, 2021 at 4:30 p.m.

Two members of the public attended the hearing but neither offered comments. The only written comment was filed by Michelle Carroll Foster, Regional Vice President for State Relations of the American Council of Life Insurers (“ACLI”). ACLI supports the proposed amendments, but noted one necessary technical correction. Subparagraph 6(C)(7)(d) currently requires reinsurers applying for certification in Maine to file three years of audited financial statements. It has been amended to change that period to two years. However, ACLI pointed out that the proposed amendment neglected to make the same change from “three” to “two” in Subparagraph 6(C)(4)(g), referencing the Superintendent’s review of these financial statements. Without the requested correction, the rule would be both inconsistent with the Model Regulation and internally inconsistent.

The correction has been made, and the amendments are otherwise adopted as proposed.

Fiscal impact of rule:

No fiscal impact on state government.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Professional and Financial Regulation,
Bureau of Insurance

Umbrella-Unit: **02-031**

Statutory authority: 24-A M.R.S. §§ 212 and 2793

Chapter number/title: **Ch. 851**, Clear Choice Designs for Individual and Small Group Health Plans

Filing number: **2022-232**

Effective date: 12/4/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The purpose of the proposed amendment is to revise the process for developing health plan cost share designs for individual and, as applicable, small group health plans to conform to amendments to 24-A M.R.S. § 2793 by P.L. 2021, c. 361 § 3 (L.D. 1725, An Act To Clarify the Deferral of the Pooled Market and Link Small Employer Clear Choice to Pooling in the Made for Maine Health Coverage Act), and to make technical changes related to implementation issues observed during the Clear Choice program's first year.

Basis statement:

Acting Superintendent of Insurance Timothy N. Schott hereby adopts amendments to rule Chapter 851, "Clear Choice Designs for Individual and Small Group Health Plans," pursuant to 24-A M.R.S. §§ 212 and 2793. The purpose of the proposed amendments is to revise the process for developing health plan cost share designs for individual and, as applicable, small group health plans to conform to amendments to 24-A M.R.S. § 2793 by P.L. 2021, c. 361 § 3 (L.D. 1725, An Act To Clarify the Deferral of the Pooled Market and Link Small Employer Clear Choice to Pooling in the Made for Maine Health Coverage Act), and to make technical changes related to implementation issues observed during the Clear Choice program's first year.

Fiscal impact of rule:

No fiscal impact on state government.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Professional and Financial Regulation,
Bureau of Insurance
Umbrella-Unit: **02-031**
Statutory authority: 24-A MRS §§ 212, 2792(5)
Chapter number/title: **Ch. 856** (*New*), Combination of the Individual and Small Business
Health Insurance Risk Pools
Filing number: **2022-012**
Effective date: 1/24/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of the proposed rule is to establish the necessary conditions and procedures for implementation of the pooled individual and small group health insurance market, and the extension of Maine Guaranteed Access Reinsurance Association (MGARA) coverage to small group health insurance.

Basis statement:

Superintendent of Insurance Eric Cioppa hereby adopts chapter 856, *Combination of the Individual and Small Business Health Insurance Risk Pools*. This rule implements provisions of the Insurance Code added by PL 2019 ch. 653 (LD 2007), "An Act To Enact the Made for Maine Health Coverage Act and Improve Health Choices in Maine", as amended by PL 2021 ch. 361 (LD 1725), "An Act To Clarify the Deferral of the Pooled Market and Link Small Employer Clear Choice to Pooling in the Made for Maine Health Coverage Act".

Pursuant to a Notice of Rulemaking issued on September 10, 2021, Superintendent Cioppa held a public hearing on October 12, 2021, and the public comment period was open until October 25, 2021 at 4:30 p.m.

The rule was proposed to establish the necessary conditions and procedures for implementation of the pooled individual and small group health insurance market, and the extension of Maine Guaranteed Access Reinsurance Association (MGARA) coverage to small group health insurance as provided in 24-A MRS §3958(1)(A-1). It also authorizes MGARA to implement a retroactive reinsurance program for individual health insurance in 2022 and, if applicable, in any subsequent year in which the pooled market has not been implemented.

Fiscal impact of rule:

No fiscal impact on state government.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Professional and Financial Regulation,
Bureau of Insurance

Umbrella-Unit: **02-031**

Statutory authority: 24-A MRS §212; PL 2021 ch. 483 part C

Chapter number/title: **Ch. 857** (*New*), Small Business Health Insurance Premium Support Program

Filing number: **2022-049**

Effective date: 4/5/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To establish the necessary conditions and procedures to implement the Small Business Premium Support Program, including: the procedure for allocating the appropriated funding to Maine small group policyholders; setting the conditions and requirements for reimbursement to small group carriers of their provision of premium relief payments to small groups; and setting the conditions and requirements to provide reimbursement to small group carriers of their administrative costs in providing the premium relief payments.

Basis statement:

Superintendent of Insurance Eric A. Cioppa hereby adopts ch. 857, *Small Business Health Insurance Premium Support Program* (the “program”). This rule implements requirements of the program in accordance with 24-A MRS §212 and unallocated language in PL 2021 ch. 483 part C, *An Act To Provide Allocations for the Distribution of State Fiscal Recovery Funds* (LD 1733).

Pursuant to a Notice of Rulemaking issued October 22, 2021, a public hearing was convened via audio-visual link on November 22, 2021, and the public comment period was held open until December 3, 2021.

The rule was proposed to establish the necessary conditions and procedures to implement the Small Business Premium Support Program, including: the procedure for allocating the appropriated funding to Maine small group policyholders; setting the conditions and requirements for reimbursement to small group health insurance carriers of their provision of premium relief credits to small groups; and setting the conditions and requirements to provide reimbursement to small group carriers of their administrative costs in providing the premium relief credits.

Fiscal impact of rule:

PL 2021 c. 483 §C-2 allocates \$39,000,000 over FY 2021-22 and FY 2022-23 to the Bureau of Insurance to use to carry out the purposes of this program. The Bureau will oversee the distribution of premium relief payments to small group health insurers, and will monitor and audit the insurers’ compliance with the program.

Business owners who provide health insurance to their employees in Maine’s small group health insurance market will receive health insurance premium relief payments for 18 months starting November 2021. Business owners must share these payments with their enrolled employees proportionate to their contributions to group coverage.

The rule will provide health insurance premium relief to businesses and their enrolled employees in Maine’s small group health insurance market.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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,
American Sign Language Interpreters

Umbrella-Unit: **02-041**

Statutory authority: 32 MRS. §§ 1522(1), 1524-B, 1524©, 1528, 1528-A, 10 MRS
§§8003-H, 8003-5-A(D)

Chapter number/title: **Ch. 50**, Definitions
Ch. 51, Requirements for Initial Licensure and Licensure by
Endorsement
Ch. 52, License Renewal, Inactive Licensure Status and Continuing
Education
Ch. 54, Code of Ethics and Ethical Standards
Ch. 55, Complaints and Investigations (Repeal)

Filing number: **2022-182 thru 186**

Effective date: 9/20/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

This is a comprehensive rulemaking effort to repeal and replace existing chapters to align with various statutory changes, streamline the licensure provisions, remove duplicative and/or obsolete terms, identify licensure by endorsement requirements, clarify the continuing education and renewal requirements, outline the requirements for inactive licensure status, and identify standards of professional and ethical conduct.

Basis statement:

The American Sign Language Interpreters is a licensure program with the Office of Professional and Occupational Regulation (“OPOR”) and is changed by the Legislature with the regulation of interpreters and deaf interpreters in the State of Maine for the sole purpose to protect the public health and welfare. The Legislature granted the Director of OPOR rulemaking authority pursuant to 32 M.R.S. § 1522(1) to fully implement rule necessary for the proper administration and enforcement of the regulated profession.

This is a comprehensive rulemaking effort to repeal and replace existing chapters to align with various statutory changes, streamline the licensure provisions, remove duplicative and/or obsolete terms, identify licensure by endorsement requirements, clarify the continuing education and renewal requirements, outline the requirements for inactive licensure status, and identify standards of professional and ethical conduct.

Repeal and Replace Chapter 50 – “Definitions” (formerly “Definitions”)

- Deletes definitions that are either defined in statute or not referenced in rule.
- Amends existing definitions for accuracy.
- Adds definition of “extreme hardship”.

Repeal and Replace Chapter 51 – “Requirements for Initial Licensure and Licensure by Endorsement” (format “Requirements for Initial Licensure”)

- Identifies and clarifies existing statutory qualifications for initial licensure for certified interpreter, certified deaf interpreter, conditional interpreter, and conditional deaf interpreter.
- Identifies the qualifications for licensure by endorsement.
- Clarifies the qualifying score in meeting ASL proficiency for conditional licensure.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

- Identifies alternative pathways in meeting the education qualifications for conditional licensure.

Repeal and Replace Chapter 52 – “License Renewal, Inactive Licensure Status and Continuing Education” (formerly “Licensure Renewal and Continuing Education”)

- Identifies general requirements for renewal, late renewal and reinstatement of licensure.
- Identifies specific renewal requirements for conditional licenses and authorizes requests for “extreme hardship”.
- Identifies the continuing education requirements for each licensure type.
- Identifies content requirements for continuing education.
- Identifies eligible and ineligible continuing education activities.
- Identifies responsibility for documentation/audit regulations.
- Includes “audit findings” language.
- Clarifies requests for waivers, extensions, expectation for first renewals and inactive status.

Repeal and Replace Chapter 54 – “Code of Ethics and Ethical Standards” (formerly “Disclosure Statement”)

- Disclosure statement language was repealed pursuant to 2019 Public Law, Chapter 284.
- Replace with NAD-RID “Code of Ethics and Ethical Standards” excluding Tenet 6 relating to business practices and Tenet 7 relating to professional development as the continuing education requirements already address maintaining professional competency.

Repeal Chapter 55 – “Complaints and Investigations”

- Repeal

Fiscal impact of rule:

None

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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(8), 12252; 10 MRS §8003(4)

Chapter number/title: **Ch. 1**, Definitions
Ch. 6, Firm License requirements (*Repeal and replace*)

Filing number: **2022-160, 161**

Effective date: 8/31/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The Board of Accountancy repeals and replaces Chapter 6 of Board rules to more accurately describe the peer review process that certain firms are required to successfully participate in as a condition to the granting or renewal of licenses pursuant to 32 MRS §12252(8)

The rulemaking would also amend the Board's Chapter 1, *Definitions*, to more accurately reflect the terminology used throughout the rules, specifically, those used to describe the administration of firm peer reviews.

Basis statement:

The Maine Board of Accountancy (the "Board") is charged by the Legislature with the regulation of certified public accountants and accountancy firms in the State of Maine for the sole purpose of protecting the public health and welfare. 10 MRS §8008. The Legislature granted the Board rulemaking authority pursuant to 32 MRS §12214(4), to adopt such rules as may be reasonably necessary for the proper performance of its duties and the administration of its laws, including, but not limited to rules of professional conduct appropriate to establish and to maintain a high standard of integrity and of dignity in the profession of public accountancy.

The Board amends Chapter 1, *Definitions*, and repeals and replaces Chapter 6, *Firm License Requirements*.

The Board amends Chapter 1, *Definitions*, to update terms used in Board rules, specifically adding terms used to describe the peer review programs that some firms are required to successfully complete as a condition of the issuance of a license or a firm license renewal. The rule would add definitions for "administering entity," "enrollment in a peer review program," "NEPR," "Peer review oversight," "peer review program," and "sponsoring organization." The rule would remove the terms "approved reviewer," "licensed," "multi-jurisdictional firm," "off-site peer review," "on-site peer review," and "report acceptance body" from Chapter 1.

The Board repeals and replaces Chapter 6, currently titled *Accounting Firm License Requirements*, and change it to *Firm License Requirements*. The replacement would substantially conform board rules with the Uniform Accountancy Act rules on peer review and approve the AICPA as a sponsoring organization, along with its peer review program and standards, as well as NEPR as an administering entity of the AICPA peer review program. The rule would update how the Board tracks a firm's successful completion of a peer review. The rule would also repeal current rules regarding the conduct of a peer review, specifically removing the sections regarding "on-site" and "off-site" peer review, qualifications of approved reviewers, qualifications of report acceptance bodies, review of peer review reports by the Board, and the current rule regarding extensions of time to meet the peer review requirement.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

The rulemaking also eliminates the rule regarding peer review as it pertains to multi-jurisdictional firms in light of the recent statutory change authorizing firm mobility.

The purpose of these changes is to track both the peer review process more accurately as it is currently administered as well as the entities with direct oversight of the peer review process for firms with a Maine license. Board staff worked with Board members as well as representatives from the New England Peer Review (“NEPR”) and the American Institute of Certified Public Accountants (“AICPA”) in development of this rulemaking.

Fiscal impact of rule:

None anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 Real Estate Appraisers

Umbrella-Unit: **02-298**

Statutory authority: 32 MRS §14012

Chapter number/title: **Ch. 220**, Educational Course Requirements
Ch. 230, Supervising Appraiser Duties

Filing number: **2022-178, 179**

Effective date: 9/18/2022

Type of rule: Routine Technical

Emergency rule: No

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

Basis statement:

The Maine Board of Real Estate Appraisers (the “Board”) is charged by the Legislature with the regulation of real estate appraisers in the State of Maine for the sole purpose of protecting the public health and welfare. The Legislature granted the Board rulemaking authority pursuant to 32 MRS §14012.

The rulemaking amends the following chapters:

Chapter 220: Educational Course Requirements

Chapter 230: Supervising Appraiser Duties

Due to the nationwide public health emergency caused by the Coronavirus Disease (COVID-19), the Appraisal Qualifications Board (AQB) temporarily allowed its programs approved for in-person delivery to be offered via synchronous distance delivery. The change became permanent beginning January 1, 2022. The rulemaking would amend the Board’s rule setting forth criteria for continuing education program approval by removing the requirement that program attendees must be in the actual physical presence of the instructor, and would further amend the rule to permit synchronous distance education programs. Board approval of a program would be valid for both in-person and synchronous delivery.

The rulemaking also removes the requirement that a supervising appraiser, who is responsible for the training and direct supervision of a trainee real property appraiser, personally inspect a certain number of appraised properties with the trainee. The AQB requires a supervising appraiser to personally inspect each appraised property with the trainee appraiser until the supervising appraiser determines the trainee is competent to inspect the property in accordance with the Competency Rule of the Uniform Standards of Professional Appraisal Practice (USPAP) for the property type. The adopted rule removes the requirement that the supervising appraiser personally inspects each appraised property with the trainee for the first fifty (50) appraisals at a minimum and, instead, allows the supervising appraiser to determine when the trainee is competent in accordance with the Competency Rule of USPAP and no longer needs personal supervision for a particular property type. Accordingly, the rulemaking removes, as no longer necessary, the requirement that in the event the trainee had a series of supervising appraisers, the determination of competency must be made by the trainee’s most recent supervising appraiser on the basis of at least 25 supervised inspections.

Fiscal impact of rule:

Minimal. It is anticipated that the rule changes to the approval of continuing education programs that permit virtual synchronous interaction will expand the number of programs

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

that may be less burdensome to attend for licensees. It is not anticipated that the rule change to the minimum number of supervised appraisals for trainees will have any fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Professional and Financial Regulation,
Maine Board of Dental Practice

Umbrella-Unit: **02-313**

Statutory authority: 32 MRS §§ 18324, 18394

Chapter numbers/titles: **Ch. 15** (*New*), Practice Requirements for Teledentistry Services

Filing numbers: **2022-169**

Effective date: 9/7/2022

Type of rules: Routine Technical

Emergency rule: No

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

Basis statement:

This is a new rule identifying the practice requirements when dental professionals licensed by the Board utilize teledentistry services. This rule includes language specific to definitions, general requirements, scopes of practice, supervision and delegation, privacy and security, emergency services, codes of professional conduct, technology and equipment, and patient disclosure requirements.

Fiscal impact of rules:
None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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,
Electricians' Examining Board

Umbrella-Unit: **02-318**

Statutory authority: 32 MRS §§ 1101, 1102-C(4), 1151, 1153, 1153-A, 1203, 1203-A,
1204; 5 MRS §9001(4); 10 MRS §8007

Chapter number/title: **Ch. 100**, Definitions
Ch. 110, Conflict of Interest
Ch. 115, Advisory Rulings
Ch. 130, Examination and Licensing Requirements
Ch. 135, Electrical Permits
Repeal:
Ch. 125, Scope of Practice
Ch. 140, Board Fees
Ch. 170, Denial Appeals

Filing number: **2022-108 to 115**

Effective date: 6/7/2022

Type of rules: Routine Technical

Emergency rules: No

Principal reason or purpose for rule:

The principal reason is to update the proposed rulemaking based on specific findings that modifications were needed to conform the proposed rule to certain provisions of the Board's enabling statute.

Basis statement:

The Maine Electrician's Examining Board (the "Board") is charged by the Legislature with the regulation of electricians in the State of Maine for the sole purpose of protecting the public health and welfare. The Legislature granted the Board rulemaking authority pursuant to 21 MRS §1153. This rulemaking updates the rules to reflect changes to the law implemented as a result of PL 2017, Ch. 198. Subject matter currently addressed in the rule is now adequately covered in statute. The rulemaking also further defines terms used in statute and clarifies eligibility for examination and requirements for licensure to each licensing category. The rulemaking eliminates the reinstatement of a license that has been expired for more than 2 but less than 10 years.

Fiscal impact of rules:

None anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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), 3269(7)3300-AA, 3200-EE

Chapter numbers/titles: **Ch. 11**, Joint Rule Regarding Telehealth Standards of Practice

Filing numbers: **2022-139**

Effective date: 7/24/2022

Type of rules: Routine Technical

Emergency rule: No

Principal reason or purpose for rules:

(See Basis Statement)

Basis statement:

On June 21, 2021, Public Law Ch. 291 “An Act Regarding Telehealth Regulations” became law following emergency enactment. The law required licensing boards, including the Board of Licensure in Medicine, Board of Osteopathic Licensure, and State Board of Nursing, to adopt rules governing telehealth services by their licensees. The Board of Licensure in Medicine and Board of Osteopathic Licensure proposed amendments to an existing joint rule which was also adopted by the State Board of Nursing. The amended joint rule updates definitions to comport with definitions in PL Ch. 291 and includes terminology and requirements applicable to nurses.

Fiscal impact of rules:

Minimal

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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), 3269(7)3300-AA, 3200-EE

Chapter numbers/titles: **Ch. 12**, Joint Rule Regarding Office Based Treatment of
Opioid Use Disorder

Filing numbers: **2022-142**

Effective date: 7/24/2022

Type of rules: Routine Technical

Emergency rule: No

Principal reason or purpose for rules:

To amend an existing joint rule to update the definition of telemedicine to telehealth to comport with the definition in PL 2021 ch. 291, “An Act Regarding Telehealth Regulations”.

Basis statement:

The Board of Licensure in Medicine, the Board of Osteopathic Licensure, and the State Board of Nursing (Boards) were created by the Legislature with the sole purpose of protecting the public. 10 MRS §8008 provides:

§8008. Purpose of occupational and professional regulatory boards

The sole purpose of an occupational and professional regulatory board is to protect the public health and welfare. A board carries out this purpose by ensuring that the public is served by competent and honest practitioners and by establishing minimum standards of proficiency in the regulated professions by examining, licensing, regulating and disciplining practitioners of those regulated professions. **Other goals or objectives may not supersede this purpose.**

Fiscal impact of rules:

Minimal

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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(1)
Chapter number/title: **Ch. 1 (New)**, Collaborative Drug Therapy Management
Filing number: **2022-061**
Effective date: 4/25/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Establish a joint rule on collaborative drug therapy management between a licensed pharmacist and licensed nurse practitioner.

Basis statement:

The State Board of Nursing and the Board of Pharmacy adopted a new joint rule to allow collaborative practice agreements between authorized practitioners and pharmacists and to expand access to healthcare while ensuring that all patients receive the most appropriate healthcare possible and to provide safe and efficient care to the citizens of Maine.

Fiscal impact of rule:

Minimal.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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: 22 MRS §1812-G(3); 32 MRS §§ 2102(2)(D) and 8, 2104, 2153-A(1)

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

Filing number: **2022-257**

Effective date: 1/1/2023

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

This amends an existing rule regarding training programs and delegation by registered professional nurses of selected nursing tasks to certified nursing assistants to align with changes in the Certified Nursing Assistant – Medication (CAN-M) curriculum.

Basis statement:

The State Board of Nursing adopted amendments to an existing rule regarding training programs and delegation by registered professional nurses of selected nursing tasks to certified nursing assistants to align with changes I the Certified Nursing Assistant – Medication (CAN-M) curriculum.

Fiscal impact of rule:

Minimal.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 §§ 2102(2)(A), 2153-A(1), 2266 to 2270
Chapter number/title: **Ch. 11**, Joint Rule Regarding Telehealth Standards of Practice
Filing number: **2022-140**
Effective date: 7/24/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

On June 21, 2021, Public Law Chapter 291, “An Act Regarding Telehealth Regulations”, became law following emergency enactment. The law required licensing boards, including the Board of Licensure in Medicine (BOLIM), Board of Osteopathic Licensure (BOL), and State Board of Nursing (BON), to adopt rule governing telehealth services by their licensees, to include “standards of practice and appropriate restrictions”.

Basis statement:

The Board of Licensure in Medicine, the Board of Osteopathic Licensure, and the State Board of Nursing (Boards) were created by the Legislature with the sole purpose of protecting the public. 10 MRS §8008 provides:

§8008. Purpose of occupational and professional regulatory boards

The sole purpose of an occupational and professional regulatory board is to protect the public health and welfare. A board carries out this purpose by ensuring that the public is served by competent and honest practitioners and by establishing minimum standards of proficiency in the regulated professions by examining, licensing, regulating and disciplining practitioners of those regulated professions. **Other goals or objectives may not supersede this purpose.**

Fiscal impact of rule:

Minimal.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 §§ 2102(2)(A), 2153-A(1), 2210, 2270

Chapter number/title: **Ch. 12**, Joint Rule Regarding Office Based Treatment of Opioid
Use Disorder

Filing number: **2022-143**

Effective date: 7/24/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To amend an existing joint rule to update the definition of telemedicine to telehealth to comport with the definition in PL 2021 ch. 291, “An Act Regarding Telehealth Regulations”.

Basis statement:

The Board of Licensure in Medicine, the Board of Osteopathic Licensure, and the State Board of Nursing (Boards) were created by the Legislature with the sole purpose of protecting the public. 10 MRS §8008 provides:

§8008. Purpose of occupational and professional regulatory boards

The sole purpose of an occupational and professional regulatory board is to protect the public health and welfare. A board carries out this purpose by ensuring that the public is served by competent and honest practitioners and by establishing minimum standards of proficiency in the regulated professions by examining, licensing, regulating and disciplining practitioners of those regulated professions. **Other goals or objectives may not supersede this purpose.**

Fiscal impact of rule:

Minimal.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 §§ 2111(2), 2153-A(1)
Chapter number/title: **Ch. 13** (*New*), Criminal History Record Information
Filing number: **2022-117**
Effective date: 6/13/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule implements fingerprint-based background checks for all applicants for initial licensure or licensure by endorsement, including applications for multistate licensure. The Board of Nursing is required under 32 MRS §2111(2) to adopt rules to implement §2111.

Basis statement:

The Board of Licensure in Medicine, the Board of Osteopathic Licensure, and the State Board of Nursing (Boards) were created by the Legislature with the sole purpose of protecting the public. 10 MRS §8008 provides:

§8008. Purpose of occupational and professional regulatory boards

The sole purpose of an occupational and professional regulatory board is to protect the public health and welfare. A board carries out this purpose by ensuring that the public is served by competent and honest practitioners and by establishing minimum standards of proficiency in the regulated professions by examining, licensing, regulating and disciplining practitioners of those regulated professions. **Other goals or objectives may not supersede this purpose.**

It was with this purpose in mind that the Board approaches the current rulemaking regarding Chapter 13.

Pursuant to 32 MRS §2111, the Board must implement procedures for considering the criminal history record information of an applicant for initial licensure or licensure by endorsement, including applicants for multistate licensure.

Fiscal impact of rule:

Minimal.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Professional and Financial Regulation,
Board of Osteopathic Licensure
Umbrella-Unit: **02-383**
Statutory authority: 32 MRS §§ 2562, 2600-AA, 2600-EE
Chapter numbers/titles: **Ch. 11**, Joint Rule Regarding Telehealth Standards of Practice
Filing numbers: **2022-141**
Effective date: 7/24/2022
Type of rules: Routine Technical
Emergency rule: No

Principal reason or purpose for rules:

On June 21, 2021, Public Law Chapter 291, “An Act regarding Telehealth Regulations”, because law following emergency enactment. The law required licensing boards, including the Board of Licensure in Medicine (BOLIM), Board of Osteopathic Licensure (BOL), and State Board of Nursing (BON), to adopt rules governing telehealth services by their licensees, to include “standards of practice and appropriate restrictions”.

Basis statement:

The Board of Licensure in Medicine, the Board of Osteopathic Licensure, and the State Board of Nursing (Boards) were created by the Legislature with the sole purpose of protecting the public. 10 MRS §8008 provides:

§8008. Purpose of occupational and professional regulatory boards

The sole purpose of an occupational and professional regulatory board is to protect the public health and welfare. A board carries out this purpose by ensuring that the public is served by competent and honest practitioners and by establishing minimum standards of proficiency in the regulated professions by examining, licensing, regulating and disciplining practitioners of those regulated professions. **Other goals or objectives may not supersede this purpose.**

It is with this purpose in mind that the Boards approach the current rulemaking regarding Chapter 11.

Fiscal impact of rules:

Minimal

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Professional and Financial Regulation,
Board of Osteopathic Licensure
Umbrella-Unit: **02-383**
Statutory authority: 32 MRS §§ 2562, 2600-C, 2600-EE
Chapter numbers/titles: **Ch. 12**, Joint Rule Regarding Office Based Treatment of
Opioid Use Disorder
Filing numbers: **2022-144**
Effective date: 7/24/2022
Type of rules: Routine Technical
Emergency rule: No

Principal reason or purpose for rules:

To amend an existing joint rule to update the definition of telemedicine to telehealth to comport with the definition in PL 2021 ch. 291, “An Act Regarding Telehealth Regulations”.

Basis statement:

The Board of Licensure in Medicine, the Board of Osteopathic Licensure, and the State Board of Nursing (Boards) were created by the Legislature with the sole purpose of protecting the public. 10 MRS §8008 provides:

§8008. Purpose of occupational and professional regulatory boards

The sole purpose of an occupational and professional regulatory board is to protect the public health and welfare. A board carries out this purpose by ensuring that the public is served by competent and honest practitioners and by establishing minimum standards of proficiency in the regulated professions by examining, licensing, regulating and disciplining practitioners of those regulated professions. **Other goals or objectives may not supersede this purpose.**

It is with this purpose in mind that the Boards approach the current rulemaking regarding Chapter 12.

Fiscal impact of rules:

Minimal

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

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

Umbrella-Unit: **02-392**

Statutory authority: 32 MRS §13720

Chapter number/title: **Ch. 39-A (New)**, Collaborative Drug Therapy Management

Filing number: **2022-060**

Effective date: 4/25/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

Establish a joint rule on collaborative drug therapy management between a licensed pharmacist and licensed nurse practitioner.

Basis statement:

The State Board of Nursing and the Maine Board of Pharmacy were created by the Legislature with the sole purpose of protecting the public. 10 M.R.S. § 8008 provides:

§8008. Purpose of occupational and professional regulatory boards

The sole purpose of an occupational and professional regulatory board is to protect the public health and welfare. A board carries out this purpose by ensuring that the public is served by competent and honest practitioners and by establishing minimum standards of proficiency in the regulated professions by examining, licensing, regulating and disciplining practitioners of those regulated professions. **Other goals or objectives may not supersede this purpose.**

It is with this purpose in mind that the boards approach the current rule making regarding Chapter 1.

The Boards recognize that the Maine Legislature enacted 2013 Public Law Chapter 308 to allow collaborative practice agreements between authorized practitioners and pharmacists and to expand access to healthcare while ensuring that all patients receive the most appropriate healthcare possible and to provide safe and efficient care to the citizens of Maine.

The Current Rulemaking Initiative

The rule is comprised of the following sections:

Section 1 defines various significant terms used in the rule. Notably, this section defines the term “qualifying condition” using the language of the statute “conditions or diseases with generally accepted standards of care.” The definition of “qualifying condition” also provides a list of recognized examples. The list is intended only to provide examples and is not exclusive. See 32 MRS §§ 13702-A, 13844(1), and 13845.

Section 2 provides that a pharmacist must submit an application to the Board of Pharmacy and must meet the qualifications set forth in statute in order to enter

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

into a collaborative practice agreement with a practitioner. The qualifications include completing certain continuing education hours prior to application and in each year of a collaborative practice agreement thereafter. These continuing education requirements are set forth in statute. This section also provides that the pharmacist must submit to both the Board of Pharmacy and the board that licenses the practitioner a copy of the collaborative practice agreement, which includes a copy of the required treatment protocol. See 32 MRS §§ 13735, 13842, and 13843(1).

Section 3 provides that a collaborative practice agreement may authorize collaborative drug therapy management only for qualifying conditions, as set forth in statute, and also provides the specific content that a collaborative practice agreement must include. The content criteria in subsections 1 - 9 reiterate the minimum requirements set forth in statute. Subsections 10 - 13 set forth additional requirements. See 32 MRS §§ 13843(5), (6) and 13844(1).

Section 4 provides the minimum content requirements for a treatment protocol. A treatment protocol must specify and describe informed consent procedures, the pharmacist's scope of activities, documentation requirements, and reporting procedures. In addition, a treatment protocol must set forth a provision that allows the practitioner to override a decision made by the pharmacist when appropriate, as well as a provision that provides for periodic review and revision of the drug therapy management. See 32 MRS §§ 13843(2), 13845, and 13846.

Section 5 requires the pharmacist to notify the Board of Pharmacy and the board that licenses the practitioner no later than 10 days after any modification to a collaborative practice agreement or treatment protocol, or any change in liability insurance.

Section 6 requires the pharmacist to comply with the record retention and production requirements set forth in Chapter 24 of the Board of Pharmacy rules for any records received or created by the pharmacist pursuant to this rule.

Section 7 provides that the Board of Pharmacy or the licensing board that licenses the practitioner may share complaint and investigative information related to a collaborative practice agreement as permitted by 10 MRS § 8003-B(2).

Section 8 sets forth that any party to a collaborative practice agreement has a duty to report disciplinary action. This section also provides that the Board of Pharmacy and the State Board of Nursing must notify each other of any disciplinary action taken against a party to a collaborative practice agreement.

With this rule, the Boards seek to ensure safe and effective collaborative practice agreements between a pharmacist and practitioner.

The boards published the proposed joint rule for public comment on December 1, 2022. The comment period for the proposed rule closed on January 3, 2022. The boards received 3 comments regarding the proposed joint rule, which is attached to this Basis Statement and Response to Comments.

Fiscal impact of rule:

Minimal.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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
Plumbers' Examining Board

Umbrella-Unit: **02-395**

Statutory authority: 32 MRS §§ 3403-A, 3403-B(1), 3302

Chapter number/title: **Ch. 4**, Installation Standards

Filing number: **2022-022**

Effective date: 2/23/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The rulemaking amends the recently adopted ch. 4, *Installation Standards*, which establishes installation rules and incorporates by reference into board rule the International Association of Plumbing and Mechanical Officials *Uniform Plumbing Code* ("UPC"), Copyright © 2020 29th edition, Third Printing, May 2021, subject to certain amendments and exclusions. The rule makes the following changes to the version of the UPC as adopted by the Board: amend Ch. 501.1, Applicability; exclude Table 501.1(1), Water Heaters; adopt Table 501.1(2), First Hour Rating; exclude Ch. 505.1, Water Heaters; exclude Ch. 505.2, Safety Devices; and exclude Ch. 721.0, Location through Ch. 723.1, General.

Go to <https://www.maine.gov/pfr/professionallicensing/professions/plumbers-examining-board> to find the proposed rule and related rulemaking documents.

The Board adopted ch. 4 as a repeal and replace at its August 9, 2021 meeting. The Board voted in favor of an effective date of January 1, 2022.

At its October 4, 2021 meeting, the Board voted to propose rulemaking to modify the adopted rule for clarity and consistency; specifically to avoid adopting standards which may conflict with standards enforced by other agencies and not within the jurisdiction of the Plumbers' Examining Board.

The Board received no comments to the proposed rulemaking and voted to adopt the rule at its December 13, 2021 meeting.

Basis statement:

The Maine Plumbers' Examining Board (the "Board") is charged by the Legislature with the regulation of plumbers in the State of Maine for the sole purpose of protecting the public health and welfare. The Legislature granted the Board rulemaking authority pursuant to 32 MRS §3403-A(1). More specifically, the board is directed pursuant to 32 MRS §3403-B(1) to adopt minimum rules relating to plumbing, including a plumbing code.

Fiscal impact of rule:

None anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Professional and Financial Regulation,
Office of Professional and Occupational Regulation,
Board of Social Worker Licensure

Umbrella-Unit: **02-416**

Statutory authority: 32 MRS §§ 7030(2), 7053, 7060

Chapter number/title: **Ch. 10,** Definitions
Ch. 11, Advisory Rulings
Ch. 12, Licensure by Endorsement (*formerly* Application for Licensure)
Ch. 13, Licensure
Ch. 14, Continuing Professional Education
Ch. 15, Scope of Practice
Ch. 16, Code of Ethics and Grounds for Discipline (*formerly* Enforcement and Disciplinary Procedures)
Ch. 17, Record Retention Requirements
Ch. 18 (*New*), Telehealth

Filing numbers: **2022-196 to 204**

Effective date: 10/11/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

The Maine Board of Social Worker Licensure (the “Board”) is charged by the Legislature with the regulation of social workers in the State of Maine for the sole purpose of protecting the public health and welfare. The Legislature granted the Board rulemaking authority pursuant to 32 MRS §7030.

The principal reasons for this rulemaking was to: (1) update the Board’s current rules, (2) adopt rules to implement Licensure by Endorsement pursuant to Public Law 2021, Chapter 167, “An Act to Facilitate Licensure for Credentialed Individuals from Other Jurisdictions”, and (3) adopt rules to implement Public Law 2021, Chapter 291, “An Act Regarding Telehealth Regulations”.

The rules were initially noticed for comment on April 20, 2022. At its June meeting, the Board reviewed the comments and directed Board staff to make additional changes to Chapter 13, “Licensure”. Those changes were noticed on June 29, 2022, and comments were accepted through July 29, 2022 at 5:00 p.m.

Chapter 10, Definitions: The rulemaking clarifies terms used to describe educational and experience requirements for licensure, to update the term “sexual misconduct” to include violations that occur during electronic communication, and to update the definition of “organic mental illness” to reflect the term as used in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders*.

Chapter 11, Advisory Rulings: The rulemaking adopts minor, technical formatting amendments.

Chapter 12, Application for Licensure: The rulemaking repeals and replaces Chapter 12, currently titled “Application for Licensure”, relocating relevant provisions to Chapter 13 and replacing the rule with a newly created Chapter 12, titled “Licensure by Endorsement”. This chapter describes the pathway for Maine licensure for applicants with an active license in a U.S. jurisdiction that maintains licensing requirements that are substantially similar to

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Maine's requirements. This rule implements LD 149 (PL 2021 ch. 167), "An Act to Facilitate Licensure for Credentialed Individuals from Other Jurisdictions".

Chapter 13, Licensure: The rulemaking amends this chapter by incorporating sections relocated from the former Chapter 12, "Application for Licensure", removing submission of letters of professional recommendation from the requirements for initial licensure, clarifying which licensed professionals are qualified to provide consultation hours, amending the rule to reflect that consultation hours may be completed in person, through video or audio-only technology, or any combination thereof, and may be individual or in a group of not more than 8 members; and clarifies that "social work employment" as the term is used in rule must consist entirely of work that is compensated financially. At its June meeting, the board directed staff to make additional changes to Chapter 13, "Licensure", in response to comments received from the public.

The changes to Chapter 13 add to the categories of licensees that may serve as consultants for a licensed master social worker conditional (clinical) licensee to satisfy the requirement of hours needed to obtain the licensed clinical social worker level of license. The rule expands the categories of acceptable licensees to serve as consultants to include licensed marriage and family therapists, licensed psychologists, licensed psychiatrists, or any similarly-credentialed licensee from any state or country.

The changes would also clarify the board's intent that the hours of consultation required for either an active social worker-conditional license applying to be a licensed social worker or a licensed master social worker conditional clinical must be in-person, or via live, synchronous video technology, or any combination thereof, and may be completed individually or in a group of not more than eight (8) members. Audio-only technology is not permitted. For the consultation for the licensed master social worker conditional clinical level of license, a minimum of 72 of the 96 hours must be completed through individual consultation for those individuals with master's degrees in clinical concentrations and for those with degrees in nonclinical concentrations, 144 hours must be completed through individual consultation.

Chapter 14, Continuing Professional Education: The rulemaking adopts amendments to this chapter by incorporating a new statutory requirement pursuant to 32 MRS §7060 to complete course work in family or intimate partner violence, clarifying the retention rule for documentation of continuing education activities, and making amendments to the scope of acceptable continuing professional education activities, specifically delineating the number of hours that may be earned through sessions in which immediate interaction with the instructor is/is not available, and hours that may be earned through teaching, writing and/or independent study.

Chapter 15, Scope of Practice: The rulemaking adopts minor, technical amendments to clarify the terminology used to describe the different categories of licenses described therein.

Chapter 16, Enforcement and Disciplinary Procedures: The rulemaking adopts to amend Chapter 16, currently titled "Enforcement and Disciplinary Procedures", by amending the title to "Code of Ethics and Grounds for Discipline". The amendments would omit the procedures for imposing discipline and conduct of adjudicatory hearings that are contained elsewhere in Maine law, namely in Title 10, Section 8003 and Title 5, Chapter 375. The amendments clarify what activities considered "misconduct," incorporate by reference the *Code of Ethics* Adopted by the National Association of Social Workers (NASW) © 2021, and amends what conduct is considered "sexual misconduct."

Chapter 17, Record Retention Requirements: The rulemaking adopts minor, technical formatting amendments to this chapter.

Chapter 18, Telehealth: The rulemaking adopts a new rule, Chapter 18, "Telehealth", to implement the provisions of PL 2021 ch. 291 (32 MRS §§ 7071 *et seq.*) by establishing

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

standards of practice and appropriate restrictions for when licensees use telehealth to provide services to clients.

Fiscal impact of rule:

Minimal.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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: 25 MRS §1612
Chapter number/title: Ch. 4 (New), Line of Duty Death Benefits for Corrections Officers
Filing number: 2022-080
Effective date: 5/18/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The purpose of this rule is to establish a process governing the award of death benefits to the child, spouse, or parent of a corrections officer who dies while in the line of duty as required by 25 MRS §1612.

Fiscal impact of rule:
None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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: PL 2021 ch. 376
Chapter number/title: **Ch. 10**, Policy and Procedures Manual – Adult:
Subsection 27.2, Supervised Community Confinement
Filing number: 2022-005
Effective date: 1/10/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The primary reason this rule is being adopted is to make permanent and expand on the emergency amendment to the rule governing supervised community confinement in order to fulfill the requirements of 34-A MRS section 3036-A, as amended by Public Law 2021 ch. 376, entitled “An Act To Provide Pathways to Rehabilitation, Reentry and Reintegration.”

Basis statement:

This rule fulfills the requirements of 34-A MRS section 3036-A, as amended by Public Law 2021 ch. 376, entitled “An Act to Provide Pathways to Rehabilitation, Reentry and Reintegration.” The provisions in this rule establish the timeframes for when a resident of a Department of Corrections adult facility is eligible to apply for transfer to supervised community confinement, the application process, the criteria and process for determining whether a resident is approved for transfer, and requirements after transfer to supervised community confinement.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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: PL 2021 ch. 376; 34-A MRS §3036-A
Chapter number/title: Ch. 10, Policy and Procedures Manual – Adult:
Subsection 27.2, Supervised Community Confinement
Filing number: 2022-239 (*Repeal and replace*)
Effective date: 12/21/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The primary reason this rule is being adopted is to incorporate recently enacted legislation to comply with the requirements of 34-A MRSA Section 3036-A, as amended by Public Law 2021, Chapter 376, entitled “An Act to Provide Pathways to Rehabilitation, Reentry and Reintegration.” In addition, the provisions in this rule establish the timeframes for when a resident of a Department of Corrections adult facility is eligible to apply for transfer to supervised community confinement, the application process, the criteria and process for determining whether a resident is approved for transfer, and requirements after transfer to supervised community confinement.

Basis statement:

The Maine Department of Corrections repealed and replaced the former Ch. 10, Subsection 27.2, “Supervised Community Confinement” rule to incorporate recently enacted legislation to comply with the requirements of 34-A MRSA Section 3036-A, as amended by Public Law 2021, Chapter 376, entitled “An Act to Provide Pathways to Rehabilitation, Reentry and Reintegration.” In addition, the provisions in this rule establish the timeframes for when a resident of a Department of Corrections adult facility is eligible to apply for transfer to supervised community confinement, the application process, the criteria and process for determining whether a resident is approved for transfer, and requirements after transfer to supervised community confinement.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 MRS §3035
Chapter number/title: Ch. 10, Policy and Procedures Manual – Adult:
Subsection 27.3, Community Transition Program
Filing number: 2022-240 (*Repeal and replace*)
Effective date: 12/21/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The Department initiated rulemaking on Ch. 10, Subsection 27.3, “Community Transition Program”, to change the timeframe for when a resident of a Department of Corrections adult facility is eligible for a community transition program from two (2) years to no more than three (3) years prior to the resident’s current custody release date. In addition, provisions in this rule establishes the application process, the criteria and process for determining whether a resident is approved for a community transition program, and requirements while in the program.

Fiscal impact of rule:
None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 MRS §3035
Chapter number/title: Ch. 10, Policy and Procedures Manual – Adult:
Subsection 27.4, Furlough Program
Filing number: 2022-241 (*Repeal and replace*)
Effective date: 12/21/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The Department adopts the Ch. 10 Subsection 27.4, “Furlough Program” rule to change the timeframe for when a resident of a Department of Corrections adult facility is eligible for a furlough from two (2) years to no more than three (3) years prior to the resident’s current custody release date. In addition, provisions in this rule establishes the application process, the criteria and process for determining whether a resident is approved for furlough, and requirements while on a furlough.

Fiscal impact of rule:
None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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(5)
Chapter number/title: Ch. 10, Policy and Procedures Manual – Adult:
Subsection 29.1, Adult Resident Grievance Process, General
Filing number: 2022-028
Effective date: 3/8/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The primary reason this rule is being adopted is to repeal and replace the current rule, adopted in 2012, in order to streamline and improve the adult facility resident general grievance process. The provisions in this adopted rule clarify what a grievable matter consists of, establish new timelines for the filing of a grievance, require that the informal resolution process be initiated by the Grievance Review Officer, clarify other staff responsibilities, better describe abuses of the grievance process, strengthen record keeping and audit requirements, and make other improvements to the process.

Fiscal impact of rule:
None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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(5)
Chapter number/title: Ch. 10, Policy and Procedures Manual – Adult:
Subsection 29.2, Adult Resident Grievance Process, Health Care
Filing number: 2022-029
Effective date: 3/8/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The primary reason this rule is being adopted is to repeal and replace the current rule, adopted in 2012, in order to streamline and improve the adult facility resident general grievance process. The provisions in this adopted rule clarify what a grievable matter consists of, establish new timelines for the filing of a grievance, require that the informal resolution process be initiated by the Grievance Review Officer, clarify other staff responsibilities, better describe abuses of the grievance process, strengthen record keeping and audit requirements, and make other improvements to the process.

Fiscal impact of rule:
None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Education
Umbrella-Unit: 05-071
Statutory authority: 20-A MRS §254(5)(A-C); PL ch. 115
Chapter number/title: Ch. 40, Rule for Medication Administration in Maine Schools
Filing number: 2022-057
Effective date: 5/12/2022
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

Statutory revisions which need to be addressed in rule.

Basis statement:

This rule provides directions to public and private schools approved pursuant to 20-A MRSA §2902 in the administration of medication to students during the students' attendance in school programs. It is to assist school administrative units in implementing the provision of the medication statute [20-MRSA §254(5)(A-D)J that provides direction for training of unlicensed school personnel in the administration of medication, requires that students be allowed to carry and self-administer prescribed emergency medications; specifically, asthma inhalers, epinephrine auto-injectors, or prescribed medications or devices for the management of diabetes with health care provider approval and school nurse assessment demonstrating competency. It provides direction for students to use sunscreen as well as provides guidelines for schools who intend to make naloxone available in the case of suspected opioid overdose.

The Department is proposing the current amendments to the rule to comply with statutory changes related to sunscreen and naloxone and improve practices of medication administration in schools statewide.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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: Chapter 60 – PL 1999 C.776, §21;
Chapter 61 - 20-A M.R.S.A. §3
20-A M.R.S.A. §405(3)(J)
20-A M.R.S.A. §15905, sub-§4
P.L. 2001, c. 439, Part 0000, §0000-3
P.L. 2007, c. 240, Part MM, Chapter 103-A
P.L. 2008, c.223
Chapter number/title: Ch. 60, New School Siting Approval
Filing number: 2022-089
Effective date: 6/10/2022
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

As the result of Resolve 2021 Chapter 114, the State Board of Education was required to amend rule Chapter 60, 61 and 125 to require standards governing air quality and ventilation for all public schools including schools with mechanical and non-mechanical ventilation systems. Therefore, the State Board proposed in a targeted rulemaking for Chapter 60 to (Insert) New “SECTION 6. Other Considerations” (on page 3) that states “The school administrative unit will utilize the best- available practice national standards of the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) for inspection, maintenance, ventilation and filtration.”

Therefore, the State Board proposed in a targeted rulemaking for Chapter 61 to in SECTION 6 SCHOOL CONSTRUCTION ELIGIBILITY AND APPROVAL PROCESS

2. Eligibility for State Funding

(insert) “I. Ventilation Requirements” (page 15) that states “The school administrative unit will utilize the best- available practice national standards of the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) for inspection, maintenance, ventilation and filtration.”

Therefore, the State Board and the Department of Education proposed in a targeted rulemaking for Chapter 125 to in SECTION 5 OTHER MINIMUM REQUIREMENTS

5.10 Health, Sanitation, and Safety Requirements

D. Air Quality (page 14) (insert) that states “The school administrative unit will utilize the best- available practice national standards of the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) for inspection, maintenance, ventilation and filtration.”

Basis statement:

The school administrative unit will utilize the best available practice national standards of the American Society of Heating, refrigerating and Air Conditioning Engineers (ASHRAE) for inspection, maintenance, ventilation and filtration.

Fiscal impact of rule:

Under Maine statute the school administrative units are to follow national standards of the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) for inspection, maintenance, ventilation and filtration.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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: Chapter 60 – PL 1999 C.776, §21;
Chapter 61 - 20-A M.R.S.A. §3
20-A M.R.S.A. §405(3)(J)
20-A M.R.S.A. §15905, sub-§4
P.L. 2001, c. 439, Part 0000, §0000-3
P.L. 2007, c. 240, Part MM, Chapter 103-A
P.L. 2008, c.223
Chapter number/title: Ch. 61, Rules for Major Capital School Construction Projects
Filing number: 2022-090
Effective date: 6/10/2022
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

As the result of Resolve 2021 Chapter 114, the State Board of Education was required to amend rule Chapter 60, 61 and 125 to require standards governing air quality and ventilation for all public schools including schools with mechanical and non-mechanical ventilation systems. Therefore, the State Board proposed in a targeted rulemaking for Chapter 60 to (Insert) New “SECTION 6. Other Considerations” (on page 3) that states “The school administrative unit will utilize the best- available practice national standards of the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) for inspection, maintenance, ventilation and filtration.”

Therefore, the State Board proposed in a targeted rulemaking for Chapter 61 to in SECTION 6 SCHOOL CONSTRUCTION ELIGIBILITY AND APPROVAL PROCESS

2. Eligibility for State Funding

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5.10 Health, Sanitation, and Safety Requirements

D. Air Quality (page 14) (insert) that states “The school administrative unit will utilize the best- available practice national standards of the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) for inspection, maintenance, ventilation and filtration.”

Basis statement:

The school administrative unit will utilize the best available practice national standards of the American Society of Heating, refrigerating and Air Conditioning Engineers (ASHRAE) for inspection, maintenance, ventilation and filtration.

Fiscal impact of rule:

Under Maine statute the school administrative units are to follow national standards of the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) for inspection, maintenance, ventilation and filtration.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 §13006-A; PL 2021 ch. 228
Chapter number/title: Ch. 115, The Credentialing of Education Personnel
Filing number: 2022-088
Effective date: 6/10/2022
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

Refine Chapter 115 to be more understandable and user friendly. A Consensus rulemaking process was undertaken with members of the Professional Standards Board. A second comment period was undertaken to review three substantial changes to the original proposal:

- Refined some of the grade spans
- Reinstated Adaptive Physical Education (APE) endorsement
- Revised language per P.L.2021, Chapter 348, which requires rules which used the term ‘hearing impaired’ be changed to ‘hard of hearing’.

Basis statement:

LD 1189 was enacted in the House on June 9, 2021 and in the Senate on June 10, 2021. The Governor signed the emergency measure into Public Law 2021, Chapter 228 on June 16, 2021. Further, the Public Law states “**Rulemaking; applicability.** The State Board of Education shall amend Department of Education rule Chapter 115 regarding the credentialing of education personnel in accordance with this Act. Notwithstanding the Maine Revised Statutes, Title 20-A, section 13006-A, subsection 3, a person who is subject to the provisions of Title 20-A, section 13006-A, subsection 3 on the effective date of this Act may choose to be certified either pursuant to the rules effective prior to the effective date of this Act or under the amended rules adopted by the State Board of Education pursuant to this Act. Therefore, the State Board is proposing revisions to Chapter 115, a major substantive rule.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: **State Board of Education** (*Joint rule with the Department of Education*)
Umbrella-Unit: **05-071**
Statutory authority: **Chapter 60** – PL 1999 C.776, §21;
Chapter 61 - 20-A M.R.S.A. §3
20-A M.R.S.A. §405(3)(J)
20-A M.R.S.A. §15905, sub-§4
P.L. 2001, c. 439, Part 0000, §0000-3
P.L. 2007, c. 240, Part MM, Chapter 103-A
P.L. 2008, c.223
Chapter number/title: **Ch. 125**, Basic Approval Standards
Filing number: **2022-091**
Effective date: 6/10/2022
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

As the result of Resolve 2021 Chapter 114, the State Board of Education was required to amend rule Chapter 60, 61 and 125 to require standards governing air quality and ventilation for all public schools including schools with mechanical and non-mechanical ventilation systems. Therefore, the State Board proposed in a targeted rulemaking for Chapter 60 to (Insert) New “SECTION 6. Other Considerations” (on page 3) that states “The school administrative unit will utilize the best- available practice national standards of the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) for inspection, maintenance, ventilation and filtration.”

Therefore, the State Board proposed in a targeted rulemaking for Chapter 61 to in SECTION 6 SCHOOL CONSTRUCTION ELIGIBILITY AND APPROVAL PROCESS

2. Eligibility for State Funding

(insert) “I. Ventilation Requirements” (page 15) that states “The school administrative unit will utilize the best- available practice national standards of the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) for inspection, maintenance, ventilation and filtration.”

Therefore, the State Board and the Department of Education proposed in a targeted rulemaking for Chapter 125 to in SECTION 5 OTHER MINIMUM REQUIREMENTS

5.10 Health, Sanitation, and Safety Requirements

D. Air Quality (page 14) (insert) that states “The school administrative unit will utilize the best- available practice national standards of the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) for inspection, maintenance, ventilation and filtration.”

Basis statement:

The school administrative unit will utilize the best available practice national standards of the American Society of Heating, refrigerating and Air Conditioning Engineers (ASHRAE) for inspection, maintenance, ventilation and filtration.

Fiscal impact of rule:

Under Maine statute the school administrative units are to follow national standards of the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) for inspection, maintenance, ventilation and filtration.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 M.R.S.
Chapter number/title: Ch. 132, Learning Results: Parameters for Essential Instruction
Filing number: 2022-058
Effective date: 5/12/2022
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

As part of this revision, the Health Education & Physical Education, Visual & Performing Arts, and World Languages standards have been reformatted into the newly designed Maine Learning Results structure. This structure divides each 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.

Basis statement:

The proposed **Health Education & Physical Education** standards have been revised to identify Health Education as a strand and Physical Education as a strand to better delineate the unique standards and performance expectations in each. For the Health Education strand, the proposed draft is closely aligned to the National Health Education Standards and includes minor adjustments to wording for clarification and the combining or elimination of some language in order to be more clear, concise, and appropriate (for the age level or age span). In addition, content topics and examples were removed from the Performance Expectations as the committee felt they were limiting the content by implying those were the only topics to be addressed. For the Physical Education strand, several standards were renamed and/or restructured and the performance expectations reworded to better meet the needs of Maine educators.

The proposed **Visual & Performing Arts** standards have been adapted from the National Core Arts Standards while still including those items that Maine arts educators felt are specific to their work with Maine students.

The two biggest changes to the document include the addition of **Media Arts** standards, a rapidly developing field of the creative economy that includes audio, video, digital design, and mixed media creations, and the realignment of strands that separate each arts discipline into its own collection of unique standards and performance expectations (previously, three of the five arts standards were universal across all arts disciplines; now, they are individualized for each discipline.) Although some disciplines share the same standards, their performance expectations are unique.

The proposed **World Languages** standards are in alignment to national standards (ACTFL World-Readiness Standards for Learning Languages), which were published in 2012, and are designed to meet the needs of Maine educators. Whereas the current standards include four strands, in the proposed draft, they have been reorganized into five strands, consistent with the five goal areas represented in the national standards. To make this shift,

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

concepts included in the four original strands were retained but categorized differently in order to align with the five goal areas. For example, language comparisons appears in the Communication strand in the current standards, while in the proposed draft it appears in the Comparisons strand.

Another substantial shift is the inclusion of proficiency levels in addition to grade spans. The current standards represent a full pre-K to Grade 12 progression of language learning. The proposed draft also offers this full progression, while at the same time providing multiple entry points by directing educators to begin at the current level of proficiency of their students. For example, if a program begins in Kindergarten, the educator will start by addressing the Kindergarten/Novice Low performance expectations. If the program begins in 7th grade, the educator will start with the performance expectations in the same Kindergarten/Novice

Low level, in order to appropriately target instruction to students' current proficiency level. Finally, a third shift is within the performance expectations themselves. In the current standards, performance expectations direct educators to focus on specific topics and skills within the standard. However, the proposed draft mirrors the national standards in its intention to provide general, universally applicable performance expectations that can be tailored to all languages, whether modern, classical, or signed. Supplemental resources will provide greater guidance on how to tailor them to specific languages, particularly classical and signed languages, which differ from modern languages in terms of uses, communities of speakers/users, and cultures.

It is also important to note that the NCSSFL-ACTFL Can-Do Statements, which include general Communication and Intercultural Communication, provided the basis for the performance expectations in the proposed standards. The performance expectations in the Communication strand are based on the Can-Do Statements for interpersonal, interpretive, and presentational communication. For the four remaining strands, performance expectations were established based primarily on the Intercultural Communication Can-Do Statements.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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-A
Chapter number/title: Ch. 169 (New), Stationary Generators
Filing number: 2022-205
Effective date: 10/9/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this regulation is to ensure that the operation of new stationary generators does not negatively impact air quality or public health. The standards and requirements proposed are based on standards and requirements in Federal and State regulations applicable to similar equipment when used in other applications.

Basis statement:

The purpose of this regulation is to ensure that the operation of new stationary generators does not negatively impact air quality or public health. The standards and requirements proposed are based on standards and requirements in Federal and State regulations applicable to similar equipment when used in other applications.

In accordance with 38 MRS §§ 585 and 585-A, the formal rulemaking process began on August 5, 2021, when the Department of Environmental Protection (Department) presented its proposal to the Board of Environmental Protection (Board) and requested that a public hearing be held on September 16, 2021. No member of the public or regulated community elected to testify at the hearing, however, comments were received during the written comment period, which closed on September 27, 2021. Based on the comments received, the Department made changes to the rule and reposted the proposed rule for additional comments on December 16, 2021. The Department again made changes to the rule to incorporate suggestions provided during the written comment period and reposted the rule on May 5, 2022, with the final comment period closing on June 20, 2022.

During the course of the proceedings, the Department received comments on this proposal from nine interested parties during the public comment periods. Only one interested party commented on the final proposed rule during the pendency of the final comment period. The final proposed rule incorporates a number of suggested changes raised during earlier comment periods, including:

- Clarification that generators previously included in an air emission license prior to the effective date of the proposed rule are exempt;
- Clarification that generators powered by engines firing digester gas are exempt;
- Changing the threshold for more stringent emission standards and stack height requirements from 1,000 kilowatts to 1,000 brake horsepower for clarity and consistency with federal regulations;
- Addition of three new options for achieving compliance with this rule for large emergency generators including limiting the engine's total use to less than 500 hours per year or submission of either an ambient air quality dispersion modeling analysis or a qualitative ambient impact screening analysis which demonstrates to the Department's satisfaction that the engine will not cause or contribute to violations of ambient air quality standards;
- Clarification of the process for calculation of 60% Good Engineering Practice (GEP) stack height used to exhaust some generator engines regulated by the rule; and

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

- Addition of the option of submitting a qualitative ambient impact screening analysis to demonstrate compliance with stack height requirements established by the rule.

Fiscal impact of rule:

Applicants intending to install generators powered by engines with a rated output equal to or greater than 1,000 brake horsepower may be required to use engines subject to more stringent emission standards than previously allowed or conduct additional analyses. These applicants may be required to install taller stacks or perform additional analyses to demonstrate compliance with Ambient Air Quality Standards. These are all activities which may add cost to the applicant's project. However, these applicants would be subject to similar requirements based on recent case-by-case determinations of BACT. The added certainty and clarity from this rule will facilitate a more efficient permitting process while yielding the same or similar outcomes, so there is little to no expected negative fiscal impact in comparison to the regulations already in place.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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-A
Chapter number/title: Ch. 170 (New), Degassing of Petroleum Storage Tanks, Marine Vessels, and Transport Vessels
Filing number: 2022-121
Effective date: 6/27/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Tanks and vessels that contain petroleum products must be emptied of product, and the vapors in the tank or vessel evacuated (degassed), before performing internal cleaning, inspections, maintenance, or repair work. The purpose of this regulation is to minimize emissions from the degassing of certain petroleum storage tanks, marine vessels, and transport vessels, and to ensure that these operations do not negatively impact air quality or public health. The standards and requirements proposed are based on, and consistent with, control requirements in other jurisdictions.

Basis statement:

The purpose of this regulation is to minimize emissions from the degassing of certain petroleum storage tanks, marine vessels, and transport vessels and to ensure that these operations do not negatively impact air quality or public health. The standards and requirements proposed are based on, and consistent with, control requirements in other jurisdictions.

In accordance with 38 MRS §§ 585 and 585-A, the formal rulemaking process began in mid-December, 2021, when the Department presented its proposal to the Board of Environmental Protection (Board) and requested that a public hearing be held on February 3, 2022. During the February 3rd public hearing, the Board heard testimony from the regulated community, interested parties, and the public. Additional comments were received during the written comment period, which closed on February 18, 2022.

The Department received comments on this proposal from 30 interested people and parties during the public comment period. The final proposed rule incorporates a number of suggested changes, including:

- Clarification that the determination of whether an emergency exists is at the sole discretion of the Department;
- Clarification that all VOC measurements are “as methane;”
- Changing the basis for discontinuing control from the concentration of VOC inside the tank after one hour with no forced ventilation to the concentration of VOC leaving the tank during forced ventilation;
- Clarification that requirements for the control of emissions from sludge do not apply when the sludge is immediately transferred to another in-service floating roof tank; and
- Allowing up to two hours to repair a leak in the control system before requiring forced ventilation to be stopped.

Fiscal impact of rule:

The cost to operate controls is estimated to be approximately \$10,000 per degassing event or potentially more depending upon the type of control selected by the facility. Since the applicable tanks and vessels are only degassed infrequently (approximately once every five to ten years), this rule is anticipated to have minimal fiscal impact on the regulated community

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

and no expected negative fiscal impact to the Department in comparison to the regulations already in place.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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: PL 2021 ch. 433; 38 MRS §576-A
Chapter number/title: Ch. 180 (New), Appliance Efficiency Standards
Filing number: 2022-206
Effective date: 11/3/2022
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

On July 8, 2021, the governor signed into law L.D. 940, *An Act To Establish Appliance Energy and Water Standards*. This legislation authorizes the Department to initiate rulemaking to restrict the sale of certain appliances and plumbing fixtures listed in Public Law 2021, Chapter 433. The proposed regulation implements the restrictions outlined by the legislature.

Basis statement:

Public Law 2021 ch. 433 (LD 940), *An Act To Establish Appliance Energy and Water Standards*, authorizes the Department to adopt rules to restrict the sale of certain appliances and plumbing fixtures. The rule will require certain new products to meet minimum efficiency standards, reducing resource consumption and emissions of greenhouse gases and other pollutants.

Product categories affected by this rule include computers and computer monitors; general service lamps; commercial hot food holding cabinets; plumbing fittings that are showerheads, lavatory faucets, kitchen faucets, public lavatory faucets, metering faucets, kitchen replacement aerators, or lavatory replacement aerators; plumbing fixtures that are water closets or urinals; portable electric spas; spray sprinkler bodies; and water dispensers. Federal and state efficiency standards and guidelines have long been in place for most of the appliances and fixtures addressed by this rule; however, they have not been enforceable. Relevant standards include EPA's Energy Star and WaterSense programs, as well as standards issued by the American National Standards Institute, and California efficiency standards.

This rule has been developed to parallel rules and legislation in several other states with greenhouse gas reduction and energy conservation goals similar to Maine's. In the event that federal regulations pre-empt state regulations for any product regulated under this rule, the federal regulation is given precedence for as long as it is in effect. The rule allows sell-through of products manufactured before the effective date as well as re-sale of used products.

Fiscal impact of rule:

Compliant versions of the products affected by this rule are already available. The rule allows sell-through of products manufactured before the effective date as well as re-sale of used products. No fiscal impact is expected from implementation of this rule.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 §§ 344(7)
Chapter number/title: Ch. 305, Natural Resource Protection Act -Permit by Rule
Filing number: 2022-256
Effective date: 12/27/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this revision is to bring the Department's rules into alignment with statutory changes concerning minor expansions in coastal sand dunes and to allow some beach nourishment projects to qualify for Natural Resource Protection Act (NRPA) permit by rule. The proposed revision also allows for planting native dune vegetation by hand with a NRPA permit by rule.

Basis statement:

This regulation allows certain activities to obtain Natural Resources Protection Act (NRPA) permits through a permit by rule (PBR) process. The purpose of this rulemaking is to bring the Department of Environmental Protection's (Department) rules into alignment with statutory changes concerning minor expansions in coastal sand dunes, to allow some beach nourishment projects to qualify for NRPA PBR, and to allow for planting native dune vegetation by hand with a NRPA PBR.

Minor Expansions (Section 16):

Prior to 2021, certain minor expansions of structures in coastal sand dunes were exempted from NRPA permitting requirements, and no review or approval was required. In 2021, P.L. Ch. 186 removed that exemption and replaced it with a provision allowing these same minor expansions through a NRPA PBR process (38 MRS §480-E(14)). This rulemaking updates Ch. 305, Section 16 "Activities in coastal sand dunes" to conform with this statutory change.

The statute includes the following limitations on minor expansions in coastal sand dunes, which are reflected in the rule revision:

- Each structure is limited to a one-time minor expansion.
- The footprint of the expansion is contained within an impervious area that existed on January 1, 2021
- The footprint of the expansion is no further seaward than the existing structure
- The height of the expansion conforms to any applicable law or ordinance
- The expansion conforms to the municipal shoreland zoning ordinance

To conform to the statutory change, submission requirements were updated. A definition of minor revision was added to the rule and updates to the definitions of "permanent structure" and "footprint" were made to better conform to the statutory definitions of these terms in NRPA. Minor changes were made to the rule for clarity and to be more consistent with Chapter 355 Coastal Sand Dune Rules.

Changes were made to exempt minor expansions from lot coverage restrictions. This is in keeping with the intention of the law not to restrict minor expansions on small lots, but to simply require notice and a permit by rule for these activities.

Finally, the standards section was updated to bring the height requirements for buildings in line with the goals of PL ch. 504 (2022). This law changed the way building heights are measured in cases where a building is raised to accommodate sea level rise or increased flood hazard due to climate change.

These revisions to Section 16 of Chapter 305 are major substantive rulemaking because they relate to development in coastal sand dunes (38 MRS §480-AA).

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Non-Development Related Activities (Section 16-A):

Section 16-A is a new section within Chapter 305 specifically for non-development related activities in coastal sand dunes, namely: dune restoration and dune construction, beach nourishment, and hand planting of native dune vegetation. Dune restoration and dune construction activities were eligible for NRPA PBR prior to this rulemaking and have been moved from Section 16 to Section 16-A. Beach nourishment and the hand planting of native dune vegetation are new activities now covered by Chapter 305. Non-development activities are grouped together in their own section because the submission requirements and relevant standards depend heavily on whether development is proposed.

Many property owners, municipalities, and engaged citizens want to increase coastal resilience to storm erosion and rising sea levels and limit the economic and recreational impact from degrading beach conditions. In some cases, spreading additional sand on a beach (termed beach nourishment) can counter the effects of erosion, creating a healthier and more appealing beach and dune environment. This rule revision allows certain beach nourishment projects to receive NRPA PBRs, lowering the regulatory barriers for this type of restoration activity. To be eligible, the sand must come from an upland source; projects using dredged sources of sand must apply for an individual NRPA permit. In addition, only projects below a certain volume of sand can qualify for the permit by rule. This volume is limited both by the square footage of beach to be nourished and by an overall upper limit. For dune restoration, dune construction, and beach nourishment activities, the applicant must submit written confirmation from the Maine Geological Survey that they find the plan acceptable and the proposed sediment suitable for the natural system.

This rule revision also adds hand planting of native dune vegetation to the list of activities allowed through NRPA PBR. Loss of dune vegetation is a significant concern because healthy dune vegetation prevents erosion and provides habitat for birds to nest. Allowing municipalities, homeowners, or homeowner associations to use a PBR to plant dune grass or other native dune vegetation by hand makes it easier for them to accomplish this type of restoration activity.

All of the activities included in this section are subject to timing restrictions in order to protect threatened and endangered bird species during their nesting season. If an applicant proposes to undertake any of these activities outside of the specified time windows, written approval from the Maine Department of Inland Fisheries and Wildlife (MDIFW) is required. The creation of this new section is routine technical rulemaking.

CHANGES MADE BASED ON BOARD DELIBERATIONS

At the September 1, 2022 public hearing a Board member pointed out an inconsistency in the draft rule concerning lot coverage restrictions and minor expansions. Consistent with the draft rule Section 16(C)(1), Lot coverage restrictions are not intended to apply to minor expansions. The following changes were made to the draft rule as a result (underline indicates additions):

Section 16(C)(2):

Where development that is existing or did exist within one year of application exceeds 40% of the total lot area, the percentage of developed area may not be increased. This lot coverage restriction does not apply to minor expansions.

Section 16(C)(3):

Where the footprint of buildings that are existing or did exist within one year of application exceeds 20% of the total lot area, the percentage of area covered by buildings may not be increased. **This lot coverage restriction does not apply to minor expansions.**

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Environmental Protection (DEP), **Board of Underground Storage Tank Installers**
Umbrella-Unit: **06-481**
Statutory authority: 32 MRS §10004
Chapter number/titles: **Ch. 3**, Certification of Underground Oil Storage Tank Installers
Ch. 6, Certification of Underground Oil Storage Tank Inspectors
Filing numbers: **2022-208, 209**
Effective date: 10/18/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rules:

LD 1336 (PL 2021 c. 348) "An Act To Discontinue the Use of the Terms "Handicap," "Handicapped" and "Hearing Impaired" in State Laws, Rules and Official Documents", in the portions relevant to the Board of Underground Storage Tank Installers (BUSTI), required Departments, agencies and offices of the legislative, executive and judicial branches of State Government to discontinue the use of the terms "handicap," "handicapped" and "hearing impaired" to describe a person or set of persons in all laws, rules and official documents.

Basis statement:

The principal reason for this rulemaking is to update the rules to discontinue the use of the terms "handicap," "handicapped" and "hearing impaired" in accordance with PL 2021 c. 348, "An Act to Discontinue the Use of the Terms "Handicap," "Handicapped" and "Hearing Impaired" in State Laws, Rules and Official Documents". The amendments replace the use of the word "handicap" with the word "disability". The amendments also update citations by replacing M.R.S.A. with M.R.S.

Fiscal impact of rules:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12452, 12461
Chapter number/title: Ch. 1, Open Water and Fishing Regulations
Ch. 1-A, State Heritage Fish Waters
Filing number: 2022-227, 228
Effective date: 1/1/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These rules are designed to provide for the effective conservation and management of inland fish throughout the state and provide for a variety of fishing opportunities. The rule sets specific season dates, bag limits, length limits, tackle restrictions, and other special regulations designed to accomplish fisheries management objectives. The list of waters contains information regarding each amendment.

Basis statement:

The Department of Inland Fisheries and Wildlife has adopted rules pertaining to the 2023 ice fishing and open water seasons. The State Heritage Fish Waters list has also been amended with the addition of three waters. These rules are necessary for the sound management and proper utilization of the State's inland fishery resource; this is, to provide for the fullest level of use of the resource without adversely affecting species distribution and abundance, thus ensuring that all benefits are retained. The rules set specific season dates, bag limits, length limits, tackle restrictions, and other special regulations designed to accomplish fisheries management objectives and are the result of the vetting process of the fisheries division law and rule committee. Biological information, public outreach, angler counts, survey results, and other available data on individual water bodies are reviewed when crafting these rules. These rules will have an effective date of January 1, 2023.

The rule-making packet was advertised to include 131 individual proposals presented in the following "theme" categories: State Heritage Fish Waters; Special Need; Salmonid Growth and Performance; Expanded Angler Opportunity; S-8 (*Restricted to two lines per person*) Waters Review; Partial Simplification to General Law; Complete Simplification to General Law; Errors, Conflicts, and Confusion; New Special Regulation Listing; Transition to "Only 1 brook trout may exceed 12 inches"; and Transition to "Only 1 brook trout may exceed 14 inches".

A public hearing was held on August 22, 2022 (minutes attached) with seven citizens in attendance. The Department also received 61 written comments from individuals/organizations (attached) which were acknowledged and forwarded to the Commissioner's Advisory Council as well as appropriate staff for consideration. A general summary of public comment and testimony and the Department's response is attached.

On October 26, 2022, the Commissioner brought forward the original proposal for adoption by the Advisory Council. The eight (8) members present voted unanimously in favor to adopt the fishing regulations package for 2023 as presented.

Copies of the publication will be available from license agents, on the Department's website or from the Department of Inland Fisheries and Wildlife, 353 Water Street, Augusta, ME 04333-0041. This body of rules is posted in its entirety on the Department's website and in a hard copy publication entitled **Open Water & Ice Fishing Laws and Rules (January 1, 2023 – December 31, 2023)** and by authority of Title 12 MRS Section 12452, is an official consolidation of the open water and ice fishing rules as maintained by the Department in an electronic version and distributed through electronic means.

Fiscal impact of rule:

No fiscal impact anticipated as a result of these rules.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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, 13061
Chapter number/title: Ch. 13, Watercraft Rules (Boating Events)
Filing number: 2022-025
Effective date: 5/1/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

LD 394 titled “An Act To Protect Maine's Loons and Other Wildlife in the Issuance of a Permit To Hold a Regatta, Race or Boat or Water-ski Exhibition” was introduced during the first regular session of the 130th Legislature. The bill was then carried over to the second regular session (in 2022). In lieu of voting for a final resolution to the bill, a letter from the Joint Standing Committee on Inland Fisheries and Wildlife was sent to the DIFW requesting that appropriate rulemaking on the subject be undertaken and a report back to the committee by February 1, 2022 would be required. The purpose of this rulemaking will be to condition and restrict a boating event permit in order to protect public safety, wildlife and wildlife habitat and water quality.

Basis statement:

LD 394 titled “An Act To Protect Maine's Loons and Other Wildlife in the Issuance of a Permit To Hold a Regatta, Race or Boat or Water-ski Exhibition” was introduced during the first regular session of the 130th Legislature. The bill was then carried over to the second regular session (in 2022). In lieu of voting for a final resolution to the bill, a letter from the Joint Standing Committee on Inland Fisheries and Wildlife was sent to the DIFW requesting that appropriate rulemaking on the subject be undertaken and a report back to the committee by February 1, 2022 would be required. The basis for the bill being submitted to the Legislature was a loon mortality found on Watchic Lake after the conclusion of a motorboat race and public concern of increased loon mortality due to motorboat race events. These rules will condition and restrict a boating event permit in order to protect public safety, wildlife and wildlife habitat and water quality.

The rule language will be placed within the current watercraft related rule Chapter 13. The rule will address application details, expectations and conditions that must be adhered to for the event applicant(s) and participants(s) and consequences for the permit holder(s) as well as participants if violations occur. Three new sections of the rule chapter have been created as follows to set conditions and restrictions for each type of event: Motorboat race event; Boat regatta, parade, non-motorized boat race, boat exhibition or water-ski exhibition, and event conditions and restrictions. Applicants for motorboat race events will submit a map of the course showing any possible safety hazards and loon nesting sites (safety hazards may include docks, sunken logs, ledges or other objects) within or adjacent to the course. The application will include resources for the applicant to research loon nesting locations by contacting the Department’s Wildlife Resource Assessment Section bird biologist. The rule also clarifies the Commissioner’s authority based on people’s behavior to deny a future permit. The new rules will have an effective date of May 1, 2022.

The Department held a public hearing on the proposed rules on November 1, 2021 and there were 16 citizens in attendance with 13 people giving oral testimony. The Department also received 60 comments in writing (copies attached). A summary of comments is attached with Department responses.

Based on public feedback the Commissioner recommended amendments to the original

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

proposal which are highlighted in the attached rule language. In section 13.10 specific language clarifying the need to provide information on loon nesting sites and any safety hazards as part of the application process was added. The role of the spotters was also clarified. The number of aquatic inspectors was reduced from two to one to make it more reasonable and the Department would be communicating with the Department of Environmental Protection regarding the training necessary to become an inspector and provide more opportunity during the course of the year. The number of days to submit notice of the motorboat race to the municipality was also corrected from 30 to 60 days to remain consistent with statute. The reference to a fee was also struck in section 13.10 and 13.11. Currently, applications for boat race events did not require a fee and staff did not feel a fee would be necessary as there was no anticipated increase in applications or administrative burden.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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, 11152
Chapter number/title: Ch. 16, Hunting: 16.05, Possession, Transport and Labeling of Big Game; 16.07, Deer Hunting
Filing number: 2022-116
Effective date: 8/8/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule covers changes to antlerless deer harvest and the antlerless deer permit system. After over a decade of doe harvests significantly below objective, it has become clear that our current system of Any-deer Permits is not able to provide desired levels of doe harvest in much of the state. In 2021-2022, IFW undertook a review of the deer permit system, which included internal review as well as a stakeholder working group. The goal of this review was to develop recommendations that would improve the Department's ability to meet doe harvest objectives while maintaining fair and equitable antlerless harvest opportunity. Additionally, the system was reviewed to identify potential sources of revenue to aid in the acquisition and management of deer wintering habitat, primarily in northern Maine. As a result of this review, a list of recommended changes to Maine statutes and Department rules was developed, and the recommended changes to Department rules are presented in this rulemaking. A report resulting from this review is available on the [MDIFW website](#) at the legislative updates page under LD 116. These rules will have an effective date of August 8, 2022 which is also the effective date of new legislation passed during the 2nd regular session of the 130th Legislature (Public Law 2022 Chapter 599).

Basis statement:

This rule covers changes to antlerless deer harvest and the antlerless deer permit system. After over a decade of doe harvests significantly below objective, it has become clear that our current system of Any-deer Permits is not able to provide desired levels of doe harvest in much of the state. In 2021-2022, IFW undertook a review of the deer permit system, which included internal review as well as a stakeholder working group. The stakeholder group included representatives of the Maine State Legislature, MDIFW Advisory Council, Sportsman's Alliance of Maine, Maine Professional Guides Association, National Deer Association, Maine Woodland Owners, Maine Deer Hunters Facebook group, Maine Farm Bureau Association, Maine Forest Products Council, and MDIFW. Historic deer harvest data, license sales figures, any-deer permit applicant data, permit system information from other jurisdictions, and current Maine statutes and rules were summarized for review by the group.

The goal of this review was to develop recommendations that would improve the Department's ability to meet doe harvest objectives while maintaining fair and equitable antlerless harvest opportunity. Additionally, the system was reviewed to identify potential sources of revenue to aid in the acquisition and management of deer wintering habitat, primarily in northern Maine. As a result of this review, a list of recommended changes to Maine statutes and Department rules was developed and this was used to amend Chapter 16 rules. A report resulting from this review is available on the [MDIFW website](#) at the legislative updates page under LD 116. These rules will have an effective date of August 8, 2022 which is also the effective date of new legislation passed during the 2nd regular session of the 130th Legislature (Public Law 2022 Chapter 599).

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

The rule transitions away from Any-deer Permits (ADP), which allow a hunter to use their hunting license to take an antlered deer anywhere in the state or an antlerless deer in a designated area, to antlerless permits, which will allow a hunter to take an antlered deer anywhere in the state and an additional antlerless deer in a designated area. Permits will be distributed via a one-round lottery where hunters may select two preferred permit areas (down from three), and permits remaining after the lottery will be made available for direct sale, in accordance with 12 MRS §11152 sub-§3. To provide consistency throughout the rule reference to the October archery season will now be referred to as the "regular archery and crossbow deer hunting season" to eliminate confusion on what harvest methods will be allowed. The rule will also eliminate the connection between issuing permits and allowing antlerless harvest without a permit during the Youth Deer Hunting Day and Regular Archery hunting seasons. Previously, if a WMD has received an allotment of permits for the year, a hunter during the Youth Deer Hunting Day or Regular Archery season may take an antlerless deer under the authority of their hunting license without a permit in that WMD. The new rule gives the Commissioner the authority to designate which WMDs will allow antlerless harvest without a permit during these seasons. Initially, we recommend allowing antlerless harvest without a permit statewide on Youth Deer Hunting Day and in WMDs 12, 13, 15-18, 20-26, and 29 during the Regular Archery Season for the 2022 hunting season.

A public hearing was held on May 2, 2022 and no members of the public attended and no testimony was received. Four written comments were received on the proposal (attached). One comment was rather in depth with multiple questions which were addressed by the Department's deer biologist. One comment was more about exp archery areas than anything but offered full support of the changes being proposed. The two remaining comments, including comments from the National Deer Association, were also in support of the proposed changes.

After review of the comments and discussion with staff, the Commissioner recommended two non-substantive changes to the proposal. To be consistent throughout the rule and clarify harvest methods, any reference to the October archery season would be referred to as the "regular archery and crossbow deer hunting season". Also, 16.07 (G.) was further amended to include persons 65 years of age and older for crossbow hunting exceptions along with disability permits. This is currently in statute, but the Department felt it would be beneficial to also include the reference in rule.

The Advisory Council met on May 18, 2022 and of the nine (9) members participating, voted unanimously to adopt the proposal as amended.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 §§ 10053, 10104, 12301-A
Chapter number/title: Ch. 16.06(I.E.), Hunting (Submission of Teeth)
Filing number: 2022-128
Effective date: 7/16/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department regularly adjusts furbearer hunting and trapping regulations in response to emerging scientific information, changes in hunter and trapper participation, and biological data. These minor changes will improve the collection and the analysis of biological data.

Basis statement:

Since 2016, trappers and hunters must submit biological samples when registering bobcat, fisher, marten, and river otter. These samples allow the Department to monitor age and sex to ensure that harvest levels are sustainable. Multiple options are available to provide some flexibility in case the hunter/trapper wants to keep the skull intact. For bobcat, a lower incisor tooth, lower canine tooth, or lower jaw must be submitted, along with a small piece of tissue. Determination of gender for bobcats can be challenging, so tissue is collected to test and compare DNA gender to the hunter/trapper assessment. Tooth samples previously were labelled with Month, Year, Sex, Species, Town, and Method (Hunt or Trap).

Bobcats are typically taken and registered in small quantities (1-2/trapper or hunter/season) and the incisor tooth is often removed at the time of registration (bobcats must be registered and tagged by DIFW staff). Revising the rule to require a label that includes Species, Sex, and Seal number will ensure that all the registration information will be tied to the biological data. One recent change in the web-based registration system was to collect Hunt Type (e.g., hunting with dogs, bait, calling, etc.) for bobcat, coyote, red fox, and gray fox. Should there be any changes to the data collected in the registration system in the future, the seal number will provide a link to all this information.

A public hearing was held on June 13, 2022 and no members of the public were in attendance. One written comment on the proposal was received (attached). The individual seemed to have misunderstood the process for registering bobcat and data collection and this was clarified by the Department's furbearer biologist.

The Commissioner moved forward with the original rule proposal and the Advisory Council gave their consent on June 29, 2022 and of the nine (9) members present, voted unanimously to adopt the proposal as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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, 12301-B
Chapter number/title: Ch. 16.06, Hunting: Registration, Data Collection and Tagging of Big Game and Furbearing Animals
Filing number: 2022-225
Effective date: 11/22/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Public Chapter Law 704 became law on May 2, 2022 and requires the Department to allow electronic registration of turkey beginning with the spring 2023 wild turkey hunting season. This required the Department to adopt rules to implement the new law. The rules may include exceptions to or electronic means of compliance with any of the requirements of this chapter for a person who registers a turkey in accordance with the rules.

Basis statement:

This rule makes amendments to Chapter 16 to allow hunters to register wild turkeys electronically and requires the hunter to attach a tag bearing the seal number issued by the electronic registration system, until the turkey is processed and packaged for consumption. The rule also clarifies that if a wild turkey is registered electronically, all radio transmitters must be submitted, or arranged for submission, to the Department within 5 days. Any leg bands or wing tags can be retained by the hunter after reporting and following approval by the Department.

The Legislature directed the Department to allow self-registration or electronic registration of wild turkeys starting with the spring 2023 season (Public Law 2022 Chapter 704). Essentially, hunters through a system developed by the Department, will be able to self-register their turkey without needing to take them to an in person registration station. Implementing this new law will require program and procedural changes in our systems and database, but we also had to look at the rule and determine if any changes were required. There were a couple of minor changes to the wild turkey registration requirements under Chapter 16 that would need to be amended. One was to clarify that if a turkey is registered electronically and not at an in person station the hunter had to submit any transmitters, bands or wing tags to the Department. The Department originally proposed these be returned within 5 business days. The Department records information from those, and we have quite a bit of ongoing banding work for turkeys as part of our management. The other part of the proposal would require the hunter to attach a tag bearing the seal number that would be issued by the electronic registration system. That would serve as a replacement for the plastic seal that the hunter would get at the registration station.

A public hearing on the proposal was held on October 13, 2022. There were no members of the public in attendance and no testimony received. One written comment was received. The comment from the Maine Professional Guides Association requested the Department review the proposed language and remove the 5 day requirement for submission of leg bands or wing tags as hunters sometimes liked to keep these. The comment was otherwise supportive of the proposal.

After review of public comment and discussion with staff, the Commissioner recommended a slight change to the original proposal and modified the language so that hunters would only need to comply with the 5 day requirement to return or arrange for return

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

of any transmitters found on harvested birds. Leg bands or wing tags would be able to be retained by the hunter after reporting and approval by the Department.

The Advisory Council met on October 26, 2022 and of the eight (8) members participating, voted unanimously to adopt the proposal as amended.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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, 11152, 11402
Chapter number/title: Ch. 16.07, Hunting: Deer Hunting (Antlerless Deer Permit Allocations and expanded Archery Areas)
Filing number: 2022-127
Effective date: 8/8/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Antlerless deer permit numbers are adjusted by MDIFW on an annual basis by department biologists who consider deer harvest levels, biological metrics and indices, and estimates of winter severity when evaluating the status of the deer population within each wildlife management district (WMD). Antlerless deer permit recommendations are based on removal rates of adult does that will stabilize, increase, or decrease deer densities. In addition to annual recommendations for each WMD, we also recommend issuing antlerless deer permits in two deer management subunits. These permits will allow hunters additional opportunity to harvest deer in areas experiencing elevated levels of deer-human conflict. Two additions to the rule for the expanded archery program include land area impacting the towns of North Yarmouth and Yarmouth as well as the coastal islands of WMD 27. Additional language has been included to better describe the expanded archery season including information on allowable weapons and required permits. These language changes do not change the way the season functioned in 2021 and prior, they only clarify or add specificity.

Basis statement:

Antlerless deer permit numbers are adjusted by MDIFW on an annual basis by department biologists who consider deer harvest levels, biological metrics and indices, and estimates of winter severity when evaluating the status of the deer population within each wildlife management district (WMD). Antlerless deer permit recommendations are based on removal rates of adult does that will stabilize, increase, or decrease deer densities. In addition to annual recommendations for each WMD, we also recommend issuing antlerless deer permits in two deer management subunits. These permits will allow hunters additional opportunity to harvest deer in areas experiencing elevated levels of deer-human conflict. Two additions to the rule for the expanded archery program include land area impacting the towns of North Yarmouth and Yarmouth as well as the coastal islands of WMD 27. Additional language has been included to better describe the expanded archery season including information on allowable weapons and required permits. These language changes do not change the way the season functioned in 2021 and prior, they only clarify or add specificity.

For 2022, the Department will issue a total of 96,340 ADP to be issued across 24 WMDs, including 460 antlerless deer permits in two deer management subunits (25a and 26a), to meet a doe harvest objective of 13,809 does, which is 9.1% less than 2021. Overall, the number of permits allocated will be much lower than the 153,910 any-deer permits allocated in 2021; with the change in permit type from any-deer permits to antlerless deer permits, we expect much higher permit fill rates, so fewer permits will be needed to achieve comparable levels of doe harvest. Additions to the expanded archery areas to include portions of North Yarmouth and Yarmouth as well as the coastal islands of WMD 27 are included. The North Yarmouth-Yarmouth addition covers an area where firearm discharge is prohibited except for shotguns and in adherence to state and local restrictions on discharge in proximity to dwellings, businesses, schools, etc. The off-shore islands of WMD 27 are somewhat of an

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

extension to the WMD 29 expanded archery area; on those off-shore islands with deer, it is very difficult to limit population growth given mild climate, lack of predators, and low hunting pressure. While expanded archery is typically applied to areas with discharge ordinances, the coastal islands have historically been an exception to this. The language changes to clarify and add specificity to the definition of the expanded archery season will not change the previously established function of that season.

A public hearing was held on June 14, 2022 and no members of the public were in attendance. One written comment on the proposal was received (attached) regarding the expanded archery area in Scarborough. The Department reviewed the request and determined it was ultimately a minute change which would move the existing boundary one road over into a town with a discharge ordinance which was already covered under expanded archery. The Department did not move forward with the requested change.

One small amendment to the proposal in the expanded archery areas was made under “E. Towns of Cumberland, Falmouth, North Yarmouth, Portland, Scarborough, South Portland, Westbrook, Windham, and Yarmouth.” After the rule was advertised an error in road names in the Yarmouth area was discovered and needed to be corrected. This did not change the map boundary but made the change to list the correct road names.

This rule will have an effective date of August 8, 2022 to be implemented in conjunction with previous rule filing 2022-116, Ch. 16 – Hunting (Antlerless deer permit system changes).

The Commissioner brought forward the amended rule proposal and the Advisory Council gave their consent on June 29, 2022 and of the nine (9) members present, voted unanimously to adopt the proposal as amended.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 (Permit Allocations)
Filing number: 2022-093
Effective date: 5/25/2022
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. This allocation also addresses ongoing concerns about the impacts of winter tick on moose survival and productivity while continuing to provide hunting opportunity across Maine's moose range.

Basis statement:

This rule is being adopted to establish the number of moose hunting permits to be issued for each Wildlife Management District (WMD) for the 2022 season. The Department advertised a proposal on April 6, 2022 with a recommended total of 4,080 permits be issued in order to meet moose harvest objectives. This is an increase of 50 permits from 2021. These numbers include the 550 permits for the Adaptive Management Unit hunt referred to as WMD 4a which was implemented beginning in 2021. 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. Moose permit allocations are adjusted on an annual basis in response to moose population estimates and population goals in each Wildlife Management District (WMD). Department biologists use moose harvest levels, aerial surveys, and biological data to evaluate the status of moose within each WMD. This information is compared to publicly derived goals outlined in the moose management system to determine whether the population in an individual WMD should be stabilized, increased, or decreased. 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. The attached memorandum from the Department moose biologist Lee Kantar outlines the moose population status and recommended actions by WMD.

The Department did not make any changes in bull or any-moose permits but did issue an increase of 50 antlerless permits in WMD 8 where the population is stable to decreasing. This is “ground zero” for winter tick impacts and the best source of data on moose and winter tick. Adaptive moose hunt season dates were also adjusted to reflect the current calendar year.

A public hearing on the proposal was held on April 26, 2022, but no members of the public attended. One written comment was received on the proposal. The comment was acknowledged and forwarded to the Commissioner’s Advisory Council and staff for consideration. The comment was in opposition to the proposed rule and offered nine separate statements. The Department’s response to each statement is attached as well as Mr. Kantar’s memo which summarizes the Department’s moose permit allocations for the 2022 hunting season and review of moose management actions.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

The Commissioner recommended no changes to the original proposal. The Advisory Council met on May 18, 2022 and of the nine (9) members participating, voted unanimously to adopt the proposal as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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, 11251, 11351
Chapter number/title: Ch. 16, Hunting: 16.09, Bear Hunting
Filing number: 2022-053
Effective date: 4/18/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Public Law Chapter 100, titled "An Act To Give the Commissioner of Inland Fisheries and Wildlife Rule-making Authority To Establish a Bear Season Framework and Bag Limits" and enacted by the Governor on June 8, 2021, directs the Department to conduct rulemaking to "establish by rule limits on the number of bears a person may hunt, trap and possess in a season, which may not exceed 2 bears in total and may not exceed one bear by trapping in a calendar year, except a person may keep more than 2 legally obtained bears in that person's home as otherwise provided in law or rule. Prior to this law, the bag and possession limits for bear hunting and trapping were established in 12 MRS. Therefore, the Department must undertake rulemaking prior to the fall 2022 bear hunting and trapping seasons to establish these limits and regulate the bear harvest at appropriate levels.

Basis statement:

Public Law Chapter 100, titled "An Act To Give the Commissioner of Inland Fisheries and Wildlife Rule-making Authority To Establish a Bear Season Framework and Bag Limits" and enacted by the Governor on June 8, 2021, directs the Department to conduct rulemaking to "establish by rule limits on the number of bears a person may hunt, trap and possess in a season, which may not exceed 2 bears in total and may not exceed one bear by trapping in a calendar year, except a person may keep more than 2 legally obtained bears in that person's home as otherwise provided in law or rule." Prior to this law, the bag and possession limits for bear hunting and trapping were established in 12 MRS. Therefore, the Department must undertake rulemaking prior to the fall 2022 bear hunting and trapping seasons to establish these limits and regulate the bear harvest at appropriate levels.

The rule creates a bag limit for bear of one by hunting with a possession limit of two bears in total. These limits are identical to those that were previously established in law. Bear hunting and trapping permit sales have increased by approximately 20% during the past two years, resulting in a corresponding increase in harvest above the long-term average. Due to other changes that were enacted by Public Law Chapter 100 (including a reduction in bear permit fees for residents) that will likely result in an additional increase in the bear harvest, the Department believes additional changes to bear bag limits or hunting seasons are not warranted at this time. The Department plans to monitor hunter and trapper participation and the bear harvest over the next 2 years before considering any additional incremental changes to further increase harvest. To ensure consistency with 12 MRS, the rule also clarifies that the bear hunting season ends no later than November 30. This clarification will not result in any changes to the actual hunting season dates for bear.

A public hearing on the proposal, in conjunction with the Chapter 17 proposal for bear trapping rules which was advertised simultaneously, was held on January 19, 2022. Two people were in attendance (minutes attached). One person testified in opposition to the Ch. 17 rule proposal but offered no comment on the Ch. 16 Bear Hunting rule proposal. One written comment in support of the rule as proposed was received from the Maine Professional Guides Association.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

The Commissioner moved forward with the original rule proposal and the Advisory Council gave their consent on March 29, 2022 and of the six (6) members present, voted unanimously to adopt the proposal as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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, 11701
Chapter number/title: Ch. 16, Hunting: 16.10, Wild Turkey Hunting (Fall Season)
Filing number: 2022-102
Effective date: 6/5/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To open Wildlife Management Districts 7, 8 and 14 to a fall turkey season with a one turkey (can be either sex) season limit.

Basis statement:

This rule opens Wildlife Management Districts 7, 8 and 14 to a fall turkey season with a one turkey of either sex season limit. The WMDs have been open to wild turkey hunting in the spring as follows: WMD 7 was first opened to a spring wild turkey season in 2007; WMD 8 was first opened to a spring wild turkey season in 2014; WMD 14 was first opened to a spring wild turkey season in 2006. Wild Turkey population numbers fluctuate annually, related to weather conditions in winter and in the breeding season, as well as availability of natural foods. These fluctuations are reflected in wild turkey spring harvest numbers in WMD 7, 8 and 14 as recorded by the Department. The fluctuations follow a similar trend when compared to the statewide spring wild turkey harvest, where wild turkey numbers are considered stable. The Department has seen production in all three WMDs and documented successful reproduction of turkeys over the last few years. With an overall stable trend in harvest, when considering the nature of annual fluctuations in wild turkey numbers, adding a conservative one turkey fall season limit to Wildlife Management Districts 7, 8 and 14 is recommended. The Department has also received requests over the years from wild turkey hunters to add fall hunting opportunity to these districts.

A public hearing on the proposal was held Monday, February 28, 2022. There were no members of the public in attendance and no testimony received. Three written comments in support of the proposal were received, including comment from the Rangeley Region Guides and Sportsman's Association. They were fully supportive and stated that the WMDs had been open for spring harvest, and even with fluctuations related to weather conditions in winter and the breeding season, as well as availability of food, their numbers continued to grow.

The Commissioner recommended no changes to the original proposal. The Advisory Council met on May 18, 2022 and of the nine (9) members participating, voted unanimously to adopt the proposal as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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: 2022-103
Effective date: 6/5/2022
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. Adjustments to the migratory bird hunting seasons are based on a collaborative effort to collect and analyze data by the USFWS and state agencies, including MDIFW. Information included in these analyses includes waterfowl banding information, harvest data, and population surveys.

After receiving the framework from the United States Fish and Wildlife Service (USFWS), the Department's rule implements Maine's 2022/23 migratory bird hunting seasons by selecting season dates and bag limits for ducks, coots, mergansers, geese, crows and woodcock. Upon recommendation from the Atlantic Flyway Council, the special sea duck season was eliminated by the USFWS, placing sea duck harvest within the regular duck season and part of the overall 6 duck daily bag limit. Although the special sea duck season was eliminated, the Sea Duck Hunting Area remains in place to allow for the shooting of crippled waterfowl under power, allowed in the USFWS Federal Register and is defined as all coastal waters and waters of rivers and streams seaward from the first upstream bridge. Also of note, the restriction of 2 hooded mergansers was lifted, following determination by Atlantic Flyway biologists that hooded merganser harvest is low and the population can sustain an increase to a 5-duck per day limit. The USFWS Service Regulations Committee approved this option for all Atlantic Flyway States.

A public hearing on the proposal was held on March 2, 2022 with 12 citizens attending including members of the Commissioner's Waterfowl Council (minutes attached). The Department presented the proposal and discussed the season frameworks and bag and possession limits. Only 3 members of the public offered testimony which was generally supportive of the rule proposal. A waterfowl council member from York County expressed support via guide input informally, but that the guides in southern Maine were supportive of the season, especially the sea duck season. With the elimination of the sea duck season the coastal zone where sea ducks are hunted would be one week shy of when it had been in the past. It was still a 60-day season but would be closing earlier. Four (4) written comments were also received in support in general (attached). The written comments also included a request for future discussion on closing the early goose season sooner in the North Zone, a request for future action on eider duck harvest limits and season length as they didn't feel the current

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

reductions went far enough, and a request for a later season end date for the second season in the coastal zone.

One thing pointed out at the hearing, which had been an oversight was under the Federal regulations there was now a one hen eider limit which was not indicated in the proposal. 16.11 (9. F. Exceptions) of the proposal was amended to include one hen eider as we did for hen mallard. An additional error was corrected under 16.11 (11. Special Falconry Season) for the Coastal and South Zone end date from March 2, 2022 to March 1, 2022. USFWS allowed a 45-day season and we would have been over that if we went to the 2nd. Two errors in the headings of the table for duck and brant seasons were also corrected.

After review of the comments and discussion with staff the Commissioner moved forward with the amended proposal. The Commissioner's Advisory Council met on May 18, 2022 and of the nine (9) members participating, voted unanimously to accept the proposal as amended.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 §§ 10053, 10104, 12251
Chapter number/title: Ch. 17, Trapping
Filing number: 2022-129
Effective date: 7/16/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department regularly adjusts furbearer hunting and trapping regulations in response to emerging scientific information, changes in hunter and trapper participation, and biological data. Several changes have been made to simplify existing rules, address management goals, and/or improve biological data collection. As in previous years, areas open or closed to beaver trapping in response to requests from landowners are listed.

Basis statement:

The Department regularly adjusts furbearer hunting and trapping regulations in response to emerging scientific information, changes in hunter and trapper participation, and biological data. Several changes have been made to simplify existing rules, address management goals, and/or improve biological data collection. As in previous years, areas open or closed to beaver trapping in response to requests from landowners are listed.

Trappers and hunters are required to submit a lower partial jaw, full jaw or tooth during the registration and pelt tagging of bobcat, fisher, marten, and river otter. Biologists extract and section teeth from each animal to determine its age, then use this information to monitor the age and sex distribution of harvested furbearers and ensure the harvest is sustainable. Each sample must be labelled completely to ensure all information is recorded. The rule change will increase the data collected for bobcats by requiring that the sample label include a seal number that is issued during the registration process. The change also clarifies what types of samples are required in order to improve the number of viable samples. The list of beaver trapping closures with new closures to accommodate the wishes of private landowners on whose land the trapping activity would occur or to address management goals is listed. Townships or portions thereof are opened and closed on an individual basis to manage local beaver populations within the general season framework. Since the 1930's, regulations have been in place to reduce trapper competition and ensure fair chase when trapping near beaver dams, beaver houses, or muskrat houses. The Department has streamlined the distance of traps to a beaver house, muskrat den or house, active beaver dam, and to another person's beaver traps at 5ft. The rule also aims to increase beaver harvests in Wildlife Management Districts that have good beaver habitat and high conflicts. The changes create consistency and simplify regulations, but still allow fair chase when trapping beaver and muskrat.

A public hearing was held on June 13, 2022 with no members of the public attending. No written comments on the proposal were received.

The Commissioner moved forward with the original rule proposal and the Advisory Council gave their consent on June 29, 2022 and of the nine (9) members present, voted unanimously to adopt the proposal as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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, 11351
Chapter number/title: Ch. 17, Trapping: 17.06(1), Bear Trapping
Filing number: 2022-054
Effective date: 4/18/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Public Law Chapter 100, titled "An Act To Give the Commissioner of Inland Fisheries and Wildlife Rule-making Authority To Establish a Bear Season Framework and Bag Limits" and enacted by the Governor on June 8, 2021, directs the Department to conduct rulemaking to "establish by rule limits on the number of bears a person may hunt, trap and possess in a season, which may not exceed 2 bears in total and may not exceed one bear by trapping in a calendar year, except a person may keep more than 2 legally obtained bears in that person's home as otherwise provided in law or rule." Prior to this law, the bag and possession limits for bear hunting and trapping were established in 12 MRS. Therefore, the Department must undertake rulemaking prior to the fall 2022 bear hunting and trapping seasons to establish these limits and regulate the bear harvest at appropriate levels.

Basis statement:

The rule creates a bag limit for bear of one by trapping with a possession limit of two bears in total. These limits are identical to those that were previously established in law. Bear hunting and trapping permit sales have increased by approximately 20% during the past two years, resulting in a corresponding increase in harvest above the long-term average. Due to other changes that were enacted by Public Law Chapter 100 (including a reduction in bear permit fees for residents) that will likely result in an additional increase in the bear harvest, the Department believes additional changes to bear bag limits or hunting seasons are not warranted at this time. The Department plans to monitor hunter and trapper participation and the bear harvest over the next 2 years before considering any additional incremental changes to further increase harvest.

A public hearing on the proposal, in conjunction with the Chapter 16 proposal for bear hunting rules which was advertised simultaneously, was held on January 19, 2022. Two people were in attendance (minutes attached). One person testified stating they were opposed to recreational trapping and recommended the proposal be withdrawn or amended to a bag limit of zero bears. One written comment in support of the rule as proposed was received from the Maine Professional Guides Association.

The Commissioner moved forward with the original rule proposal and the Advisory Council gave their consent on March 29, 2022 and of the six (6) members present, voted unanimously to adopt the proposal as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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, 12863
Chapter number/title: Ch. 28, Educational Trip Leader Rules
Filing number: 2022-104
Effective date: 6/5/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Public Law Chapter 162 (LD 1474) “*An Act To Promote Outdoor Recreational Opportunities for Maine Students*” passed into law by emergency on June 11, 2021. This law requires that the commissioner adopt rules outlined within Title 12 Section 12863 to create an Educational Trip Leader Permit program within the Department which will allow staff and students from public and private schools and postsecondary educational institutions to conduct, without a guide license, paddling and primitive camping trips for students and adults associated with those institutions. The rule was previously advertised in Secretary of State rulemaking ad dated July 14, 2021 but was not finalized. The current rule addresses concerns from the previous rulemaking regarding overextending authority of the ETL Advisory Committee. Modifications to their responsibilities clarify the committee will make recommendations to the Commissioner for approval or denial of permits. A substantive change in 28.09 now allows two educational institutions who have current ETL programs to collaborate and sponsor joint trips, and section 28.10 Standards of Competency has been established.

Basis statement:

For many years, educational institutions have been conducting trips into the Maine outdoors providing students a variety of outdoor education and peer leadership experiences. In many situations the trips include paddling opportunities and camping at primitive camping sites, which if conducted in conjunction with remuneration, require a Maine Guide’s license. Concerns and questions were raised by representatives of the UME system and Colleges Association attempting to find clarity on whether they were violating guide licensing laws when taking students on a variety of outdoor paddling and primitive camping trips. During the 129th Legislative Session LD 1932 was introduced. LD 1932 required IFW to establish a task force of stakeholders to convene and report back with recommendations, but unfortunately the bill died when the Legislature adjourned by emergency due to the Covid 19 pandemic. However, agreeing a remedy to the educational trip leader question was necessary, IFW did convene a task force of stakeholders. The task force included 15 members representing public and private education, nonprofit organizations which coordinates outdoor education for K-12, a member of the Camp Trip Leader committee, a representative from the Guide’s Advisory Board, a representative from the Maine Professional Guide’s Association and representatives from IFW. Twelve of the task force members were also Registered Maine Guides. Task force recommendations were taken into consideration during the 130th Legislative session and in crafting the rule.

During the 130th Legislature, a new law was passed ([Public Law Chapter 162](#) (LD 1474)) directing the Commissioner to adopt rules to establish the following: An advisory committee of appointed members and their responsibilities; Educational Trip Leader Administrator Responsibilities; Educational Trip Leader Instructor Eligibility and Application Process; Educational Trip Leader Permit Eligibility and Application Process; Educational Trip Leader Permit Authorization, and Standards for Revocation, Suspension or Denial. The law also

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

contains a provision for institutions currently conducting these trips as part of their programming to continue to do so until October 1, 2022, when they will need to be compliant with the new permitting process that was adopted. The rule was previously advertised in Secretary of State rulemaking ad dated July 14, 2021 but was not finalized. The current rule addresses concerns from the previous rulemaking regarding overextending authority of the ETL Advisory Committee. Modifications to their responsibilities clarify the committee will make recommendations to the Commissioner for approval or denial of permits. A substantive change in 28.09 now allows two educational institutions who have current ETL programs to collaborate and sponsor joint trips, and section 28.10 Standards of Competency has been established. The adopted rule will allow staff and students from public and private schools and postsecondary educational institutions to conduct, without a guide license, paddling and primitive camping trips for students and adults associated with those institutions.

As a public hearing was held during the previous rulemaking with only one citizen attending the Department did not schedule a hearing for this rulemaking and none was requested. The Department received two written comments (attached) on the proposal. The first comment raised concerns with various sections of the proposal. After review, the Department felt these concerns would be better addressed by the Advisory Committee once it was established. The second comment, which was received shortly after the comment deadline, was from the legal office of PretiFlaherty. The Department agreed with these recommended minor changes in section 28.10 (1. a. and c.) and they were determined not to be substantial. The amended language will remove the words “safe” and “safest” which is important from a legal liability perspective as outdoor activities are not completely safe and need to be approached from a managing/mitigating risk standpoint.

The Commissioner brought the amended proposal forward to the Advisory Council at their May 18, 2022 meeting, and the nine (9) members present voted unanimously to adopt the proposed rule as amended.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 §§ 10105, 12152
Chapter number/title: Ch. 29 (New), Species of Special Concern
Filing number: 2022-024
Effective date: 2/27/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Public Law Chapter 65, titled “An Act To Amend Maine’s Wildlife Laws Regarding Species of Special Concern” and enacted by the Governor on May 25, 2021, directs the Department to conduct rulemaking to “establish criteria for determining when a species of fish or wildlife that is not an endangered species or a threatened species is of special concern. The rules may include different criteria for categories of species of special concern, including a category for species that are rare. The rules must list the species that meet the criteria established in rule. The commissioner shall use the list in administering section 12152 and may also use the list in administering any other laws or programs or when providing advisory recommendations to other entities or agencies on fish and wildlife matters in accordance with applicable laws or rules.” Prior to this rule, the list of special concern species had existed only in Department policy and did not include an opportunity for review or input by the public. Incorporating the species of special concern criteria and list of species into a Department rule will increase transparency of the list and provide a formal opportunity for public involvement in species designation.

Basis statement:

Public Law Chapter 65, titled “An Act To Amend Maine’s Wildlife Laws Regarding Species of Special Concern” and enacted by the Governor on May 25, 2021, directs the Department to conduct rulemaking to “*establish criteria for determining when a species of fish or wildlife that is not an endangered species or a threatened species is of special concern. The rules may include different criteria for categories of species of special concern, including a category for species that are rare. The rules must list the species that meet the criteria established in rule. The commissioner shall use the list in administering section 12152 and may also use the list in administering any other laws or programs or when providing advisory recommendations to other entities or agencies on fish and wildlife matters in accordance with applicable laws or rules.*” Prior to this rule, the list of special concern species had existed only in Department policy and did not include an opportunity for review or input by the public. Incorporating the species of special concern criteria and list of species into a Department rule will increase transparency of the list and provide a formal opportunity for public involvement in species designation.

The proposed rule was advertised on October 13, 2021 and three written comments were received (attached). A public hearing was held on November 1, 2021 and one member of the public attended and provided testimony (attached). Comments received from Maine Audubon Society requested that we include text requiring a regular update of the list and suggested that happen every 10 years, and in our working definition of rare, they suggested we add a note about climate change and vulnerability being a factor driving the species into the rare category. They also requested a clarification that while we stated in the definition of rare that several of the species would qualify for the Maine Endangered Species Act, Maine Audubon wanted us to clarify that yes, they qualified, but were not included on the list. They

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

also recommended the addition of Common Murre and Leach's Storm-petrel to the list of rare species. The bird group was fine with listing them given the few numbers of nesting locations.

Comments received from the Maine Forest Products Council stated they were encouraged by the public process and suggested more public availability of the data regarding each species and the reason for listing. The Department does have worksheets that biologists put together and a handbook that guided the listing process and all those materials were public information and could be made available upon request. The final written comment from a member of the public requested we consider Pied-billed Grebe be added to the list and King Rail. Bird group review of the comment found there was no reason to do that. He also requested Least Bittern which was currently on the Maine endangered species list. Testimony received at the public hearing requested adding wolf to the list, and staff did not support that recommendation.

In response to the public comments, the Department amended the rule as follows which is highlighted in the attached language. Under the Review of List (5.) it will make the Department review the list at least every 10 years. That was added at the request of Maine Audubon. Below that, under 29.03 Designation of Rare Species of Special Concern, the last line (again at the request of Maine Audubon) we added "a species highly vulnerable to climate change" as a factor. The final line after "qualifies for Maine endangered species status" added language "but has not yet been listed." At the request of Maine Audubon, Leach's Storm-petrel and Common Murre were both added as rare species of special concern. Fox Sparrow was eliminated from the list of rare species but continues to be listed as special concern.

Due to multiple lists being combined, some species were inadvertently included that were not special concern, and those have been struck from the list; Least Flycatcher, Wood Thrush, Veery, American Redstart, Yellow Warbler, Orchard Oriole and Dark-eyed Junco. They had appeared on a previous list and species specialists had dropped them from the list for special concern and they would become species of greatest conservation need in our state wildlife action plan. No public comment had been received on the species that were being struck out. A spelling error was also corrected for the "Bridle" shiner.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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, 42(7)(H), 3173; 42 CFR §§ 431.108, 455.434, 447.56, 431.224, 431.12; 42 CFR Parts 1001 and 1003; *Bipartisan Budget Act of 2018*, Sec. 53102, PL No. 115-123
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. I Section 1**, General Administrative Policies and Procedures
Filing number: **2022-101**
Effective date: 5/29/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

This final rule makes various complex changes, including changes to comply with federal regulations, make updates to reflect current practices, clarify ambiguous and vague sections of policy, and increase the MaineCare Program Integrity Unit's ability to safeguard against fraud, waste, and abuse. The changes in this final rule are listed below.

The previous rule did not address retroactive enrollment for providers other than federally qualified health centers, rural health centers, and Indian health centers. This final rule broadens Sec. 1.03-1(F) to allow for retroactive enrollment for other eligible providers, subject to review and approval by the Department of Health and Human Services (the Department) in accordance with 42 CFR §431.108. A request for retroactive enrollment is subject to the Department's review and discretion and is not a guarantee of claim payment or prior authorization. The Department may grant retroactive enrollment back to providers' Medicare enrollment effective dates but will not grant a retroactive enrollment date that is more than 365 days prior to the date of providers' MaineCare application submissions.

To comply with 42 CFR §455.434, the final rule adds a section on fingerprint-based criminal background checks (FCBC), mandating that providers or applicants whose categorical risk level meets the federal definition of high risk must consent to a FCBC. The new Section 1.03-1(J) includes relevant criteria for provider termination or denial of enrollment and outlines which providers and suppliers have high categorical risk.

The current "rounding rule" in Sec. 1.03-8(J) allows providers to round up a unit of service if the unit of service delivered is equal to or greater than fifty percent. The current version of this rule will remain in effect until December 31, 2022. To encourage better alignment between the amount of covered, medically necessary services delivered and billed, the final rule makes changes so when a partial unit of service is delivered, the provider may either bill for the partial unit of service provided or round up if eighty percent of the unit of service was delivered. The rule retains the ability to round up if fifty percent of the unit of service was delivered, but only when unforeseen circumstances prevent a provider from delivering a whole unit of service. As a result of comments, these changes will be effective January 1, 2023 to allow providers time to change their billing systems in order to comply with the changes.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

The final rule also adds misuse of the “rounding rule” to examples of conduct that could constitute fraud.

This final rule expands the definition of non-covered services to include administrative tasks (Sec. 1.06-4(B)(8)), including verification of MaineCare eligibility, updating member contact information, scheduling of appointments, tasks performed for the provider’s own administrative purposes, and similar activities. The final rule includes an exception explaining that certain administrative tasks may be covered if addressed in an appropriate section of the *MaineCare Benefits Manual*. This provision strengthens the Office of MaineCare Services (OMS) Program Integrity Unit’s enforcement of the prohibition on billing for administrative tasks, which already exists per current MaineCare rules.

To comply with section 53102 of the *Bipartisan Budget Act of 2018*, .L No. 115-123, the final rule removes Section 1.07-3(F)(1) to reflect that the Department will no longer pay and then seek reimbursement, commonly known as pay and chase, from liable third parties for prenatal services.

In Section 1.19-1(C)(2), the final rule clarifies that the Department may reimburse providers for covered services rendered during the period following a notice of termination up to the effective date of termination, instead of for a period not to exceed thirty days after the date of receipt of the notice of termination. This change was made because providers may not be reimbursed after termination of a provider agreement. The final rule also adds that providers must follow the provisions of their provider agreements and the *MaineCare Benefits Manual* to continue to receive reimbursement for services.

To enable the OMS Program Integrity Unit to implement appropriate sanctions, the final rule allows the Department, in its discretion, to consider a request from a provider to impose a lower percentage than 20% recoupment. The rulemaking adds a list of factors in Sec. 1.20-2 the Department may consider when assessing this type of provider request.

In order to correct provider deficiencies, the final rule adds a sanction permitting the Department to require providers to submit a detailed plan of correction for review and approval. This will allow the OMS Program Integrity Unit to ensure providers comply with MaineCare rules and monitor providers who experience rapid growth or changes. Providers that grow rapidly may not have adequate infrastructure to maintain quality of service provision. The final rule allows providers to satisfy the plan of correction requirement by submitting a plan that was approved by another Division within the Department if it addresses identical violations. The additional sanctions added to Section 1.20-2 provide that the Department may:

- Impose a suspension of referrals to a provider;
- Deny or pend any enrollment applications submitted by a provider;
- Limit the number of service locations a provider may enroll; and
- Limit the number of MaineCare members the provider may serve.

The final rule clarifies the provisions in Sec. 1.21 regarding reinstatement following termination or exclusion to make the provisions easier to understand and apply.

The final rule adds Section 1.24-4 on expedited member appeals that includes: (1) the procedure to request an expedited appeal, (2) criteria for the Division of Administrative Hearings (DAH) to consider when deciding whether to grant requests, (3) deadlines for when the Department must take final agency action, and (4) other requirements, per 42 CFR § 431.224. The final rule amends Section 1.24-3 to provide that MaineCare Member Services shall send all expedited hearing requests to a hearings representative and the DAH within 24 hours of identifying the request.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

The MaineCare Advisory Committee (MAC) developed structural and process changes to improve its function and efficiency. The final rule implements these changes in Section 1.25. The MAC changes include, among others, increasing MAC membership and including at least two Medicaid beneficiaries as members.

The final rule also makes the following changes:

- Defines the ownership and control relationships that are subject to an offset and/or recoupment;
- Establishes a 10-day timeframe for when providers need to update OMS of changes to their National Provider Identifier or other enrollment information;
- Requires providers who change their name or “doing business as” name to change their MaineCare Provider Agreement;
- Clarifies that providers must take all reasonable and appropriate steps requested by the Department to transition members before changes of ownership, closures, and disenrollment, except in the case of reasonably unforeseen circumstances, and, upon request, submit a transition plan to the Department for review and approval;
- Update the rule in accordance with 10-144 *Code of Maine Rules*, Chapter 128, Certified Nursing Assistant and Direct Care Worker Registry Rule, to require agencies hiring direct care workers (DCWs) to check the Maine Certified Nursing Assistant and Direct Care Worker Registry to ensure DCWs are eligible for employment in Maine and comply with all requirements stipulated in the rule;
- Adds that providers may not bill MaineCare for an interpreter service supplied by an entity in which the providers, any owner of the providers, or an immediate family member of the providers or any of their owners has any direct or indirect ownership or financial interest, unless the provider also reimburses other entities for the provision of interpreter services and the entity providing the interpreting service makes those services commercially available to MaineCare providers or other businesses that do not share a direct or indirect familial ownership interest with the interpreting entity;
- Changes the billable amount for interpreter services to be the lesser of the interpreter’s usual and customary charge and the rate authorized by the Department;
- To comply with section 53102 of the Bipartisan Budget Act of 2018, increases the number of days, from 30 to 100, that providers must wait for a response from an absent parent’s third party insurance before billing MaineCare;
- Adds that the Department may impose sanctions on providers who fail to provide information to the Department or to otherwise respond to Departmental requests for information within a reasonable timeframe established by the Department;
- Adds a penalty of 25% of MaineCare payments for covered goods and services where the providers’ records lack a required signature by a member or the member’s guardian;
- Changes penalties to equal 20%, as opposed to not exceeding 20%, when mandated records are missing but providers are able to demonstrate by a preponderance of the evidence that the disputed goods or services were medically necessary;
- Clarifies the Department’s authority to exclude individuals, entities, and providers from participation in MaineCare for any reason identified in 42 CFR Part 1001 or 1003;

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

- Adds considerations for reinstatement from termination or exclusion to include the conduct of the individual or entity prior to and after the date of the notice of exclusion;
- Clarifies that providers may request an informal review within 60 calendar days from the date of written notification of the Department’s alleged grievance and extends the deadline to the next business day if it falls on a weekend or holiday; and
- Makes minor grammatical and technical changes.

As described in detail in the Summary of Comments and Responses document, the Department made a few changes to the final adopted rule, including: delaying the implementation of the Sec. 1.03-8(J) rounding rule changes until January 1, 2023; clarifying in Section 1.03-8(J) that providers may bill partial units of service to the first or second decimal place and adding an example of how providers may bill for partial units; removing the proposed “shall” and retaining the original “in its discretion may” language in Section 1.20-2(H); adding that “certain administrative tasks may be covered when described in the appropriate Section of policy” in Section 1.06-4(B)(8); adding a provision to Section 1.20-2(I) that states “providers may satisfy the plan of correction requirement by sharing a copy of a plan of correction approved by another Office or Department for the identical violation(s) for which OMS sought the plan of correction.”; clarifying the language referencing the CNA and DCW Registry in Section 1.03-12; removing the proposed 340B Drug Pricing Program in Section 1.03-14; and clarifying Section 1.12-C(2) to address when a provider is related to another provider by ownership and control.

Fiscal impact of rule:

The Department anticipates that this rulemaking will save approximately \$46,203 in SFY 2022, which includes \$16,685 in state dollars and \$29,518 in federal dollars, and \$46,203 in SFY 2023, which includes \$16,648 in state dollars and \$29,555 in federal dollars. This savings is primarily due to the implementation and expected use of the new 25 percent penalty on providers’ whose records lack required signatures, which is an increase over the current 20 percent penalty applied for these types of violations.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173; 42 CFR §441.301(c)
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. I Section 6**, Global HCBS Waiver Person-Centered Planning and Settings Rule
Filing number: **2022-010**
Effective date: 1/19/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This new rule implements the federal requirements for Maine’s Section 1915(c) home and community-based waiver programs as set forth in 42 CFR §441.301(c), and includes requirements for person-centered service planning and for settings in which home and community-based waiver services (“HCBS”) are provided, including requirements for provider-owned or controlled residential settings. Adoption of this rulemaking means that the rule is judicially enforceable. See 5 MRS §8002(9). The Department adopted this rule implementing these requirements in order to be in compliance with federal Medicaid law and regulations, so that the Department can continue to receive federal funding for HCBS waiver programs.

The adopted rule implements additional requirements or changes to HCBS waiver programs under the following sections of the *MaineCare Benefits Manual*:

Section 18: Home and Community-Based Services for Adults with Brain Injury;

Section 19: Home and Community Benefits for the Elderly and Adults with Disabilities;

Section 20: Home and Community-Based Services for Adults with Other Related

Conditions;

Section 21: Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder; and

Section 29: Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder.

In the event of conflict between the requirements of this adopted rule and any rule listed above, the terms of the adopted rule will supersede and shall apply.

The rule tracks closely the federal requirements set forth in 42 CFR §441.301(c). It clarifies that the Member leads the person-centered planning process and that the process should reflect the Member’s cultural considerations and provide necessary information to allow the Member to make informed choices and decisions. The rule outlines what must be contained in the person-centered service plan, requires that it must be understood and agreed to by the Member, and provides when and how a modification may be made to the person-centered service plan. The rule establishes general requirements for HCBS settings so that the setting ensures the Member’s rights of privacy, dignity and respect, freedom from coercion and restraint, and facilitates individual choice regarding HCBS waiver services and settings.

There are additional requirements for provider-owned or controlled residential settings. These include Members having privacy in their sleeping or living unit, Members having freedom to access food at any time, and Members having the ability to have visitors at any time. The adopted rule also contains a provision related to certain disability-specific settings (such as sec. 18 Work Ordered Club House Services). The rule leaves open the Department’s

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

ability to amend sec. 18, sec. 20, sec. 21 and/or sec. 29 regulations through rulemaking to impose additional requirements.

The adopted rule outlines requirements for provider qualifications as well as Department oversight and enforcement to ensure full compliance with HCBS waiver services and related sections of the *MaineCare Benefits Manual*, including ch. I sec. 1, “General Administrative Policies and Procedures”.

The Department shall submit to CMS and anticipates CMS approval of Waiver amendments related to this rule.

The rule will become effective 5 days after the finally adopted rule is filed with the Secretary of State’s office, per 5 MRS §8052(6). The rule provides for a prospective application date for HCBS settings that were approved as settings prior to March 17, 2014, for sections 6.04(A) (Home and Community-Based Settings - General Requirements) and 6.04(B) (Additional Requirements for Provider-Owned or Controlled Residential Settings) which will have a prospective application date of September 30, 2022.

Finally, as a result of public comments and further review by the Department and the Office of the Attorney General, there were additional minor grammatical and formatting changes to the adopted rule language.

Fiscal impact of rule:

The Department does not anticipate this rulemaking will have a fiscal impact on the state budget.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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, 42(8), 3173, 42 CFR Sec. 441.301(c), 42 USC §1396b(l)

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

Filing number: **2022-087**

Effective date: 5/22/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

The Department is adopting comprehensive amendments of 10-144 CMR Chapter 101, *MaineCare Benefits Manual* (“MBM”), Chapter II Section 21, “Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder”.

This Section 21 rule implements and regulates a Section 1915(c) home and community-based services (HCBS) Medicaid waiver approved by the Centers for Medicare and Medicaid (“CMS”) in the U.S. Dept. of Health and Human Services. Under this Section 21 waiver program, the Department provides comprehensive services to support eligible adult MaineCare Members with an intellectual disability or autism living in the community. MBM Chapter II Section 21 is a routine technical rule pursuant to 34-B MRS §5432(3).

On September 25, 2020, CMS approved the request of the Maine Department of Health and Human Services (DHHS or the Department) to renew the Section 21 HCBS waiver for a five-year period, with an effective date of July 1, 2020. The Section 21 waiver was further amended effective January 1, 2021, April 1, 2021, and July 1, 2021, and the Department will prepare and request CMS approval of additional amendments of the waiver authorizing additional changes made as part of this rulemaking.

On or about December 29, 2021, the Office of the Secretary of State gave notice of proposed amendments of MBM Chapter II, Section to the Executive Director of the Legislative Council, and published notice of the rulemaking. The Department gave notice of the rulemaking to known interested parties, and held a remote public hearing pursuant to 34-B MRS § 5465(4) on January 19, 2022 and accepted other public comment regarding the proposed rulemaking pursuant to 5 MRS §8057-A(3) until the close of business on January 31, 2022. A summary of public comments, the Department’s responses, and changes made to the rule after it was published for public comment will be filed with the Secretary of State in conjunction with this rulemaking.

In conformance with the CMS-approved Section 21 waiver, the Department now:

- Adds a definition of “Competitive Integrated Employment” in § 21.02;
- Updates the definitions of “Autism Spectrum Disorder”, “Intellectual Disability”, “Activities of Daily Living”, “Instrumental Activities of Daily Living”, “Person-Centered Service Plan”, and “Shared Living”;
- Eliminates Counseling as a Section 21 Covered Service. Counseling services are available to Section 21 Members under Section 65 of the MaineCare Benefits Manual (MBM). All Section 21 Members who were receiving Counseling services under Section 21 received written notice of this change in October 2020;

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

- Updates, expands, and/or clarifies the description of the following Covered Services in §21.05:
 - Career Planning
 - Community Support
 - Crisis Intervention Services (Requires additional documentation by the Planning Team.)
 - Home Support – Agency Per Diem (Requires that at least one staff person be present and awake at all time one or more Members are at home, 24/7, in order to respond immediately to Member requests for assistance.)
 - Home Support – Family Centered Support
 - Home Support – Quarter Hour
 - Non-Medical Transportation Service
 - Shared Living (Foster Care Adult)
 - Specialized Medical Equipment
 - Speech Therapy (Maintenance) (Clarifies the intent is to prevent regression, loss of movement, injury and medical complications that would result in a higher level of skilled care.)
 - Work Support – Individual (Clarifies the primary focus of the service is job related and encompasses adherence to workplace policies and safety.).
- **U.S. Department of Justice (DOJ) Settlement Agreement:** On June 4, 2021, the Department entered into a Settlement Agreement with the DOJ (DJ No. 204-34-72). The Department agreed to adopt a rule which establishes an exceptions process that provides Section 21 Members, and Members applying to receive Section 21 benefits, may request services in excess of otherwise-applicable Section 21 monetary and/or unit caps, where necessary to ensure that Section 21 Members receive adequate and appropriate services and supports in the most integrated setting appropriate to their needs, consistent with Title II of the Americans with Disabilities Act (ADA). This rulemaking adopts this exceptions process as *Requests for Exceptions* in §21.14.
- On January 19, 2022 the Department adopted a new rule which implements the federal requirements for Maine’s Section 1915(c) home and community-based waiver programs set forth in 42 CFR §441.301(c). This adopted rule is codified as 10-144 CMR ch. 101, *MaineCare Benefits Manual*, Chapter I Section 6, “Global HCBS Waiver Person-Centered Planning and Settings Rule”, referred to as the Global HCBS Rule. The Global HCBS Rule includes requirements for person-centered service planning and for settings in which home and community-based waiver services are provided, including requirements for provider-owned or controlled residential settings. Consistent with the Global HCBS Rule, MBM Chapter II Section 21 rule incorporates applicable HCBS planning and settings requirements (*See, e.g.*, §21.04-2 [Person Centered Service Planning Process] and § 21.05-1 [Home and Community Based Settings]).
- This adopted rule notifies providers and the public that all Section 21 providers must comply with all applicable federal and state laws, which includes applicable Maine licensing laws and regulations as well as Ch I Section 1 of the MBM including maintaining current licenses, as applicable.
- **Plan of Corrective Action (“POCA”):** The Department adopts a new provision which expands upon the quality assurance activities authorized under Appendix V of the rule. This new §21.14 authorizes the Department to issue written Notices of Deficiency, and to require providers to submit and implement Plans of Corrective Action as approved by the Department. Providers have the right to appeal written Notices of Deficiency. This POCA process provides increased protections for Members

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

and ensures that providers are in compliance with service requirements, have sufficient clinical and administrative capability to carry out the intent of the service, and have taken steps to assure the safety, quality, and accessibility of the service for Members.

- **§21.08-3 (Termination from Participation as a MaineCare Provider):** The Department clarifies this provision by expressly notifying providers of the MBM Ch. I, Sec. 1 requirement that providers must give written notice of their intent to terminate all participation in the MaineCare Program. In addition, this provision requires Section 21 providers to notify all Section 21 Members they serve of any intent to terminate participation in the MaineCare program.
- **§21.10-1 (Direct Support Professional Qualifications):** The Department requires all DSPs, regardless of capacity and prior to provision of services to a Member, to receive training regarding the “Global HCBS Waiver Person Centered Planning and Settings Rule”, *MaineCare Benefits Manual*, Chapter I Section 6; eliminates the requirement for grievance process training prior to working with Members; and adds a requirement for DSPs who provide Crisis Intervention to receive behavioral intervention training. Within six (6) months of hire and annually thereafter, the adopted rule requires DSPs to comply with the Department’s regulations: Reportable Events System (14-197 CMR ch. 12) and the Adult Protective Services System (10-149 CMR ch. 1). The Department changes Provider Qualifications and Requirements for Direct Support Professionals (DSPs) for Career Planning and Employment Specialist Services.
- **§21.10-9 (Electronic Visit Verification):** The Department requires providers of Home Support-Quarter Hour services to comply with Maine DHHS Electronic Visit Verification (EVV) system standards and requirements. This complies with the *21st Century Cures Act* (PL 114-255), Section 12006, as codified in 42 USC §1396b(l).
- **§21.11 (Member Appeals):** The Department is adding a sentence to provide that Members have the right to appeal decisions made regarding priority level and waitlist determinations.
- **Appendix IV (Performance Measures):** The Department eliminates Appendix IV because the Department utilizes data available through the Department of Labor, Person Centered Service Plans, and authorization data as part of the Department’s commitment to quality assurance and quality improvement system. Additionally, specific performance measures are either no longer relevant or necessary to measure the performance of specifically listed employment services, or have been met.

With this rulemaking, the Department adopts and will seek CMS approval of the following additional changes:

- Community Support services are separated into three tiers of service delivery: Community Only-Individual, Community Only-Group, and Center-Based, to support individualized needs of the participant population more broadly.
- **§21.07-2 (Limits):** The Department changes the limit from \$26,640 to \$39,875 for the combined annual cost of Work Support-Group, Work Support-Individual, and Community Support Services, retroactive to January 1, 2021. This retroactive application is authorized under 22 MRS §42(8), as the change is a benefit to both Members and Providers.

As a result of public comments and further review by the Department and the Office of the Attorney General, the adopted rule includes clarifying language for various Covered Services, including: §21.05-1, Home and Community-Based Settings, §21.05-11, Community Support Services, §21.05-13, Home Support-Quarter Hour Services, §21.05-14, Home Support-Remote Support Services, and §21.05-20 (Shared Living / Foster Care, Adult).

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Additionally, as a result of public comment the adopted rule includes a definition for Competitive Integrated Employment (§21.02-9) consistent with the Department's CMS-approved waiver, a revised definition for §21.02-5, Autism Spectrum Disorder, to align with the most current edition of the *Diagnostic and Statistical Manual of Mental Disorders*, (American Psychiatric Association), and a clarified definition for §21.02-4, Agency Home Support.

Finally, as a result of public comment, the Department has revised the Plan of Corrective Action (POCA) process, specifically §21.10-14 (D), to align with Chapter I Section 1 of the MBM in allowing providers 60 days to appeal a Notice of Deficiency and including the mailing address of the Clinical Review Team at §21.14-2(C).

Fiscal impact of rule:

This rulemaking updates Member services, incorporates the Department's Global HCBS (MCBM ch 1 Sec. 6) by reference, and adopts a Plan of Correction procedure for providers.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 §8073; PL 2019 ch. 616 part A §A-7; PL 2021 ch. 398
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: **2022-044** (*Repeal*)
Effective date: 3/23/2022
Type of rule: Major Substantive
Emergency rule: Yes

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

Basis statement:

The Department is repealing an emergency major substantive rule that was effective on April 7, 2021, that included reimbursement rate increases for certain services under *MaineCare Benefits Manual*, ch. III section 21, “Allowances for Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder”, pursuant to PL 2019 ch. 616. Under 5 MRS §8072, emergency major substantive rules are effective for up to 12 months or until Legislative review. The Department has not yet initiated the proposed major substantive rulemaking associated with the April 7, 2021 emergency major substantive rule, and thus there is no provisional major substantive rule pending for review before the Legislature.

There is no decrease in reimbursement for any service affected by this repeal of the April 2021 emergency major substantive rule changes. The Department is repealing this emergency major substantive rule because of additional Section 21 reimbursement rate changes that were required by PL 2021 ch. 398 (the “Act”).

Simultaneous with the repeal of the emergency major substantive rule, pursuant to the Act, the Department will implement separate emergency routine technical rule changes that increase rates for section 21 providers. As set forth in the MAPA documents for the separate rulemaking, the Act authorized the Department to make those specific section 21 reimbursement rate changes on an emergency basis via routine technical rulemaking, even though ch. III section 21 rulemaking is typically major substantive. All of the section 21 reimbursement rates that were increased via the April 7, 2021 emergency major substantive rule (that is now being repealed) are included in the rate increases for the separate emergency routine technical rule. Because of the separate routine technical emergency rule, the repeal of the emergency major substantive rule will not have the effect of causing the reimbursement rates to revert to the lower rates that were in the current permanent major substantive ch. III sec. 21 (eff. 7/28/2019).

The separate routine technical emergency rule changes shall be effective for up to 90 days. The Department intends to proceed with proposed routine technical rulemaking to make permanent the increases to reimbursement rates enacted through the emergency rule changes. These increased rates in the separate routine technical rulemaking will be effective retroactive to January 1, 2022, as directed by the Act, per 22 MRS §42(8).

Fiscal impact of rule:
(No response)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 2021 ch. 398
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: **2022-045**
Effective date: 3/23/2022
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

In response to the statewide staffing crisis and to comply with PL 2021 ch. 398 (the “Act”), the Department is implementing emergency routine technical rule changes to increase rates for providers of services under ch. III section 21, “Allowances for Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder”.

Section AAAA-1 of the Act enacts 22 MRS ch. 1627, “Essential Support Worker Reimbursement”. The new law requires that, effective January 1, 2022, the labor components of MaineCare reimbursement rates for specified services delivered by “essential support workers” must equal at least 125% of the minimum wage established in Title 26 section 664, subsection 1. Essential support workers are individuals who by virtue of employment generally provide to individuals direct contact assistance with activities of daily living or instrumental activities of daily living or have direct access to provide care and services to clients, patients or residents regardless of the setting. 22 MRS §7401. In addition, part AAAA states that the reimbursement rate must include an amount necessary to reimburse the provider for taxes and benefits related to the wages. 22 MRS §7402(2). Section AAAA-2 of the Act specifies that the 125% of minimum wage requirement for essential support workers applies to ch. III section 21 services.

Additionally, part OOO of the Act authorizes the Department to implement cost of living increases (COLAs). In calculating the rate increases necessary to comply with part AAAA of the Act, the Legislature and the Department took into consideration the impact of planned COLAs on ensuring the labor components of the reimbursement rates for section 21 and other services specified under part AAAA are equal to at least 125 percent of minimum wage.

Rulemaking required for these particular rule changes are routine technical per 22 MRS §7404 (for the essential support worker increases), and part OOO of the Act (for the COLA-related increases) even though ch. III section 21 is generally a major substantive rule. *See, e.g.,* 22 MRS §3195.

Section GGGG-1 of the Act provides the Department with authority to enact these routine technical changes on an emergency basis, without the need to make findings in support of an emergency per 5 MRS §8054. These routine technical emergency rule changes shall be effective for up to 90 days. The Department intends to proceed with proposed routine technical rulemaking to make permanent the increases to reimbursement rates enacted through this emergency adoption.

These increased rates will be effective retroactive to January 1, 2022, as directed by the Act. The retroactive application of this rule comports with 22 MRS §42(8), which provides state authority for the Department to adopt rules with a retroactive application for a period not to

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

exceed eight (8) calendar quarters where there is no adverse financial impact on any MaineCare member or provider. Here, the rule change is a beneficial change for the providers.

Separately, effective December 31, 2021, and coinciding with the adoption of this emergency routine technical rule, the Department shall repeal an emergency major substantive rule that was adopted on April 7, 2021, and that included reimbursement rate increases for certain services under ch. III section 21 pursuant to PL 2019 ch. 616; emergency major substantive rules are effective for up to twelve months, or until Legislative review. The Department has not yet initiated the proposed major substantive rulemaking associated with the April 7, 2021, emergency major substantive rule, and thus there is no provisional major substantive rule pending for review before the Legislature. There is no decrease in reimbursement for any service affected by the repeal of the April 2021 emergency major substantive rule.

The Department shall seek approval from the Centers for Medicare & Medicaid Services (CMS) for the increased reimbursement rates. In addition, the Governor's proposed budget will ask the legislature for additional funds to support these increases and to meet the intent of part AAAA of the Act ensuring labor components of all rates are at least equal to 125% of minimum wage.

Fiscal impact of rule:

(No response)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 and 42(8), 3173; PL 2021 ch. 398
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: **2022-119**
Effective date: 6/15/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

In response to the statewide staffing crisis and to comply with PL 2021 ch. 398 (the “Act”), the Department is adopting routine technical rule changes to increase rates for providers of services under Ch. III Section 21, “Allowances for Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder”.

Section AAAA-1 of the Act enacts 22 MRS Chapter 1627, “Essential Support Worker Reimbursement”. The new law requires that, effective January 1, 2022, the labor components of MaineCare reimbursement rates for specified services delivered by “essential support workers” must equal at least 125% of the minimum wage established in Title 26 section 664 subsection 1. Essential support workers are individuals who by virtue of employment generally provide to individuals direct contact assistance with activities of daily living or instrumental activities of daily living or have direct access to provide care and services to clients, patients or residents regardless of the setting. 22 MRS §7401. In addition, Part AAAA states that the reimbursement rate must include an amount necessary to reimburse the provider for taxes and benefits related to the wages. 22 MRS §7402(2). Section AAAA-2 of the Act specifies that the 125% of minimum wage requirement for essential support workers applies to Ch. III, Section 21 services.

Additionally, Part OOO of the Act authorizes the Department to implement cost of living increases (COLAs). In calculating the rate increases necessary to comply with Part AAAA of the Act, the Legislature and the Department took into consideration the impact of the planned COLAs on ensuring the labor components of the reimbursement rates for Section 21 and other services specified under Part AAAA are equal to at least 125 percent of minimum wage.

Rulemaking required for these particular rule changes are routine technical per 22 MRS §7404 (for the essential support worker increases), and Part OOO of the Act (for the COLA-related increases) even though Ch. III Section 21 is generally a major substantive rule. *See, e.g.,* 22 MRS §3195.

On March 22, 2022, the Department implemented these increased rates via an emergency routine technical rule, which shall be effective for up to 90 days. The rates are effective retroactive to January 1, 2022, as directed by the Act. The retroactive application of this rule comports with 22 MRS §42(8), which provides state authority for the Department to adopt rules with a retroactive application for a period not to exceed eight (8) calendar quarters where there is no adverse financial impact on any MaineCare member or provider. Here, the rule changes are beneficial for the providers. This adopted routine technical rulemaking seeks to make permanent the increases to the reimbursement rates enacted via emergency rule.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

As noted in detail in the Summary of Comments and Responses, certain commenters incorrectly asserted that (1) the final rule, Sec. 1300(3), implements a reduction in per diem rates, and (2) the changes in reimbursement do not fully include rates equal to at least 125% of the minimum wage.

With regard to (1), this rule continues the previous policy of lower reimbursement for hours in excess of 168; the actual rate for hours in excess of 168 has increased by \$3.95. Hence there is no reduction and no violation of the Maintenance of Effort required under Section 9817 of the *American Rescue Plan*.

With regard to (2), per PL 2021 ch. 635, *An Act To Make Supplemental Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2022 and June 30, 2023*, the Legislature has approved additional funds to support these increases and to meet the intent of Part AAAA of the Act ensuring labor components of all rates are at least equal to 125% of minimum wage.

The Department had previously implemented rates to include these labor component amounts (that are all equal to at least 125% of the minimum wage) in the emergency rule and also proposed the same rates. This final adopted rule includes rates with labor components that are all at least equal to 125% of the minimum wage.

The Department received temporary approval on March 7, 2022 and intends to seek permanent approval from the Centers for Medicare & Medicaid Services (CMS) for the adopted increased reimbursement rates with a retroactive effective date of January 1, 2022.

The Department did not make any additional changes to the adopted rule as a result of public comments.

Fiscal impact of rule:

(No response)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 2021 Ch. 398 Sec. A-17 Part CCC and Part GGGG

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II and III Section 25**, Dental Services and Reimbursement Methodology (*replaces Ch. II Section 25, “Dental Services”, and Ch. III Section 25, “Allowances for Dental Services”*)

Filing number: **2022-125** (*Repeal and replace*)

Effective date: 7/1/2022

Type of rule: Routine Technical

Emergency rule: Yes

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

Basis statement:

The Department adopts this emergency rule, which repeals Ch. II and Ch. III, Section 25, and replaces them with a new Ch. II rule, “Dental Services and Reimbursement Methodology.”

Emergency Rulemaking Authority for Dental Services: Pursuant to PL 2021 Ch. 398 (eff. July 1, 2021), Sec. A-17, *An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2021, June 30, 2022 and June 30, 2023*, (the “Budget”) Part CCC, Sec. CCC-1, of the Budget enacted changes to the MaineCare dental statute – 22 MRS 3174-F(1)(Coverage for Adult Dental Services), by adding subsection G, which provides: “Other comprehensive preventive, diagnostic and restorative dental services to maintain good oral health and overall health in accordance with rules adopted by the department.” Section CCC-2 of the Budget required the Department to adopt emergency rules by July 1, 2022, to implement the new provisions of 22 MRS Section 3174-F(1), which expanded covered services for members 21 and older (adults), after consideration of recommendations by the dental subcommittee of the MaineCare Advisory Committee (“MAC”).

Between August 2021 and May 2022, the Department met with the dental subcommittee of the MAC ten times and with the full MAC once. The Department also held two stakeholder forums to receive input on the benefit design and reimbursement methodology. Stakeholders included MaineCare dental providers and various oral health advocates, including representatives from Maine Equal Justice, Maine Primary Care Association, and Children’s Oral Health Network of Maine. This rule incorporates recommendations from this stakeholder engagement, invests \$45 million to increase rates and expand the adult dental benefit, as well as fully integrate the children and adult benefits and rates into a single rule. The emergency rule adds a comprehensive array of dental services for adult members, per 22 MRS 3174-F(1).

Emergency Rulemaking Authority for Dental Services Reimbursement

Methodology: Part GGGG Section GGGG-1 of the Budget authorized the Department to amend the rule on an emergency basis “to implement recommendations of the MaineCare comprehensive rate system evaluation report for dental rates.” The Department’s Comprehensive Rate System Evaluation, conducted by the firm Myers and Stauffer, showed that MaineCare rates for preventive, diagnostic, and endodontic services are lower than rates

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

for state Medicaid agencies in Connecticut, New Hampshire, Vermont, North Carolina, and Montana. Through this emergency rulemaking, the Department repeals the current Ch. III, Section 25, and implements a new reimbursement methodology in the emergency Ch. II, Section 25. The new Section 25 dental reimbursement rates will be posted on a website, and those rates will be set based on either the “Commercial Median Benchmark” or the “All-States Medicaid Average Benchmark,” as defined by the emergency rule. The dental codes shall undergo annual updates, per the methodology included in the emergency rule. On average, the reimbursement rates for dental services are increasing by 74%. Since April 11, 2022, the Department has conferred multiple times with providers and the MAC regarding this new reimbursement methodology.

Differences Between the Repealed Rules and the Emergency Rule:

The Department finds that the holistic approach of including coverage of both children’s and adult services as well as the reimbursement methodology in a single rule is a more efficient and streamlined approach for the dental rule.

Accordingly, the emergency rulemaking repeals and replaces 10-144 CMR Ch. 101, *MaineCare Benefits Manual* (the “MBM”) Chapters II and III Section 25, “Dental Services”, and replaces those rules with one Ch. II Section 25 rule.

The differences between the emergency and the former Chapters II and III Section 25, rules include the following:

1. **Section 25.06 (Reimbursement Methodology). The rule replaces specified rates with a reimbursement methodology.** Whereas the former Chapter II Section 25, rule stated rates would be the amount listed in Chapter III Section 25, the emergency rule implements a reimbursement methodology that increases overall reimbursement consistent with recommendations from the comprehensive rate setting evaluation.

The reimbursement methodology sets rates for diagnostic, endodontic, periodontic, and preventative services based on 67% of the Commercial Median Benchmark or 133% of the Medicaid State Average Benchmark, if the Commercial Median Benchmark rate is unavailable or unreliable.

The reimbursement methodology sets rates for adjunctive, oral and maxillofacial surgery, orthodontics, prosthodontics, and restorative services based on 50% of the Commercial Median Benchmark or 100% of the Medicaid State Average Benchmark if the Commercial Median Benchmark rate is unavailable or unreliable.
2. **In addition, the rule eliminates inconsistent payment for services billed as medical versus dental services.** To ensure that there is not a rate disparity between CDT and CPT codes that represent the same service, the emergency rule removes coverage of some oral and maxillofacial surgery and maxillofacial prosthetic services so that they are solely covered under Section 90, Physician Services. The Department removes services from the proposed rule that have a CPT code equivalent, that are medical in nature, and are primarily delivered by oral surgeons who already bill the services under Section 90, “Physician Services”.
3. **Replaces emergency-only adult dental coverage with comprehensive adult dental coverage.** To implement the new comprehensive adult dental benefit, the emergency rule adds coverage for adults for diagnostic, preventive, restorative, endodontic, periodontic, prosthodontic, oral and maxillofacial surgery, and adjunctive services. To enable this comprehensive adult coverage, the emergency rule removes the Section 25.04 requirement that adult dental care be limited to acute surgical care directly related to an accident; oral medical procedures not involving the dentition and gingiva; extraction of teeth that are severely decayed and pose a serious threat of infection during cardiovascular surgery; or treatment necessary to relieve pain, eliminate infection, or prevent imminent tooth loss.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

4. **Replaces separate adult and child coverage provisions with a single covered services description generally applicable to all members.** As a result of removing the restrictions on adult dental coverage, the emergency rule contains one “Covered Services” provision, which includes the services, limits, and other requirements for all members, regardless of age, unless otherwise specified. Some services will continue to be age-limited, and they are noted as such in the rule.
5. **In addition to adding broad coverage for adult dental services, the emergency rule adds or increases coverage for many existing services, including the following:**
 - a. Comprehensive periodontal evaluations
 - b. Counseling for the control and prevention of adverse oral, behavioral, and systemic health effects associated with high-risk substance use
 - c. Removable unilateral space maintainers
 - d. Multiple types of crowns
 - e. Prefabricated crowns
 - f. Apicoectomies
 - g. Immediate partial dentures
 - h. Complete denture repairs
 - i. Partial denture relines
 - j. Multiple types of pontics and prosthodontic retainers
 - k. Re-cement or re-bond and repairs of fixed partial dentures
 - l. Dental case management
 - m. Single bitewings
 - n. Panoramic radiographs
 - o. Topical fluoride
 - p. Denture adjustments
6. **Aligns limits and prior authorization requirements with other state Medicaid agencies, commercial payers, and stakeholder recommendations.** Because of the limited scope of the adult dental benefit in the current rule, the emergency rule makes changes to align the covered services and limits with typical comprehensive dental coverage. Specifically:
 - a. The emergency rule removes the requirement that adults have a qualifying medical condition to receive removable prosthodontics (dentures).
 - b. The emergency rule establishes medically appropriate limitations where none previously existed, based on recommendations from clinical consultation and alignment with other comprehensive dental coverage (commercial payers and other Medicaid agencies).
 - c. The emergency rule adds and removes prior authorizations to align with other payors and based on recommendations from clinical consultation and provider feedback.
 - d. The emergency rule removes the “more than once every 150 days” requirement for detailed and extensive and periodic oral evaluations and prophylaxis treatments.
7. **Removes unnecessary and overly detailed provisions.** The emergency rule removes the following from the rule:
 - a. Unnecessary and unused definitions.
 - b. Reference to coverage for members residing in an “Intermediate Care Facility for Persons with Mental Retardation (ICF-IID)” because these members will now receive the services covered for members 21 and over (adults).
 - c. Requirements that address the covered services certain provider types can provide under their scope of practices because providers’ scope of practices are already defined in 32 MRS Ch. 147.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

- d. Prescriptive descriptions of services that are overly detailed for the rule.
- e. Section 25.03-9, Temporomandibular Joint Services, because it is not clear what specific services this provision encompasses and because services that are related to the temporomandibular joint are listed in the new covered services Section.
- f. Section 25.06-1, Member's Records, because Chapter I, Section 1.03-8(M) and Board rule 02-313 CMR Chapter 12 both contain member/patient record requirements.
- g. Section 25.06-2, The Division of Program Integrity, because it only refers providers to Chapter I, which already applies to all providers.
- h. Requirements and instructions in Section 25.06-3, Prior Authorization of Dental Services, because they either exist in Chapter I of the MBM or in MaineCare's Prior Authorization Manual on the HealthPAS Portal.
- i. Section 25.06-5, Case Management, because it describes standard health care provider practices and because the emergency rule adds coverage for a dental case management service.
- j. Sections 25.07-4, Denturist Services, and 25.07-5, Dental Hygienist Services, because it is unnecessary to include the services that these providers can deliver under their scopes of practice, which are defined in 32 MRS Ch. 147. Section 25.07-5 also includes outdated guidance.
- k. Section 25.07-6, Independent Practice Dental Hygienist (IPDH) Services, because IPDHs must comply with their scope of practice, as defined in 32 MRS Ch. 143 § 18375, and it is redundant to list services that IPDHs can deliver in rule. In addition, the requirements for IPDHs delivering temporary fillings no longer have a basis in Board rules and have been a roadblock to delivering this service. The requirements for processing and exposing radiographs are also no longer in effect.
- l. The appendix because the forms either exist on the HealthPAS Portal or will no longer be required.

The Department will propose a routine technical rule to permanently repeal Chapters II and III Section 25, and replace them with the single Ch. II Section 25 rule.

The Department shall seek approval from the Centers for Medicare and Medicaid Services (CMS) of state plan amendments (SPAs) for the changes in this rulemaking. Additionally, on or before July 1, 2022, the Department will publish a notice of change in reimbursement methodology pursuant to 42 CFR §447.205.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$45,080,337 in FY 2023 in state dollars and \$29,089,011 in federal dollars.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 2021 Ch. 398 Sec. A-17 Part CCC and Part GGGG

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual:
Ch. II Section 25, Dental Services (*Repeal*)
Ch. III Section 25, Allowances for Dental Services (*Repeal*)
Ch. II Section 25, Dental Services and Reimbursement Methodology (*Replaces repealed Ch. II and III*)

Filing number: **2022-193, 194** (*Repeal and replace*)

Effective date: 9/28/2022

Type of rule: Routine Technical

Emergency rule: No

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

Basis statement:

The Department adopts this rule, which repeals Ch. II and Ch. III Section 25, and replaces them with a new Ch. II rule, “Dental Services and Reimbursement Methodology.”

On July 1, 2022, the Department implemented the vast majority of changes in this adopted rule via emergency rulemaking, pursuant to PL 2021 Ch. 398 (eff. July 1, 2021), Sec. A-17 (the “Budget”), Part CCC Sec. CCC-1, Part GGGG, and Section GGGG-1.

Between August 2021 and May 2022, the Department met with the dental subcommittee of the MaineCare Advisory Committee (“MAC”) ten times and with the full MAC once. The Department also held two stakeholder forums to receive input on the benefit design and reimbursement methodology. Stakeholders included MaineCare dental providers and various oral health advocates, including representatives from Maine Equal Justice, Maine Primary Care Association, and Children’s Oral Health Network of Maine. This rule incorporates recommendations from this stakeholder engagement, invests \$45 million to increase rates and expand the adult dental benefit, as well as fully integrates the children and adult benefits and rates into a single rule. The adopted rule adds a comprehensive array of dental services for adult members, per 22 MRS §3174-F(1).

Additionally, this adopted rule implements the recommendations from the Department’s Comprehensive Rate System Evaluation, conducted by the firm Myers and Stauffer. The new Section 25 dental reimbursement rates will be posted on a website, and those rates will be set based on either the “Commercial Median Benchmark” or the “All-States Medicaid Average Benchmark,” as defined by the adopted rule. The dental code benchmarks shall undergo updates every two years, per the methodology included in the adopted rule. Since April 11, 2022, the Department has conferred multiple times with providers and the MAC regarding this new reimbursement methodology.

The differences between the adopted rule and the former, now repealed Chapters II and III, Section 25, rules include the following:

1. **Section 25.06 (Reimbursement Methodology). The rule replaces specified rates with a reimbursement methodology.** Whereas the former Chapter II, Section 25, rule stated rates would be the amounts listed in Chapter III, Section 25, the adopted rule implements a reimbursement methodology that increases overall reimbursement consistent with recommendations from the comprehensive rate setting evaluation.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

The reimbursement methodology sets rates for diagnostic, endodontic, periodontic, preventive, and limited orthodontic treatment services based on 67% of the Commercial Median Benchmark or 133% of the Medicaid State Average Benchmark, if the Commercial Median Benchmark rate is unavailable or unreliable.

The reimbursement methodology sets rates for adjunctive, oral and maxillofacial surgery, orthodontics (except for limited orthodontic treatment), prosthodontics, and restorative services based on 50% of the Commercial Median Benchmark or 100% of the Medicaid State Average Benchmark if the Commercial Median Benchmark rate is unavailable or unreliable.

2. **In addition, the rule eliminates inconsistent payment for services billed as medical versus dental services.** To ensure that there is not a rate disparity between CDT and CPT codes that represent the same service and to leverage the ‘percent of Medicare methodology’ in Section 90, the adopted rule removes coverage of some oral and maxillofacial surgery and maxillofacial prosthetic services so that they are solely covered under Section 90, Physician Services. The Department removed services from the adopted rule that have a CPT code equivalent, that are medical in nature, and are primarily delivered by oral surgeons who already bill the services under Section 90, Physician Services.
3. **Replaces emergency-only adult dental coverage with comprehensive adult dental coverage.** To implement the new comprehensive adult dental benefit, the adopted rule adds coverage for adults for diagnostic, preventive, restorative, endodontic, periodontic, prosthodontic, oral and maxillofacial surgery, and adjunctive services. To enable this comprehensive adult coverage, the adopted rule removes the Section 25.04 requirement that adult dental care be limited to acute surgical care directly related to an accident; oral medical procedures not involving the dentition and gingiva; extraction of teeth that are severely decayed and pose a serious threat of infection during cardiovascular surgery; or treatment necessary to relieve pain, eliminate infection, or prevent imminent tooth loss.
4. **Replaces separate adult and child coverage provisions with a single covered services description generally applicable to all members.** As a result of removing the restrictions on adult dental coverage, the adopted rule contains one “Covered Services” provision, which includes the services, limits, and other requirements for all members, regardless of age, unless otherwise specified. Some services will continue to be age-limited, and they are noted as such in the rule.
5. **In addition to adding broad coverage for adult dental services, the adopted rule adds or increases coverage for many existing services for members under 21, including the following:**
 - a. Comprehensive periodontal evaluations
 - b. Counseling for the control and prevention of adverse oral, behavioral, and systemic health effects associated with high-risk substance use
 - c. Removable unilateral space maintainers
 - d. Multiple types of crowns
 - e. Prefabricated crowns
 - f. Apicoectomies
 - g. Immediate partial dentures
 - h. Complete denture repairs
 - i. Partial denture relines
 - j. Multiple types of pontics and prosthodontic retainers
 - k. Re-cement or re-bond and repairs of fixed partial dentures
 - l. Dental case management
 - m. Single bitewings

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

- n. Panoramic radiographs
 - o. Topical fluoride
 - p. Denture adjustments
 - q. Nutritional counseling
 - r. Preventive resin restorations
6. **Aligns limits and prior authorization (PA) requirements with other state Medicaid agencies, commercial payers, and stakeholder recommendations.** Because of the limited scope of the adult dental benefit in the previous rule, the adopted rule makes changes to align the new covered services and limits with typical comprehensive dental coverage. Specifically:
- a. The adopted rule removes the requirement that adults have a qualifying medical condition to receive removable prosthodontics (dentures).
 - b. The adopted rule establishes medically appropriate limits where none previously existed, based on recommendations from clinical consultation and alignment with other comprehensive dental coverage (commercial payers and other Medicaid agencies).
 - c. The adopted rule adds and removes PAs to align with other payers and based on recommendations from clinical consultation and rule commenters. The emergency rule did not contain PAs for scaling and root planing (SRP), crowns, and sedation, but the proposed rule included PAs for all three to allow for further public comment and Department deliberation. As a result of comments, the Department removed the PA for crowns for members under age 21, removed the PA for the first unit of SRP delivered to each quadrant, and removed the PA for sedation, which only applied to members 21 and over. Also as a result of comments, the Department removed the PAs in the proposed rule for replacement of a lost or broken retainer and for a third prophylaxis treatment.
 - d. The adopted rule removes the “more than once every 150 days” requirement for detailed and extensive and periodic oral evaluations and prophylaxis treatments.
7. **Removes unnecessary and overly detailed provisions.** The adopted rule removes the following from the rule:
- a. Unnecessary and unused definitions.
 - b. Reference to coverage for members residing in an “Intermediate Care Facility for Persons with Mental Retardation (ICF-IID)” because these members will now receive the services covered for members 21 and over (adults).
 - c. Requirements that address the covered services certain provider types can provide under their scope of practices because providers’ scope of practices are already defined in 32 MRS Ch. 147.
 - d. Prescriptive descriptions of services that are overly detailed for the rule.
 - e. Section 25.03-9, “Temporomandibular Joint Services”, because these services are covered under Section 90, “Physician Services”, and they are billed for using Common Procedural Terminology (CPT) codes.
 - f. Section 25.06-1, “Member’s Records”, because Chapter I Section 1.03-8(M) and Board rule 02-313 CMR Chapter 12 both contain member/patient record requirements.
 - g. Section 25.06-2, “The Division of Program Integrity”, because it only refers providers to Chapter I, which already applies to all providers.
 - h. Requirements and instructions in Section 25.06-3, “Prior Authorization of Dental Services”, because they either exist in Chapter I of the MBM or in MaineCare’s *Prior Authorization Manual* on the HealthPAS Portal.
 - i. Section 25.06-5, “Case Management”, because it describes standard health care provider practices and because the adopted rule adds coverage for a dental case management service.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

- j. Sections 25.07-4, “Denturist Services”, and 25.07-5, Dental Hygienist Services, because it is unnecessary to include the services that these providers can deliver under their scopes of practice, which are defined in 32 MRS Ch. 147. Section 25.07-5 also includes outdated guidance.
- k. Section 25.07-6, “Independent Practice Dental Hygienist (IPDH) Services”, because IPDHs must comply with their scope of practice, as defined in 32 MRS Ch. 143 § 18375, and practice requirements outlined in Board rule 02-313 CMR Ch. 12, and it would be redundant to list either in this rule. In addition, the requirement for IPDHs delivering temporary fillings to have a dentist who can treat the member within 60 calendar days is not required in statute or Board rules.
- l. The appendix because the forms either exist on the HealthPAS Portal, will no longer be required, or the documents are required by the Board, not the Department.

The Department shall seek approval from the Centers for Medicare and Medicaid Services (CMS) of state plan amendments (SPAs) for the changes in this rulemaking. In addition, on June 29, 2022, the Department published a notice of change in reimbursement methodology pursuant to 42 CFR §447.205.

As described in detail in the List of Changes to the Final Rule at the end of the Summary of Comments and Responses document, the Department made the following changes in the adopted rule (compared to the changes that were included in the proposed rule):

- 1. The Department added coverage for sealants on premolars (bicuspid) for members under age 21 in Section 25.03-2(C).
- 2. In Section 25.03-2(H), the Department added coverage for preventive resin restorations (PRRs) once per eligible tooth per three years for members with a moderate to high caries risk when an active cavitated lesion in a pit or fissure does not extend into the dentin.
- 3. The Department clarified in Section 25.03-2(C) that sealants are covered for permanent and primary first and second molars.
- 4. The Department added coverage for CDT code D1310, nutritional counseling for control of dental disease, in Section 25.03-2(I) with a limit of once per member per year when delivered in addition to another covered service. The Department also added a description of the service.
- 5. The Department changed the reimbursement methodology used to set rates for limited orthodontic treatment from the 50% of commercial median benchmark methodology described in Section 25.06(B)(2) to the 67% of commercial median benchmark methodology described in Section 25.06(B)(1), to reflect evidence indicating that limited orthodontic treatment is an effective preventive approach to avoid severe malocclusion.
- 6. The Department updated Section 25.03-5(E) to not require a PA for the first unit of SRP delivered to each quadrant but will require PA for the second unit and any additional units of SRP delivered to each quadrant. For example, SRP delivered for the first time to the first quadrant will not require PA, but a PA is required to deliver SRP again to the first quadrant.
- 7. The Department will no longer require risk assessment results and a PA that includes those results to authorize a third prophylaxis treatment. Instead, a third prophylaxis treatment per year will be permissible without PA if the member meets the criteria added to Section 25.03-2(A).
- 8. The Department clarified in Section 25.03-9(F) that behavior management is covered when behavior delays, as well as prevents, a covered service from being delivered, meaning providers may bill behavior management whether a covered service is delivered or not. The Department also increased the limit from three times per member per lifetime per service location to three times per member per year per service location.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

9. The Department clarified the limit for bitewings in Section 25.03-1(B).
10. The Department re-added coverage for diagnostic casts (CDT code D0470) in Section 25.03-1(F) because they enable orthodontic treatment planning.
11. The Department removed the PA requirement for replacement of lost or broken retainers in Section 25.03-8(G).
12. As a result of comments, in Section 25.05-3, the Department clarified that “year” in the context of service limits defined on a “per year” basis means calendar year. For any limit that is defined on a multi-year basis, each “year” means a rolling 365-day period or the 365 days following the date of the delivery of the first covered service subject to the limit. For example, a “two per three years” limit means a member cannot receive more than two of the specified services in any given 1,095-day period.
13. The Department removed the PA requirement for sedation in Section 25.03-9(A).
14. The Department removed the PA requirement for crowns for members under the age of 21 in Section 25.03-3(B).
15. The Department revised the definition for dental extern because the Board no longer issues permits to dental externs.
16. The Department redefined “dental resident” to mean “any person with a resident dental license, as defined in 32 MRS §18302.”
17. The Department clarified in Section 25.03-6(A) that replacement dentures are covered when they are no longer sufficiently functional and there is not a cost-efficient way to repair them, not when they are “medically necessary,” because dentures are not technically medically necessary.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$45,080,337 in FY 2023, which includes \$15,991,326 in state dollars and \$29,089,011 in federal dollars in state dollars and \$29,089, 011 in federal dollars.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 §8072; PL 2019 ch. 616 part A §A-7; PL 2021 ch. 398
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: **2022-046** (*Repeal*)
Effective date: 3/23/2022
Type of rule: Major Substantive
Emergency rule: Yes

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

Basis statement:

The Department is repealing an emergency major substantive rule that was effective on April 7, 2021, and that included reimbursement rate increases for certain services under *MaineCare Benefits Manual*, ch. III section 29, “Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder”, pursuant to PL 2019 ch. 616. Per 5 MRS §8072, emergency major substantive rules are effective for up to 12 months or until Legislative review. The Department has not yet initiated the proposed major substantive rulemaking associated with the April 7, 2021, emergency major substantive rule, and thus there is no provisional major substantive rule pending for review before the Legislature.

There is no decrease in reimbursement for any service affected by this repeal of the April 2021 emergency major substantive rule changes. The Department is repealing this emergency major substantive rule because of additional section 29 reimbursement rate changes that were required by PL 2021 ch. 398 (the “Act”).

Simultaneous with the repeal of the emergency major substantive rule, pursuant to the Act, the Department will implement separate emergency routine technical rule changes that increase rates for section 29 providers. As set forth in the MAPA documents for the separate rulemaking, the Act authorized the Department to make those specific section 29 reimbursement rate changes on an emergency basis via routine technical rulemaking, even though ch. III section 29 rulemaking is typically major substantive. All of the section 29 reimbursement rates that were increased via the April 7, 2021, emergency major substantive rule (that is now being repealed) are included in the rate increases for the separate emergency routine technical rule. Because of the separate routine technical emergency rule, the repeal of the emergency major substantive rule will not have the effect of causing the reimbursement rates to revert to the lower rates that were in the current permanent major substantive ch. III section 29 (eff. 7/28/2019).

The separate routine technical emergency rule changes shall be effective for up to 90 days. The Department intends to proceed with proposed routine technical rulemaking to make permanent the increases to reimbursement rates enacted through the emergency rule changes. These increased rates in the separate routine technical rulemaking will be effective retroactive to January 1, 2022, as directed by the Act, per 22 MRS §42(8).

Fiscal impact of rule:
(No response)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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, 42(8), 3173; 5 MRS §8054; PL 2021 ch. 398
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: **2022-047**
Effective date: 3/23/2022
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

In response to the statewide staffing crisis and to comply with PL 2021 ch. 398 (the “Act”), the Department is implementing emergency routine technical rule changes to increase rates for providers of services under ch. III section 29, “Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder”.

Section AAAA-1 of the Act enacts 22 MRS ch. 1627, Essential Support Worker Reimbursement. The new law requires that, effective January 1, 2022, the labor components of MaineCare reimbursement rates for specified services delivered by “essential support workers” must equal at least 125% of the minimum wage established in Title 26 section 664 subsection 1. Essential support workers are individuals who by virtue of employment generally provide to individuals direct contact assistance with activities of daily living or instrumental activities of daily living or have direct access to provide care and services to clients, patients or residents regardless of the setting. 22 MRS §7401. In addition, part AAAA states that the reimbursement rate must include an amount necessary to reimburse the provider for taxes and benefits related to the wages. 22 MRS §7402(2). Section AAAA-2 of the Act specifies that the 125% of minimum wage requirement for essential support workers applies to ch. III section 29 services.

Additionally, part OOO of the Act authorizes the Department to implement cost of living increases (COLAs). In calculating the rate increases necessary to comply with part AAAA of the Act, the Legislature and the Department took into consideration the impact of planned COLAs on ensuring the labor components of the reimbursement rates for section 29 and other services specified under art AAAA are equal to at least 125 percent of minimum wage.

Rulemaking required for these particular rule changes are routine technical per 22 MRS §7404 (for the essential support worker increases), and part OOO of the Act (for the COLA-related increases) even though ch. III section 29 is generally a major substantive rule. *See, e.g.,* 22 MRS §3195.

Section GGGG-1 of the Act provides the Department with authority to enact these routine technical changes on an emergency basis, without the need to make findings in support of an emergency per 5 MRS §8054. These routine technical emergency rule changes shall be effective for up to 90 days. The Department intends to proceed with proposed routine technical rulemaking to make permanent the increases to reimbursement rates enacted through this emergency adoption.

These increased rates will be effective retroactive to January 1, 2022, as directed by the Act. The retroactive application of this rule comports with 22 MRS §42(8), which provides state authority for the Department to adopt rules with a retroactive application for a period not to

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

exceed eight (8) calendar quarters where there is no adverse financial impact on any MaineCare member or provider. Here, the rule change is a beneficial change for the providers.

Separately, effective December 31, 2021, and coinciding with the adoption of this emergency routine technical rule, the Department shall repeal an emergency major substantive rule that was adopted on April 7, 2021, and that included reimbursement rate increases for certain services under ch. III section 29 pursuant to PL 2019 ch. 616; emergency major substantive rules are effective for up to twelve months, or until Legislative review. The Department has not yet initiated the proposed major substantive rulemaking associated with the April 7, 2021, emergency major substantive rule, and thus there is no provisional major substantive rule pending for review before the Legislature. There is no decrease in reimbursement for any service affected by the repeal of the April 2021 emergency major substantive rule.

The Department shall seek approval from the Centers for Medicare & Medicaid Services (CMS) for the increased reimbursement rates. In addition, the Governor's proposed budget will ask the legislature for additional funds to support these increases and to meet the intent of Part AAAA of the Act ensuring labor components of all rates are at least equal to 125% of minimum wage.

Fiscal impact of rule:

(No response)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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, 42(8), 3173; PL 2021 ch 398; PL 2021 ch. 635
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: **2022-118**
Effective date: 6/15/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

In response to the statewide staffing crisis and to comply with PL 2021 ch. 398 (the “Act”), the Department is adopting routine technical rule changes to increase rates for providers of services under Ch. III Section 29, “Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder”.

Section AAAA-1 of the Act enacts 22 MRS Chapter 1627, “Essential Support Worker Reimbursement”. The new law requires that, effective January 1, 2022, the labor components of MaineCare reimbursement rates for specified services delivered by “essential support workers” must equal at least 125% of the minimum wage established in Title 26 section 664 subsection 1. Essential support workers are individuals who by virtue of employment generally provide to individuals direct contact assistance with activities of daily living or instrumental activities of daily living or have direct access to provide care and services to clients, patients or residents regardless of the setting. 22 MRS §7401. In addition, Part AAAA states that the reimbursement rate must include an amount necessary to reimburse the provider for taxes and benefits related to the wages. 22 MRS §7402(2). Section AAAA-2 of the Act specifies that the 125% of minimum wage requirement for essential support workers applies to Ch. III Section 29 services.

Additionally, Part OOO of the Act authorizes the Department to implement cost of living increases (COLAs). In calculating the rate increases necessary to comply with Part AAAA of the Act, the Legislature and the Department took into consideration the impact of the planned COLAs on ensuring the labor components of the reimbursement rates for Section 29 and other services specified under Part AAAA are equal to at least 125 percent of minimum wage. In addition, per PL 2021 ch. 635, *An Act To Make Supplemental Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2022 and June 30, 2023*, the Legislature has approved additional funds to support these increases and to meet the intent of Part AAAA of the Act ensuring labor components of all rates are at least equal to 125% of minimum wage.

The Department had previously implemented rates to include these labor component amounts (that are all equal to at least 125% of the minimum wage) in the emergency rule and also proposed the same rates. This final adopted rule includes rates with labor components that are all at least equal to 125% of the minimum wage.

Rulemaking required for these particular rule changes are routine technical per 22 MRS §7404 (for the essential support worker increases), and Part OOO of the Act (for the

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

COLA-related increases) even though Ch. III Section 29 is generally a major substantive rule. See, e.g., 22 MRS §3195.

On March 22, 2022, the Department implemented these increased rates via an emergency routine technical rule, which shall be effective for up to 90 days. The rates are effective retroactive to January 1, 2022, as directed by the Act. The retroactive application of this rule comports with 22 MRS §42(8), which provides state authority for the Department to adopt rules with a retroactive application for a period not to exceed eight (8) calendar quarters where there is no adverse financial impact on any MaineCare member or provider. Here, the rule changes are beneficial for the providers. This adopted routine technical rulemaking seeks to make permanent the increases to the reimbursement rates enacted via emergency rule.

The Department received temporary approval on March 7, 2022 and intends to seek permanent approval from the Centers for Medicare & Medicaid Services (CMS) for the adopted increased reimbursement rates with a retroactive effective date of January 1, 2022.

The Department did not make any additional changes to the adopted rule as a result of public comments.

Fiscal impact of rule:

(No response)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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, 42(8), 3173
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 45**, Hospital Services, *and* **Ch. III Section 45**, Principles of Reimbursement for Hospital Services
Filing number: **2022-212**
Effective date: 10/24/2022
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 Chapter 101, Chapter II Section 45, “Hospital Services”; and Chapter III Section 45, “Principles of Reimbursement for Hospital Services”.

The adopted rules consist of the following changes in Chapter II Section 45, “Hospital Services”, and Chapter III Section 45, “Principles of Reimbursement for Hospital Services”.

A. CHAPTER II, SECTION 45, HOSPITAL SERVICES

The adopted rule adds Outpatient Partial Hospitalization Services as a covered service for MaineCare members. These services may be offered by Acute Care Non-Critical Access Hospitals, Acute Care Non-Critical Access hospital-based clinics, or in a distinct part of the Acute Care Non-Critical Access Hospital, if allowed by the Hospital’s license. These programs provide intensive psychiatric care that is more intensive than outpatient day treatment but less intensive than an inpatient program. Upon admission, a physician must certify that the member would need inpatient hospitalization services if the partial hospitalization services were not provided. The certification must include the diagnosis and psychiatric need for partial hospitalization. The adopted rule also allows for Certified Intentional Peer Support Specialist (someone who has undergone the training for this specialty and who maintains their certification) to be part of the multi-disciplinary team that provides Outpatient Partial Hospitalization Services.

After public comment, the Department declined to adopt the proposed rule change that required Hospital Emergency Departments to make referrals to designated Health Home providers. Instead, the adopted rule requires that Hospital Emergency Departments include discharge instructions for eligible individuals with chronic conditions to contact designated Health Home providers as required under the *Social Security Act* (SSA), Title 19, 42 USC Section 1945(d).

After public comment, the Department received CMS approval for several changes to the rule and updated the language in the adopted rule to reflect these approvals. The Department finds that these changes are necessary to improve clarity in the rules and to accurately reflect CMS’ approval.

B. CHAPTER III, SECTION 45, PRINCIPLES OF REIMBURSEMENT FOR HOSPITAL SERVICES

The adopted rule adds Ch. III Sec. 45.07, “Value-Based Purchasing (VBP) Supplemental Sub-Pool”, pursuant to PL 2021 ch. 398. The VBP Supplemental Sub-Pool distributes \$600,000 annually, to eligible hospitals (acute care non-critical access, critical access, and hospitals reclassified to a wage area outside of Maine) that participate in the MaineCare

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Accountable Communities initiative (defined by Ch. III Sec. 45.01-1). The funds are distributed based on performance of one or more quality measures. The Department ranks each eligible hospital based on the quality measures and allocates the funds according to performance, weighted by its Hospital Service Area.

Pursuant to Resolves 2021 Ch. 119, the adopted rule also provides reimbursement for members discharged from Southern Maine Health Care's psychiatric inpatient unit in the amount of \$10,166 per distinct discharge effective retroactively to October 1, 2021.

The adopted rule also eliminates the need for annual rulemaking to update the supplemental pool amounts. The specific dollar amounts for the supplemental pools have been removed from the rule and replaced with a link to the MaineCare website and a phone number, which the public can call for detailed information on annual supplemental pool amounts. Ch. III Sec. 45.04-1(C); 45.08.

The proposed rule included a change to Ch. III, Sec. 45.03(3), which would have removed payments for graduate medical education costs in non-rural hospitals. After reviewing the public comments, the Department declines to adopt this provision of the proposed rule. The original language of this section remains unaltered in the adopted rule.

Fiscal impact of rule:

The Department anticipates that these changes will cost \$12,393,864 in State Fiscal Year 2022 and \$12,562,523 in State Fiscal Year 2023.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 §8053; 42 CFR Part 8; PL 2019 ch. 407; PL 2021, Ch. 398
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 65**, Behavioral Health Services
Filing number: **2022-219**
Effective date: 11/9/2022
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”) adopted this rule to finalize the following changes to 10-144 CMR Ch. 101, *MaineCare Benefits Manual*, Chapter II Section 65, “Behavioral Health Services”.

The Department adopts this rule to incorporate various new Intensive Outpatient Program (IOP) Services to be covered in Chapter II, including Mental Health, Developmental Disabilities/Behavioral Health, Geriatric, Dialectical Behavior Therapy, and Eating Disorder (Level I and Level II) IOPs. The adopted rule updates Substance Use IOP requirements and establishes requirements for new IOP services to include: IOP service and staff requirements, general and specific member eligibility criteria, as well as program requirements.

To align with federal regulations under 42 CFR Part 8, the Department adopts language in Chapter II replacing the term “Medication Assisted Treatment with Methadone (MAT)”, with the term, “Opioid Treatment Program (OTP) with Methadone.” The adopted Chapter II rule also updates requirements for OTPs, under Section 65.05-11, to align with the federal regulation including Counseling, Substance Use Disorder Testing, Medication Administration, and Facility Operation requirements in 42 CFR §8.12.

To reduce barriers to services and administrative burden to providers, the Department adopts a change in the definition of the Crisis Resolution Services “treatment episode” under 65.05-1, from limiting the service to “six (6) face-to-face visits and related follow up phone calls over a thirty (30) day period after the first face-to-face visit,” to “face-to face visits and related follow up phone calls, as clinically indicated, for up to a sixty-day period after the first face-to-face visit.” Additionally, the Department adopts the removal of language from Section 65.07-5(B) that limited substance use individual and family outpatient therapy to three (3) hours per week, for thirty (30) weeks in a forty (40) week period. Each of these changes provide broader access to these Section 65 services.

The rule also adopts clarifications on qualified staff allowed to provide Crisis Resolution Services (65.05-1) and Crisis Residential Services (65.05-2) to include Clinicians (as defined in 65.01-11), “Mental Health Rehabilitation Technicians (MHRTs)”, “Behavioral Health Professionals (BHPs)”, or with Certification at the level appropriate for the services being delivered and for the population being served.

As a result of comments, the Department determined not to adopt a rule change that would have removed the requirement that licensed Mental Health Agencies and Substance Use Agencies must separately contract with the Office of Child and Family Services and/or the Office of Behavioral Health.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

The adopted rule reorganizes requirements related to Individualized Treatment Plans in 65.08-4(B) and updates requirements for treatment plans for members receiving OTP services.

In addition and separately, the Department is adopting rulemaking to repeal and replace the former Ch. III of Section 65. The changes in Chapter III Section 65 make it consistent with the Chapter II-related updates, and related budget initiatives that require reimbursement increases for Section 65 providers, per PL 2021 ch. 398. The Chapter III Section 65 rulemaking shall be filed simultaneously, so that the upcoming changes will be effective at the same time these changes in Chapter II Section 65 are finally adopted.

Throughout the rule, the Department adopted edits to language to make updates to formatting, citations, and references where necessary, including changes to address potentially stigmatizing language based on recommendations from the Maine opioid task force and legislation passed in 2018 to minimize stigma (PL 2017, ch. 407).

The Department shall seek CMS approval for the new covered services and provider requirements, as specifically noted in various adopted rule changes.

Considering public comment, in addition to the changes to the adopted rule described above, the Department made the following changes to the adopted rule:

1. Pursuant to Comment #4, The Department updated its definition of Serious Emotional Disturbance in 65.01-41 to align with national standards through SAMHSA.
2. Pursuant to Comment #11, 65.05-5.A.2.a has been updated from “Intake and Comprehensive Assessment” to “Intake and service assessment” to reflect the purpose of the assessment under the IOP program.
3. Pursuant to Comment #1, 65.07-6 has been updated to remove the prohibition of billing the Comprehensive Assessment separately from final rule.
4. Pursuant to Comment #12, 65.07-6 has been updated to add “Members may receive additional outpatient services as medically necessary when the treating condition(s) is distinct from the condition(s) addressed by the IOP.”
5. Pursuant to Comment #16, 65.05-1 been amended to change “specific to the population being served” to read “...at the level appropriate for the services being delivered and appropriate for the population being served” to allow for staff types to serve members when appropriate to do so.
6. Pursuant to Comment #21, 65.05-5.B.2.a has been updated to note the physician evaluation must be clinically indicated. The change is as follows:
“Assessment by a Clinician; and evaluation by a physician (MD/DO) as clinically indicated, as part of the service assessment; and...”
7. Pursuant to Comment #24, 65.05-6.C.2 has been updated to add “or” after each of the at risk criterion to clearly state a member meet one of a-d.
8. Pursuant to Comment #25, to 65.05-5.D.5 was updated to add “Otherwise Specified Feeding or Eating Disorder” and “Unspecified Feeding or Eating Disorder” in the final rule
9. Pursuant to Comment #31, 65.05-9.A.1.e was updated to add “or caregiver involvement, when appropriate.”
10. Pursuant to Comment #38, 65.08-4.A.1-3 was updated to fix the numbering error.
11. Pursuant to Comment #39, the final rule updated references to amend the title of the “Diagnostic Classification of Mental Health and Development Disorders of Infancy and Early Childhood” and to update to the current version 5 (“DC: 0-5”).
12. As a result of legal review, the Department finds that it must update the definition of “Affected Other” has been updated to more clearly state the “Affected Other” have a familial relationship to the member.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

13. As a result of legal review, the Department finds that it must make technical edits to 65.05-9.A for clarity and readability.

Fiscal impact of rule:

The Department intends to address the fiscal impact of all Ch. II-related updates and related budget initiatives identified in PL 2021 ch. 398 with corresponding changes in the *MaineCare Benefits Manual*, Ch. III Section 65.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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, 42(8), 3173; 42 CFR Part 8; PL 2019 ch. 407; PL 2021 ch. 398; PL 2021 ch. 635

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

Filing number: **2022-220**

Effective date: 11/9/2022

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 repeal and replace the prior 10-144 CMR Ch. 101, *MaineCare Benefits Manual*, Chapter III Section 65, “Behavioral Health Services”.

The Department adopts this rule to comply with PL 2021 Ch. 398 (the “Budget”) and PL 2021 Ch. 635 (the “Supplemental Budget”). Per the Budget, the rule adopts increased medication management rates. This provision will be effective retroactive to October 1, 2021, as directed by the Supplemental Budget, and in alignment with 22 MRS §42(8), which authorizes the Department to adopt retroactive rules that do not have any adverse financial impact on any MaineCare provider or member. The Department received CMS approval for these rate changes in January 2022.

Additionally, pursuant to Legislative directive and funding, the rule will incorporate updates to Chapter III from an independent rate study recommending increases to rates for Substance Use Disorder Intensive Outpatient Program (IOP) services. This provision will be effective retroactive to January 1, 2022, pursuant to 22 MRS §42(8). On March 31, 2022, the Department submitted a request for changes to its SPA to implement these changes. Also, pursuant to Legislative directive and funding, from the Budget as well as the Supplemental Budget, the rule adopts cost-of-living adjustments (COLAs) for services that have not received a rate adjustment in the prior 12 months, according to appropriate criteria for calculating COLAs. This provision will be effective retroactive to July 1, 2022, pursuant to 22 MRS §42(8). On September 30, 2022, the Department submitted a request for changes to its SPA to implement these changes.

The Department is adopting a separate rule for Chapter II Section 65, simultaneous with this adopted rule. The adopted changes in Chapter II include the addition of various new IOP Services including Mental Health, Developmental Disabilities/Behavioral Health, Geriatric, Dialectical Behavior Therapy, and Eating Disorder (Level I and Level II). The Department also adopted a new modifier (ST) for use with the H2021 code, for reimbursement tracking purposes of the Trauma Focused-Cognitive Behavioral Therapy (TF-CBT) treatment modality, which is already allowable under Children’s Comprehensive Community Support Services – HCT-Master’s Level. This Chapter III rulemaking will adopt rates from an independent rate study for the new IOP Services pursuant to Legislative directive and funding from the Budget. These reimbursement rates shall be effective prospectively, upon the legal effective date of the adopted rule.

Throughout the rule, the Department adopts language consistent with the adopted Chapter II rule to address potentially stigmatizing language based on

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

recommendations from the Maine opioid task force and legislation passed in 2018 to minimize stigma (PL 2017 ch. 407).

The Department made the following change to the final rule:

- As a result of the Department's review, the Department finds that it must delete the term LADC because it was erroneously included in the proposed rule under the designated Substance Use Agency codes of H0004 (Outpatient Services – Individual/Family Therapy) and H0004 HQ (Outpatient Services – Group Therapy).

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$5,390,529 in SFY2022, which includes \$1,170,242 in state dollars and \$4,220,287 in federal dollars and \$26,146,406 in SFY 2023, which includes \$7,147,672 in state dollars and \$18,998,734 in federal dollars.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 2021 Ch. 398 Sec. A-17; PL 2021, Ch. 348
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 90**, Physician Services
Filing number: **2022-079**
Effective date: 5/14/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This final rule makes the following changes:

Pursuant to PL 2021 Ch. 398 Sec. A-17, *An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2021, June 30, 2022 and June 30, 2023* (the “Budget”), and in alignment with the recommendations from the comprehensive rate setting evaluation conducted by Myers and Stauffer at the request of the Department, this final rule increases the reimbursement rate from 70% of the lowest level in the 2009 Medicare fee schedule to 72.4% of the current year’s Medicare rate per code. In addition, the final rule sets the reimbursement rates for select primary care services at 100% of current Medicare rates, from 100% of 2014 Medicare rates, for eligible primary care providers, which is an additional reimbursement increase. These reimbursement changes shall be effective July 1, 2022, as authorized and required by the Budget.

Also per the Budget, the final rule adds a new provision, Section 90.04-7(B), “Physician-Administered Drugs that have Biosimilar Equivalents and/or Prior Authorization (PA) Criteria”. This provision implements a Biosimilar Preferred Drug List which establishes preferred and non-preferred drug statuses based on cost and biosimilar equivalency for physician-administered drugs. Physician-administered drugs are those that satisfy the criteria in 90.04-7(A), but they also may be drugs administered orally. For drugs that are not administered orally, the adopted changes require providers not only to go through the steps set forth in 90.04-7(A), but also to use physician-administered biosimilar drugs when a physician-administered drug has a Food and Drug Administration- (FDA) approved, biosimilar equivalent that the Department identifies as more affordable. Annually, the Department shall identify drugs that have a more affordable FDA-approved biosimilar equivalent on the Biosimilar Preferred Drug List on the MaineCare Health PAS Online Portal. Physicians shall submit a PA request to administer the original drug. For physician-administered drugs that are administered orally, providers must satisfy the requirements in 90.04-7(B).

Section 90.04-7 also requires that some physician-administered drugs may require PA to ensure members meet age, clinical, or other requirements for MaineCare to provide payment and that the MaineCare Health PAS Online Portal contains a complete list of physician-administered drugs that require PA and corresponding PA criteria sheets. Providers must make requests for PA on the Department’s approved form and get approval prior to the date of service. This new PA process is in addition to the requirements for PA in 90.04-7(A).

The final rule (Sec. 90.04-30) allows members under the age of 21 to receive the application of topical fluoride varnish up to four times per calendar year from eligible

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

providers, rather than two times per calendar year or three times for members with a high caries rate or new restorations placed in the last 18 months. This change aligns with other states' Medicaid program limitations on fluoride treatment and the current American Academy of Pediatrics recommendation on fluoride treatment. The final rule also removes the list of allowable providers who may provide topical fluoride varnish and has replaced "eligible providers" and "providers" with "qualified providers." The adopted rule (Sec. 90.04-31) also allows all members to receive an oral health risk assessment if they do not have a dental home and/or have not seen a dentist in the past year, rather than restricting the service to members under three years of age. In addition, the final rule adds dental hygienists to the list of providers in association with physician services in Section 90.04-15.

The final rule (Sec. 90.05-2(A)) clarifies that medication abortions are covered and shall be performed in compliance with applicable Food and Drug Administration law and guidelines.

The 130th Maine Legislature enacted PL 2021 Ch. 348, *An Act to Discontinue the Use of the Terms "Handicap," "Handicapped" and "Hearing Impaired" in State Laws, Rules and Official Documents*. The final rule replaces the term 'handicapped' with 'person with disabilities' pursuant to PL 2021 Ch. 348.

Effective June 21, 2022, this Section 90 rulemaking also eliminates Sec. 90.09-4, "Primary Care Provider Incentive Payment (PCPIP)", as part of the new Primary Care Plus (PCPlus) initiative. PCPIP authorizes an incentive payment to primary care practices (PCP) based on their performance on several access, utilization, and quality measures. Retaining this payment after PCPlus takes effect would be duplicative of the reimbursement PCPs will receive under the new PCPlus rule. PCPs who currently receive the Incentive Payment may instead apply to participate in PCPlus and, if approved as part of the program, will receive reimbursement based on their performance for members attributed to their practice.

To complete the transition to PCPlus, the Department also significantly revises MBM, Ch. II Sec. 91 (to be titled "Health Home Services – Community Care Teams"), which includes repealing "Health Home Practices". All of these rulemakings make up the PCPlus initiative, will be adopted simultaneously, and will have the same effective date.

The PCPlus program is intended to give primary care providers (PCPs) greater flexibility and incentives to effectively meet MaineCare members' health care needs by transitioning away from a volume-based (fee-for-service) payment system with little connection to value, toward an approach that provides risk-adjusted Population-Based Payments tied to cost- and quality-related outcomes. To receive reimbursement under PCPlus, providers are required to locate, coordinate, and monitor health care services for members who are attributed to them. The Department will continue to reimburse other MaineCare covered services under the fee-for-service system. Interested parties should refer to the new PCPlus rule (MBM, Ch. VI Sec. 3) for more details.

On April 21, 2022, the Department received approval from the Centers for Medicare and Medicaid Services (CMS) for the state plan amendment (SPA) to implement the PCPlus program. The Department shall seek approval from CMS for SPAs to repeal and revise any other programs necessary to implement the PCPlus program. The Department will publish notice of changes in reimbursement methodology pursuant to 42 CFR 447.205.

As described in detail in the Summary of Comments and List of Changes Made to Final Rule, the Department made a few changes to the final adopted rule, including: replacing the term "physician's assistant" with "physician assistant" in Sec. 90.04-15 and 90.04-24(B)(5); removing the list of allowable providers who may provide topical fluoride varnish and adding the term, "qualified providers;" adding dental hygienist to the list of providers in Sec. 90.04-15; and to align with the implementation of "Primary Care Plus", the Department established an effective date of June 21, 2022, for the removal of Sec. 90.09-4, "Primary Care Provider

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Incentive Payment”. The final adopted rule remains consistent with what was proposed and is not substantially different, per 5 MRS §8052(5).

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$8,276,041 in SFY 2022, which includes \$2,661,873 in state dollars and \$5,614,169 in federal dollars, and \$16,552,083 in SFY 2023, which includes \$5,355,592 in state dollars and \$11,196,491 in federal dollars.

The initial phase (anticipated to be 18-24 months) of the PCPlus initiative is projected to be cost neutral. The cost of the new PCPlus rule is estimated to equal the savings from repealing Chapter VI Section 1, “Primary Care Case Management”; Section 91, “Health Homes Services” (excluding Community Care Teams); and the Primary Care Provider Incentive Payment within Section 90, “Physician Services”. The Department will monitor program enrollment to assess ongoing fiscal impact. PCPlus and the Section 90 Primary Care Provider Incentive Payment program have different provider requirements, so there may be primary care providers who are currently eligible for the Sec. 90 Primary Care Provider Incentive Payment who will not be eligible for the PCPlus reimbursement.

Providers will receive increased reimbursement due to the changes in rates to 72.4% of the current year’s Medicare rate per code and to 100% of current Medicare rates of select primary care services for eligible primary care providers.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 2021 Ch. 398 Sec. A-17; PL 2021, Ch. 348
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II and III Section 91**, Health Home Services – Community Care Teams
Filing number: **2022-084**
Effective date: 6/21/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This adopted rule will have a future effective date of June 21, 2022, and will not be effective five days after filing the adopted rule with the Secretary of State’s Office, as is typical.

This adopted rule makes the following changes:

This adopted rule eliminates Health Home Practices (HHP) from the Section 91 rule, makes various changes to Community Care Teams (CCTs), establishes the Housing Outreach and Member Engagement Provider (HOME Provider) as a provider of specialized CCT services and adds affiliated reimbursement rates to Chapter III Section 91, and changes the names of the Chapters II and III Section 91, rules to “Health Home Services – Community Care Team”.

Health Home Practices and the PCPlus Initiative

HHPs are primary care practices that have been approved by MaineCare to provide Health Home Services. In this adopted rule, the Department eliminates HHPs as providers because it would be duplicative of the covered services and reimbursement which the members and primary care providers (PCPs), respectively, will receive via the new Primary Care Plus (PCPlus) program. To complete the transition to PCPlus, the Department repealed “Primary Care Case Management” (Ch. VI Sec. 1) and the Primary Care Provider Incentive Payment within Ch. II Sec. 90 (“Physician Services”).

The PCPlus program is intended to give PCPs greater flexibility and incentives to effectively meet MaineCare members’ health care needs by transitioning away from a volume-based (fee-for-service) payment system with little connection to value, toward an approach that provides risk-adjusted Population-Based Payments tied to cost- and quality-related outcomes. To receive reimbursement under PCPlus, providers are required to locate, coordinate, and monitor health care services for members who are attributed to them, as set forth in the PCPlus rule, Section 3.04. The Department will continue to reimburse other MaineCare-covered services under the fee-for-service system. PCPs who were HHPs may apply to participate in the soon-to-be-implemented PCPlus program and, if approved, will receive reimbursement based on their practice level characteristics and performance for members attributed to their practice. Interested parties should refer to the new PCPlus rule (MBM, Ch. VI, Sec. 3) for more details.

On April 21, 2022, the Department received approval from the Centers for Medicare and Medicaid Services (CMS) for the state plan amendment (SPA) to implement the PCPlus program. The Department shall seek approval from CMS for SPAs to repeal and revise any other programs necessary to implement the PCPlus program. The Department will publish notice of changes in reimbursement methodology pursuant to 42 CFR 447.205.

Members who were attributed to an HHP panel will not experience any direct impacts. Members will keep their PCPs, but those PCPs that were HHPs are no longer held to the HPP

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

provider and covered service requirements. Members will be notified of the HHP repeal if their PCP was an HHP and if their PCP becomes a PCPlus provider.

Community Care Teams

Under the adopted rule, CCTs support PCPs, rather than HHPs, by providing services to members who are high-risk and/or high-cost and whose health care needs are more intense than can be managed by a PCP. The rule expands, simplifies, clarifies, and removes redundancies from the covered service requirements.

Under the adopted rule, CCTs are subject to new provider requirements. CCTs must implement an electronic health record, participate in Department-required technical assistance and educational opportunities, maintain a Participant Agreement for data sharing with Maine's Health Information Exchange, follow ten core standards originally designed for and applied to HHPs, have a documented relationship with one or more PCPs, and have a multidisciplinary team of at least three health care professionals whose roles have been clarified.

The adopted rule also changes member eligibility requirements for CCT services to be more inclusive by decreasing the number of chronic medications, hospital admissions, and emergency department visits that are needed to qualify a member. Members are also now eligible if they are transitioning from an institutional setting and if members are identified by risk-stratification as at risk for deteriorating health; high-risk or high-cost due to severity of illness or high social needs; or higher health care needs than is expected for their clinical risk group. To receive CCT services Members must still have two or more chronic conditions or have one chronic condition and be at risk for another. The adopted rule also adds new risk factors that make a member at risk for a chronic condition.

Housing Outreach and Member Engagement Providers

Via *Resolve, To Increase Access to Housing-related Support Services*, LD 1318 (129th Legislature 2019), the Legislature directed the Department to examine federal opportunities to provide housing-related services to persons experiencing chronic homelessness who have mental health conditions or substance use disorder and other vulnerable populations. In addition, the Office of MaineCare Services, Maine State Housing Authority (MSHA), and various housing and homeless services providers applied for and were accepted into a Medicaid Innovation Accelerator Program (IAP) for State Medicaid-Housing Agency Partnerships with technical assistance from the Corporation for Supportive Housing (CSH) and the Center for Health Care Strategies (CHCS). The collaborative group focused on improving outcomes for MaineCare members with disabilities and chronic health conditions, including Substance Use Disorder (SUD), who are experiencing homelessness and developing a Medicaid benefit to support housing sustainability, improved health outcomes, and reduced overall costs of care. The group proposed to use Section 2703 of the *Affordable Care Act* to develop a new type of CCT, a "HOME Provider," that would provide comprehensive care management and medical and behavioral health care coordination with intensive levels of transitional care and individual supports to meet the needs of MaineCare members with long-term homelessness.

HOME Providers shall conduct outreach to underserved populations in need of intensive HOME services due to high emergency services utilization, chronic conditions, complex care coordination needs, and long-term homelessness. The HOME Provider shall be comprised of a manager, clinical leader, case manager, peer support staff, and housing navigator. HOME Providers shall receive and review referrals for HOME service eligibility and enrollment from any point of care, including but not limited to hospitals, medical and behavioral health providers, and community service organizations. HOME Providers shall provide comprehensive care management, care coordination, health promotion, comprehensive transitional care, individual and family support services, and referral to community and social support services. There are three HOME service tiers in which members can be enrolled. Members must first meet the Intensive Tier criteria before entering the Stabilization and Maintenance Tiers. Each tier

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

represents an intensity level of covered services and has a different per member per billing month reimbursement amount. Eligible members who are children may receive covered HOME services, as long as the HOME Provider obtains written consent from a parent or legal guardian.

Lastly, the adopted rule requires both CCTs and HOME Providers to submit data necessary to compile and report on performance measures, as identified by the Department. This will aid in the development of value-based metrics to include in future iterations of rulemaking and to ensure that the services provided are high-quality. The rulemaking also defines “billing month” as the period from the 21st of a month to the 20th of the following month and, when appropriate, replaces “month” and “calendar month” with “billing month” to clarify the reimbursement period for providers.

As described in detail in the Summary of Comments and List of Changes to Final Rule, the Department made a few changes to the final adopted rule, including: the addition of physician assistants to the list of allowable CCT Medical Director provider types; reinserting “practice-integrated” into the CCT definition and making changes to allow HOME Providers to be practice-integrated providers; clarifying that only diagnoses relating to eligibility must be documented in the member’s electronic health record (not the plan of care); requiring a member’s choice between duplicative services be retained in the member’s electronic health record instead of retaining a record of written documentation; and clarifying in Sec. 91.01-4 that CHW core competencies are those competencies as defined by *The Community Health Worker Core Consensus Project* (see <https://www.c3project.org/roles-competencies>). The final adopted rule remains consistent with what was proposed and is not substantially different, per 5 MRS §8052(5).

Fiscal impact of rule:

22 MRS §§ 42, 3173; Section 2703 of the *Affordable Care Act*; LD 1318 (129th Legislature 2019), *Resolve, To Increase Access to Housing-related Support Services*; PL 2021, ch. 398 Sec. A-17, *An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2021, June 30, 2022 and June 30, 2023*.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 2021 ch. 635 Part A

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

Filing number: **2022-147**

Effective date: 8/21/2022

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*, Chapter II Section 93, “Opioid Health Home Services”, and Chapter III Section 93, “Reimbursement for Opioid Health Home Services”, to improve access to treatment, reduce administrative barriers to providing treatment for Opioid Use Disorder (OUD), promote evidence-based treatment standards, and reinforce the importance of Opioid Health Home (OHH) integration with primary care. The Department received approval of a state plan amendment (SPA) from the Centers for Medicare & Medicaid Services (CMS) for some of these changes. The Department will publish notice of changes in reimbursement methodology pursuant to 42 CFR 447.205.

These rules will be legally effective on August 21, 2022.

The adopted rules consist of the following changes in Chapter II, Section 93, Opioid Health Home Services, and Chapter III, Section 93, Reimbursement for Opioid Health Home Services:

A. CHAPTER II SECTION 93, OPIOID HEALTH HOME SERVICES

The adopted rule makes various changes to the Medication for Opioid Use Disorder (MOUD) prescriber position. It allows practitioners licensed under state and federal law to order, administer, or dispense opioid agonist treatment medications to be MOUD prescribers for members in the Methadone Level of Care who receive OHH services from an Opioid Treatment Program (OTP). It requires the MOUD prescriber to coordinate with the OTP OHH when members in the Methadone Level of Care receive OHH services from a non-OTP OHH. It also requires MOUD prescribers to be involved in providing the services described under Chapter II Section 93.05-1, “Health Home Services”.

The adopted rule makes various changes to the nurse care manager position on the OHH team. In response to requests from providers, the adopted rule allows licensed practical nurses to be nurse care managers. It requires any person serving as the nurse care manager to complete the eight-hour training for buprenorphine prescribing by physicians within six months of initiating service delivery for OHH members, unless the individual is an Advanced Practice Registered Nurse with a X-Drug Enforcement Administration (DEA) license. It no longer requires the nurse care manager to oversee and/or participate in all aspects of OHH services because the nurse care manager would not oversee OUD counseling. The final rule specifies that the nurse care manager position may be filled by another appropriately licensed medical professional on the OHH team, as long as the individual completes training for an X-DEA license within six months of initiating service delivery for OHH members.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

The adopted rule adds methadone to the medications included in the OHH model and enables an OTP to provide methadone to OHH members. The adopted rule also adds a statement encouraging the co-prescribing of naloxone for OHH members, as appropriate, in alignment with best practice guidelines.

The adopted rule makes a number of changes to the counseling requirement. It clarifies that counseling is not required for the Medication Plus Level of Care and is not part of the OHH bundle for the Methadone Level of Care. It changes the counseling requirement to be assessed on a monthly instead of weekly basis, which is in response to feedback that weekly requirements are too stringent for this service and are challenged by normal life events. It clarifies that counseling requirements for each clinical phase are based on a “billable” month (in alignment with standard billing practice), which does not always equate to a full 60 minutes of counseling. The final rule requires OHH members in Intensive Outpatient (IOP) and Induction Levels of Care to engage in individual or group counseling for four billable hours per month; members in the Stabilization Level of Care for two hours; and members in the Maintenance Level of Care for one hour.

The adopted rule makes various changes to the reimbursement section. The adopted rule allows providers to bill the new Medication Plus and Methadone Levels of Care if the member is enrolled for at least one day during the billing month. It adds that OHH providers will not be reimbursed for an OHH member if that member also receives Section 97, “Private Non-Medical Institution Services”; Section 13, “Targeted Case Management Services”; Section 17, “Community Support Services”; or Section 92, “Behavioral Health Homes”, unless the Section 13, 17, or 92 provider has a contract with the OHH to provide Health Home Services. The final rule also adds an Additional Provider Support provision for OHH members with additional community support needs related to mental health, HIV, medical concerns and/or utilization, and/or homelessness. The Department or its authorized entity must approve additional supports provided to eligible members and reimbursed through the pass-through payment described in Chapter III Section 93, “Reimbursement for Opioid Health Home Services”, including an active release of information and a contractual agreement between the OHH and additional support provider.

The adopted rule also adds a pay-for-performance provision which withholds four percent of total OHH per member per month (PMPM) payments. This amount shall be paid to providers every six months if they satisfy the minimum performance threshold, and providers who meet the excellent performance threshold are eligible to receive any additional available amount. The Department shall set the performance thresholds so that no less than 70% of eligible OHHs are expected to be above the minimum performance threshold and no less than 20% of OHHs are expected to be above the excellent performance threshold. This means the Department anticipates that no more than 30% of eligible OHHs would not meet the minimum performance threshold and thus would not receive the four percent payment. Those four percent withhold amounts will be combined and distributed to OHH providers that meet the excellent performance threshold. If all OHH providers do satisfy the minimum performance threshold, then no amounts would be distributed to OHH providers who satisfy the excellent performance threshold. Performance calculations shall be based on the composite score of three performance measures, as set forth in the adopted rule. Providers shall receive reports quarterly to inform them about whether they satisfied the minimum or excellent performance threshold standards, what their reimbursement shall be, as well as instructions for appeal if they disagree with the Department’s determinations.

This adopted rule also makes the following changes:

- Clarifies that the clinical counselor provides behavioral health expertise and contributes to care planning, assessment of individual care needs, and identification of and

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

connection to behavioral health services, as part of the services described in Chapter II Section 93.05-1.

- Allows community health workers to be patient navigators, in response to requests from providers. A definition and certification/training requirements for community health workers is also added.
- Requires Connecticut Community for Addiction Recovery (CCAR) or other Department approved recovery coach training for recovery coaches. OHHs will have six months from rule adoption to train existing staff, and each new recovery coach will have six months to complete the applicable training upon starting to deliver OHH services.
- Encourages people with lived experience to serve as recovery coaches but also allows recovery allies to serve as recovery coaches.
- Requires the OHH to adopt processes to identify and classify patients across their population served who are missing critical preventive services and/or other health screenings.
- Adds that members must be assessed for appropriateness of OHH services in alignment with American Society of Addiction Medicine guidelines.
- Requires OHHs to retain a signed consent form for all OHH members in the member record. The documentation must indicate that the individual has received information in writing, and verbally as appropriate, that explains the OHH purpose and the services provided and indicates that the individual has consented to receive the OHH services and understands their right to choose, change, or disenroll from their OHH provider at any time.
- Requires OHH providers to provide and document efforts to connect each OHH member to a primary care provider.
- Adds that health promotion activities may include health education and referral support for health-related risk factors (e.g. oral health, contraceptive counseling, preventive screenings).
- Removes language that referred to “coordinated case management” to align with language for the approved MaineCare SPA for these services, which instead utilizes an expanded team-based approach for the provision of additional supports, reimbursed through pass-through payments.
- Requires OHHs to conduct a comprehensive biopsychosocial assessment annually.

B. CHAPTER III SECTION 93, REIMBURSEMENT FOR OPIOID HEALTH HOME SERVICES

The adopted rule introduces the Medication Plus and Methadone Levels of Care. The Medication Plus Level of Care reimburses for all OHH covered services except for OUD counseling, which allows members to receive OUD medication without electing to participate in OUD counseling. The Methadone Level of Care allows members who receive methadone from Chapter II Section 65, Behavioral Health Services, providers to receive Health Home services from the team-based care delivery model of the OHH.

Under the current rule, when members receiving OHH services elect to receive comprehensive care management and comprehensive transitional care from an additional support provider, the Department reimburses both providers separately. CMS advised that the OHH must reimburse the additional support provider via a pass-through payment. Hence, this final rule increases the reimbursement amount to the OHH provider to include a pass-through payment of \$394.40 for the IOP, Induction, Stabilization, and Maintenance Levels of Care when members elect to receive services from an additional support provider.

In alignment with the Department’s goal to implement value-based payment models tied to quality, the final rule adds a pay-for-performance provision that will withhold four (4)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

percent of OHH payments, pending the OHH's performance on three measures of OHH quality and effectiveness of service. The measures include assessing whether members in Maintenance and Stabilization Levels of Care have attended an annual primary care visit, had continuous pharmacotherapy as part of their MOUD, and are involved in regular employment or other forms of community engagement. While the methodology for this pay-for-performance provision is detailed in rule, MaineCare will evaluate the need for adjustments to ensure OHH providers are not inappropriately penalized for the costs or changes in quality/utilization that result from COVID-19. Performance measure thresholds and the performance of other providers will determine if OHHs receive the full four percent and if they are eligible for a pay-for-performance surplus payment.

C. SUMMARY OF CHANGES TO CHAPTER II SECTION 93, AND CHAPTER III SECTION 93, AS THE RESULT OF PUBLIC COMMENT

As described in detail in the Summary of Comments and Responses document, the Department made a few changes to the final adopted rule, including: replacing the term Medication Assisted Treatment (MAT), which implies that medication assists treatment, with the term Medication for Opioid Use Disorder (MOUD), a more current term that implies medication is its own form of treatment; changing the language of the Continuity of Pharmacotherapy for OUD numerator in Chapter III Section 93, to better align with the language used by the [measure steward, USC](#); adding Chapter II Section 93.02-1(K), which requires OHHs to refer members to another OHH or appropriate provider when a member requires treatment or a level of care that the OHH does not offer; changing Chapter II Section 93.02-1(G), to require OHHs to establish and maintain a relationship with a primary care provider when an OHH member has a primary care provider, rather than require OHHs to establish and maintain a relationship with a primary care provider for each member served, which did not accurately reflect the requirement the Department intended to establish; implementing a cost-of-living-adjustment by increasing the proposed reimbursement rates in the final Chapter III Section 93, rule by 4.94%; and changing the term "dosage plan" to "medication plan;" and setting the effective date to August 21, 2022.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$20,082 in SFY 2022, which includes \$4,828 in state dollars and \$15,254 in federal dollars, and \$240,983 in SFY 2023, which includes \$58,622 in state dollars and \$182,361 in federal dollars.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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; *Social Security Act* §1905(t)(1) (42 USC §1396d(t)(1))

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. VI Section 3**, Primary Care Plus (*replaces Ch. VI Section 1*, Primary Care Case Management)

Filing number: **2022-083**

Effective date: 6/21/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

This adopted rule will have a future effective date of June 21, 2022, and will not be effective five days after filing the adopted rule with the Secretary of State's Office, as is typical.

Ch. VI Sec. 1 (Primary Care Case Management)

This adopted rulemaking repeals Ch. VI Sec. 1, "Primary Care Case Management (PCCM)" from 10-144 CMR Ch. 101, **MaineCare Benefits Manual** (the "MBM").

Ch. VI Sec. 3 (Primary Care Plus)

This rulemaking replaces Ch. VI Sec. 1 (PCCM) with MBM Ch. VI Sec. 3, "Primary Care Plus (PCPlus)", a single integrated program for MaineCare's current primary care programs. To complete the transition to PCPlus, the Maine Department of Health and Human Services (the "Department") also repealed MBM Ch. II Sec. 90.09-4 ("Primary Care Provider Incentive Payment") and significantly revised MBM Ch. II Sec. 91 (titled "Health Home Services – Community Care Teams"), which includes repealing "Health Home Practices". All of these rulemakings relate to the PCPlus initiative and have the same effective date.

On April 21, 2022, the Department received approval from the Centers for Medicare and Medicaid Services (CMS) for the state plan amendment (SPA) to implement the PCPlus program. The Department shall seek approval from CMS for SPAs to repeal and revise any other programs necessary to implement the PCPlus program. The Department will publish notice of changes in reimbursement methodology pursuant to 42 CFR 447.205.

As a result of comments, the Department determined that it would delay the effective date of the PCPlus rule until June 21, 2022. The removal of the Primary Care Provider Incentive Payment in Section 90 and the final adopted changes in Section 91 (described below and in separate MAPA documents) shall also be effective June 21, 2022.

Overview of the PCPlus Initiative

The Department and the Office of MaineCare Services (OMS) are committed to improving health care access and outcomes for MaineCare members, demonstrating cost-effective use of resources, and creating an environment where providers can innovate in delivering high-value care. PCPlus is part of OMS' commitment to have 40% of MaineCare expenditures paid through Alternative Payment Models (APMs) by the end of 2022. APMs are health care payment methods that use financial incentives to promote or leverage greater value, indicated by higher quality care and/or lower costs.

PCPlus is considered an "Integrated Care Model" by CMS under State Medicaid Director Letter #12-002, aligns with the Center for Medicare and Medicaid Innovation's (CMMI) Primary Care First Model (See also: <https://innovation.cms.gov/innovation-models-options>), and

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

operates under the authority of Section 1905(t)(1) of the **Social Security Act (SSA)**. The PCPlus program is intended to give primary care providers (PCPs) greater flexibility and incentives to effectively meet MaineCare members' health care needs by transitioning away from a volume-based (fee-for-service) payment system with little connection to value, toward an approach that provides risk-adjusted Population-Based Payments tied to cost- and quality-related outcomes.

Participation in PCPlus is voluntary for PCPs. For PCPs that elect to participate, the Department will share quality and utilization data, offer a new value-based payment model, and provide technical assistance to assist practices to transform care delivery and achieve performance outcomes. The new payment model is risk-based, meaning reimbursement will increase or decrease depending on the PCPlus provider's performance, as set forth in Section 3.08 of the rule. Providers may appeal Departmental actions, pursuant to Chapter I, Section 1.

Member participation in this model is based on which PCP the member visited for health care services or by the members' identification of a PCP through calling MaineCare Member Services. Member participation is voluntary and does not interfere with MaineCare members' freedom of choice to access other MaineCare providers. If a member identified their PCP for attribution through MaineCare Member Services but does not receive at least one primary care service from their selected PCP within one year, then DHHS will notify and reattribute the member in accordance with the primary care services-based attribution methodology. Members may change their PCP or opt out of PCPlus at any time.

To receive reimbursement under PCPlus, providers are required to locate, coordinate, and monitor health care services for members who are attributed to them, as set forth in Section 3.04. All covered services rendered by PCPlus providers must be documented in the member's electronic health record. The Department will continue to reimburse other MaineCare covered services under the fee-for-service system.

Differences Between PCPlus and PCCM

CMS considers PCCM to be a form of managed care, which operates under Section 1905(a)(25) of the SSA and 42 CFR 438.6 with mandatory member participation for the majority of MaineCare members. PCPlus operates under 1905(t)(1) of the SSA and is not a managed care program. Since PCPlus is not a managed care program, it does not include many of the managed care requirements that PCCM follows. For example, except as set forth in the rule, member participation in PCPlus is based on members' selection of a PCP, members may opt out of this program, and this program has no bearing on MaineCare members' freedom of choice to access services from any qualified MaineCare provider. In addition, PCPlus, unlike PCCM, does not include the PCCM provisions on member participation or complaints, and PCP selection, change, and reassignment.

Under both PCCM and PCPlus, providers locate, coordinate, and monitor health care services. However, PCPlus expands service and practice requirements to support whole-person coordination and transitions of care; completing timely prior authorizations; providing, tracking, and following up on referrals; and closing care gaps, including a focus on preventive services.

PCCM providers who choose to participate in PCPlus will benefit from a new value-based payment model, which includes a risk-adjusted population-based payment tied to cost- and quality-related outcomes, rather than the flat per member per month management fee provided under PCCM. Given the additional requirements and support for providers, PCPlus should improve health outcomes for members.

Section 90 and 91 Rulemakings for PCPlus Initiative

Regarding the related adopted rulemaking for Section 90, the Department eliminated the Primary Care Provider Incentive Payment because it would duplicate the reimbursement model of the new PCPlus program. Physicians who received the Incentive Payment may apply

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

to be PCPs under the PCPlus program, and, if approved, will receive reimbursement based on the PCPlus service expectations and performance for members attributed to their practice.

For Section 91, as it relates to the PCPlus initiative, the Department removed Health Home Practices (HHPs) because payment for these Health Home services would be duplicative of the reimbursement the PCPs will receive and the covered services they provide via PCPlus. HHPs that received reimbursement through Section 91 may apply to participate in the PCPlus program, and, if approved, PCPs will receive reimbursement based on the PCPlus service expectations and performance for members attributed to their practice.

As more specifically set forth in the Summary of Public Comments and Department Responses document, the Department made several changes to the final adopted rule, including: clarifying in Sec. 3.02-6 that CHW core competencies are those competencies defined by The Community Health Worker Core Consensus Project (see <https://www.c3project.org/roles-competencies>); adjusting the attribution assessment period in Section 3.02-2 from twelve (12) months to twenty-four (24) months; changing the Section 3.03-2(J) CHW requirement to become effective April 1, 2024, rather than one year after the PCPlus effective date; adding to Section 3.08-1(B) that “providers may request a reassessment of their Population Group and Risk Category PMPM if there is a significant change within the practice, such as a relocation or inclusion of a new population;” and clarifying in Section 3.03-2(H) that “advisory activities may include, but are not limited to, having MaineCare members on an advisory board and/or holding focus groups with members. Solely collecting survey data, e.g., patient experience data, without inclusion of members/families in synchronous engagement activities to identify needs and solutions is insufficient.” The final adopted rule remains consistent with what was proposed and is not substantially different, per 5 MRS §8052(5).

Fiscal impact of rule:

22 MRS §§ 42, 3173; *Social Security Act* §1905(t)(1) (42 USC §1396d(t)(1))

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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: PL 2021 ch. 398; 22 MRS §§ 42, 42(8), 3173
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. VII Section 5**, Estate Recovery
Filing number: **2022-020**
Effective date: 2/20/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This adopted rule implements PL 2021 ch. 398 Part A §A-1, pg. 99 to modify MaineCare estate recovery rules to conform with the minimum mandatory federal requirements, which are set forth in 42 USC 1396p(b).

These rule changes were originally implemented via an emergency rule, effective November 24, 2021; routine technical emergency rules are effective for 90 days. This final adopted rule permanently changes the Department's estate recovery claim so that it is limited to the amount paid by MaineCare for all nursing facility services, home and community-based services, and hospital and prescription drug services related to these services paid on behalf of the Member. The effective date of this change is November 24, 2021, since that is when the emergency rule was implemented.

Additionally, this adopted rule clarifies the definition of life estate, including how life estates are valued.

As a result of public comments and further review by the Department and the Office of the Attorney General, there were additional minor changes to the adopted rule language for purposes of clarity. The Summary of Public Comments and Department Responses document identifies more specifically all changes that were made to the final rule.

Finally, this adopted rule removes language regarding CMS's pending approval because the Department has received CMS approval for those changes.

Fiscal impact of rule:
(No response)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 §674(4)(D); 22 MRS Ch. 160; *Atomic Energy Act of 1954* (PL 83-703), *as codified* 42 USC 2011 et seq.
Chapter number/title: **Ch. 220**, Radiation Protection Rule
Filing number: **2022-210**
Effective date: 10/23/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The Department of Health and Human Services, Maine Center for Disease Control and Prevention (Department), advertised rulemaking changes for 10-144 CMR Ch. 220, the *Radiation Protection Rule*, on June 8, 2022, with a 30-day public comment period. The comment period ended on July 8, 2022. 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, in part to implement corrections recommended by the NRC via communications dated: December 17, 2012, August 27, 2013, January 26, 2015, September 2, 2015, October 23, 2015, January 14, 2019, June 16, 2020, August 17, 2020, November 16, 2020, and September 8, 2021. In 2019, the Department amended the *Radiation Protection Rule*; however, the Department did not address all the NRC's recommendations from December 17, 2012, August 27, 2013, January 26, 2015, September 2, 2015, October 23, 2015, and January 14, 2019. This current rulemaking further implements all corrections not yet addressed by the NRC's recommendations, as well as all others recommended in the NRC's 2020 correspondence to the Department. These corrections align with federal radiation regulations, and clarify rule requirements. These rule changes make it easier for regulated entities to comply with these standards, 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 General Provisions

- Add definitions for *initial transfer* and *ore*.
- Correct the internal reference in the definition of *radiation therapy physicist* from "Part G §961" to "Part G.690."

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

- Revise the definition of *unrefined* and *unprocessed ore* to include, “processing does not include sieving or encapsulation of ore or preparation of samples for laboratory analysis” to be consistent with 10 CFR §40.4.

Part C Licensing of Radioactive Material

- C.2.C: add additional information about exemption requirements for a license regarding source material to be consistent with 10 CFR §40.13(c).
- C.2.C(2)(a) and (b): clarify source products exempt from regulatory requirements to be consistent with 10 CFR §40.13c(2)(i) and (iii).
- C.2.C.(5)(a): remove reference to uranium counterweight distribution and licensing, due to 10 CFR §40.13(c)(5)(i) being removed.
- C.2.C.(5)(d): add statement to clarify the requirements in C(5)(a) and (b) for counterweights.
- C.2.C.(7), C(2)(C)(7)(a) & (b): clarify thorium and uranium when used as source material in optical lenses, optical instruments, and mirrors, to be consistent with 10 CFR §40.13(c)(7).
- C.2.C(8): remove “uranium contained in detector heads for use in fire detection units, provided that each detector head contains not more than 0.005 microcuries of uranium” due to 10 CFR §40.13(b) being removed.
- C.2.C(10), C(2)(C)(10)(a) & (b): add language to clarify licensing requirements for individuals to transfer, sell or distribute source materials to be consistent with 10 CFR §40.13(c)(10).
- C.2.C(10), C(2)(C)(9): for clarity reformat rule so that (9) becomes Subsection D and (10) becomes Subsection E.
- C.3.C(1)(g): add certain static elimination devices as an exempt item to be consistent with 10 CFR §30.15(a)(2).
- C.3.C.(1)(h): add certain ion generating tubes as an exempt item to be consistent with 10 CFR §30.15(a)(2).
- C.3.C(3)(C): update requirements for a license to process, produce or transfer for sale or distribution of certain self-luminous products.
- C.3.C.(4)(a): clarify this section regarding licensing and registration for persons to manufacture, process, produce or transfer certain gas and aerosol detectors containing radioactive material, to be consistent with 10 CFR §30.19(b).
- C.3.C(4)(a): replace “radioactive material” with “byproduct material,” to be consistent with 10 CFR §30.20.
- C.3.C(4)(C): add “and for a certificate of registration in accordance with 10 CFR Part 32.210” for clarity.
- C.3.C(6) & (7): clarify is required to obtain a license and who is exempt from obtaining license to manufacture, transfer or sell products with byproduct radioactive material to be consistent with 10 CFR §30.22. Provide internal references to both the rule and to 10 CFR Part 32.210.
- C.5.A(1): clarify the purpose of obtaining a general license, to be consistent with 10 CFR §40.22(a).
- C.5.A(1)(a) through (d): add information about the amounts of uranium and thorium that a licensee may possess and under what conditions or circumstances, to be consistent with 10 CFR §40.22(a)(1) through (a)(4).
- C.5.A(2)(a) through (e): add information about the use and handling of source material, including use on humans, abandonment of source material, timely responses to written requests from the Department for information on the handling of source material, and restrictions on exporting source material to be consistent with 10 CFR §40.22(b).

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

- C.5.A(3): add language to minimize contamination to the facility and to the environment, to be consistent with 10 CFR §40.22(c).
- C.5.A(4): add language to provide additional information around exemptions that include internal references to the rule and to 10 CFR Part 21, to be consistent with 10 CFR §40.22(d).
- C.5.A(5): add language regarding the transfer and distribution of source material, including internal references to the rule, to be consistent with 10 CFR §40.22(e).
- C.6.(A), C.6.A(1) & (2): remove licensing requirements for a static elimination device and for an ion generating tube, because this requirement from 10 CFR §31.3 has been removed.
- C.6.C.(3)(h)(iii): update internal reference.
- C.7.G: add clarifying language and internal rule references for when a specific license must be obtained for byproduct material in a sealed source or a device that contains a sealed source, to be consistent with 10 CFR §30.32(g).
- C.7.H: update the manufacture date from “November 30, 2007” to “October 23, 2012”, to be consistent with 10 CFR §30.32(g).
- C.7.I. and J: add information regarding the registration of sealed sources and devices to be consistent with 10 CFR §32.53(f).
- C.8.F(4)(b): update internal rule references for accuracy.
- C.8.F(5): update requirements for decommissioning plan costs, to be consistent with 10 CFR §30.35(e).
- C.11.E(1)(b)(v): add “Quality assurance procedures to be followed that are sufficient to ensure compliance with C.11.E(3)”, to be consistent with 10 CFR §32.53(b)(5).
- C.11.E(1)(d)(iv) and (v): add requirements for the manufacture, assembly, or repair of luminous safety devices for use in aircraft, to be consistent with 10 CFR §32.53(d)(4) and (e).
- C.11.E(3): update quality assurance criteria for prohibitions on transfer of luminous safety devices, to be consistent with 10 CFR §32.55.
- C.11.E(4): remove quality assurance criteria for prohibitions on transfer of luminous safety devices, to be consistent with 10 CFR §32.56.
- C.11.E(5): update criteria for material transfer reports, to be consistent with 10 CFR §32.56.
- C.11.F(1)(e)(ii): update internal reference in this section, to be consistent with 10 CFR §32.72(d)(2).
- C.11.F(1)(f): add additional requirements for a license to manufacture calibration sources containing americium-241, plutonium or radium-226 for distribution, to be consistent with 10 CFR §32.57(e).
- C.11.F(2): remove this section from the requirements for a license to manufacture calibration sources containing americium-241, plutonium or radium-226 for distribution, due to the fact that 10 CFR §32.102 has been removed.
- C.11.F(4): add language to clarify the leak testing of each source, to be consistent with 10 CFR §32.59.
- C.11.I(1)(e)(iv): clarified language to be consistent with 10 CFR 32.61(e)(4).
- C.11.I(1)(f): add quality assurance tests of ice detection devices containing strontium-90, to be consistent with 10 CFR §32.61(f).
- C.11.I(1)(g): add a requirement that ice detection devices containing strontium-90 must be registered in the Sealed Source and Device Registry, to be consistent with 10 CFR §32.61(f).

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

- C.11.I(2)(c) through (e): update the quality assurance criteria for persons licensed to manufacture and distribute ice detection devices containing strontium-90, to be consistent with 10 CFR §32(c),(d) and (e).
- C.11.I(3): remove the schedule D prototype tests for ice detection devices containing strontium 90, because 10 CFR §32.103 has been removed.
- C.11.J(4): add, “a licensee shall satisfy the labelling requirements in C.J.1(c)”, to be consistent with 10 CFR §32.72.
- C.11.L(4): add, “the source or device has been registered in the Sealed Source and Device Registry”, to be consistent with 10 CFR §32.74(a)(3).
- C.12: update special requirements for issuance of license for initial transfer of small quantities of source material.
- C.14.B(1): clarify criteria for the application of a transfer license, to be consistent with 10 CFR §30.34(b)(1) and (2).
- C.14.D: update reporting requirements by stating, “The licensee shall report the results of any test that exceeds the permissible concentration listed in Part G.204.A of these rules at the time of generator elution, in accordance with Part G.3204 of these rules” to be consistent with 10 CFR §30.34.
- C.14.H: add to clarify the requirements for a license to initially transfer source material for use under the ‘small quantities of source material’ general license.
- C.21.E: add requirements for a license to initially transfer source material for use under the ‘small quantities or source material’ general licenses to be consistent with 10 CFR §40.54.
- C.21.F: add conditions of licenses to internally transfer source material for use under the ‘small quantities or source material’ general licenses to consistent with 10 CFR §40.55(a) through (d).
- C.24.A(1)(b): add, “Up to 180 days of accumulative works may be performed during the covered period.” for clarity.
- C.25.A(2): Update record keeping requirement, to comply with 10 CFR §40.55.

Part D Standards for Protection Against Radiation

- 1403.C(1) and (2): clarify acceptable financial assurance mechanisms, to be consistent with 10 CFR §20.1403(c)(1).
- 1404.A(5): add language stating that through financial assurance, the Department (Agency) may terminate a license using alternate criteria greater than the dose criterion, to be consistent with 10 CFR §20.1404(a)(5).
- 1501.A: include language that surveys should also include the subsurface, to be consistent with 10 CFR §20.1406(b),(c) and (d).
- 1501.B: add, “records from surveys describing the location and amount of subsurface residual radioactivity identified at the site must be kept with records important for decommissioning, and such records must be retained in accordance with C.25, C.8.F(7)(f), as applicable”, to be consistent with 10 CFR §20.1406(a)(b),(c) and (d).
- 1501.D(1) and (2): remove requirements for dosimetry accreditation from the national voluntary laboratory accreditation program (NVLAP), to be consistent with 10 CFR §34.47.
- 2201.B: update the requirement of written or telephone reports from the initial report, to be consistent with 10 CFR § 70.50(c)(2).
- 2207.H: Remove this section, due to the requirements being outdated.
- 2304.B: add, “Licensees shall, to the extent practical, conduct operations to minimize the introduction of residual radioactivity into the site, including the subsurface, in accordance with the existing radiation protection requirements in Subpart B and

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

radiological criteria for license termination in Subpart E of this part”, to be consistent with 10 CFR §20.1406(c).

- Appendix B Table 1: add footnote notations to Nitrogen-13 and Oxygen-15, to be compatible with 10 CFR 20 Appendix B.
- Appendix B Table 1: corrected internal references to footnotes.

Part E Radiation Safety Requirements For Industrial Radiographic Operations

- E.18: remove, “an individual monitoring device that meets the requirements of Part D.1501”, due to the reference to personnel dosimetry accreditation being removed from Part D.1501(1) and (2).
- E.18(A)(3): update this section to include, “Film badges must be replaced at least monthly and all other personnel dosimeters that require replacement must be replaced at least quarterly. All personnel dosimeters must be evaluated at least quarterly or promptly after replacement, whichever is more frequent”, to be consistent with 10 CFR § 34.47.
- E.18(D)(E) and (F): update language to be consistent with NRC terminology.
- E.36(D): update terminology in this section to be consistent with E.18.

Part F X-Rays in the Healing Arts

- F.3.A.(1)(J), F.3.B(3), F.3.C(2), F.9.B: update internal references.

Part G Medical Use of Radioactive Material

- G.2: add definitions for *associate radiation safety officer*, *ophthalmic physicist*, and update the definition of *preceptor* to include associate radiation safety officer, to be consistent with 10 CFR §35.2.
- G.2: update an internal reference for the definition of *medical event*.
- G.12.B(1): update application requirements to include associate radiation safety officer(s) and ophthalmic physicist(s), to be consistent with 10 CFR §35.12.
- G.12.C(1): update application requirements to include either HHE Form 850 or a letter containing all the information required by HHE Form 850, to be consistent with 10 CFR §35.2.
- G.12.D: update and add criteria for the application of license or amendment for medical use of radioactive material, to be consistent with 10 CFR §35.2.
- G.13.B: add authorized ophthalmic physicist to license amendments, to be consistent with 10 CFR §35.13.
- G.13.B(1): update internal rule reference to include G.59, to be consistent with 10 CFR §35.13.
- G.13.B(4): add, “ophthalmic physicist” to be consistent with 10 CFR §35.13.
- G.13.I. through K: add conditions prior to obtaining a license amendment, to be consistent with 10 CFR §35.13.
- G.14.A: update notification requirements and information that a licensee must give to the Commission, to be consistent with 10 CFR §35.14.
- G.14.B: update notification requirements and information that a licensee must give to the Department (Agency), to be consistent with 10 CFR §35.14.
- G.15.E: add “ophthalmic physicist” to be consistent with 10 CFR §35.15.
- G.24.B: add supervision requirements and responsibilities assigned to an associate radiation safety officer, to be consistent with 10 CFR §35.24.
- G.40.B(6): add written directives for permanent implant brachytherapy, to be consistent with 10 CFR §35.40.
- G.40.B(7): add date to the written directives to be consistent with 10 CFR §35.40.
- G.41.B(5) and (6): update procedures requiring an administrative directive to include permanent implant brachytherapy, to be consistent with 10 CFR §35.41.
- G.50: add associate radiation safety officer to be consistent with 10 CFR §35.50.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

- G.50.A: add language to provide clarity to be consistent with 10 CFR §35.50.
- G.50.B(1)(b): add, “An associate radiation safety office may provide supervision for those areas for which the associate radiation safety officer is authorized on a Commission or an Agreement State license or permit issued by a commission master material license”, to be consistent with 10 CFR §35.50.
- G.50.B(2): clarify that as part of the training, a radiation safety officer or an associate radiation safety officer must obtain written attestation of satisfactorily completing training requirements to be consistent with 10 CFR §35.50.
- G.50.C: add experience requirements for an individual fulfilling the responsibilities of the radiation safety officer, to be consistent with 10 CFR §35.50.
- G.51: clarify the training requirements to be an authorized medical physicist, to be consistent with 10 CFR §35.51.
- G.55.A: clarify the training requirements of an authorized nuclear pharmacist, to be consistent with 10 CFR §35.55.
- G.55.B(2): update and clarify the training certification/attestation requirements for an authorized nuclear pharmacist, to be consistent with 10 CFR §35.55.
- G.57: update requirements in this section of the rule for the training of experienced radiation safety officers, teletherapy or medical physicists, authorized medical physicists, authorized users, nuclear pharmacists and authorized nuclear pharmacists, to be consistent with 10 CFR §35.57.
- G.57.B(2): correct the phrase “or a permit issued by a Commission master material license of broad scope on or before October 24, 2005,” to “or a permit issued in accordance with a Commission master material broad scope license on or before October 24, 2005,”.
- G.65.F(1) and (2): add byproduct material to medical use radioactive material, to be consistent with 10 CFR §35.65.
- G.65.G: add that the licensees do not need to list radioactive material sources when using calibration, transmission and reference sources in accordance with rule requirements, to be consistent with 10 CFR §35.65.
- G.190.B(2)(a) and (b): add and update written attestation requirements for training for uptake, dilution, and excretion studies, to be consistent with 10 CFR §35.190.
- G.204: add strontium-82, and strontium-85, to be consistent with 10 CFR §35.204.
- G.204.B through E: update and clarify licensee requirements for using molybdenum-99, strontium-82, and strontium-85 concentrations, to be consistent with 10 CFR §35.204.
- G.290.C(1)(b): add an authorized nuclear pharmacist who meets the requirements may provide the supervised work experience, to be consistent with 10 CFR §35.290.
- G.290.C(2)(a) and (b): add and update written attestation requirements of training for imaging and localization studies.
- G.300: add reference to section G.390.B(1)(b)(vii) of the rule to be consistent with 10 CFR §35.300.
- G.390.A(1), G490.A(1) and G690.A(1): replace “Committee on Post Graduate Training” with “Council on Postdoctoral Training” to be consistent with 10 CFR §§ 35.390(a)(1), 35.490(a)(1), and 35.690(a)(1).
- G.390.B(1)(b)(viii): clarify the requirements for the administering dosages of radioactive drugs to patients or human research subjects to be consistent with 10 CFR §35.300.
- G.390.B(2)(b): add and update written attestation requirements for training for use of unsealed radioactive material for which a written directive is required, to be consistent with 10 CFR §35.300.
- G.392.C(3): clarify written attestation requirements for training for the oral administration of sodium iodide I-131 requiring a written directive in quantities less

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

than or equal to 1.22 gigabecquerels (33 Millicuries), to be consistent with 10 CFR §35.392.

- G.394.C(3): clarify written attestation requirements for training for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 gigabecquerels (33 Millicuries), to be consistent with 10 CFR §35.394.
- G.396.B: clarify that these requirements pertain to a physician, to be consistent with 10 CFR §35.396.
- G.396.B(2): add supervising authorized user, to be consistent with 10 CFR §35.396.
- G.396.B(2)(F): update requirements for administering dosages to patients or human research subjects that include at least three cases, to be consistent with 10 CFR §35.396.
- G.396.B(3): clarify written attestation requirements for training for the parenteral administration of unsealed byproduct material requiring a written directive, to be consistent with 10 CFR §35.396.
- G.400.A and B: update the use of sources for manual brachytherapy, to be consistent with 10 CFR §35.400.
- G.433: update this section to add requirements for licensees who use strontium-90 for ophthalmic treatments, to be consistent with 10 CFR §35.433.
- G.490.B(3)(i) and (ii): clarify written attestation requirements for training for use of manual brachytherapy sources, to be consistent with 10 CFR §35.490.
- G.491.B(3): clarify written attestation for training for ophthalmic use of strontium-90, to be consistent with 10 CFR §35.491.
- G.500.A, B and C: update criteria for use of sealed sources and medical devices for diagnosis, to be consistent with 10 CFR §35.500.
- G.590: clarify language in this section for the requirement of training for the use of sealed sources and medical devices for diagnosis, to be consistent with 10 CFR §35.590.
- G.600.A: add clarifying requirements when a licensee can use a sealed source unit to be consistent with 10 CFR §35.600.
- G.600.B: add requirements for clarity when a licensee can use photon-emitting remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units, to be consistent with 10 CFR §35.600.
- G.610.D(1): update safety procedures for a licensee for the use of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units, to be consistent with 10 CFR §35.610.
- G.655.A: update inspection requirements for teletherapy units and gamma stereotactic radiosurgery units, to be consistent with 10 CFR §35.655.
- G.690.B(3)(ii): clarify written attestation requirements for training for the use of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units, to be consistent with 10 CFR §35.690.
- G.2040: update internal reference.
- G.2024.C: add record retention requirements for an associate radiation safety officer, to be consistent with 10 CFR §35.2024.
- G.2204.A and B: update and add record keeping requirements for molybdenum-99, strontium-82 and strontium-85 concentrations, to be consistent with 10 CFR §35.2204.
- G.2310: add “the operational and safety instruments required by”, to be consistent with 10 CFR §35.2310.
- G.2655: replace “five year inspection” with “full-inspection servicing”, to be consistent with 10 CFR §35.2655.
- G.3045: update requirements for report and notification of medical events, to be consistent with 10 CFR §35.3045.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

- G.3045.G(1)(b): clarify identification number.
- G.3047.F(1)(b): update requirements for report and notification of a dose to an embryo/fetus or nursing child, to be consistent with 10 CFR §3047.
- G.3204: add report and notification for an eluate exceeding permissible molybdenum-99, strontium-82, and strontium-85 concentrations, to be consistent with 10 CFR §35.3204.

Part H Radiation Safety Requirements For Analytical and Other Industrial Radiation Machines

- H.8.C: update internal reference.

Part N Regulation and Licensing of Technologically Enhanced Naturally Occurring Radioactive Materials (Tenorm)

- N.3: add clarifying language to the definition of Technologically enhanced naturally occurring radioactive material (TENORM)

Part S (New) Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material

- Add new section to rule, Part S, “Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material. Standards” to be consistent with 10 CFR Part 37, which became effective March 19, 2013.

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, 2022 to December 31, 2022
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 (Maine CDC)**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §1341(2)
Chapter number/title: **Ch. 252**, Syringe Services Programs Rule
Filing number: **2022-168**
Effective date: 9/1/2022
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Department adopts these emergency amendments in response to the October 6, 2021 renewal of the nationwide opioid public health emergency, the increased number of drug-related deaths and injuries, the recent decrease in use of certified exchange programs, which provide education, new syringes, and proper disposal of used syringes, as well as PL 2021 ch 434, *An Act to Promote Public Health by Eliminating Criminal Penalties for Possession of Hypodermic Apparatuses*, and PL 2022 ch 545, *An Act to Amend Syringe Services Programs*, which became effective on August 8, 2022. These emergency changes reflect these most recent public laws to implement a change to the distribution model that is based on research showing that less restrictive distribution models, based on Consumers' needs, can lead to lower syringe re-use and minimize the spread of blood-borne diseases. Reusing syringes increase the risk of transmitting bloodborne pathogens like HIV and viral hepatitis, as well as increased exposure to bacterial infections like cellulitis, endocarditis, or sepsis. This amendment to allow certified Syringe Services Programs to expand the one-to-one exchange of syringes follows best practice guidelines for current syringe service programs. The Department replaced "hypodermic apparatus exchange" with "syringe services" throughout the rule, including a change to the rule title. The Department has determined that these rule changes are necessary to provide greater protection to people who inject drugs in Maine. Pursuant to 5 MRS §8054, the Department finds that the emergency adoption of 10-144 CMR Ch. 252 is necessary to avoid an immediate threat to public health, safety or general welfare.

Basis statement:

The Department originally adopted this rule to meet the requirements of 22 MRS §1341, which mandates the Department to establish a rule for Syringe Services Programs to facilitate the prevention of HIV and other blood borne pathogens, due to the opioid epidemic, leading to an increase in the number of people who use syringes to inject drugs. The U.S. Department of Health and Human Services Secretary Xavier Becerra renewed the federal public health emergency on October 6, 2021, as a result of the continued consequences of the opioid crisis affecting the United States and after consultation with public health officials, pursuant to Secretary Becerra's authority under section 319 of the Public Health Services Act. The US CDC's National Center for Health Statistics reported an estimated 109,247 drug overdose deaths in the United States during the 12-month period ending in March 2022, an increase of 9.7% from the 99,567 deaths during the same period the year before. Within Maine, the provisional death counts increased 19.69% in reported cases to CDC. Provisional mortality data is based on death certificate data received but not fully reviewed by the CDC National Center for Health Statistics' (NCHS) National Vital Statistics System (NVSS); however, due to the time needed to investigate certain causes of death and process and review death data, this early estimate reveals trends before the release of final data, which typically is reported 11 months after the end of the calendar year. The number of suspected and confirmed fatal overdoses rose 36% from 2020 to 2021, with 77% of those deaths caused by nonpharmaceutical fentanyl, which is 9% higher than the rate in 2020, according to the Maine

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Drug Death Report in 2021. Maine CDC reports that the rate of drug deaths continue to be high in 2022.

Additionally, Maine experienced a 300% increase in the rate of acute Hepatitis A and C from 2019 to 2020, with current year-to-year data in 2021 showing a continued increase rate from before the COVID-19 pandemic. From 2019 to 2020, the proportion of acute Hepatitis A cases among individuals who use drugs (injection or non-injection) increased from 27% to 52% of cases. In 2021, 33% of all reported acute hepatitis C cases reported injection drug use. Though new cases of HIV are down nationwide, the CDC reports that about 10% of new HIV cases in the United States are people who inject drugs.

Emergency changes to this rule are based on research showing that less restrictive distribution models, based on a Consumer's need, can lead to lower syringe re-use and minimize the spread of blood-borne diseases. Reusing syringes can increase transmission of HIV, viral hepatitis, as well as lead to an increase in exposure to bacterial infections like cellulitis, endocarditis, or sepsis. The Department is promoting a needs-based distribution model, in order to follow best practice guidelines for current syringe service programs and in response to An Act to Promote Public Health by Eliminating Criminal Penalties for Possession of Hypodermic Apparatuses, PL 2021, ch 434, which decriminalized possession of more than 10 syringes. Without the fear of committing crime, Syringe Service Programs may encourage consumers to use a trusted source for new syringes. In addition, the resources provided by these programs increase the safe disposal of used syringes, which keeps them out of community spaces.

The Department has determined that the adoption of this rule is necessary to provide a continuity and consistency of services that will support people who inject drugs in Maine. While the Department is lifting the strict one-for-one exchange requirements, it is imposing a limit of 100 syringes per Consumer, due to the recent public law at PL 2021, ch. 545 which now allows the Department to limit the number of syringes provided by certified programs. The Department set a reasonable limit of 100 syringes per Consumer per exchange event that a Syringe Services Program could provide, in order to avoid interfering with the needs-based distribution model encouraged by the Department in this rule change.

Findings of Emergency: The emergency adoption of 10-144 CMR Ch. 252 is necessary to avoid an immediate threat to public health, safety or general welfare, based on the nationwide opioid public health emergency renewed on October 6, 2021, the reports of drug-related injuries and deaths in Maine, the decrease in people accessing syringe services programs, and recent changes in Maine law that decriminalize possession of over 10 syringes and allow the Department to impose reasonable limitations on the number of syringes that are introduced into the community. The emergency adoption of this rule will allow increased access to Syringe Services. This emergency rule, the Syringe Services Programs Rule, 10-144 CMR Ch. 252, will be effective immediately upon filing with the Secretary of State for 90 days. During this 90-day time period, the Department will propose non-emergency standard routine technical rulemaking, to allow for public comment and permanently adopt these changes, as well as other non-emergency changes.

Fiscal impact of rule:

These emergency amendments pose no fiscal impact to the Department, counties or municipalities.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 (Maine CDC)**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §1341(2)
Chapter number/title: **Ch. 252**, Syringe Services Programs Rule
Filing number: **2022-229**
Effective date: 11/30/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rulemaking aligns with the Department's recently adopted emergency amendments effective September 1, 2022, to address the October 6, 2021 renewal of the nationwide opioid public health emergency; the increased number of drug-related deaths and injuries; the recent decrease in use of certified exchange programs, which provide education, new syringes, and proper disposal of used syringes; PL 2021 c. 434, *An Act to Promote Public Health by Eliminating Criminal Penalties for Possession of Hypodermic Apparatuses*; and PL 2021 ch 545, *An Act to Amend Syringe Services Programs*, which became effective on August 8, 2022. In accordance with these recently enacted laws and emergency rule adoption, the rule permits certified Syringe Services Programs to, according to their respective policies, expand the previous one-to-one exchange of syringes and follow best practice guidelines for current syringe service programs, provided that distribution is limited to no more than 100 syringes per Consumer per Exchange Event. In addition to Maine CDC proposing that all recent emergency changes become a permanent part of this rule, the agency proposes rule changes to further clarify that the length of a Syringe Services Program certification period is five years, which is set in statute (22 MRS §1341(2)(H)), as well as update definitions, internal references, and rule format for consistency with agency standards.

Basis statement:

This rule is administered by the Department of Health and Human Services – Maine Center for Disease Control and Prevention and governs Syringe Services Programs established to facilitate the prevention of HIV and other blood borne pathogens, pursuant to 22 MRS §1341. Amendments are adopted for continuity of rule changes recently implemented on an emergency basis to revise program requirements, including syringe exchange and dispensing requirements, in response to the national opioid epidemic and the increase in injectable drug use in Maine.

The U.S. Department of Health and Human Services Secretary Xavier Becerra renewed the federal public health emergency pertaining to the nationwide opioid epidemic on September 29, 2022, pursuant to his authority under Section 319 of the *Public Health Service Act*, 42 USC §247d, effective October 3, 2022. This renewal is a result of the continued consequences of the opioid crisis affecting the United States and after consultation with public health officials. The US CDC's National Center for Health Statistics reported an estimated 109,247 drug overdose deaths in the United States during the 12-month period ending in March 2022, an increase of 9.7% from the 99,567 deaths during the same period the year before. The State continues to take steps to confront the epidemic of substance use disorder, including expanding access to sterile syringes, education and treatment. Within Maine, the provisional death counts increased 19.69% in reported cases to CDC. Provisional mortality data is based on death certificate data received but not fully reviewed by the CDC National Center for Health Statistics' (NCHS) National Vital Statistics System (NVSS); however, due to the time needed to investigate certain causes of death and process and review death data, this early estimate reveals trends before the release of final data, which typically is reported 11

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

months after the end of the calendar year. The number of suspected and confirmed fatal overdoses rose 36% from 2020 to 2021, with 77% of those deaths caused by nonpharmaceutical fentanyl, which is 9% higher than the rate in 2020, according to the Maine Drug Death Report in 2021. Maine CDC reports that the rate of drug deaths continue to be high in 2022.

Additionally, Maine experienced a 300% increase in the rate of acute Hepatitis A and C from 2019 to 2020, with current year-to-year data in 2021 showing a continued increase rate from before the COVID-19 pandemic. From 2019 to 2020, the proportion of acute Hepatitis A cases among individuals who use drugs (injection or non-injection) increased from 27% to 52% of cases. In 2021, 33% of all reported acute hepatitis C cases reported injection drug use. Though new cases of HIV are down nationwide, the CDC reports that about 10% of new HIV cases in the United States are people who inject drugs.

Rule changes are based on research showing that the less restrictive distribution models that factor consumer need can lead to lower syringe re-use and minimize the spread of blood-borne diseases. Reusing syringes can increase transmission of HIV and viral hepatitis, as well as lead to an increase in exposure to bacterial infections like cellulitis, endocarditis or sepsis. Where the Executive Orders that permitted unrestricted dispensing allowances during the public health crisis have been lifted, the Department's rule is shifting from the previous strict one-to-one exchange requirement to allow an expanded dispensing of new syringes, consistent with the emergency rule. Rule changes are partially in response to Public Law 2021, chapter 434, *An Act to Promote Public Health by Eliminating Criminal Penalties for Possession of Hypodermic Apparatuses*, which decriminalized possession of more than 10 syringes. Without the fear of committing crime, Syringe Service Programs may encourage consumers to use a trusted source for new syringes. Maintaining that syringes may be dispensed only at the SSP site aids the oversight of Programs and manages public perception. Resources provided by these programs offer support services, education and referrals through in-person contacts and increase the safe disposal of used syringes, a public health concern.

The current emergency rule remains effective from September 1, 2022, for 90 days until November 30, 2022. (5 MRS §8054(3).) The adoption of this rule is necessary to provide continuity and consistency of services for people who use injectable drugs in Maine. While the Department is not requiring a one-for-one syringe exchange, programs must have a distribution policy that allows for the one-to-one exchange of used syringes for new syringes. In addition, the Department is imposing a limit of 100 syringes per encounter, when the Consumer does not have a used syringe to exchange, as authorized by 22 MRS § 1341(1)(A). Additionally, Programs are permitted to implement policies that further limit the number of syringes dispensed to a Consumer. The Department has determined that, while dispensing is restricted to SSP sites and the age eligibility remains in place, permitting the flexibility of 1:1 exchanges and up to 100 syringes per encounter when used syringes are not returned by the Consumer, is a reasonable approach to implementing a less restrictive distribution model, striking a balance that considers Consumer needs while safeguarding Program capacity to serve Consumers.

Fiscal impact of rule:

No fiscal impact to the Department, counties or municipalities.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 (Maine CDC)**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 1531 - 1533; 22-A MRS §210
Chapter number/title: **Ch. 283**, Newborn Bloodspot Screening Rule
Filing number: **2022-037**
Effective date: 4/13/2022
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

Chapter 283 is a routine technical rule, except for Section 14 (Fees), which is major substantive, pursuant to 5 MRS §8071(3)(B). On March 24, 2021, the Department provided notice for its proposed Major Substantive rule change to increase the filter paper fee from \$110 to \$220 per infant tested. These changes were provisionally adopted May 24, 2021, in accordance with 5 MRS §8073. On February 17, 2022, the 130th Maine Legislature authorized the final adoption of changes to the major substantive portions of the rule (Resolve 2022 chapter 124). The Department plans to finally adopt this rule change within 60 days of this emergency legislation to permanently implement the increase to the filter paper fee from \$110 to \$220 per infant tested. The finally adopted Major Substantive rule will take effect 30 days after the date it is filed with Secretary of State; the emergency major substantive rule will expire when this rule takes legal effect, resulting in no lapse in the Department's ability to collect the increased fee (5 MRS §8072(8).)

Basis statement:

Maine's *Newborn Bloodspot Screening Rule* (10-144 MRS Ch. 283) is a routine technical rule, except for Section 14 - Fees, which is a major substantive rule provision, pursuant to 5 MRS §8071(3)(B).

On March 24, 2021, the Department provided notice through the Secretary of State's Office and Maine CDC a proposed rulemaking to permanently implement changes established by a March 11, 2021 hybrid Emergency Routine Technical/Major Substantive rule. The Routine Technical rule changes were adopted and became effective June 1, 2021. The Department provisionally adopted the Major Substantive rule changes on May 24, 2021 and submitted them to the Legislature for review in accordance with 5 MRS §8073.

The June 1, 2021 Routine Technical rule added four conditions to Maine's newborn bloodspot screening panel:(1) Spinal Muscular Atrophy (SMA); (2) Mucopolysaccharidosis Type 1 (MPS-1); (3) Pompe; and (4) X-linked Adrenoleukpdystrophy (X-ALD). The addition of these conditions is consistent with the U.S. DHHS Recommended Universal Screening Panel (RUSP) and is supported by the Joint Advisory Committee to further reduce mortality and morbidity from certain heritable conditions and ensure a level of support for children and families affected by these conditions. This Major Substantive rulemaking increases the fee for newborn bloodspot filter paper from \$110 to \$220 to off-set costs corresponding to these four additional conditions (i.e. genetic clinic contracts, resource material, follow-up services and other related program operations).

On February 17, 2022, the 130th Maine Legislature authorized the final adoption of changes to the major substantive portions of the rule (Resolve 2022 chapter 124, *Resolve, Regarding Legislative Review of Portions of Chapter 283: Newborn Bloodspot Screening Rule, Section 14, a Major Substantive Rule of the Department of Health and Human Services, Maine Center for Disease Control and Prevention.*) As emergency legislation, the Resolve became effective immediately on February 17, 2022. The Department is authorized to finally adopt

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

this Major Substantive rule change within 60 days of the effective date of the Resolve. The finally adopted Major Substantive rule will take effect 30 days after the date it is filed with Secretary of State; the emergency major substantive rule will expire when this rule takes legal effect, resulting in no lapse in the Department's ability to collect the increased fee.

Fiscal impact of rule:

The additional conditions will increase the costs for contracted NBS testing services. Consistent with the national cost for lab services, the 100% increase in the cost to purchase the required NBS filter paper is to offset additional laboratory charges that the Department estimates to be close to \$500,000, and other related cost increases (i.e. genetic clinic contracts, resource material, follow- up services and other related program operations) corresponding to the additional new conditions on the bloodspot screening panel.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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; 5 MRS §8054
Chapter number/title: **Ch. 301**, Supplemental Nutrition Assistance Program: **SNAP Rule #224E, Section 999-3**, Charts
Filing number: **2022-031**
Effective date: 3/1/2022
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

Each state agency is charged with determining standard utility allowances and having those approved by the United States Department of Agriculture (USDA). Each year, Maine proposes figures based on the best available data in July for implementation in October. The utility allowance values for Federal Fiscal Year 2022 were calculated to increase using The Consumer Price Index (CPI) of 240.778% for June 2021 published by the Bureau of Labor Statistics of the Department of Labor, and were submitted to and approved by USDA. Between June and October 2021, the CPI increased another 11.88 percentage points. This increase is indicative of an additional \$2 per month in phone expenses, an additional \$14 per month in utility expenses for households without a heating or cooling expense, and an additional \$42 per month in utility expenses for household with a heating or cooling expense. To accurately reflect the expense of Maine families, the Department has submitted and the USDA has approved updated standard utility allowances for the remainder of Federal Fiscal Year 2022.

Findings of Emergency

Pursuant to 5 MRS §8054, the Department finds that emergency rulemaking is necessary for the health, safety, and general welfare in order to ensure that SNAP benefits are issued appropriately and accurately taking into account the high utility expenses experienced by Maine residents as verified by the Maine Public Utilities Commission and attested to by various media outlets.

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

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). State funded SNAP benefits are estimated to cost an additional \$42,247 per year. These same changes will result in an estimated \$6,401,112 in federal funds flowing to Maine residents and grocers.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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
Chapter number/title: **Ch. 301**, Supplemental Nutrition Assistance Program (SNAP) Rules: **SNAP Rule #224A**, March 2022 Standard Utility Allowance Updates; **Section 999-3**, Charts
Filing number: **2022-086**
Effective date: 5/30/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule implements increases to the standard utility allowances. As a result, SNAP benefits will increase for some households.

Each state agency is charged with determining standard utility allowances and having those approved by the United States Department of Agriculture (USDA). Each year, Maine proposes figures based on the best available data in July for implementation in October. The utility allowance values for Federal Fiscal Year 2022 were calculated to increase using The Consumer Price Index (CPI) of 240.778% for June 2021 published by the Bureau of Labor Statistics of the Department of Labor, and were submitted to and approved by the USDA. Between June and October 2021, the CPI increased another 11.88 percentage points. This increase is indicative of an additional \$2 per month in phone expenses, an additional \$14 per month in utility expenses for households without a heating or cooling expense, and an additional \$42 per month in utility expenses for households with a heating or cooling expense. To accurately reflect the expense of Maine families, the Department has submitted and the USDA has approved updated standard utility allowances for the remainder of Federal Fiscal Year 2022. These same changes were incorporated into the Supplemental Nutrition Assistance Program (SNAP) Rules, in emergency rule making number 2022-031. This rulemaking makes those changes permanent to ensure that SNAP benefits are issued appropriately and accurately taking into account the high utility expenses experienced by Maine residents as verified by the Maine Public Utilities Commission and attested to by various media outlets.

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

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). State funded SNAP benefits are estimated to cost an additional \$42,247 per year. These same changes will result in an estimated \$6,401,112 in federal funds flowing to Maine residents and grocers.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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) and (8) and 1161; PL 2021 Ch. 472 §4
Chapter number/title: **Ch. 323**, Maine General Assistance Manual, Sections II, IV, V, VI
Filing number: **2022-157**
Effective date: 9/1/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

PL 2021 Ch. 472 sets requirements and limits on municipalities related to the use of housing assistance for individuals living in Recovery Residences. The chapter further required the Department to establish in this manual appropriate maximum housing assistance levels for said individuals. Based on a survey of actual expenses for Recovery Residences, the Department has set this level at 75% of the one-bedroom allowance. This rulemaking proposes to comply with those requirements by— making edits to the definitions of “Household” and “Pooling of Income” and the addition of a definition of “Recovery Residence” in Section II, adding Subsection O to Section IV, adding Paragraph 4 to Section V(D), and making edits to Section VI(B)(3)(b)(ii).

Consistent with PL 2021 Ch. 472, the changes listed above are to be applied retroactively to July 1, 2022. Retroactive rulemaking is permitted under 22 MRS §42(8). None of the changes below would be applied retroactively.

The Department regularly reviews rules for clarity and accessibility. Throughout these sections, modifications would be made to use gender neutral language. Uses of similar terms (such as “individual”, “applicant”, and “recipient”) were reviewed and changes proposed to provide clarity and specificity. Language would be modernized. E.g., references to “Food Supplement” would be updated to “SNAP”. Citations were reviewed and would be updated for accuracy, specificity, and consistency of format. The enumeration of some subsections, paragraphs, etc. would be updated for clarity and ease of reference.

Within Section II, the following modifications are adopted to enhance the clarity of the chapter. The definition of “available resources” would be modified to more explicitly distinguish them from potential resources. A definition of “Department of Health and Human Services” would be added to clarify that uses of this term, “DHHS”, and “The Department” throughout the manual are references to the Maine Department of Health and Human Services. Definitions of “earned income” and “unearned income” would be added to specify what income fits each category and that all income fits one of these categories. Clarification would be added to the definition of “eligible person” to specify that the 24-month limit applies only to those pursuing a lawful process to apply for immigration relief. The definitions of “Family Development Accounts” and “household” would be simplified to avoid discrepancies as the statutory definitions are updated. The definition of “federal poverty level” would be removed as that term is no longer used in this chapter. The definition of “homelessness” would be modified to include individuals who do not have a permanent residence upon exiting an institution. The definition of “misspent income” would be moved from Section IV to Section II for consistency and ease of reference. A definition of “rehabilitation facility” would be added to help distinguish between this type of facility and a recovery residence. The definition of “Resident” would be clarified to include individuals who intend to keep a particular town as

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

their permanent residence even if they are temporarily absent. A definition of “Supplemental Nutrition Assistance Program” would be added.

Within Section IV the following modifications are adopted to enhance clarity. Subsection A(2) would be modified to clarify that recipients are not required to reapply every 30 days unless they are seeking further assistance. In Subsection B reiterations of definitions provided in Section II would be removed for brevity and to avoid potential future conflicts. In Subsection F, reiterative language would be removed. Furthermore, in light of current health insurance laws and regulations, Paragraph 1(b) would be modified to acknowledge that all employer offered health and dental insurances are considered cost effective for the purposes of General Assistance budgeting. Additionally, Paragraph 2(b) would have language added clarifying that each municipality sets their mileage rate cap. Language would be added to Subsection H Paragraph 4 (parallel to the language used in the preceding paragraphs) to spell out that it addresses the verification of expenses. Language would be added to Subsection I(6)(b)(i) specifying that the greater of the state or federal minimum wage would be used in the calculation of the value of workfare hours (consistent with Subsection L(4)). Subsection J(1) would be broken into two paragraphs to more clearly articulate the financial responsibilities of parents and spouses as it relates to General Assistance budgeting. Subsection K was modified to clarify that a minor does not need to be pregnant or a parent to be eligible. Subsection L(5) would be reworded to use language more consistent with the rest of the section and more immediately state the circumstances under which this paragraph would apply. Furthermore, Paragraph 13 would have language added specifying that piece work standards are set by employers and that General Assistance administrators will adopt good cause determinations made by the Department of Labor, not apply their standards. Subsection M would be amended to clarify that Emergency General Assistance is a subset of General Assistance, not a separate benefit. Furthermore, the start date of 120-day disqualification period in Paragraph 3(b) would be clarified to the date of the disqualification determination. Additionally, Paragraph 4 would be amended to specify that the disqualification would only apply to a member of a recipient household. Paragraph 5 would, also, be amended to specify that the process to appeal a decision is by requesting a fair hearing.

Section VI(B)(5) would be amended to cover all applicants experiencing homelessness.

This rule will have an impact on municipalities. Changes to rent reimbursement for residents of Recovery Residences is estimated to cost an additional \$36,000 annually. The State General Fund will pay \$25,200 of that expense. The remaining \$10,800 will be incurred by municipalities administering the GA program. The full amount will be seen as income for local small businesses and non-profit organizations.

Fiscal impact of rule:

Direct costs to the Department include the cost of rulemaking activity and updating staff and municipal training and resources (all of which are covered by the existing budget for such changes).

Changes to rent reimbursement for residents of Recovery Residences is estimated to be minimal and can be absorbed by current funding.

This rule will have an impact on small businesses. For a copy of the small business impact statement, please contact: Sara Denson, General Assistance Program Manager, Department of Health and Human Services, Office for Family Independence, 109 Capitol Street, Augusta, ME 04333-0011. Phone: (207) 624-4193. Fax: (207) 287-3455. TT Users Call Maine Relay – 711. Email: Sara.Denson@Maine.gov.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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) and (8), 3790-A(6)
Chapter number/title: **Ch. 330**, Higher Opportunity for Pathways to Employment (HOPE) Program Rule, Sections 1, 2, 3, 4, 5, 7
Filing number: **2022-062**
Effective date: 4/25/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule provides a necessary support for HOPE participants required to engage in remote learning and provides clarification on eligibility requirements and limits for certain supports already being applied. Department staff will continue to determine eligibility for the HOPE Program and all supports according to current guidance.

The original HOPE rules did not anticipate the need to provide Internet access when establishing the support service funding cap on technology supports. In the interest of public health, Maine's institutions of higher learning suspended their in-person activities during the spring of 2020 due to the COVID-19 pandemic, while continuing to provide education and career training programs online. Some of Maine's most vulnerable people did not have sustained access to Internet connections necessary to avail themselves of those programs. This rule change allows funding of Internet access for HOPE participants when other cost-effective Internet options are not feasible. Furthermore, the Department regularly reviews policies for clarity, and applicability.

PL 2021 Ch. 149 amended 22 MRS §3790-A(2)(C) so that the reference to acceptable target jobs more closely matches the language used by the Maine Department of Labor, and relaxed the criteria for acceptable post-secondary degree programs. This rule change brings the manual in compliance with those changes. These changes include the addition of definitions of "Adequate Job Outlook," "Career Pathway," "Substantial Improvement in Earnings and Benefits," and "Universally Recognized and Accepted"; the removal of the term "Average Job Outlook"; and related modifications to eligibility and verification criteria (the updates to the third sentence of Section 2, Section 3(A)(10)(b)(iv), and Section 7 Subsections B(1)(e) and E(1)(i)(vi) and the addition of Section 7(E)(1)(i)(v)). Although Subsection 1 of 22 MRS §3790-A was not amended, the Department has decided to move forward with rulemaking as it has determined that the passage of this amendment is an implied repeal of the inconsistent language contained there. "[T]he legislature cannot be supposed to have intended that there should be two distinct enactments embracing the same subject matter in force at the same time, and that the new statute, being the most recent expression of the legislative will, must be deemed a substitute for previous enactments, and the only one which is to be regarded as having the force of law." *State v. Taplin*, 247 A.2d 919, 921-22 (Me. 1968). These changes are effective Monday, October 18, 2021, the effective date of the legislation. Retroactive rulemaking is permissible under 22 MRS §42(8) as the change affords this benefit to more residents of the State of Maine and does not adversely impact applicants, participants, beneficiaries, or providers.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

PL 2021 Ch. 398 Part BBB amended 22 MRS §3790-A to expand the number of individuals who may be enrolled in the HOPE program from 500 to 800. This rule change brings the manual in compliance with that change effective Thursday, July 1, 2021. Retroactive rulemaking is permissible under 22 MRS §42(8) as the change affords this benefit to more residents of the State of Maine and does not adversely impact applicants, participants, beneficiaries, or providers.

The following changes are not being implemented retroactively:

In Section 1, “Definitions”, a number of terms are added or have their definitions updated. The definition of “Application” is updated to allow for electronically signed submissions. This change improves access especially at times that in-person contact is discouraged for health reasons. A definition of “Credential” is added to clarify this term as distinct from “High-Value Credential.” The definition of “Matriculation” is simplified and standardized. This change is necessitated by the vast spectrum of definitions of “Matriculation” used by various institutions, and the fact that some do not use the term at all. It is further amended to allow for test preparation courses when a HOPE participant has graduated from their primary Training or Education program but is using such a course to prepare for an exam necessary to achieve the related credential. A definition of “Outstanding Tuition and Fees” is added to help clarify what bills can and cannot be paid by HOPE supports. A definition of “Specified Relative” is added for consistency with other TANF funded OFI programs. A definition of “Stackable Credential” is added to facilitate a lifelong education, training, and employment program that leads to improved employability or increased earnings potential in a specific job sector. The definition of “Working Age” is simplified to avoid a potential conflict should the CWRI change its definition in the future.

In Section 3, “Eligibility”, the following items are clarified. Paragraphs 6, 8 and 10 of Subsection A are changed to provide more clarity and specificity to the eligibility criteria for Participants, Institutions, and Programs. A list of TANF programs that do not include cash payments is added to A(6). A(8) is modified to clarify that the individual must have aptitude for the career not just the training or education program. The standards of accreditation are added to A(10)(a)(i). In addition to modifications related to PL 2021 Ch. 149, A(10)(b) is amended to expand the criteria for cost effectiveness of a training or education program. Amendments to Subsection B(2) clarify the treatment or exclusion of certain income types.

In Section 4, “Services”, the following items are amended. Subsection B(1)(a) is amended to clarify that the Outstanding Tuition and Fees support does not apply to student loan payments or prior payments made to payment plans entered into before HOPE enrollment. The mileage reimbursement rate in Subsection B(3) is increased from 44 to 45 cents per mile consistent with the MSEA rate at

<https://www.maine.gov/osc/travel/mileage-other-info> and the rate used by other OFI supports such as the Additional Support for People in Retraining and Employment (ASPIRE), Food Supplement Employment and Training (FSET) and Transitional Transportation programs. Paragraphs 3 and 7 of Subsection B are amended to specify that these supports are available only for vehicles being operated in accordance with Maine law. Subsection B(5) is amended to clarify that Technology and Software supports are only considered necessary if the Participant does not have sustained access to Technology and Software at their home. Subsection B(6) is added to allow funding of Internet access for HOPE participants who do not have other available, cost-effective Internet resources.

Section 7, “Policies and Procedures”, has the following modifications. Subsection B(1) is amended to allow for electronically signed submissions. Subsection B(1) is

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

amended to clarify that applicants can have their denial reconsidered if they provide verifications within the month of denial or the month following. Finally, Subsection B(1) is amended to allow the same timeframe for waitlisted applicants to be reconsidered. These changes provide improved access. Subsections C and D are amended to clarify the end date of eligibility for supports. Subsection C(2) is amended to clarify that a change to an eligibility factor expected to last at least 30 days or a change to HOPE funded services expected to last at least 14 days needs to be reported. Subsection D is corrected to reflect the location of the caps for Supports as Section 4(B). Subsection D(3) is amended to clarify the timeframe during which Participants can request reimbursements. This change reduces the administrative burden on Participants and the Department. Subsection E is amended to reflect the clarifications made to Section 3(A)(6), (8), and (10) detailed above including detailing the acceptable verifications for the clarified eligibility criteria. Subsection E(1)(g) is amended for greater consistency with the terminology and requirements in Section 3(A)(9). Subsection E(1)(i)(v) is further amended to allow other documentation similar to those specified as evidence of acceptability of an online program.

Other changes are part of a standardization of practice across all OFI rules. Enumeration and lettering of subsections, paragraphs, etc. is updated as part of a general effort to make these systems consistent throughout OFI rules and as necessary to accommodate the addition and deletion of material. References to Maine law or regulations are reformatted for standardization within the document and consistency with the conventions detailed in *Uniform Maine Citations* by Michael D. Seitzinger, Charles K Leadbetter, and Sara T.S. Wolff.

(<https://digitalcommons.maine.gov/uniform-maine-citations>). References to various website URLs are updated to reflect instances where the owner of the information changed the URL. Some references to other parts of this manual are corrected for clarity. Changes include using gender inclusive pronouns. Other grammatical and typographical errors are corrected. Redundant terms are removed. References to “Caretaker Relative” are changed to “Specified Relative” for consistency with other TANF funded Office for Family Independence (OFI) programs.

As proposed, this rule would only have authorized technology and software supports if they were not available to the participant. As a result of public comments, the adopted version of this rule clarifies that these supports are authorized if the participant does not have access to them at their home.

As a result of comments, clarification was added related to employability aptitude. The adopted rule specifies that verification of employability aptitude will only be requested if the Department receives information that the individual would not meet the standards defined by the professional licensing or regulatory board for the individual’s chosen industry, and provides added specificity as to what documentation is acceptable.

On the advice of the OAG, information was added on how to acquire the current income standards from the Department.

Fiscal impact of rule:

No annual fiscal impact is anticipated. The addition of the Internet support will, likely, only result in participants using this support in a given year as opposed to the Technology and Software or Other Support categories. Any increases in cost related to the changes in eligibility criteria or the increased caseload cap can be absorbed in the existing allocation.

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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) and (8); 3762(3)(A) and (8)(B)(C); 3769-A; 3769-C(C) and (D); and 3786
Chapter number/title: **Ch. 331**, Public Assistance Manual (TANF); **TANF #119**, Expansion of Transitional Transportation, and Adjustments to TANF Budgeting
Filing number: **2022-234**
Effective date: 12/10/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The adoption of this final rule amends Chapter III to clarify the exclusion of certain non-recurring payments as assets, including one-time cash assistance such as the Build HOPE Project. Updates to Chapter III Section (B) increase the excluded gift threshold in recognition of inflation since the original figure was established.

This rulemaking updates Chapter V Section B to extend the Transitional Transportation benefit to working families with income below 200% of the federal poverty level (FPL) even if they did not participate in ASPIRE-TANF, or lost TANF for a reason other than employment.

Pursuant to PL 2021 ch. 1 §N-1, this adopted rule restricts eligibility for this group to \$1,400,000 per year.

This adopted rulemaking effectuates changes related to Chapter V Sections B(4) and (5) regarding payment of TT supports. It also applies the \$20 cap uniformly to all months rather than reduce it to \$15 for the second six months. In addition, it also clarifies that this benefit is available so long as transportation is incurred regardless of the mode of transportation.

Chapter V(B)(6)(a)(v) is amended to clarify that households only need to report increases in income that put them over the applicable limit.

Appendix Charts page 1, The Table of Percentages for First Month Payment, corrects the rate for the 31st day of the month from 3.20 percent to 3.23 percent.

This adopted rulemaking includes minor changes such as correcting typographical errors, enumeration and formatting changes necessitated by more substantive changes, adding clarifying language, and reducing the use of stigma inducing language as well as modernizing the asset type list to include crypto currency.

All of the above changes are effective upon adoption of this rule.

Updates to Chapter V Section B(4) increases the mileage reimbursement to maintain consistency with the rate afforded to those covered under the Maine State Employees Association (MSEA) contract. This change is effective retroactive to October 1, 2022, consistent with the MSEA contractual change.

Pursuant to 22 MRS §3769-C(1)(D), this adopted rule increases Appendix Charts, page 2, Standard of Need and Maximum Grant, each October based on the Cost of Living Increase, used by the Social Security Administration effective retroactive to October 22, 2022.

To comply with 22 MRS §3762(8)(C), Appendix Charts page 3, Worksheet For Calculating Transitional Child Care (TCC) Parent Fees and Subsidy Payments, is updated based on Federal Poverty Level (FPL) figures published in the Annual Update of the HHS Poverty Guidelines, Federal Register 87:14 (January 21, 2022) p. 3315.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

<https://www.federalregister.gov/documents/2022/01/21/2022-01166/annual-update-of-the-hhs-poverty-guidelines> effective retroactive to February 1, 2022.

Retroactive rulemaking is authorized by the Legislature in accordance with 22 MRS § 42(8) because this rule provides a benefit to recipients or beneficiaries and does not have an adverse financial effect on either providers or beneficiaries or recipients.

The adopted rule differs from the proposed rule in the following ways:

Chapter V Section (B)(a)(i) is updated to Transitional Transportation (TT) is available for up to 18 months when requested within twelve months of TANF/PaS closure.

This adopted rule effectuates additional supports for working families and reduces complexity of the program for them and Department staff. Additional changes to the adopted rule are intended to improve readability and contemporariness of the sections. Families receiving TANF may see an increase in their benefits. In addition, some families not previously eligible for TANF may be eligible under the new income guidelines.

The Department does not anticipate that this rulemaking will cause any specific, actual or any potential points of public controversy for stakeholders, businesses, or municipalities.

Fiscal impact of rule:

Direct costs to the Department include the cost of rulemaking activity, updating staff training and resources, and necessary technology changes such as changes to the Automated Client Eligibility System (ACES) (all of which are covered by the existing budget for such changes).

The increases to the TANF Standard of Need and Maximum Benefit amounts will result in an anticipated additional expenditure of \$1,522,236 per year from the Federal TANF Block Grant for federally funded benefits and \$119,412 per year in state General Funds for state funded benefits. The expansion of the Transitional Transportation support will result in an increased expenditure of the TANF Block Grant of \$1,400,00 per year. As a result of the updated income eligibility guidelines for Transitional Child Care there is an anticipated increase to TANF Block Grant expenditures, but this increase is minimal and unable to be determined for currently enrolled households. Additional households may also become eligible, but that number cannot be predicted. These expenditures will primarily be realized as income for Maine landlords and businesses where they are spent.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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) and (8), 3173, 3174(G), 3174-FFF
Chapter number/title: **Ch. 332**, MaineCare Eligibility Manual, Parts 2, 3, 5: Changes to Post-Partum Coverage, and Coverage for Young Adults
Filing number: **2022-218**
Effective date: 11/6/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

PL 2021 Ch. 461 amended 22 MRS § 3174-G to incrementally increase the period of time an individual can receive postpartum coverage. PL 2022 Ch. 519 adjusted the timeframe of those extensions to comply with 42 USC §§ 1396a(e) and 1397gg(e)(1) as amended by PL 117-2, the *American Rescue Plan Act of 2021*. This rulemaking incorporates those extended timeframes into Part 2 §13.1(III) and Part 3 §2.3(I) effective August 1, 2022.

PL 2021 Ch. 461 further amended 22 MRS §3174-G to provide MaineCare coverage to non-citizens during their pregnant/postpartum period or under the age of 21 to the extent allowable under federal law. This rulemaking incorporates that coverage into Part 3 §2.3(III). Consistent with amendments made by PL 2022 Ch. 519, and State Plan Amendments ME 22-0020 and ME-20-0021 these changes are, also, effective July 1, 2022.

PL 2021 Ch. 398 Part DDD established 22 MRS §3174-FFF to provide state-funded MaineCare and CubCare to non-citizens under age 21 who would be eligible for the federally-funded program if not for their immigration status. This rulemaking incorporates that program in the definitions of “Cub Care” and “Coverage for Noncitizens Under Age 21” in Part 2 §1, Part 3 §2.1(V), and Part 5 §3(C) effective July 1, 2022 consistent with the timeframe in law.

Consistent with 8 USC §1612(b)(2)(G) as established by the *Consolidated Appropriations Act, 2021*, PL 116-260, §208, this rulemaking extends MaineCare coverage to otherwise eligible non-citizens with Compact of Free Association (COFA) status. This addition of Subparagraph P to Part 2 §3.4(I) is effective December 27, 2020.

The Department is adopting the preceding changes retroactively to the dates indicated. Retroactive rulemaking is permissible under 22 MRS §42(8) as these changes afford benefits to more residents of the State of Maine and do not adversely impact applicants, participants, beneficiaries, or providers. The following changes are not adopted retroactively.

This rulemaking clarifies the requirements in Part 2 §§ 3.1, 3.2, 3.3, and 3.4 for applicants and the Department as they relate to non-citizen eligibility. These requirements are consistent with 42 USC §1320b-7 and 42 CFR §435.956(a).

The Department is updating Part 2 §11, and Part 5 §§ 1, 9, and 10 to reflect online application avenues that have changed.

The Department is removing language from Part 3 §2.4 and Part 5 §3 that was necessary immediately after the adoption of other rule changes, but no longer applies.

The following additional updates are being made to Part 2. Section 7.1 is amended to include a more accurate list of programs that do not require cooperation in obtaining medical support from a non-custodial parent. The Department is removing redundant language from Section 12.2. Additionally, general verification requirements in Section 12.1 are modified to specify that the Department must use electronic verifications systems when available. Only if

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

eligibility cannot be determined based on those systems is verification required of the individual. These changes are necessary to comply with 42 CFR §435.949. Section 13.1 is amended to more clearly articulate that while a child may be eligible for continuous coverage for 12 months, the category of eligibility may change. Section 13.3 is reworded to be more consistent with other sections that address change reporting. The Department is removing ambiguous language from Section 13.4. Clarity is added to Section 15 related to the types of computer matches that require timely noticing.

The following additional updates are being made to Part 3. A definition of Federal Poverty Level is added to Section 1. The Department is removing an unnecessary redundant definition in Section 2.1. Section 2.2 is corrected to indicate an individual is still considered to live with their parent or caretaker if they attended the Governor Baxter State School for the Deaf if services cannot be found in their home community. Section 2.3(II) is amended to clearly state that providers must communicate a decision to the Department as a whole, not to a specific regional office. It is further amended to clarify that Presumptive Eligibility ends the earlier of the date the Department renders a decision or the end of the month following the month the provider renders a decision. Section 4.1.1 is amended to more clearly state which coverage groups may move to Transitional MaineCare. Section 4.2.2 is amended to reflect that recipients who are no longer employed must request a good cause determination before the Department can establish one.

The Department is removing redundant language from Part 5 Section 9.

Finally, some non-substantive changes are being made for clarity and inclusivity. Where possible, similar terms that may have carried stigma or are now out of date are replaced with “noncitizen.” The Department is using person first language except where it would create inconsistency in terminology used in other parts of the manual. Language is rendered gender neutral where possible. The Department is converting some language to the active voice for clarity. Some instances of bulleted items are converted to a more consistent outline style. Citations and cross references are updated as needed for accuracy, clarity, and consistency of format. Minor corrections to punctuation, grammar, and spelling are being made. Whole numbers zero through ten are being represented in word form with all other numbers being represented numerically (consistent with the method being applied to all Office for Family Independence Manuals). Date format is being made consistent throughout these parts. Part 2 §8 is reorganized. These changes improve the readability of the manual without changing its meaning.

The adopted rule differs from the proposed rule in the following ways: Amendments have been made to clarify that the SAVE requirements do not apply to citizens or noncitizens who do not declare a qualifying status; the reference to individuals being limited to Emergency Services if SAVE verification could not be completed within the reasonable opportunity period has been removed; the section on Emergency Services has been updated to clarify it does not apply to individuals under 21 or or pregnant individuals eligible for full coverage; references to the “Mountain View Youth Development Center” have been modernized to refer to the “Mountain View Correctional Facility”; and the CHIP coverage for pregnant individuals was updated to— include the correct effective date of July 1, 2022, eliminate language that may have been interpreted to limit the type of care covered, and clarify that coverage continues until the end of the month the pregnancy ends or longer if necessary to allow for adequate and timely notice.

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

Fiscal impact of rule:

Direct costs to the Department include the cost of rulemaking activity, updating staff training and resources, and necessary technology changes such as changes to the Automated

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Client Eligibility System (ACES) (all of which are covered by the existing budget for such changes).

Extended postpartum eligibility is anticipated to cost an additional \$279,720 in General Funds for State Fiscal Year 2023 and each subsequent year. It is, also, expected to bring an additional \$497,280 in federal funds into the state for State Fiscal Year 2023 and each subsequent year.

Expanded eligibility for noncitizens is anticipated to cost an additional \$430,811 in General Funds for State Fiscal Year 2023 and \$2,070,971 for each subsequent year. It is, also, expected to bring an additional \$1,278,757 in federal funds into the state for State Fiscal Year 2023 and each subsequent year.

All of these funds would primarily be realized as income for Maine businesses where they are spent.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Office of Child and Family Services**
Umbrella-Unit: **10-148**
Statutory authority: 22 MRS §§ 7702-B(11), 7703(6), 7704, 7707(3), 7802(7), 8301(8), 8302-A(2), 8303-A(1)
Chapter number/title: **Ch. 33** (*Repeal and replace*), Family Child Care Provider Licensing Rule
Filing number: **2022-069**
Effective date: 5/27/2022
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 major substantive portions of 10-148 CMR Chapter 33, *Family Child Care Provider Licensing Rule* and repeals 10-144 CMR Chapter 33, *Family Child Care Provider Licensing Rule*. The Maine Legislature designated portions of the Family Child Care rule as major substantive, per 22 MRS §§ 8302-A(2)(G)-(J) and 8303-A(1). Other sections are designated as routine technical, per 22 MRS §§ 7702-B, 7703, 7802, 8301-A and 8302-A (2)(A)-(F). On May 20, 2021, the Commissioner finally adopted the routine technical portions of the rule and provisionally adopted the major substantive portions. On May 27, 2021, the Commissioner adopted an identical rule on an emergency basis. Pursuant to 5 MRS §8073, the emergency rule expires on May 27, 2022. This rule has been reviewed and approved by the legislature (LD 1864 (130th Legis. 2021)) with an emergency resolve effective March 31, 2022. Resolves 2021 ch. 138. The resolve authorizes the Department to finally adopt Chapter 33: *Family Child Care Provider Licensing Rule*, only if the following changes are made:

1. The rule must be amended to remove the definition of critical violation in Section 1.B.11 as a category of violation by providers that do not meet licensing requirements;
2. The rule must be amended to remove all references to “CV” for critical violations from the margins;
3. In section 2.G.12, the rule must be amended to require providers to enroll rather than register with the Quality Rating and Improvement System within the Office of Child and Family Services;
4. In section 6.F.4, the rule must be amended to remove the requirement for providers to notify the department of a critical violation within 24 hours of occurrence;
5. In section 7.F.5 and 7.F.6, the rule must be amended to specify that the immunization records of providers and staff members document immunity against tetanus, pertussis and diphtheria;
6. In section 8.A.10, the rule must be amended to clarify that training for staff members on transportation of children is required biennially rather than biannually;
7. In section 12.A.1.a, the rule must be amended to update the child care immunization standards from those published in September 2019 to those published on August 8, 2021;
8. In section 14.M, the rule must be amended to remove the requirement for both hot and cold running water in toilet facilities and only require running water; and

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

9. The rule must be amended to remove administrative fines from section 20.D as an option for noncompliance with licensing rules and removed from Section 20.P.1.c.v from actions that are afforded the right to appeal.

The finally adopted rule includes these required changes from the provisionally adopted rule.

The Department determined that adoption of this rule, 10-148 CMR Ch. 33, *Family Child Care Provider Licensing Rule*, is necessary to fully comply with the federal requirements of the 2014 reauthorization of the Child Care and Development Block Grant (CCDBG), which provides significant funding annually to improve access to and quality of child care in Maine. The new provisions in the rule are required to remain in compliance with CCDBG.

Additionally, the rule includes provisions necessary to meet the health and safety needs of children who are served by licensed family child care providers. The rule also removes and modifies provisions of the current rule in order to streamline requirements and processes. Finally, statutory requirements omitted from the current rule have been reincorporated for clarity and improved transparency of requirements.

Significant major substantive changes adopted in this rulemaking include: clarifying definitions; requiring compliance with comprehensive background checks pursuant 10-148 CMR Ch. 34; adding requirements for provider handbook and staff manual; increasing record retention from two years to three years; updating immunization requirements; clarifying and adding requirements for notifications to the Department; adding staff qualifications and requirements; specifying orientation and ongoing training requirements; adding a requirement for registration with Maine's Professional Development Network; adding child and parent rights; adding time requirements for active outdoor play; reducing screen time, adding a requirement for a carbon monoxide detector; changing temperature requirements, adding swimming requirements; adding healthy meal and snack requirements; adding disqualifying driving offenses prohibiting provider transport of children; prohibiting swaddling; and modifying requirements for nighttime care.

Fiscal impact of rule:

The Department does not anticipate any fiscal impact as the changes are cost neutral.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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(1), 8302-A(1)(J), 2(K); 42 USC §9858(b)
Chapter number/title: **Ch. 34** (*New*), Child Care Provider (Child Care Facilities and Family Child Care Providers Background Check Licensing Rule
Filing number: **2022-059**
Effective date: 5/12/2022
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 10-148 CMR Chapter 34, *Child Care Provider (Child Care Facilities and Family Child Care Providers) Background Check Licensing Rule*. This is a major substantive rule pursuant to 22 MRS §8302-A (1), (2). On September 25, 2020, the Commissioner adopted a substantively identical rule on an emergency basis. However, pursuant to 5 MRS §8073, that emergency rule expired on September 24, 2021. In order to avoid a lapse in the legal application of the rule, the Department provisionally adopted Chapter 34 on September 17, 2021 and proposed the rule with a legal applicability date of September 25, 2021. This Rule has been reviewed and approved by the legislature (LD 1865 (130th Legis. 2021) with an emergency resolve effective March 16, 2022. Resolves 2021 ch. 130.

The rule implements 22 MRS §8302-A(1)(J) and (2)(K), which requires that the Department adopt rules for child care facilities and family child care providers which require a criminal background check that meets the requirements of 42 USC §9858f. The rule thus provides necessary protection to children who receive child care in licensed child care settings. It also provides protection to the child care facilities and family and child care providers. The Maine Legislature has provided that the criminal background checks be paid by the Department from the funds available under the federal *Child Care and Development Block Grant Act of 1990*, as amended by the federal *Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, Public Law 104-193, 110 Stat 2105. 22 MRS §8302-A(3). The Child Care Providers and staff members bear no cost for the expense of the criminal background checks under the finally adopted rule.

The finally adopted rule is also necessary for continued compliance with the federal background check requirements of the 2014 reauthorization of the *Child Care and Development Block Grant (CCDBG)*, 42 USC §9858f(b) and 22 MRS §8302-A(1)(J), (2)(K). CCDBG provides significant funding annually to improve access to and quality of child care. Maine will receive a financial penalty of approximately \$800,000.00 if the components of the comprehensive background check established by means of emergency major substantive rulemaking lapse.

On September 21, 2021 the Department adopted 10-148 CMR ch. 32, *Child Care Facility Licensing Rule - Child Care Centers, Nursery Schools, Small Child Care Facilities, Other Programs*. This rule includes a provision - Section 2(D) - requiring compliance with 10-148 CMR ch. 34, *Child Care Provider Background Check Licensing Rule*. Additionally, the Department adopted 10-148 ch. 33, *Family Child Care Provider Licensing Rule*, by means of an emergency major substantive adoption on May 27, 2021 and this rule also includes a provision - Section 2(D) - requiring compliance with 10-148 ch. 34, *Child Care Provider*

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Background Check Licensing Rule. The Department provisionally adopted the *Family Child Care Provider Licensing Rule* on May 20, 2021, and it is currently before the Legislature for review pending final adoption. LD 1864 (130th Legis. 2021).

The final rule makes no substantive changes to the rule provisionally adopted September 17, 2021. This rule adds requirements to pre-employment and pre-licensure comprehensive background checks for Child Care Providers to include:

- Mandatory fingerprinting with search of the Federal Bureau of Investigation (FBI) and State Bureau of Identification (SBI), as well as the National Crime Information Center (NCIC) National Sex Offender Registry.
- Searching state criminal repositories, state child abuse and neglect registries/databases, and state sex offender registries in each state where the individual has resided in the previous five years.
- Prescribing specific disqualifying offenses for determining whether an individual is deemed eligible or ineligible to work for or as a licensed child care provider.
- Requiring (1) all current and prospective staff members, (2) all adult household members in a family child care, and (3) any other individual whose activities involve the care or supervision of children or who has unsupervised access to children to receive a qualifying result pursuant to a comprehensive background check as provided for in the *Child Care Provider Background Check Licensing Rule*.

Fiscal impact of rule:

22 MRS §8302-A sub-§3 requires that fees for criminal background checks must be paid by the Department from the funds available under the federal *Child Care Development Block Grant Act of 1990* as amended by the federal *Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, Public Law 104-193, 110 Stat. 2105. The fees for the criminal background checks reimbursed under this subsection may not exceed the actual costs for processing and administration.

Fingerprint-based background checks are valid for five years and will continue to be provided at no cost to the individual and no cost to the Child Care Provider.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Office of Child and Family Services**
Umbrella-Unit: **10-148**
Statutory authority: 22 MRS §§ 42, 4008(7), 5601-5610; PL 2015 ch. 501
Chapter number/title: **Ch. 201**, Procedures for the Child Abuse or Neglect Findings, Appeals from Findings, and Appeals from Denial of Access in Certain Confidential Records
Filing number: **2022-030**
Effective date: 2/28/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To be in compliance with changes in 22 MRS §4008(7), and PL 2015 c. 501.

Basis statement:

The Department of Health and Human Services (the "Department") proposed rulemaking to amend 10-148 CMR ch. 201, currently called "Procedures for the Abuse or Neglect Substantiation Process, for Appeals for Persons Substantiated as Perpetrators of Abuse or Neglect of Children, and Appeals for Denial of Access to Confidential Records". There was no hearing held for this rule. The comment period following publication ended on November 20, 2021. No comments were received.

Maine law requires the Department to investigate allegations of child abuse or neglect and determine whether the child has been harmed, as well as the degree of harm or threatened harm, and decide whether the allegations are unsubstantiated, indicated, or substantiated, 22 MRS §§ 4004(2), 8354. "Substantiated" means a finding of high severity abuse or neglect or present threat thereof, while "indicated" means a finding of low to moderate severity abuse or neglect and no further threat of harm. The current rule provides for administrative hearings of appeals only in the case of substantiated findings because of the substantial difference in impact of an indicated finding versus a substantiated one. Substantiated findings are reported out on child protective background checks and as a result may prohibit an individual from working in their chosen field, Indicated findings are not reported out on background checks, but may nonetheless still impact the indicated individual-for example, as part of a so-called "Clifford Order" whereby the Department is ordered by a court to produce records in a civil or criminal proceeding, or as part of the Department's decision to issue certain licenses to individuals.

The Department therefore adopts this rule to allow a person indicated for abuse or neglect of a child to request a "paper review" and, if the finding is upheld on paper review, an administrative hearing to appeal the finding following a determination by the Chief Administrative Hearing Officer that the person has experienced or is likely to experience collateral consequences as a result of the indicated finding. The adopted rule requires the Department to provide notice of the right to request an administrative hearing to appeal an indicated finding after it is upheld on paper review, and that collateral consequences must be proven to the Chief Hearing Officer for a hearing to be granted. The adopted rule also provides a process for those who were previously indicated for abuse or neglect of a child to appeal the indication if they are now suffering collateral consequences of the finding. The adopted rule also allows a person who was substantiated for abuse or neglect of a child before November 1, 2003, and never previously afforded notice of an opportunity for paper review or an administrative hearing, to request a paper review or administrative hearing.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

The adopted rule makes several other changes to the current rule, which the Department in its judgment has determined are necessary to the successful operation of the rule. The adopted rule extends the deadlines for the Department to complete paper reviews of findings. The adopted rule changes the time in which the Department must conduct a paper review from sixty to ninety days from the request for paper review, changes the time an appellant may respond to new information in the paper review from seven to ten days, and extends the Department's obligation to notify the appellant of the result of the paper review from five to ten business days.

The adopted rule clarifies that although the Department must substantiate a specific allegation of child abuse or neglect if the Department was a party to a case in which a court found as a factual matter that the specific conduct did occur, a court finding that a child is not in circumstances of jeopardy does not require the Department to change an indicated or substantiated finding against a person with respect to that child.

The adopted rule also gives the paper reviewer the ability to lower a finding from substantiated to indicated during paper review, and the hearing officer authority to recommend the Commissioner lower a substantiated finding to an indicated finding.

Finally, the adopted rule adds a new section XVII, "Time Limits", clarifying the computation of time periods provided for in the rule.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Office of Aging and Disability Services (OADS)**
Umbrella-Unit: **14-197**
Statutory authority: PL 2021 ch. 284; 22 MRS §3089(3); 34-B MRS §5605
Chapter number/title: **Ch. 1 (New)**, Rights and Basic Protections of Persons with an Intellectual disability, Autism Spectrum Disorder or Acquired Brain Injury
Filing number: **2022-223**
Effective date: 11/18/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This new rule sets forth the rights and basic protections of persons with an intellectual disability, Autism Spectrum Disorder or acquired brain injury in accordance with 22 MRS §3089 and 34-B MRS §5605.

PL 2021 ch. 284 extended certain rights and basic protections set forth in 34-B MRS §5605 to persons with an acquired brain injury; directed the Commissioner to convene a task force to make recommendations on rules and procedures regarding the rights and basic protections of persons with acquired brain injuries; and directed the Department to consider the task force's recommendations and to adopt rules regarding the rights and basic protections of individuals with an acquired brain injury.

Because the Department had not previously undertaken rulemaking regarding the rights and basic protections of persons with an intellectual disability or Autism Spectrum Disorder, the rule also states the statutory rights and basic protections of these persons. Most of these rights and basic protections apply to all persons with an intellectual disability, Autism Spectrum Disorder, or acquired brain injury – not just those who receive services from a provider that is funded or licensed by the Department. This distinction is reflected in the rule.

The rule also describes the procedures for notifying persons receiving services of their rights and basic protections, and states the remedies available for alleged violations of rights and basic protections.

OADS drafted this rule relying on the following: PL 2021 ch. 284; 22 MRS § 3089; 34-B MRS §§ 5603-5606 and 5610, including the statutory rights for individuals with an intellectual disability, Autism Spectrum Disorder, or acquired brain injury; the January 2022 Task Force Recommendations; other stakeholder input; Department staff's knowledge of and experience with educating individuals receiving services of their rights; and the administration's guidance and vision for educating individuals receiving services about their rights and basic protections.

The Department held a virtual public hearing on July 15, 2022. Nine commenters submitted comments during the comment period and the public hearing. The Department made some changes to the final rule from the proposed rule in response to the comments and on the advice of the Office of the Attorney General.

Fiscal impact of rule:

This rulemaking will not impose any costs on municipal or county government or on small businesses.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Office of Aging and Disability Services (OADS)**
Umbrella-Unit: **14-197**
Statutory authority: 22 MRS §206(4); 34-B MRS §5604(3)
Chapter number/title: **Ch. 8**, Grievance Process for Persons with an Intellectual Disability, Autism Spectrum Disorder or Acquired Brain Injury
Filing number: **2022-224**
Effective date: 11/18/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule establishes the procedures by which a recipient of services with an intellectual disability, autism spectrum disorder, or an acquired brain injury may grieve and seek resolution of complaints regarding actions or inactions of the Department or providers affecting the recipient's statutory rights, or services.

The Department is adopting this rule to update and clarify requirements for its grievance procedure rule. Specifically, this rule implements PL 2021 ch. 284, *An Act to Improve the Rights and Basic Protections of Persons with Acquired Brain Injuries*, §§ A-2, A-8, which provide individuals with an acquired brain injury the right to submit a grievance. This rule revises the definition of grievance and provides new deadlines for the resolution of grievances and includes a six-month savings clause for grievances that accrued prior to the effective date of the proposed rule. Further, the Department is clarifying the grievance procedure for a person receiving services if an individual has a grievance against his or her case manager. This rule also clarifies the role of Maine's Protection and Advocacy Agency and affords the Commissioner discretion whether to issue an Order of Reference when an administrative hearing is requested, and thus reserve the final decision for herself.

OADS drafted this rule relying on the following: existing grievance procedures for persons with an intellectual disability or Autism Spectrum Disorder; stakeholder input; Department staff's knowledge of and experience with grievance procedures; and the administration's guidance and vision for grievance procedures for these populations.

The Department held a virtual public hearing on July 14, 2022. Seven comments were submitted during the comment period and the public hearing. The Department made some non-substantive changes to the final rule from the proposed rule in response to the comments and on the advice of the Office of the Attorney General.

Fiscal impact of rule:

This rulemaking will not impose any costs on municipal or county government or on small businesses.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Labor, **Bureau of Labor Standards**
Umbrella-Unit: **12-170**
Statutory authority: 26 M.R.S. §§ 42 and 53
Chapter number/title: **Ch. 9**, Rules Governing Administrative Civil Money Penalties
Filing number: **2022-177**
Effective date: 9/21/2022
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

The proposed amendments are intended to clarify the calculations of penalties for wage and hour violations and to explain in more detail the process for appealing such penalties and the conduct of an appeal hearing.

Basis statement:

The Bureau of Labor Standard is proposing amendments to Chapter 9 to clarify and expand upon the process for calculation of penalties for wage and hour violations, specifically, to add multipliers for repeat and willful violations and to provide for combining or grouping violations. The proposed Rule expands upon the process for appeals of such penalties, by explaining in more detail the conduct of an appeal hearing, the role of the Hearing Officer in conducting the hearing and issuing a Recommended Decision, the role of the Bureau Director in issuing a final agency decision, and the right of appeal to Superior Court. The proposed Rule adds definitions and explains the respective roles of the Division Director and the Bureau Director.

No public comments were received for this proposed rule.

A public hearing was held via Zoom at 2PM on November 11th, 2021, as posted.

The virtual hearing was conducted by Mike Roland, Director of the Bureau of Labor Standards. Several other employees of the Bureau attended and assisted with the technology. The hearing was recorded.

Shortly after 2PM, Director Roland read an opening statement and invited comment on the proposed rules. The hearing was kept open for slightly more than one hour. During that time there were no other attendees and no public comment was offered. Shortly after 3PM, Director Roland made a brief closing statement explaining that public comment would be accepted until 5PM on December 6th, and the hearing was ended.

The Rule was released to the Second Session of the 130th Legislature as LD 1925, “Resolve, Regarding Legislative Review of Portions of Chapter 9: Rules Governing Administrative Civil Money Penalties for Labor Law Violations, a Major Substantive Rule of the Department of Labor, Bureau of Labor Standards.” The Rule was considered by both the Labor and Housing Committee and the full legislature. It was signed by the Governor on April 14th as Resolve 2022 Chapter 157. The Resolve became effective on August 8th, 2022, which allows the Department to formally adopt this major substantive rule.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Labor, **Bureau of Labor Standards**
Umbrella-Unit: **12-170**
Statutory authority: 26 M.R.S. § 42
Chapter number/title: **Ch. 13**, Rules Governing the Establishment and Use of Fair Minimum Wage Rates on State Construction Projects
Filing number: **2022-081**
Effective date: 5/4/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department of Labor, Bureau of Labor Standards, is responsible for drafting rules and changes for Title 26 Chapter 15. The changes to the rules are to implement statutory changes from P.L. 2019, Ch. 545, update two incorporation-by-reference sources and streamline the mailed survey data collection process.

Basis statement:

Modification of this rule, which governs the administration of Maine's Prevailing Wage Program by the Department's Bureau of Labor Standards, is needed in order to bring it into conformity with changes in statute, specifically P.L. 2019, Ch. 545. These amendments also adapt the rule to changes in technology and in job classifications in the regulated construction industry. They also provide for the more efficient and less intrusive conduct of the required annual surveys by updating the two incorporation-by-reference sources and streamlining the mail survey process. These amendments to the rule were developed through consultation with an ad hoc advisory group convened in accordance with 26 MRS 1307-A. No public comments were received. The final rule is as proposed, except for minor formatting edits.

Fiscal impact of rule:

There may be increased costs on the projects involving state-funded one and two-family residential building projects which are rare and on average should amount to less than \$1 million per year.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Labor, **Bureau of Labor Standards**
Umbrella-Unit: **12-170**
Statutory authority: 26 M.R.S. § 3502
Chapter number/title: **Ch. 19**, Rules Governing Apprenticeship in Construction of Energy Generation Facilities
Filing number: **2022-006**
Effective date: 1/15/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule was proposed to clarify standards laid out in 26 MRS Chapter 43. There are a large number of applicable projects planned in the state that the laws apply to and this rule provides definitions to clarify the law and procedures necessary for implementing the apprenticeship standards set in the law. The rule is necessary so affected parties are able to properly follow the law.

Basis statement:

The purpose of this chapter is to provide definitions and procedures for implementing apprenticeship standards in the construction of certain energy generation facilities pursuant to 26 MRS Ch. 43 § 3502. This rule describes the responsibility of persons engaged in the construction of energy generating facilities with capacity of 2 or more megawatts to hire and employ a minimum number of apprentices. Construction employers are defined to include a general contractor or subcontractor or other entity having significant control over the construction of a generation facility. The rule explains how that number will be determined based on the total number employed in apprenticeable occupations in a such construction. Construction employers must demonstrate compliance with the statute and must provide payroll records demonstrating compliance or must offer valid evidence that sufficient numbers of apprentices in apprenticeable occupations were not available as determined by this rule. The comment period was extended from August 23 to September 13.

Fiscal impact of rule:

None

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Labor, **Maine Apprenticeship Program**
Umbrella-Unit: **12-181**
Statutory authority: 26 M.R.S. § 3212
Chapter number/title: **Ch. 1**, Rules Relating to Labor Standards for Registration of Apprenticeship Programs
Filing number: **2022-130**
Effective date: 7/19/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is updated to reflect changes in federal regulations, 29 CFR Parts 29 and 30, and changes in state law set forth at Title 26, Chapter 37.

Basis statement:

The proposed amendments clarify that Maine Apprenticeship Program has the authority for approval, registration, and deregistration of apprenticeships. The proposed amendments update the standards for approval and registration of apprenticeships to conform with title 26, Chapter 37.

The proposed rule was published for public comment and sent to interested persons on May 25, 2022. The public comment period ended on June 27, 2022. No public comments were received. The final rule being adopted is identical to the proposed rule.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Labor, **Maine Apprenticeship Program**
Umbrella-Unit: **12-181**
Statutory authority: 26 M.R.S. § 3212
Chapter number/title: **Ch. 2**, Rules Pertaining to Equal Opportunity for Employment in Registered Apprenticeship Programs in the State of Maine
Filing number: **2022-131**
Effective date: 7/22/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These rules are amended to comply with updates required under 29 CFR 30.

Basis statement:

Modification of this rule, which sets forth the Maine Apprenticeship Program's plan to promote equality of opportunity and affirmative action in apprenticeship programs, is necessary for conformity with requirements in the federal rules for apprenticeship programs, 29 CFR 29 and 29 CFR 30.

The proposed rule was published for public comment and sent to interested persons on May 25, 2022. The public comment period ended on June 27, 2022. No public comments were received. The final rule being adopted is identical to the proposed rule.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 §§ 6072, 6072-A, 6072-C
Chapter number/title: Ch. 2, Aquaculture Lease Regulations
Filing number: 2022-033
Effective date: 3/13/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this rule is to provide compliance with recent statutory changes, to address feedback concerning aquaculture site marking requirements, and clarify that wild sources of stock or seed must be taken in compliance with existing laws.

Basis statement:

This rule makes a number of changes to comply with statutory changes made by Public Law 2021 ch. 52. It establishes a fee for an amendment of a lease of \$200. The rule specifies that the maintenance of a bond or escrow account and timely payment of rent is a minimum lease maintenance standard. The rule also restructures section 2.90(2)(B) for greater clarity and provides that any stock or seed obtained from wild sources needs to be taken in accordance with applicable season or size limits or any other limitations concerning take. In compliance with the National Shellfish Sanitation Program (NSSP) Model Ordinance (MO), the rule adds surf clams to the list of species contemplated in 2.95(A)(4)(a) and a provision that would require Department permission for any other species not listed. This rule updates lease and LPA marking requirements, so that by January 1, 2023, sites must be marked with yellow floating devices that host reflective material. The floating devices must display the lease or license identifier, and the words SEA FARM. The marking changes also increase the distance between floating devices from 100 yards to 200 yards. Lease and LPA license sites that have received a Private Aid to Navigation permit from the U.S. Coast Guard are exempt from the requirements but must still display the lease or license identifier and the words SEA FARM. It removes the limit on the number of helpers that may be designated for an LPA that is held by a municipal shellfish committee.

The recent statutory changes increased the fees for LPA licenses from \$50 to \$100 for Maine residents and \$300 to \$400 for non-residents. In processing the proposed rule, DMR noted that it should have updated the fees for LPA licenses listed in regulation. During the public hearing, DMR explained that the LPA fees would need to be updated to reflect the statute. Therefore, the rule has been updated accordingly.

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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. 8, Landings Program: Halibut Reporting
Filing number: 2022-065
Effective date: 4/26/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this rulemaking is to update the harvester reporting requirements in Maine's halibut fishery, namely to implement weekly harvester reporting during the halibut season for Maine's territorial waters. Harvester reports must be submitted via an approved electronic mechanism no more than two days after the end of each reporting week. The elements required in the harvester report remain unchanged.

Basis statement:

This rule updates the frequency of harvester reporting for Maine's halibut fishery, implementing a requirement for harvesters to submit harvester reports on a weekly basis during the halibut season for Maine's territorial waters. Harvester reports must be submitted via an approved electronic mechanism no more than two days after the end of each reporting week. The data elements required in the harvester report remain unchanged. This rule is necessary to provide better data about in-season halibut landings to help ensure Maine stays within its quota and to reduce the number of late reports. Exceeding quota allocations can have a variety of negative implications for Maine's halibut fishery. Based on a public comment received, Maine DMR modified the proposed language to clarify that the requirement is for the submission of trip level catch reports on a weekly basis, as opposed to a single accrued weekly report, and to indicate that this requirement applies to those who are commercially fishing for halibut.

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, 2022 to December 31, 2022
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: Scallop, Herring, Lobster, and Pelagic and Anadromous
Filing number: 2022-213
Effective date: 11/1/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this rulemaking is to update the harvester reporting requirements for scallop, herring, lobster, and pelagic and anadromous license holders. For scallop license holders, the frequency of reporting is changed from monthly to weekly, and reports must be submitted through an approved electronic reporting mechanism. For herring license holders, the period of time for which daily reports are required is extended from September 30 to December 30. For lobster license holders, the requirement to report is changed from 10% of license holders to all license holders, and reports must be submitted through an approved electronic reporting mechanism. For pelagic and anadromous license holders, a clarification is provided that they only need to report those species authorized under the pelagic and anadromous license.

Basis statement:

This rule makes changes to the reporting requirements for scallop, herring, lobster, and pelagic and anadromous license holders. It changes the frequency of reporting for scallop license holders from trip level data reported monthly to trip level data reported weekly (no later than 11:59 p.m. Sunday) and requires that reports are submitted via an approved electronic mechanism. The data elements in the scallop harvester report remain unchanged. The rule also extends the time frame for which daily reporting is required in the herring fishery, from September 30 to December 30 annually. The data elements in the herring harvester report remain unchanged. The rule clarifies that pelagic and anadromous license holders only need to report those species authorized under the pelagic and anadromous license. Effective January 1, 2023, the rule requires all lobster license holders (except apprentice and noncommercial license holders) to report trip level data monthly and requires reports to be submitted via an approved electronic mechanism. The data elements required in the lobster harvester report remain unchanged.

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this agency.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(A)
Chapter number/title: Ch. 11, Scallops. 11.08, Targeted Closures: (9), Gouldsboro & Dyers Bay LAA; (10) Wahoa Bay & West Moosabec Reach LAA
Filing number: 2022-001
Effective date: 1/2/2022
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to establish scallop conservation closures for the Gouldsboro and Dyers Bays limited access area and Wahoa Bay including the West Moosabec Reach limited access area all within Zone 2. The Department is concerned that continued harvesting for the remainder of the 2021-2022 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2021 Spring Scallop survey that are essential to the ongoing recruitment, regrowth and recovery of the scallop resource. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in these three scallop resource areas.

Basis statement:

The Department is taking emergency rulemaking action to amend targeted conservation closures in ch. 11.08, Targeted Closures: (9) Gouldsboro & Dyers Bay LAA; (10) Wahoa Bay & West Moosabec Reach LAA.

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, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(A)
Chapter number/title: Ch. 11, Scallops. 11.08, Targeted Closures: (11) Johnson Bay and Eastport Breakwater
Filing number: 2022-016
Effective date: 2/6/2022
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 for Johnson Bay and Eastport Breakwater within Zone 3. The Department is concerned that continued harvesting for the remainder of the 2021-2022 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2021 Fall Scallop survey that are essential to the ongoing recruitment, regrowth and recovery of the scallop resource. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in Johnson Bay and Eastport Breakwater area.

Basis statement:

The Department is taking emergency rulemaking action to amend targeted conservation closures in ch. 11.08, Targeted Closures: (11) Johnson Bay & Eastport Breakwater.

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, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(A)
Chapter number/title: Ch. 11, Scallops. 11.08, Targeted Closures: (9) Gouldsboro & Dyers Bay RA; (11) Cobscook, Whiting & Dennys Bays; (12) Upper Machias RA; (13) West Vinalhaven Islands
Filing number: 2022-023
Effective date: 2/20/2022
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to establish scallop conservation closures for Cobscook, Whiting, and Dennys Bays (Zone 3), Upper Machias Bay Rotational Area (RA), Gouldsboro & Dyers Bays RA and West Vinalhaven Islands in the Lower Penobscot RA (Zone 2). The Department is concerned that continued harvesting for the remainder of the 2021-2022 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2021 Scallop surveys that are essential to the ongoing recruitment, regrowth and recovery of the scallop resource. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in four important scallop harvest areas.

Basis statement:

The Department is taking emergency rulemaking action to amend targeted conservation closures in ch. 11.08, Targeted Closures: (9) Gouldsboro & Dyers Bay RA; (11) Cobscook, Whiting & Dennys Bays; (12) Upper Machias RA; (13) West Vinalhaven Islands.

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, 2022 to December 31, 2022
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, 6122
Chapter number/title: Ch. 11, Scallops: 2022-2023 Season
Filing number: 2022-214
Effective date: 11/1/2022
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 rulemaking establishes the 2022-2023 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 would begin on December 12, 2022 and the last day of the season would be March 23, 2023. For Zone 1, a 60-day season for divers would start on November 15, 2022 and the last day of the season would be April 29, 2023. For Zone 2, a 70-day season for draggers would start on December 1, 2022 and the last day of the season would be March 30, 2023. For Zone 2, a 70-day season for divers would start on November 17, 2022 and the last day of the season would be April 22, 2023. For Zone 3, a 50-day season for draggers would begin on December 5, 2022 and the last day of the season would be March 28, 2023. For Zone 3, a 50-day season for divers would begin on December 1, 2022 and the last day of the season would be April 29, 2023.

Harvesting of scallops by hand (diving) is restricted to Rotation A (First) only for the 2022-2023 season. Harvesting for scallops by dredge gear is restricted to Rotation B (Second) only for the 2022-2023 season. A new limited access area is proposed for East Moosabec Reach in Zone 2 for the 2022-2023 season. The St. Croix River in Zone 3 re-opens to harvest for the 2022-2023 season.

DMR would maintain the following Limited Access Areas: Western Penobscot Bay, Muscle Ridge, Whiting and Denny's Bays. Additionally, the following existing targeted closures based on depletion, high concentrations of seed/sublegal scallops and/or the presence of spat-producing scallops would be maintained: Lower Muscle Ridge, Upper Sheepscot River, New Meadows River, Card Cove and Beals-Jonesport Bridge

- Section 11.12 [Rotational Management] was updated to remove references to prior years. These changes provide additional clarity.

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, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6071
Chapter number/title: Ch. 25, Lobster and Crab: 25.04, Lobster Trawl Limits
(Hancock County)
Filing number: 2022-071
Effective date: 5/1/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

In Zone B, there was an area with an existing 3 trap trawl maximum that needed to be modified in order to comply with a new 5 trap trawl minimum in the 2021 Atlantic Large Whale Take Reduction Plan final rule. The Zone B Council requested that the area from 3 to 6 mile nautical line from there is a 5 trap minimum have a 5 trap maximum.

Basis statement:

This rule modifies an existing 3-trap maximum in Zone B to a 5-trap maximum to comply with the new Atlantic Large Whale Take Reduction Team rule.

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, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §§ 6071, 6526
Chapter number/title: Ch. 25, Lobster and Crab (Technical Corrections)
Filing number: 2022-148
Effective date: 8/16/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The principal reason is to make technical corrections to Chapter 25 to improve the clarity of the regulation.

Basis statement:

This rule makes technical corrections to Chapter 25. Specifically, it provides accurate buoy colors and numbers in Linekin Bay, as well as correcting the name of an island which the owners have renamed "Oak Island". Finally, it clarifies that a harvester who is selling fish that they caught for bait is not a bait dealer.

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, 2022 to December 31, 2022
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 (2022-2023 Season)
Filing number: 2022-149
Effective date: 8/16/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This regulation establishes open harvest days and tote limits for the taking of sea urchins by divers, rakers, trappers, and draggers in Zones 1 and 2 for the 2022-2023 season. For Zone 1, seasons are implemented for divers, trappers, rakers and draggers in 2022-2023, from which harvesters may only fish up to 15 days of their choosing, the same number of days allowed during the 2021-2022 season. For Zone 1, the daily tote limit is nine (9), the same as in the 2021-2022 season. For Zone 2, 40-day seasons are implemented for divers, trappers, rakers and draggers in 2022-2023, from which harvesters may only fish up to 30 days of their choosing. This regulation has the same number of fishing days and opportunity days as the 2021-2022 season. For the Whiting & Dennys Bays Limited Access Area in Zone 2, a 15-day season is implemented for Zone 2 divers, trappers, rakers and draggers in 2022-2023. For Zone 2, the daily tote limit is six (6), the same as in the 2021-2022 season.

The Blue Hill Bay Limited Access Area designation sunset on April 1, 2022 and that language has been removed from the regulation.

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, 2022 to December 31, 2022
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 §6505-A
Chapter number/title: Ch. 32, Eel Regulations (Elver Quota System for the 2022 Season)
Filing number: 2022-034
Effective date: 3/13/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Each year, the method of calculating annual elver quota must be specified for the upcoming season.

Basis statement:

This rulemaking establishes the elver quota allocations for the 2022 season for individuals licensed under §§ 6505-A and 6302-A, and the method of calculating individual elver quota allocations for individuals licensed under §6505-A. The quota for the Passamaquoddy Tribe has been adjusted in accordance with their overage in the 2021 season. 2022 allocations for individuals who held a license in 2021 are the same as their 2021 allocations, plus any quota associated with licenses not renewed in 2021, or licenses suspended for the duration of the 2022 season, in excess of that which is allocated to new license holders authorized through the lottery, which will be distributed evenly to all existing license holders. Existing requirements around the distribution of transaction cards have been eliminated so that cards may be distributed whatever manner is appropriate and most protective of public health.

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, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(C)
Chapter number/title: Ch. 34, Groundfish Regulations: 34.06, Recreational Groundfish Restrictions
Filing number: 2022-163
Effective date: 9/1/2022
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This action is intended to manage the Gulf of Maine cod and haddock recreational fishery in compliance with the federal fishery management plan.

Basis statement:

The Commissioner adopts this emergency rulemaking to modify the recreational fishing measures for Gulf of Maine cod and haddock. Cod and haddock are regulated by NOAA Fisheries as part of the Northeast Multispecies Fishery Management Plan (FMP). NOAA Fisheries sets recreational sub-annual catch limits (sub-ACLs) for both species as well as a suite of effort controls to ensure catch stays within the sub-ACLs. To this end, NOAA Fisheries issued a final rule to set the recreational measures for the 2022 fishing year. The rule increases the bag limit for haddock while expanding the fishing season and increasing the minimum size limit for cod. This is in response to analysis from NOAA Fisheries which suggests these modifications are not expected to result in an overage of the sub-ACLs for Gulf of Maine cod and haddock.

Specifically, for the 2022 fishing year, the bag limit for Gulf of Maine haddock is increased from 15 fish to 20 fish; the season and minimum size for haddock remain unchanged. For Gulf of Maine cod, the minimum size is increased from 21 inches to 22 inches and the fishing season is expanded such that cod can be harvested from April 1 -14 and from September 1 – October 7, inclusive. This season applies to both private and for-hire recreational anglers, re-aligning the seasons for these two sectors. The 1 fish bag limit for Gulf of Maine cod remains unchanged.

Importantly, this action ensures compliance with the federal fishery management plan. It also expands recreational fishing opportunities for these species in Maine state waters. For these reasons, the Commissioner hereby adopts an emergency regulation to modify the recreational groundfish measures for Gulf of Maine cod and haddock in accordance with 12 MRS §6171(3)(C).

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, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(C)
Chapter number/title: Ch. 34, Groundfish Regulations: 34.06, Recreational Groundfish Restrictions
Filing number: 2022-215
Effective date: 11/1/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This action is intended to manage the Gulf of Maine cod and haddock recreational fishery in compliance with the federal fishery management plan.

Basis statement:

On September 1, 2022, DMR adopted an emergency rule to be consistent with a NOAA Fisheries federal rulemaking. DMR is adopting the emergency rule as part of its regular rules. Consistent with the existing emergency rule, this rule implements regulatory changes for charter, party and recreational fishing vessels operating in state waters regarding Gulf of Maine cod and haddock. The bag limit for Gulf of Maine haddock is increased to 20 fish, with the fishing season and minimum size remaining unchanged. The season for Gulf of Maine cod is expanded such that cod may be possessed on board charter, party, or recreational fishing vessels from April 1-14, inclusive, and from September 1 – October 7, inclusive. The minimum size for Gulf of Maine cod is also increased to 22 inches, and there is no change to the 1-fish bag limit. This action ensures compliance with the federal fishery management plan. It also expands recreational fishing opportunities for these species in Maine state waters.

No changes were made to the proposed rule.

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, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(C)
Chapter number/title: Ch. 36, Atlantic Herring
Filing number: 2022-105
Effective date: 5/31/2022
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

The Days Out Commissioners have set zero landing days for June 1 through July 10, 2022 at 6:00 pm. The Days Out Commissioners have set five landing days for Season 1 (Trimester 2; June 1 – September 30) of the Atlantic herring fishery, Sunday at 6:00 p.m. through Friday at 6:00 p.m., beginning on Sunday, July 10, 2022 at 6:00 p.m. The weekly landing limit for Atlantic Herring Limited Access Category A vessels is 240,000 pounds (or 6 trucks). Harvesters may not transfer herring to carrier vessels while at-sea. Carrier vessels may not receive herring from a harvester vessel while at-sea. All herring harvesters are required to report electronically prior to landing through an agency approved electronic method (i.e. LEEDS or VESL app) or through a Federal electronic reporting method. The Commissioner has determined that it is necessary to take emergency action to comply with the changes to the interstate management of the Atlantic herring resource and to reduce the risk of an overage in the Area 1A sub-ACL that could deplete the supply of Atlantic herring. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3)(C).

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(C)
Chapter number/title: Ch. 36, Atlantic Herring
Filing number: 2022-195
Effective date: 9/29/2022
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

During the Days Out meeting held on September 14, 2022, the Days Out Commissioners set zero landing days for October 1 through November 6, 2022 at 5:59 p.m. The Days Out Commissioners designated four landing days for Season 2 (Trimester 3; October 1 – December 31) of the Atlantic herring fishery, Sunday at 6:00 p.m. through Thursday at 6:00 p.m., beginning on Sunday, November 6, 2022 at 6:00 p.m. contingent upon receipt of the 1,000 mt quota transfer from the management uncertainty buffer associated with catches from the Canadian weir fishery. If the quota transfer does not occur as anticipated prior to October 31, 2022, there will be another Days Out meeting to determine next steps.

The Commissioner has determined that it is necessary to take emergency action to comply with the changes to the interstate management of the Atlantic herring resource and to reduce the risk of an overage in the Area 1A sub-ACL that could deplete the supply of Atlantic herring. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3)(C).

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 41, Atlantic Menhaden: 2022 Harvest Start Date
Filing number: 2022-066
Effective date: 4/26/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule is a technical update amending the opening date of the State Allocation fishery from Monday, June 14, 2021 to Monday, June 13, 2022 at 12:01 a.m. for the 2022 fishing year. This rule is needed to update the opening of the 2022 menhaden season.

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, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 41, Atlantic Menhaden: 2022 Harvest Start Date
Filing number: 2022-066 (*Correction*)
Effective date: 5/15/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule is a technical update amending the opening date of the State Allocation fishery from Monday, June 14, 2021 to Monday, June 13, 2022 at 12:01 a.m. for the 2022 fishing year. This rule is needed to update the opening of the 2022 menhaden season.

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, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(A)
Chapter number/title: Ch. 41, Atlantic Menhaden
Filing number: 2022-106
Effective date: 5/31/2022
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

Under the Interstate Fishery Management Plan (ISFMP) for Atlantic menhaden, Maine is allocated 0.52% of the coastwide Total Allowable Catch (TAC). For the 2022 fishing year, this base allocation for the state directed fishery is 2,194,080 pounds. In previous seasons, Maine has reduced harvest opportunity through either landing days or trip limits to minimize the risk of incurring an overage within the state directed fishery. With the anticipation of additional effort for the 2020 fishing season, it is necessary to reduce open harvest days for the state directed fishery to only Mondays and Thursdays to ensure effective monitoring of the State's available quota. The weekly limit remains at 23,800 pounds (or 68 barrels). Reporting is still required on the same day as fish are landed to ensure that DMR has the most accurate accounting of the catch as possible. All harvesting and landing of menhaden are restricted to Maine territorial waters and any vessel is restricted to one landing only per calendar day.

The Commissioner has determined that it is necessary to take emergency action to reduce the daily landing limit to prevent unusual damage to the menhaden resource by exceeding available quota. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3)(A).

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(A)
Chapter number/title: Ch. 41, Atlantic Menhaden
Filing number: 2022-120
Effective date: 6/21/2022
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

Under the Interstate Fishery Management Plan (ISFMP) for Atlantic menhaden, Maine is allocated 0.52% of the coastwide Total Allowable Catch (TAC). For the 2022 :fishing year, this base allocation for the state directed fishery is 2,194,080 pounds. An emergency rulemaking, filed on May 31, 2022, reduced harvest days from four days per week to only two days per week for the FY2022 state allocation fishery. This action was completed in anticipation of increased effort related to legislative action to implement a limited entry license program for the FY2023 menhaden fishery and to allow for additional time to tabulate landings reports. As DMR predicted, the number of participants reporting landings on opening day of the menhaden fishery on June 13, 2022 was a five-fold increase due to recent action at the state legislature. As a result, there was an overage within the state allocation fishery related to an increased spatial spread of menhaden biomass in state waters, increased participation in the fishery and continued latent reporting which hampers effective real-time management.

Detailed in the ISFMP for Atlantic menhaden, the Episodic Event Set Aside (EESA) program receives 1% of the coastwide total allowable catch (TAC). The estimated EESA quota for FY2022 is 4,285,786 pounds and is a shared quota pool between Northeastern states. Increased participation observed during the FY2022 state allocated fishery signals a necessary reduction in harvest controls for the EESA to mitigate risk of overage of this shared EESA quota. Harvest for EESA is permitted on Tuesdays and Fridays only as was determined practical during the FY2021 season. However, harvesters are restricted to a daily vessel landing of 6,000 pounds with same day reporting required. All harvesting and landing of menhaden are restricted to Maine territorial waters and any vessel is restricted to one landing only per calendar day.

The Commissioner has determined that it is necessary to take emergency action to reduce the daily landing limit to prevent unusual damage to the menhaden resource by exceeding available quota. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3)(A).

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(A)
Chapter number/title: Ch. 41, Atlantic Menhaden
Filing number: 2022-164
Effective date: 8/28/2022
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

Under the Interstate Fishery Management Plan (ISFMP) for Atlantic menhaden, Maine is allocated 0.52% of the coastwide Total Allowable Catch (TAC). For the 2022 fishing year, this base allocation for the state directed fishery is 2,194,080 pounds. As DMR predicted, the number of participants reporting landings on opening day of the menhaden fishery on June 13, 2022 was a five-fold increase due to recent action at the state legislature. As a result, there was an overage within the state allocation fishery related to an increased spatial spread of menhaden biomass in state waters, increased participation in the fishery and continued latent reporting which hampers effective real-time management.

Detailed in the ISFMP for Atlantic menhaden, the Episodic Event Set Aside (EESA) program receives 1% of the coastwide total allowable catch (TAC). The estimated EESA quota for FY2022 is 4,285,786 pounds and is a shared quota pool between Northeastern states. Increased participation observed during the FY2022 state allocated fishery signaled a necessary reduction in harvest controls for the EESA to mitigate risk of overage of this shared EESA quota. Harvest for EESA was permitted two days a week and effort remained constant for the duration of the program. To avoid an overage in this fishery, Maine DMR closed the EESA fishery on June 28, 2022.

Commercial harvesting under the incidental catch and small scale fishery (ICSSF) began on July 6, 2022 and has operated at three days a week with a daily landing limit of 6,000 lbs. Comparing the first 17 days of harvest under the ICSSF across years, Maine has landed 170% more pounds of menhaden in 2022 than in 2021, and 250% more pounds in 2022 than in 2020. To date, we have landed 15.8 million pounds under the ICSSF.

The non-commercial rate of harvest is significantly lower than the commercial rate of harvest, with the non-commercial daily landing limit set to 1,050 pounds. These additional landings will not significantly impact the overall total landings of menhaden. Additionally, there are non-directed fixed gears within state waters targeting multiple species (i.e. mackerel). The allowance for fixed gears to retain 7,350 pounds of menhaden per week is to ensure continued access to other pelagic fisheries while reducing incidental mortality of menhaden.

Since 2018, Maine has been allocated roughly 2.2 million pounds of menhaden but has been landing greater than 20 million pounds through a combination of EESA quota, transfers of quota from other states and the use of the ICSSF once all quota options have been exhausted. Maine's ICSSF landings peaked at 13.6 million pounds in 2020 and decreased to 12.5 million pounds in 2021 as regulatory changes were established to moderate effort and landings during that portion of the fishery. However, in 2021, total landings of menhaden (including landings under the ICSSF provision) exceeded the Total Allowable Catch (TAC) for menhaden.

The Commissioner has determined that it is necessary to take emergency action to end the commercial fishing season to prevent unusual damage to the menhaden resource by

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

exceeding available quota. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3)(A).

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(C)
Chapter number/title: Ch. 50, Spiny Dogfish (Harvest, Possession, and Landing)
Filing number: 2022-073
Effective date: 5/1/2022
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rule increases the spiny dogfish commercial trip limit to 7,500 pounds to align Maine state water regulations with those published by NOAA Fisheries and those voted on at the Atlantic States Marine Fisheries Commission.

Basis statement:

The Commissioner adopts this emergency rule to align Maine state waters regulations for spiny dogfish with action taken by the Atlantic States Marine Fisheries Commission (ASMFC) and the recent publication of spiny dogfish specifications by NOAA Fisheries. Specifically, this emergency rule increases the spiny dogfish commercial trip limit to 7,500 pounds per calendar day or 24-hour period, effective May 1, 2022.

The spiny dogfish stock is not overfished and overfishing is not occurring. Spiny dogfish are jointly managed by the New England Fishery Management Council and Mid-Atlantic Fishery Management Council (Councils) in federal waters, and by the Atlantic States Marine Fisheries Commission (ASMFC) in state waters. In recent years, catch has been well below the coastwide quota and the fishery has not been reaching optimal yield. As a result, the Councils recommended an increase in the federal trip limit to NOAA Fisheries for the 2022 fishing year. A 7,500-pound trip limit was proposed as a modest increase which would move the fishery closer to optimal yield while also minimizing potential market disruptions. In response, on April 7, 2022 NOAA Fisheries published final spiny dogfish specifications for the 2022 fishing year, including an adjustment of the federal commercial trip limit to 7,500 pounds. In addition, at its January 2022 meeting, the ASMFC Spiny Dogfish Management Board voted to set the trip limit for the Northern Region, which includes state waters of Maine through Connecticut, equal to the federal trip limit. This was done to align the spiny dogfish measures in state and federal waters.

Based on the recent rulemaking by NOAA Fisheries and action at ASMFC, DMR is modifying its regulations to adopt a 7,500-pound trip limit per calendar day or 24-hour period in the commercial spiny dogfish fishery. Establishing a consistent commercial trip limit between state and federal waters unifies management of the stock and improves enforcement of the regulations. The higher trip limit also provides additional fishing opportunities to Maine harvesters. For these reasons, the Commissioner hereby adopts an emergency regulation to modify the spiny dogfish commercial trip limit in accordance with 12 MRS §6171(3)(C). DMR will follow this emergency rulemaking with a regular rulemaking to collect public comment.

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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. 50.02(A), Spiny Dogfish: Harvest, Possession, and Landing Restrictions)
Filing number: 2022-150
Effective date: 8/16/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule increases the spiny dogfish commercial trip limit to 7,500 pounds to align Maine state water regulations with those published by NOAA Fisheries and those voted on at the Atlantic States Marine Fisheries Commission. It would incorporate the May 1, 2022 emergency rule as a regular rule.

Basis statement:

On May 1, 2022, the Department of Marine Resources (DMR) adopted an emergency rule that increased the spiny dogfish commercial trip limit in Maine state waters to 7,500 pounds per calendar day or 24-hour period. The increased trip limit aligned Maine's regulations with the 2022 fishing year spiny dogfish specifications published by NOAA Fisheries on April 7, 2022 and with a recent vote at the Atlantic States Marine Fisheries Commission to mirror the federal waters trip limit in state waters. As emergency rules are temporary, this rule adopts the May 1, 2022 emergency rule making it part of DMR's regular rules.

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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. 52, Atlantic Mackerel
Filing number: 2022-216
Effective date: 11/1/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

A 2021 stock assessment found that Atlantic mackerel are overfished and overfishing is occurring. In response, the Mid-Atlantic Fishery Management Council developed a new rebuilding plan for Atlantic mackerel, which includes a 20 fish per person possession limit in the recreational fishery. Given over 90% of Atlantic mackerel recreational catch occurs in New England state waters, the Mid-Atlantic Council requested the states of Maine, New Hampshire, and Massachusetts to implement complementary Atlantic mackerel recreational measures in state waters.

Basis statement:

This rule establishes a 20-fish per person per day recreational take and possession limit for Atlantic mackerel. Atlantic mackerel caught on a recreational, party, or charter vessel can be pooled in one or more containers; compliance with the 20-fish limit will be determined by dividing the number of Atlantic mackerel onboard by the number of persons onboard. Atlantic mackerel caught recreationally may be communally stored in dockside bait pens. Mackerel purchased from a lawful bait dealer with proof of receipt do not count towards the 20 fish possession limit. Similarly, chunked frozen mackerel do not count towards the 20 fish limit. Individuals who hold a commercial pelagic and anadromous fishing license are exempt from the possession and take limit. Further, the possession limit does not apply to several commercial licenses including lobster and crab fishing licenses, finfish licenses, and wholesale and retail licenses issued by the Maine Department of Marine Resources.

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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: 2022-072
Effective date: 5/1/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule was proposed for the purpose of ensuring compliance with the 2021 Atlantic Large Whale Take Reduction Plan federal regulations, including the requirements for 1700-pound weak link inserts, gear marking, and minimum trawl lengths specified by Zone and distance from shore and the LMA 1 Restricted Area.

Basis statement:

This rule incorporates the measures in the 2021 Atlantic Large Whale Take Reduction Plan final rule for 1700-pound weak link inserts, gear marking requirements, minimum trawl lengths, and defines the LMA1 Restricted Area.

Based on the comments received, DMR made the following changes to the proposed rule prior to the adoption:

- The exemption to the minimum number of traps per trawl requirement for certain islands has been expanded to include all islands eligible for this exemption as listed in the federal regulation.
- The requirements for the use of weak point insertions in exempt waters has been clarified to specify that the manufactured weak links and weak rope may be attached in whatever manner the fisherman chooses.

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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: PL 2021 ch. 348 §58
Chapter number/title: Ch. 100 (*Repeal*), Grievance Procedures for the Handicapped
Filing number: 2022-035
Effective date: 5/13/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

In compliance with PL 2021 ch. 348 §58, DMR undertook a review of laws, regulations, and official documents under its jurisdiction. Ch. 100 of DMR's regulations is titled *Grievance Procedures for the Handicapped*, which was initially adopted by the agency in 1984 and would need to be updated in compliance with the recently enacted law. However, in the years following DMR's implementation of ch. 100, the State of Maine adopted a disability-related Nondiscrimination Policy and Grievance Procedure, which applies to all agencies. The state's Nondiscrimination Policy and Grievance Procedure is codified in ch. 50 of the Maine Department of Labor's regulations. Therefore, this proposed rule would repeal ch. 100 and DMR would follow the state's Nondiscrimination Policy and Grievance Procedure rather than maintaining a separate regulation.

Basis statement:

On June 23, 2021, Public Law 2021 ch. 348 §58 was enacted. This provision directs all state agencies to discontinue the use of the terms "Handicap, Handicapped, and Hearing Impaired" in all laws, rules, and official documents. In compliance with the law, DMR undertook a review of laws, regulations, and official documents under its jurisdiction. Ch. 100 of DMR's regulations is titled *Grievance Procedures for the Handicapped*, which was adopted in 1984 and needs to be updated in compliance with the recently enacted law and is generally out of date. However, in the years following DMR's implementation of ch. 100, the State of Maine adopted a disability-related Nondiscrimination Policy and Grievance Procedure, which applies to all agencies. The state's Nondiscrimination Policy and Grievance Procedure is codified in ch. 50 of the Maine Department of Labor's regulations. Therefore, this rule repeals ch. 100 and DMR will follow the state's Nondiscrimination Policy and Grievance Procedure rather than maintaining and updating a separate regulation.

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this agency.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171-A
Chapter number/title: Ch. 115, *Vibrio parahaemolyticus* Control Plan
Filing number: 2022-067
Effective date: 4/26/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This regulation incorporates specified areas of the Weskeag River to existing vibrio control areas. The addition of the Weskeag 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 Weskeag River will cause *Vp* infections in consumers. The Maine Department of Marine Resources recognizes that this area 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. This regulation is necessary to minimize threats to public health posed by *Vp* infections.

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Defense, Veterans and Emergency Management (DVEM)
Umbrella-Unit: **15-210**
Statutory authority: Federal Mandate
Chapter number/title: **Ch. 1 (Repeal)**, Grievance Procedures for the Handicapped
Filing number: **2022-077**
Effective date: 5/10/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The Department of Defense, Veterans and Emergency Management (DVEM) intends to repeal department rule 15-210, Chapter 1, "Grievance Procedures for the Handicapped". Recently the State of Maine implemented 2021 Public Law Chapter 348 which requires all branches of State Government to discontinue the use of the term "handicap", "handicapped" and "hearing impaired". Upon searching departmental official documents, it is determined rule 15-210, Ch. 1 is in violation of the new law. In consultation with the State of Maine Bureau of Human Resources and the Office of Employee Relations, rule 15-210, Ch. 1 which was originally published December 19, 1984 is determined to be antiquated and obsolete. The Department of Labor has published a statewide grievance procedure, rule 12-168, Ch. 50, "Nondiscrimination Policy and Grievance Procedure". The intent is to repeal the Department of Defense, Veterans and Emergency Management rule.

Fiscal impact of rule:
None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Public Safety, **Maine Emergency Medical Services (Maine EMS)**
Umbrella-Unit: **16-163**
Statutory authority: 32 MRS §§ 81-A, 84, 88
Chapter number/title: **Ch. 21** (*New*), Immunization Requirements for EMS Personnel
Filing number: **2022-132**
Effective date: 8/7/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this rule is to adopt a list of vaccine preventable diseases for which licensees must obtain immunization or provide appropriate exemption documentation.

Basis statement:

Chapter 21 is a new chapter to be added to the Maine EMS rules. No entity may permit a covered emergency medical services person to provide direct patient care as defined by the rule without a Certificate of Immunization, or documentation of an exemption pertaining to the diseases enumerated in the chapter. New employees must have begun the COVID-19 series, or have an approved medical exemption, prior to providing direct patient care, and come into compliance with the remaining administrations in accordance with the U.S. Centers for Disease Control & Prevention dosing recommendation.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Public Safety, **Maine Emergency Medical Services (Maine EMS)**

Umbrella-Unit: **16-163**

Statutory authority: 32 MRS §§ 81-A, 84, 88

Chapter numbers/titles: **Ch. 2**, Definitions
Ch. 5, Personnel Licenses
Ch. 5B, Emergency Medical Services Ambulance Operator Licenses
Ch. 17, Minimum Required Equipment Lists for Maine EMS Services and Regional EMS Radio Frequencies
Ch. 22, Emergency Medical Services Data
Ch. 23, Registry of Automated External Defibrillators

Filing number: **2022-243 to 248**

Effective date: 12/24/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose:
(See Basis Statement)

Basis statement:

Chapter 2 is updated to reflect the addition of certain terms to the Maine EMS rules.

Chapter 5 is updated to facilitate the transition to the National Core Competency Requirements (NCCR) for continuing education to renew clinical licensure. Additionally, Chapter 5 extends the duration for continuing education accepted as part of a license renewal application to “within the current license cycle,” and adds a requirement to our rules that a licensee must complete the most recent Maine EMS pre-hospital protocol update, including all necessary skills expansion, in order to perform emergency medical treatment.

Chapter 5B is adopted to facilitate the licensure of ambulance vehicle operator licenses. It establishes minimum standards for licensing, including training, continuing education, and other requirements in accordance with 32 MRS §85-B.

Chapter 17 is updated to account for recent changes to Maine EMS pre-hospital treatment protocols, adding required equipment for EMT and advanced EMT agencies to deliver nebulized medication, and identifying optional equipment for EMT agencies to deliver continuous positive airway pressure and to obtain a 12 lead EKG. The addition of a pediatric transport device is also included.

Chapter 22 is adopted to allow Maine EMS to receive data into our reporting system from Health Info Net, the State of Maine’s health information exchange, regarding patient outcomes. Additionally, chapter 22 incorporates direct entry of patient care reports into the State of Maine provided run reporting system.

Chapter 23 is adopted to implement a statewide registry of publicly accessible automated external defibrillators for the purpose of assisting a person or a law enforcement officer, firefighter or emergency medical services person who calls 9-1-1 in an emergency situation.

Fiscal impact of rule:
None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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. 10**, Stationary Combustion Engines and Gas Turbines
Filing number: **2022-170**
Effective date: 8/23/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule will address life safety issues applicable to both portable engines and stationary engines.

Basis statement:

Ch. 10 will incorporate the 2021 National Fire Protection Association's Standard #37 for Stationary Combustion Engines and Gas Turbines. The new edition will address safety issues for both portable engines and the growing number of stationary engines.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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. 14**, National Fuel Gas Code
Filing number: **2021-171**
Effective date: 8/23/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule requires appliances to be listed to and in compliance with the appropriate ANSI/CSA listed standard to ensure safety.

Basis statement:

This code is a safety code that shall apply to the installation of fuel gas piping systems, applications, equipment and related accessories.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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. 15**, Fire Protection for Medical Facilities and Equipment
Filing number: **2022-008**
Effective date: 1/18/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This chapter contains specific information, regulations and minimum requirements relating to inhalation anesthetics, respiratory therapy, laboratories in health-related institutions, hypobaric facilities, nonflammable medical gas systems, and inhalation anesthetics in ambulatory care facilities.

Basis statement:

This routine technical rule addresses the numerous technological changes made to, and materials used in, medical facilities today as opposed to 2005.

Fiscal impact of rule:

No fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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, 2482
Chapter number/title: **Ch. 16**, Storage and Handling of Liquefied Petroleum Gases
Filing number: **2022-172**
Effective date: 8/23/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule provides clarification for fire protection systems citing additional existing NFPA standards.

Basis statement:

This rule applies to the storage, handling, transportation, and use of LP-gas and the design, construction, location, installation, operation, and maintenance of refrigerated and non-refrigerated utility gas plants.

Fiscal impact of rule:

No fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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. 19**, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations
Filing number: **2022-009**
Effective date: 1/18/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This routine technical rule addresses changes in the operation of commercial and private cooking operations made since 2008.

Basis statement:

This rule provides minimum fire safety requirements (preventative and operative) related to the design, installation, operation, inspection, and maintenance of public and private cooking operations.

Fiscal impact of rule:

No fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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. 21**, Tents, Grandstands, Air Supported Structures for Places of Assembly
Filing number: **2022-173**
Effective date: 8/23/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule will incorporate the 2021 edition of National Fire Protection Associations Standard #102, Standard for Grandstands, Folding and Telescoping Seating, Tents and Membrane Structures, 2021 edition. The rule defines baseline requirements for life safety as it pertains to fire, storm, collapse, and crowd behavior in tents, membrane structures, and assembly seating.

Fiscal impact of rule:
None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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, 2465
Chapter number/title: **Ch. 22**, Chimneys, Fireplaces, Bents and Solid Fuel Burning Appliances
Filing number: **2022-174**
Effective date: 8/23/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule provides much needed guidance for the removal of waste gases, the reduction of fire hazards associated with construction and installation of chimneys, fireplaces and venting systems for residential, commercial and industrial appliances and the installation of solid fuel burning appliances.

Basis statement:

This rule will incorporate the 2019 edition of National Fire Protection Association's Standard #211, *Standard for Chimneys, Fireplaces, Vents and Solid Fuel-Burning Appliances*. The rule provides guidance for the removal of waste gases, the reduction of fire hazards associated with construction and installation of chimneys, fireplaces, and venting systems for residential, commercial and industrial appliances and the installation of solid fuel burning appliances.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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: 8 MRS §236
Chapter number/title: **Ch. 25**, Rules for the Display of Fireworks
Filing number: **2022-175**
Effective date: 8/23/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule provides new information on multi-sized device spacing to address the separation distances required at a given location. It also provides guidance for the use of flammable liquid fireball effects.

Basis statement:

This rule incorporates the 2022 edition of National Fire Protection Association's Code #1123, *Code for Fireworks Display*. The rule establishes the rules and regulations for the manufacture, transportation, storage and display of fireworks, pyrotechnic articles, and model rocketry.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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: 8 MRS §236
Chapter number/title: **Ch. 36**, Standard for the Use of Pyrotechnics before a Proximate Audience
Filing number: **2022-176**
Effective date: 8/23/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule provides users of pyrotechnic devices guidelines to follow in order to protect audiences near the use of these devices.

Basis statement:

The rule provides much needed guidance to individuals and organizations using pyrotechnic entertainment devices before a proximate audience. This rule provides clarification with regards to the definition of effect simulation equipment.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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: 8 MRS §502
Chapter number/title: **Ch. 27** (*Repeal*), Rules and Regulations Governing the Tents and Equipment of Circuses and Traveling Amusement Shows
Filing number: **2022-152**
Effective date: 8/23/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:
Chapter 27 has outdated content and content now incorporated into other rules.

Fiscal impact of rule:
None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Public Safety, **Maine State Police**
Umbrella-Unit: **16-222**
Statutory authority: 29-A MRS §1769
Chapter number/title: **Ch. 1**, Maine Motor Vehicle Inspection Manual
Filing number: **2022-014**
Effective date: 1/31/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The principal reason for this amendment to the existing regulation is to update and make various changes – some technical, some substantive – to the regulation to ensure for the effective administration of Maine motor vehicle inspection program.

The final rule is the same as the proposed rule with two exceptions: (1) a ten dollar (\$10) licensing fee that appeared at page 1 of the supplemental information documentation appended to the rule was removed due to lack of statutory authority for that fee; and (2) changes were made throughout the rule to ensure that the language complied with PL 2021 ch. 348 section 58.

Fiscal impact of rule:

No additional fiscal impact is anticipated due to the amendments to the existing regulation.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Public Safety, **Gambling Control Board/Unit**
Umbrella-Unit: **16-633**
Statutory authority: 8 MRS §1003(1)(B),(1)(L),2(U), and §1071-1072
Chapter number/title: **Ch. 13**, Exclusion
Filing number: **2022-162**
Effective date: 8/29/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule package adds the requirement for a reinstatement interview with a problem gambling service agency approved by the Board.

Basis statement:

This is an amendment to Board rules Chapter 13, regarding updates to add the requirement for a reinstatement interview with a problem gambling service agency approved by the Board.

Fiscal impact of rule:

\$3,000 to set up initial training of staff through Adcare.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Public Safety, **Gambling Control Board/Unit**
Umbrella-Unit: **16-633**
Statutory authority: 17 MRS ch. 62 §§ 317, 1843
Chapter number/title: **Ch. 32**, Rules Relating to Games of Chance
Filing number: **2022-039**
Effective date: 3/20/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These rules are to update areas of concern from prior changes in 2018.

Basis statement:

This is an amendment to Board rule ch. 32, *Rules Relating to Games of Chance*. The amended rules include the addition of a “distributor” definition, distributor application and operational requirements, sealed tickets sales requirements, a requirement for approval from the local governing authority for licenses to conduct a card or tournament game and minimum requirements for rules of play. The amended rules modify who can participate in a game of chance or sealed ticket game. In addition, the amended rules contain grammatical and formatting changes to make the language readily understood by the general public.

Fiscal impact of rule:

Only in the area of certifying electronic video machines of which Maine has less than a dozen.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Public Safety, **Gambling Control Board/Unit**
Umbrella-Unit: **16-633**
Statutory authority: PL 2021 ch. 636 §4 (unallocated language;
17 MRS §§ 1837-C, 1843
Chapter number/title: **Ch. 32**, Rules Relating to Games of Chance
Filing number: **2022-189**
Effective date: 9/26/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These rules are to update areas of concern from prior changes that include immediate family member definition, authority to close sealed ticket games, posting of top awards, the reporting of winners of five dollars or more and the repeal of registrants from sub 6 reports and records required.

Basis statement:

This is an amendment to Gambling Control Unit Rules; Chapter 32, *Rules Relating to Games of Chance*, with updates as directed by the Veteran's and Legal Affairs legislative committee through Bill LD 1980 that no later than September 30, 2022, the Department of Public Safety, Gambling Control Unit shall adopt rules relating to games of chance to add a definition of "immediate family member" and, for a Lucky Seven or similar sealed ticket game of chance, to allow limited posting of whether a prize has been awarded and to eliminate the requirement to sell an entire box of serial-numbered tickets before the end of that serial-numbered game. The Gambling Control Unit shall hold a public hearing regarding the adoption of rules required by this section and, after the public hearing, shall allow the submission of written comments regarding the rules for a period of 30 days.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Transportation (DOT)
Umbrella-Unit: 17-229
Statutory authority: 23 MRS §704(A)
Chapter number/title: Ch. 305, Rules and Regulations Pertaining to Traffic Movement Permits
Filing number: 2022-040 (*Repeal and replace*)
Effective date: 4/14/2022
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

This amendment to the rule will rescind and replace the current rules. The changes include updated definitions and sections added to the rule to provide for multi-modal trips and to address the developer review process. Included are updates providing general clarifications to the content of the rule.

Basis statement:

This amended rule rescinds and replaces the current Traffic Movement Permit rule which was formatted in the same way as the MDEP Site Law Rules. As a result, the application process and key permitting requirements were not set out in a user-friendly format with terms and procedures adequately defined or explained, causing much confusion for applicants. The amended rule clarifies the developer application and review process, updates key definitions, and adds multi-modal trips as a component of required traffic studies.

Fiscal impact of rule:

The estimated fiscal impact of the rule has not changed and should not impact the General Fund.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Administrative and Financial Services (DAFS),
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 - 2022

Filing number: **2022-050**

Effective date: 4/6/2022

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:

Repeal-and-replace Rule 202 provides updated valuation rates for each forest type by region.

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

Fiscal impact of rule:

Annual establishment of valuations produces no additional cost to the State. The anticipated FY 2022-23 amount appropriated to reimburse anticipated municipal claims for “taxes lost” due to the use of Tree Growth Tax Law values on classified forestland is \$7,600,000.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Administrative and Financial Services (DAFS),
Bureau of Revenue Services (Maine Revenue Services – MRS)
Umbrella-Unit: **18-125**
Statutory authority: 36 MRS §§ 4641(1-A)(C), 4641-E
Chapter number/title: **Ch. 207**, Controlling Interest Transfers (*Repeal and replace*)
Filing number: **2022-153**
Effective date: 08/24/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

MRS is proposing to repeal and replace Rule 207 (“Controlling Interest Transfers”) to replace the current format that relies heavily on examples, to a narrative explanation of the law. Changes also include a more consistent approach to use of terms, an in-depth explanation of complex issues, and an approach that improves readability.

Basis statement:

Rule 207 explains Maine law on the application of the real estate transfer tax under 36 MRS chapter 711-A to the transfer or acquisition of a controlling interest in an entity that owns real property located in Maine. MRS is repealing and replacing Rule 207 (“Controlling Interest Transfers”) to replace the current format that relies heavily on examples, to a narrative explanation of the law. Changes also include a more consistent approach to use of terms, an in-depth explanation of complex issues, and an approach that improves readability.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

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

Umbrella-Unit: **18-125**

Statutory authority: 36 MRS §§ 112, 328, 330, 331

Chapter number/title: **Ch. 208**, Guidelines for Professional Assessing Firms that Provide Revaluation Services to Municipalities (*Repeal and replace*)

Filing number: **2022-154**

Effective date: 8/24/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

This rule is being changed to replace obsolete procedures, provide a more consistent approach to explanations, and to improve readability.

Basis statement:

Rule 208 explains the requirements for professional assessing firms that provide revaluation services to municipalities in Maine. The rule is being amended to replace obsolete procedures, provide a more consistent approach to explanations, and to improve readability.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

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

Umbrella-Unit: **18-125**

Statutory authority: 36 MRS §§ 112, 305, 457

Chapter number/title: **Ch. 210** (*New*), Telecommunications Excise Tax

Filing number: **2022-017**

Effective date: 2/13/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The rule is new and is needed to explain the telecommunications excise tax law in 36 MRS §457.

Basis statement:

Enacted Rule 210 establishes a written process for the assessment, filing, and payment of the telecommunications excise tax.

Maine imposes an excise tax on all qualified telecommunications equipment located in the State. Maine Revenue Services is responsible for assessing the tax on qualified telecommunications equipment owned or leased by a telecommunications business. Qualified telecommunications equipment owned or leased by a person who is not a telecommunications business must be assessed a tax by the assessor of the municipality in which the equipment is located. Any property subject to the telecommunications excise tax is exempt from municipal property tax.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Administrative and Financial Services (DAFS),
Bureau of Revenue Services (Maine Revenue Services – MRS)
Umbrella-Unit: **18-125**
Statutory authority: 36 MRS §§ 112, 305, 6250
Chapter number/title: **Ch. 211** (*New*), Deferred Collection of Homestead Property Taxes
Filing number: **2022-075**
Effective date: 5/9/2022
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The rule explains the disability qualification portion of the Deferred Collection of Homestead Property Taxes Program (the “Deferral Program”).

Basis statement:

The Deferral Program, 26 MRS §§ 6250-6266, allows seniors and disabled resident homeowners to defer property tax on their primary residence if they meet certain criteria.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

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

Umbrella-Unit: **18-125**

Statutory authority: 36 MRS §§ 112, 305, 6250

Chapter number/title: **Ch. 211**, Deferred Collection of Homestead Property Taxes

Filing number: **2022-155**

Effective date: 8/24/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The rule explains the disability qualification portion of the Deferred Collection of Homestead Property Taxes Program (the “Deferral Program”). This filing permanently adopts rule 211 through regular rulemaking.

Basis statement:

The Deferral Program, 26 MRS §§ 6250-6266, allows seniors and disabled resident homeowners to defer property tax on their primary residence if they meet certain criteria.

Fiscal impact of rule:

None - see §8057-A(1)(C).

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

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

Umbrella-Unit: **18-125**

Statutory authority: 36 MRS §112

Chapter number/title: **Ch. 801**, Apportionment

Filing number: **2022-055**

Effective date: 4/20/2022

Type of rule: Routine Technical

Emergency rule: No

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

Basis statement:

Amended Rule 801 (“Apportionment”) reflects recent legislative changes related to factor presence nexus thresholds that apply to tax years beginning on or after January , 2022, provides a definition for affiliated group, and makes certain technical changes.

Fiscal impact of rule:
N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

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

Umbrella-Unit: **18-125**

Statutory authority: 36 MRS §112

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

Filing number: **2022-051**

Effective date: 4/6/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

Enacted MRS Rule 803 (“Income Tax Withholding Reports and Payments”) reflect recent legislative changes and to make other technical changes by adding language to address partnership audit requirements related to pass-through entity withholding and to reflect recently enacted penalties for failure to furnish, or for furnishing fraudulent or false, information statements (e.g., Forms W-2, 1099) to MRS.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

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

Umbrella-Unit: **18-125**

Statutory authority: 36 MRS §112

Chapter number/title: **Ch. 805**, Composite Filing

Filing number: **2022-052**

Effective date: 4/6/2022

Type of rule: Routine Technical

Emergency rule: No

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

Basis statement:

MRS is adopting Rule 805 to add language to address partnership audit requirements related to composite filing and to make other technical changes. Affected partnerships must file amended composite returns within 180 days of the final determination date of a partnership-level audit to report additional Maine income tax due.

Fiscal impact of rule:
(No response)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

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

Umbrella-Unit: **18-125**

Statutory authority: 36 MRS §112

Chapter number/title: **Ch. 808**, Corporate Income Tax Nexus

Filing number: **2022-078**

Effective date: 5/10/2022

Type of rule: Routine Technical

Emergency rule: No

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

Basis statement:

- MRS is proposing to amend Rule 808 ("Corporate Income Tax Nexus") to do the following:
- Clarify the definitions of foreign corporation and partnership
 - Add new section .04 to reflect recently enacted corporate income tax nexus thresholds for tax years beginning on or after January 1, 2022
 - Repeal section .05 (Other Exceptions) in current rule as unnecessary
 - Relocate section .06 (Imputed Activity) in current rule to section .05
 - Make other technical changes.

Fiscal impact of rule:
Not provided.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

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

Umbrella-Unit: **18-125**

Statutory authority: 36 MRS §112

Chapter number/title: **Ch. 810**, Maine Unitary Business Taxable Income, Combined
Reports and Tax Returns

Filing number: **2022-056**

Effective date: 4/20/2022

Type of rule: Routine Technical

Emergency rule: No

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

Basis statement:

MRS amends Ch. 810 to reflect recent legislative changes related to factor presence nexus thresholds that apply to tax years beginning on or after January 1, 2022, to clarify the apportionment of income tax credits among taxable corporations that are members of a unitary group, and to make certain technical changes.

Fiscal impact of rule:
None provided.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

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

Umbrella-Unit: **18-125**

Statutory authority: 36 MRS §112

Chapter number/title: **Ch. 813**, Property Tax Fairness Credit

Filing number: **2022-082**

Effective date: 5/8/2022

Type of rule: Routine Technical

Emergency rule: No

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

Basis statement:

Amended rule Ch. 813 to reflects a recent law change that makes property tax payments made on behalf of a taxpayer by the State through the reinstated Elderly Tax deferral Program to be eligible for the credit and reflects that married taxpayers filing separately are not eligible for the credit.

Fiscal impact of rule:
None provided.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Administrative and Financial Services (DAFS),
Bureau of Revenue Services (Maine Revenue Services – MRS)
Umbrella-Unit: **18-125**
Statutory authority: 36 MRS §§ 112, 5219-XX(5)
Chapter number/title: **Ch. 818** (*New*), Renewable Chemicals Tax Credit
Filing number: **2022-032**
Effective date: 3/7/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

MRS adopts Rule 818 (“Renewable Chemicals Tax Credit”) as authorized by 36 MRS §5219-XX(5) in order to address required information reporting by taxpayers and third-party testing of renewable chemicals for purposes of the credit.

Basis statement:

Enacted MRS Rule 818 establishes certain required information reporting by taxpayers and third-party testing of renewable chemicals for purposes of the Renewable Chemicals Tax Credit (as authorized by 36 MRS §5219-XX(5)).

Fiscal impact of rule:

(No response)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Administrative and Financial Services (DAFS),
**Bureau of Alcoholic Beverage and Lottery Operations (BABLO) /
Maine State Liquor and Lottery Commission**

Umbrella-Unit: **18-553**

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

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

Filing number: **2022-126**

Effective date: 7/18/2022

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 Lotto America in Maine as required by the Multi State Lottery Association. These rules will allow Maine to continue to sell the Lotto America game with one additional drawing per week.

Basis statement:

This amendment updates the existing rules governing the jackpot draw game Lotto America. This amendment makes necessary changes to add one additional drawing per week, 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, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Administrative and Financial Services (DAFS),
Office of Cannabis Policy
Umbrella-Unit: **18-691**
Statutory authority: 28-B; PL 2021-ch. 226, 314
Chapter number/title: **Ch. 1**, Adult Use Marijuana Program Rule
Filing number: **2022-107**
Effective date: 7/1/2022
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

To implement newly enacted laws, specifically PL 2021, ch. 226 and 314; streamline the license application process to require less information from a prospective licensee in order to obtain a conditional license to seek local authorization for the siting of a marijuana establishment; to clarify the regulation of "logos" and "brands" as marketing and advertising tools; to permit the use of reusable packaging; and to reduce the information required to be listed on the labels of marijuana and marijuana products sold to consumers.

Basis statement:

The Department of Administrative and Financial Services, Office of Marijuana Policy', is promulgating revisions to the *Adult Use Marijuana Program Rule*, 18-691 CMR ch. 1, to incorporate legislative changes to the *Marijuana Legalization Act*, Title 28-B ch. I, enacted during the first session of the 130 Maine Legislature, specifically PL 2021, ch. 226, 251 and 314, "An Act to Amend the Marijuana Legalization Act", "An Act to Make Technical Changes to the Maine Medical Use of Marijuana Act", and "An Act Regarding Controlled Entry Areas within Retail Marijuana Stores", respectively.

In addition to changes necessitated by legislative action, revisions to the rule reflect the incorporation of guidance issued by the Office of Marijuana Policy to active and prospective adult use licensees from December 2019 - October 2021 to clarify unclear provisions of the Adult Use Marijuana Program Rule in effect during that period.

Next, these revisions incorporate public comments received by the Office of Marijuana Policy pursuant to the public comment period for this rulemaking.

Finally, this provisionally adopted rule includes two sets of revisions that may not be readily apparent in the draft published for public comment; specifically, the addition of Section 2.4.6 to the rules to address the Department's ability to consider a conditional license application to be "abandoned" after a year of inaction by an applicant, and the failure to appropriately track and identify the reorganization of the rule regarding Section 4, which incorporates provisions of Section 7 "Authorized Transfers" from the original rule subject to revision during the current rulemaking period.

A complete list of the public comments received by the Office of Marijuana Policy during the rulemaking period, as well as the agency's response to those changes, is attached to this Basis Statement. Additionally, the agency has included, as another attachment hereto, a list of all changes made in response to the comments received as well as form and legality review by the Office of the Attorney General (OAG).

Fiscal impact of rule:

De minimis. The rule is expected to slightly reduce conditional application processing burdens by shifting most disclosure of information regarding operations, cultivation, and facility layout to the active licensure phase as opposed to considering so much information at both the conditional and active licensure phases. The rule imposes no cost on municipalities or counties.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Administrative and Financial Services (DAFS),
Office of Cannabis Policy

Umbrella-Unit: **18-691**

Statutory authority: Title 28-B, ch.1 (Cannabis Legalization Act), including P.L. 2021, ch. 558, 612, 667, and 669, *An Act To Allow for a Variance Rate in the Amount and Potency of Cannabinoids in Adult Use Edible Marijuana Products, An Act To Improve Testing Requirements for Adult Use Marijuana, An Act To Permit Curbside Pickup and Limited Delivery of Adult Use Marijuana, and An Act To Promote Equity and Increase Opportunities in the Cannabis Industry by Removing Restrictions Related to Convictions for Drug Offenses and To Replace the Term "Marijuana" with the Term "Cannabis" in the Maine Revised Statutes*, respectively.

Chapter number/title: **Ch. 1, Adult Use Marijuana Program Rule**

Filing number: **2022-165**

Effective date: 9/8/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To implement newly enacted laws, specifically PL 2021, ch. 559, 612, 667, and 669 including changes to the requirements for mandatory testing, the allowable potency variance for edible cannabis products, and laws permitting cannabis stores to conduct curbside pickup and delivery of cannabis.

Basis statement:

The Department of Administrative and Financial Services, Office of Cannabis¹ Policy, is promulgating revisions to the Adult Use Cannabis Program Rule, 18-691 CMR ch. 1, to incorporate legislative changes to the Cannabis Legalization Act, Title 28-B, ch. 1, enacted during the second session of the 130th Maine Legislature, specifically PL 2021 ch. 558, 612, 667, and 669, *An Act To Allow for a Variance Rate in the Amount and Potency of Cannabinoids in Adult Use Edible Marijuana Products, An Act To Improve Testing Requirements for Adult Use Marijuana, An Act To Permit Curbside Pickup and Limited Delivery of Adult Use Marijuana, and An Act To Promote Equity and Increase Opportunities in the Cannabis Industry by Removing Restrictions Related to Convictions for Drug Offenses and To Replace the Term "Marijuana" with the Term "Cannabis" in the Maine Revised Statutes*, respectively.

In addition to changes necessitated by legislative action, the revisions to the rule reflect the incorporation of guidance regarding mandatory testing issued by the Office of Cannabis Policy to current and prospective adult use licensees from January 2021 through May 2021.

Next, these revisions incorporate public comments received by the Office of Cannabis Policy pursuant to the public comment period for this rulemaking. A complete list of the

¹ Pursuant to PL 2021, ch. 669, *An Act To Promote Equity and Increase Opportunities in the Cannabis Industry by Removing Restrictions Related to Convictions for Drug Offenses and To Replace the Term "Marijuana" with the Term "Cannabis" in the Maine Revised Statutes*, the Office of Marijuana Policy changed its name to the Office of Cannabis Policy beginning in June of 2022. Any reference to “marijuana” or the “Office of Marijuana Policy” in filings or notices associated with this rulemaking use the terms “marijuana” and “cannabis” interchangeably, as the office was in the process of changing its use of the terms during the period that it was engaged in this rulemaking.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

public comments received by the Office of Cannabis Policy during the rulemaking period, as well as the agency's response to those comments, is attached to this Basis Statement.

Additionally, the Office of Cannabis Policy made a change to the analyte category title for "pesticides" in Section 7 of the rule to align the category title with the identical analyte category in the *Rules for the Certification of Cannabis Testing Facilities*, 18-691 CMR ch. 5, to ensure clarity and alignment in the terminology used in both 18-691 CMR ch. 1 and 5.

Finally, the Office of Cannabis Policy received a comment regarding the application of its retail sales video surveillance requirements to sales conducted by delivery and an assertion by the commenting party that these video surveillance requirements run afoul of Maine law limiting the use of automated or semi-automated facial recognition systems by public entities. The Office of Cannabis Policy finds that its rule is not in violation of 25 MRS §6001.

Statutory Changes

An Act To Allow for a Variance Rate in the Amount and Potency of Cannabinoids in Adult Use Edible Marijuana Products provided a method for calculating an allowable variance for maximum potency edible cannabis products to provide additional flexibility to edibles manufacturers seeking to achieve maximum allowable potency in individual servings and multi-serving packages of edible cannabis products, without failing mandatory testing for edible cannabis product potency, it also allowed testing facilities to account for this variance in addition to the particular "laboratory uncertainty" calculated by each testing facility for its potency analyses. This method for calculating whether a sample of edible cannabis products passes or fails mandatory testing for potency was integrated into the rule regarding edible cannabis products manufacturing requirements.

An Act To Improve Testing Requirements for Adult Use Marijuana included changes to the timing and frequency of mandatory testing of cannabis and cannabis products within the Adult Use Cannabis Program, changing the mandatory testing from being required every time cannabis or cannabis products are transferred between licensees, to only requiring such mandatory testing before cannabis or a cannabis product is transferred to a cannabis store for sale to consumers. The new law also accounted for the carrying forward of mandatory test results conducted earlier in the cannabis cultivation and manufacturing process, so long as further processing or manufacturing would not "result in an increase in the concentration of any contaminants or factors identified in [28-B MRS §602(1)] or in any rules adopted by the department pursuant to that section."

In response to this new law, the Office of Cannabis Policy revised the rules to permit testing of cannabis and cannabis products in their "final form" immediately before transfer to a cannabis store for sales to consumers, and also provided exceptions to testing for some analytes for which the cannabis or cannabis product had been tested for and passed mandatory testing earlier in the cultivation and manufacturing process. The exceptions are: for pesticides, if cannabis flower and/or trim is tested for and passes mandatory testing for pesticides, any cannabis concentrate and/or cannabis products manufactured from that flower and trim are not required to be tested again for pesticides; and for other harmful chemicals (metals) and/or residual solvents, if cannabis concentrate is tested for and passes mandatory testing for other harmful chemicals (metals) and/or residual solvents, then any resulting cannabis products manufactured from that concentrate does not require additional testing for other harmful chemicals (metals) and/or residual solvents.

An Act To Permit Curbside Pickup and Limited Delivery of Adult Use Marijuana added new authorized activities for adult use cannabis stores "curbside pickup" and "delivery" of adult use cannabis and cannabis products. The Office of Cannabis Policy updated the rule to reflect these new authorized activities for cannabis store licensees and provided application, security and purchaser age and identity verification requirements to the rules regarding sales conducted via curbside pickup or delivery.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

An Act To Promote Equity and Increase Opportunities in the Cannabis Industry by Removing Restrictions Related to Convictions for Drug Offenses and To Replace the Term "Marijuana" with the Term "Cannabis" in the Maine Revised Statutes directed the Office of Cannabis Policy, in unallocated language, as well as the Revisor of Statutes and the Department of Health and Human Services, to replace the term “marijuana” with “cannabis” throughout the statutes and rules promulgated by those entities. The Office of Cannabis Policy replaced the term “marijuana” with “cannabis” throughout the entirety of this rule pursuant to the current routine technical rulemaking activity. The law also changed the definition of “disqualifying drug offense”, but because that change was not designated for routine technical rulemaking, the Office of Cannabis Policy did not make that change in these routine technical rules. However, effective August 8, 2022, the Office of Cannabis Policy did begin to enforce the new definition of “disqualifying drug offense” contained in that new law, and will update the rules to reflect that definitional change when it next engages in major substantive rulemaking.

Fiscal impact of rule:

De minimis. The rule imposes no specific costs on municipalities or counties.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Administrative and Financial Services (DAFS),
Office of Cannabis Policy

Umbrella-Unit: **18-691**

Statutory authority: Title 28-B, ch.1 (*Cannabis Legalization Act*), including PL 2021 ch. 558, 612, and 669, *An Act To Allow for a Variance Rate in the Amount and Potency of Cannabinoids in Adult Use Edible Marijuana Products*, *An Act To Improve Testing Requirements for Adult Use Marijuana*, and *An Act To Promote Equity and Increase Opportunities in the Cannabis Industry by Removing Restrictions Related to Convictions for Drug Offenses and To Replace the Term "Marijuana" with the Term "Cannabis" in the Maine Revised Statutes*, respectively.

Chapter number/title: **Ch. 5**, Rules for the Certification of Cannabis Testing Facilities

Filing number: **2022-166**

Effective date: 9/8/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To implement newly enacted laws, specifically PL 2021 ch. 558, 612, and 669 regarding the mandatory testing requirements for adult use cannabis and adult use cannabis products, including the introduction of an allowable variance in the potency of adult use edible cannabis products.

Basis statement:

The Department of Administrative and Financial Services, Office of Cannabis² Policy, is promulgating revisions to the *Rules for the Certification of Cannabis Testing Facilities*, 18-691 CMR ch. 5, to incorporate legislative changes to the *Cannabis Legalization Act*, Title 28-B ch. 1, enacted during the second session of the 130th Maine Legislature, specifically PL 2021 ch. 558, 612, and 669, *An Act To Allow for a Variance Rate in the Amount and Potency of Cannabinoids in Adult Use Edible Marijuana Products*, *An Act To Improve Testing Requirements for Adult Use Marijuana*, and *An Act To Promote Equity and Increase Opportunities in the Cannabis Industry by Removing Restrictions Related to Convictions for Drug Offenses and To Replace the Term "Marijuana" with the Term "Cannabis" in the Maine Revised Statutes*, respectively.

In addition to changes necessitated by legislative action, the revisions to the rule reflect the incorporation of guidance regarding mandatory testing issued by the Office of Cannabis Policy to current and prospective adult use licensees from January 2021 through May 2021.

Next, these revisions incorporate public comments received by the Office of Cannabis Policy pursuant to the public comment period for this rulemaking. A complete list of the public comments received by the Office of Cannabis Policy during the rulemaking period, as well as the agency's response to those comments, is attached to this Basis Statement.

² Pursuant to PL 2021, ch. 669, *An Act To Promote Equity and Increase Opportunities in the Cannabis Industry by Removing Restrictions Related to Convictions for Drug Offenses and To Replace the Term "Marijuana" with the Term "Cannabis" in the Maine Revised Statutes*, the Office of Marijuana Policy changed its name to the Office of Cannabis Policy beginning in June of 2022. Any reference to "marijuana" or the "Office of Marijuana Policy" in filings or notices associated with this rulemaking use the terms "marijuana" and "cannabis" interchangeably, as the office was in the process of changing its use of the terms during the period that it was engaged in this rulemaking.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Statutory Changes

An Act To Allow for a Variance Rate in the Amount and Potency of Cannabinoids in Adult Use Edible Marijuana Products provided a method for calculating an allowable variance for maximum potency edible cannabis products to provide additional flexibility to edibles manufacturers seeking to achieve maximum allowable potency in individual servings and multi-serving packages of edible cannabis products, without failing mandatory testing for edible cannabis product potency, it also allowed testing facilities to account for this variance in addition to the particular “laboratory uncertainty” calculated by each testing facility for its potency analyses. This method for calculating whether a sample of edible cannabis products passes or fails mandatory testing for potency was integrated into the rule regarding edible cannabis products manufacturing requirements.

An Act To Improve Testing Requirements for Adult Use Marijuana included changes to the timing and frequency of mandatory testing of cannabis and cannabis products within the Adult Use Cannabis Program, changing the mandatory testing from being required every time cannabis or cannabis products are transferred between licensees, to only requiring such mandatory testing before cannabis or a cannabis product is transferred to a cannabis store for sale to consumers. The new law also accounted for the carrying forward of mandatory test results conducted earlier in the cannabis cultivation and manufacturing process, so long as further processing or manufacturing would not “result in an increase in the concentration of any contaminants or factors identified in [28-B MRS §602(1)] or in any rules adopted by the department pursuant to that section.”

In response to this new law, the Office of Cannabis Policy revised the rules to permit testing of cannabis and cannabis products in their “final form” immediately before transfer to a cannabis store for sales to consumers, and also provided exceptions to testing for some analytes for which the cannabis or cannabis product had been tested for and passed mandatory testing earlier in the cultivation and manufacturing process. The exceptions are: for pesticides, if cannabis flower and/or trim is tested for and passes mandatory testing for pesticides, any cannabis concentrate and/or cannabis products manufactured from that flower and trim are not required to be tested again for pesticides; and for other harmful chemicals (metals) and/or residual solvents, if cannabis concentrate is tested for and passes mandatory testing for other harmful chemicals (metals) and/or residual solvents, then any resulting cannabis products manufactured from that concentrate does not require additional testing for other harmful chemicals (metals) and/or residual solvents.

An Act To Promote Equity and Increase Opportunities in the Cannabis Industry by Removing Restrictions Related to Convictions for Drug Offenses and To Replace the Term "Marijuana" with the Term "Cannabis" in the Maine Revised Statutes directed the Office of Cannabis Policy, in unallocated language, as well as the Revisor of Statutes and the Department of Health and Human Services, to replace the term “marijuana” with “cannabis” throughout the statutes and rules promulgated by those entities. The Office of Cannabis Policy replaced the term “marijuana” with “cannabis” throughout the entirety of this rule pursuant to the current routine technical rulemaking activity.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 MRS §153
Chapter number/title: **Ch. 15**, Rules Governing Acceptable Documents to Establish
Legal Presence
Filing number: **2022-221**
Effective date: 11/13/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These rules, first published in 2008, implement the provisions of 29-A MRS §§ 1301(2-A) and 1410(8) which prohibit the Secretary of State from issuing a driver's license or nondriver identification card to an individual unless the individual presents valid documentary evidence of legal presence in the United States. The rule changes being proposed update the existing guidance, bringing Maine's practices into compliance with federal law changes since this chapter was originally published. These changes will clarify procedures for BMV staff, increasing efficiency and effectiveness, which will ultimately improve customer service.

Basis statement:

These rules implement the provisions of 29-A MRS §§ 1301(2-A) and 1410(8) which prohibit the Secretary of State from issuing a driver's license or nondriver identification card to an individual unless the individual presents valid documentary evidence of legal presence in the United States. These rules describe the documents that may be accepted to establish evidence of legal presence in the United States. These rules do not apply to credentials issued under the federal REAL ID Act which are governed by federal regulations at 6 CFR §37 *et seq.*

The rules identify the general criteria for acceptable documents and provide Bureau staff with guidance on specific acceptable documents and alternative documents to establish evidence of legal presence for both citizens and non-citizens. Additionally, the rules outline appropriate expiration dates for driver's licenses and nondriver identification cards.

These changes will clarify procedures for BMV staff, increasing efficiency and effectiveness, which will ultimately improve customer service. Careful consideration was given to the development of criteria for acceptable documentary evidence, in order to ensure that citizens and noncitizens who are legally present in the United States have the opportunity to provide evidence of such.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 MRS §453 sub-§3-C
Chapter number/title: **Ch. 172**, Rules Governing the Issuance of Vanity
Registration Plates
Filing number: **2022-190**
Effective date: 10/1/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule implements 29-A MRS §453, subsections 3-A and 3-B, which authorize the Secretary of State to refuse to issue and to recall certain non-compliant vanity registration plates and describes the process for review of the Secretary of State's decision to refuse to issue or recall a vanity registration plate.

Basis statement:

The Bureau of Motor Vehicles has seen a rise in the number of registration plates with explicit profanity, slurs, references to illegal activity and more on Maine roads.

Title 29-A §463 states that these plates in fact are and remain the property of the State of Maine. The government has a clear and compelling interest in regulating speech on government property to protect public safety and the peace. Incitement to violence, profanity, ethnic, racial, religious, or other slurs, or reference to illegal or criminal activity - all of which unfortunately can be seen on Maine registration plates today - are all directly contrary to the public interest.

This rule is adopted in the interest of advancing public safety, peace, and civility.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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, 3203
Chapter number/title: **Ch. 305**, Licensing Requirements, Annual Reporting, enforcement and Consumer Protection Provisions for Competitive Provision of Electricity
Filing number: **2022-133**
Effective date: 7/13/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopts amendments to Chapter 305 of its rules, which governs the licensing requirements, annual reporting, enforcement, and consumer protection provisions for the competitive provision of electricity. The amended rule conforms Chapter 305 to recent legislative changes regarding competitive electricity providers (CEPs), the door-to-door marketing of retail energy supply, and the registration of third-party sales agents. The Commission also adopts amendments to improve customer protection standards regarding the marketing practices of CEPs, to provide consistency and clarity, and to reflect the current electronic filing practices of the Commission.

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. 2021-00396, issued on June 2, 2022. 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, 2022 to December 31, 2022
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, 3209-B
Chapter number/title: **Ch. 313**, Customer Net Energy Billing
Filing number: **2022-207**
Effective date: 10/17/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission initiates a proceeding to amend its Net Energy Billing (NEB) rule (Chapter 313) as required to reflect recently enacted legislation.

Basis statement:

The factual and policy basis for this rule is set forth in the Commission's Order Adopting Rule and Statement of Factual and Policy Basis, Docket No. 2022-00185, issued on May 3, 2022. 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, 2022 to December 31, 2022
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, 3214
Chapter number/title: **Ch. 314**, Statewide Low-income Assistance Plan
Filing number: **2022-096**
Effective date: 5/28/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopts amendments to its *Statewide Low-income Assistance Plan* rule (Chapter 314) to expand program eligibility.

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. 2021-00400, issued on May 3, 2022. 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, 2022 to December 31, 2022
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, 301(1-A), 2305-A, 3104-A, 3106
Chapter number/title: **Ch. 320**, Electric Transmission and Distribution Utility Service Standards
Filing number: **2022-158**
Effective date: 8/27/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopts amendments to the Commission's *Electric Transmission and Distribution Utility Service Standards* rule (Chapter 320). The amendments include substantial modifications to better measure and motivate improved performance in the areas of service quality and customer service, as well as for other aspects of investor-owned transmission and distribution (T&D) utilities' performance. The amended rule also complies with recently enacted legislation that provides for minimum service standards and a "report card" for T&D utilities.

Basis statement:

The factual and policy basis for this rule is set forth in the Commission's Order Adopting Rule and Statement of Factual and Policy Basis, Docket No. 2022-00052, issued on July 29, 2022. Copies of the Statement and Order have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 18 State House Station, Augusta, Maine 04333-0018.

Fiscal impact of rule:

Minimal fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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, 3482
Chapter number/title: Ch. 324, Small Generator Interconnection Procedures
Filing number: 2022-002
Effective date: 1/9/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopts amendments to the Commission's *Small Generator Interconnection Procedures* rule (ch. 324). This adoption follows an Inquiry conducted by the Commission. The Inquiry was initiated in a February 9, 2021 Notice of Inquiry and was conducted for the limited purpose of gathering information regarding (1) the screening process for interconnecting Level 2 generating facilities, and (2) potential penalties for utility non-compliance with the timing and schedule requirements of ch. 324.

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. 2021-00167, issued on December 21, 2021. 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, 2022 to December 31, 2022
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, 4508, 4515, 4516-A, 4705-A
Chapter number/title: **Ch. 420**, Safety Standards for Natural Gas and Liquefied Natural Gas Facility Operators
Filing number: **2022-167**
Effective date: 9/5/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopts amendments to ch. 420, *Safety Standards for Natural Gas and Liquefied Natural Gas Facility Operators*. These amendments are intended to update and modernize the Commission's gas safety rules.

Basis statement:

The factual and policy basis for this chapter is set forth in the MPUC's Order Amending Rule and Statement of Factual and Policy Basis, Docket No. 2022-00155, issued on August 23, 2021. 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, 2022 to December 31, 2022
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 §6114
Chapter number/title: **Ch. 615**, Exemptions from Regulatory Requirements for Consumer-Owner Water Utilities
Filing number: **2022-252**
Effective date: 12/26/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopted amendments to Ch. 615, *Exemptions from Regulatory Requirements for Consumer-Owned Water Utilities*. With these amendments, the Commission expands the methods by which consumer-owned water utilities may provide notice to customers of a pending request for specific exemption. The Commission is also adopting non-substantive editorial amendments to the rule.

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. 2022-00237, issued on November 22, 2022. 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, 2022 to December 31, 2022
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 §6114
Chapter number/title: **Ch. 616**, Specific Exemptions from Regulatory Requirements for Consumer-Owner Water Utilities
Filing number: **2022-253**
Effective date: 12/26/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopted amendments to Ch. 616, *Specific Exemptions from Regulatory Requirements for Consumer-Owned Water Utilities*. In this rule, the Commission exempts consumer-owned water utilities from the newspaper publication requirements in 35-A MRS §§ 6104 and 6104-A. The Commission also intends to include future generally applicable exemptions granted by Commission order in this rule.

Basis statement:

The factual and policy basis for this chapter is set forth in the Commission's Order Adopting Rule and Statement of Factual and Policy Basis, Docket No. 2022-00243, issued on November 22, 2022. 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, 2022 to December 31, 2022
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 §611
Chapter number/title: **Ch. 620** (formerly Chapter 62), Service Standards for Water Utilities
Filing number: **2022-254**
Effective date: 12/26/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopted amendments to Ch. 620, *Service Standards for Water Utilities* of the Commission's rules. The adopted amendments are intended to add provisions for Maine's water utilities to more effectively respond to water supply emergencies, better reflect modern metering technology and make changes to sections which cover service lines, seasonal service, service interruptions, low pressure areas, and conditions of service. In addition, the Commission updated and modernized the rule, including changing the designation of the rule from Chapter 62 to Chapter 620 to conform with the Commission's current rule organization conventions and adopted 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. 2021-00334, issued on November 16, 2022. 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, 2022 to December 31, 2022
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; PL 2021 ch. 347
Chapter number/title: **Ch. 815**, Consumer Protection Standards for Electric and Gas Transmission and Distribution Utilities
Filing number: **2022-003**
Effective date: 1/9/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopts amendments to the Commission's Consumer Protection Standards for Electric and Gas (ch. 815). The adopted amendments address notice requirements during the winter disconnection period, as directed by *An Act to Protect Maine Electricity Customers from Threats of Disconnection in the Wintertime*, Public Law 2021 ch. 347 §1.

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. 2021-00266, issued on December 20, 2021. 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 impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 §§ 35-A MRS §§ 101, 104, 111, 301, 304, 705(3)
Chapter number/title: Ch. 850, Regulatory Proceeding Expenses
Filing number: 2022-159
Effective date: 8/27/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopts amendments to its *Regulatory Proceeding Expenses* rule. The adopted amendments update the rule to be more in accordance with recent Commission practice and include a change to the way regulatory proceeding expenses are determined and calculated for inclusion in rates.

Basis statement:

The factual and policy basis for this chapter is set forth in the Commission's Order Adopting Rule and Statement of Factual and Policy Basis, Docket No. 2021-00072, issued on August 3, 2022. Copies of the Statement and Order have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 18 State House Station, Augusta, Maine 04333-0018.

Fiscal impact of rule:

Minimal fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 §§ 35-A MRS §§ 101, 104, 111, 301, 304, 705(3)
Chapter number/title: **Ch. 870**, Late Payment Charges, Interest Rates to be Paid on Customer Deposits, and Charges for Returned Checks
Filing number: **2022-095**
Effective date: 5/28/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission adopts amendments to *its Late Payment Charges, Interest Rates to be Paid on Customer Deposits, and Charges for Returned Checks* (Chapter 870). The primary amendment is the adoption of a fixed percentage of 1% a month or 12% annually for the maximum late payment charge that replaces a maximum interest charged based on the Prime Rate plus a fixed adder. In addition, the amended rule exempts customers adhering to terms of a payment arrangement from late payment charges.

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. 2021-00359, issued on April 27, 2022. 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, 2022 to December 31, 2022
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 §§ 35-A MRS §§ 104, 111, 122
Chapter number/title: **Ch. 886** (*Repeal*), Energy Infrastructure Corridors
Filing number: **2022-226**
Effective date: 11/26/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Public Utilities Commission repeals Chapter 886 of the Commission's rules (65-407 ch. 886), which sets forth rules governing the designation and use of energy infrastructure corridors, because the Commission no longer regulates these matters.

Basis statement:

The factual and policy basis for this chapter is set forth in the Commission's Order Repealing Rule, Docket No. 2022-00222, issued on October 18, 2022. 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, 2022 to December 31, 2022
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: **Maine Health Data Organization**
Umbrella-Unit: **90-590**
Statutory authority: PL 2021 ch. 423. 22 MRS §8704(4), MHDO has authority to adopt rules necessary for the proper administration and enforcement of the requirements of 22 MRS ch. 1683.
Chapter number/title: **Ch. 120**, Release of Data to the Public
Filing number: **2022-074**
Effective date: 5/28/2022
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

These changes update definitions and several data elements available for release to authorized data recipients based on how our data user's needs have changed; and due to new and existing laws that allow for the collection of certain data elements as well as the release of these data, including PL 2021 Chapter 423 and PL 2017 Chapter 218.

Basis statement:

The Maine Health Data Organization (MHDO) is charged with collecting health care data. This chapter governs the release of data that the MHDO is authorized to collect to the public. The purpose of this rule is to specify the permissible uses of the data; the releasable data elements available in MHDO's Level I, II, and III Data Sets; the process for which data requests will be reviewed and if approval the data release; public notice of data requests; the MDDO Data Use Agreement (MHDO DUA), MHDO internal use of the data, and the security and protection of the MHDO Data.

These changes update definitions and several data elements allowable for release to authorized data recipients based on how our data user's needs have changed; and due to new and existing laws that allow for the collection of certain data elements as well as the release of these data, including P> 2021 ch. 423 and PL 2016 ch. 218.

It is anticipated that these updates will align the data collection rules and requirements with the release of these data, as well as respond to the needs of our data users as it relates to their use of the MHDO data, including the study of healthcare disparities and inequities.

Fiscal impact of rule:

There is no fiscal impact on state municipalities, counties or small businesses.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State, pursuant to 5 MRS §8053-A sub-§5

Agency name: **Maine Health Data Organization**
Umbrella-Unit: **90-590**
Statutory authority: 22 MRS §§ 8703(1), 8704(1)&(4); 24-A § 6951
Chapter number/title: **Ch. 247**, Uniform Reporting System for Non-Claims Based Primary Care Payments and Other Supplemental Health Care Data Sets
Filing number: **2022-242**
Effective date: 12/20/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The primary reason for this rulemaking is for the MHDO Board to adopt the changes to 90-50 CMR ch. 247, needed because of PL 2021 ch. 603. Once the changes are adopted by the board, the rule will align with the law.

Basis statement:

This chapter contains the provisions for filing non-claims-based payment information and other supplemental health care data sets.

Fiscal impact of rule:

This rule will not have a fiscal impact on municipalities or counties, or any adverse economic impact on small businesses.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State, pursuant to 5 MRSA, §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
Filing number: 2022-042
Effective date: 3/27/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Proposed revision to Rule 1.2 in Section 1: Camping, Reservations and Registration. The Authority is proposing to remove from this rule information concerning season length, check in and check out times, and specific areas where group camping can occur, and to remove language around whether campers are permitted to set up tents at lean-to sites.

Proposed revision to Rule 3.1 in Section 3: Hunting, Trapping and Fishing The Authority proposes to add crossbows to the list of weapons permitted in the hunting areas of the Park to be used in hunting.

Proposed revision to Rule 4.6 in Section 4: Resource Protection and Wilderness Preservation – The Authority proposes to include provisions which call out specific actions for those with human waste to dispose above treeline to align with Leave No Trace™ practices.

Proposed revision to Rule 5.4 in Section 5: Vehicles and Transportation – The Authority proposes to modify the existing rule to allow motorcycles to travel on certain and limited gravel sections of the Park Tote road outside the main gates.

Proposed revision to Rule 5.5 in Section 5: Vehicles and Transportation – The Authority proposes to modify rule language to make drone prohibitions more clear and defensible.

Basis statement:

Basis Statement: Rule 1.2 (Camping is permitted by reservation only...) Revising this text will remove language not judicially enforceable, and allow for alternative management options. The expected operation of this Rule will be in accordance with BSP Policy.

Proposed and Approved Text:

Camping is permitted by reservation only and only in authorized campgrounds and campsites **during certain dates and times**, as specified by the Park. ~~May 15 through October 22 and December 1 through March 31.~~ Campers must register at the gatehouse no later than 8:30 p.m. ~~Check out time is 11:00 a.m. and check in time is 1:00 p.m. Tents are not permitted outside of lean tos at lean to sites.~~ Camping by groups of more than 12 people is permitted only at **designated** group camping areas. ~~located at Bear Brook, Foster Field, Nesowadnehunk Field, Trout Brook Farm and North Branch Camps.~~

If Adopted as Proposed and Approved above, Rule 1.2 Clean Text:

Camping is permitted by reservation only and only in authorized campgrounds and campsites during certain dates and times, as specified by the Park. Campers must register at the gatehouse no later than 8:30 p.m. Camping by groups of more than 12 people is permitted only at designated group camping areas.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Basis Statement: Rule 3.1 (Partial): (Hunting and trapping are prohibited within the Park.) Revising this text will add “crossbow”. Crossbow hunting has enjoyed increasing popularity in recent years and it is useful from an enforcement standpoint to list this specific activity.

Rule 3.1 (Partial): Proposed and Approved Text:

Hunting and trapping are prohibited within the Park. Use or possession of any firearm, bow and arrow, sling shot, **crossbow**, ~~or~~ air rifle or pistol is prohibited...

If Adopted as Proposed and Approved above, Rule 3.1 (Partial) Clean Text:

Hunting and trapping are prohibited within the Park. Use or possession of any firearm, bow and arrow, sling shot, crossbow, air rifle or pistol is prohibited...

Basis Statement: Rule 4.6 (Where toilets are not available...) Revising this text will include provisions which call out specific actions for those with human waste to dispose above treeline to align with Leave No Trace™ practices.

Rule 4.6: Proposed and Approved Text:

Where toilets are not available, human waste must be disposed of at least 200' from water or trail ~~by burying or by carry out~~. **Below treeline, human waste must be buried or carried out. Above treeline, the digging of catholes is prohibited, and human waste must be carried out or left on the surface of the soil or a rock.**

If Adopted as Proposed and Approved above, Rule 4.6 Clean Text:

Where toilets are not available, human waste must be disposed of at least 200' from water or trail. Below treeline, human waste must be buried or carried out. Above treeline, the digging of catholes is prohibited, and human waste must be carried out or left on the surface of the soil or a rock.

Basis Statement: Rule 5.4 (Partial) (The operation of...) Enforcement of the prohibition of motorcycles beyond where the pavement ends inside the Park is a somewhat arbitrary measure and one that is difficult to enforce. This revision will make this provision more practically enforceable. The expected operation of this Rule will be in accordance with BSP Policy.

Rule 5.4: Proposed and Approved Text (Partial):

(The operation of Motorized trail bikes, and ATVs...). The operation of Motorcycles is prohibited **beyond Togue and Matagamon gatehouses** ~~on unpaved roads~~ within the Park.

If Adopted as Proposed and Approved above, Rule 5.4 Clean Text (Partial):

(The operation of Motorized trail bikes, and ATVs ...). The operation of Motorcycles is prohibited beyond Togue and Matagamon gatehouses within the Park.

Basis Statement: Rule 5.5 (Take-off and Landing...) The current rule leaves room for visitors to legally carry and deploy drones as long as they do so off of trails or bodies of water. This proposed revision to existing rule seeks to make this provision more practically enforceable and would bring the rule language into alignment with current enforcement practice.

Rule 5.5 Proposed and Approved Text:

Take-off and landing of aircraft in the Park are prohibited except on Matagamon, Nesowadnehunk, and Webster Lakes. Persons landing aircraft on permitted waters in the Park must register with Park Headquarters or a gatehouse in advance. "Aircraft" is defined to include any machine or device capable of deriving support in the atmosphere from the reactions of the air, including, but not limited to model craft, hot air balloons, hang gliders, para-sails, para-gliders and unmanned aerial vehicles (UAVs). The possession **or use** of a UAV **within the Park boundaries** ~~on any trail, waterway or body of water within the Park~~ is

Annual List of Rule-Making Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

prohibited. UAVs may be transported through the Park if kept in a car trunk, enclosed in a case, or otherwise inaccessible to use.

If Adopted as Proposed and Approved above, Rule 5.5 Clean Text:

Take-off and landing of aircraft in the Park is prohibited except on Matagamon, Nesowadnehunk, and Webster Lakes. Persons landing aircraft on permitted waters in the Park must register with Park Headquarters or a gatehouse in advance. "Aircraft" is defined to include any machine or device capable of deriving support in the atmosphere from the reactions of the air, including, but not limited to model craft, hot air balloons, hang gliders, para-sails, para-gliders and unmanned aerial vehicles (UAVs). The possession or use of a UAV within the Park boundaries is prohibited. UAVs may be transported through the Park if kept in a car trunk, enclosed in a case, or otherwise inaccessible to use.

Fiscal impact of rule:

N/A

Annual List of Rule-Making Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: **Maine Human Rights Commission**
Umbrella-Unit: **94-411**
Statutory authority: 5 MRS §4566(7)
Chapter numbers/titles: **Ch. 2**, Procedural Rule
Ch. 3, Employment Regulations of the Maine Human Rights Commission
Ch. 7, Accessibility Regulations of the Maine Human Rights Commission
Ch. 8, Housing Regulations of the Maine Human Rights Commission
Filing numbers: **2022-235 to 238**
Effective date: 12/10/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Chapter 2: The current procedural rule is not as clear as it could be, and is silent on a number of procedural matters that have come up over the past several years. We anticipate that the rule will make the process more transparent, and will provide more concrete guidance to the parties.

Chapter 3: The employment provisions of the MHRA have been amended by the Legislature in recent years, and this revision addresses those changes. It includes, but is not limited to, inclusion of new protected classes (familial status and having sought and obtained a permanent order of protection), clarification that leave can be a reasonable accommodation, updated provisions on protections for persons who are pregnant or have recently been pregnant, and using gender-inclusive language.

Chapter 7: The public accommodation provisions have also been amended recently, and this revision incorporates those changes. It includes, but is not limited to, the inclusion of age as a protected class, the requirement of gender-neutral single-user toilet rooms, and use of gender-inclusive language.

Chapter 8: The housing provisions were also recently amended by the Legislature, and this revision incorporates those changes. It includes, but is not limited to, a new definition of familial status, inclusion of a new protected class (having sought and obtained a permanent order of protection), and the use of gender-inclusive language.

Basis statement:
(See above.)

Fiscal impact of rules:
None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2022 to December 31, 2022
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. 202 (*Repeal*), Medical Board
Filing number: 2022-098
Effective date: 5/30/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This governs the establishment of the Medical Board of the Maine Public Employees Retirement System.

Basis statement:

The proposal for rulemaking was noticed on March 23, 2022. A public hearing was held on April 14, 2022. One member of the public provided oral and written comments at the public hearing. No other members of the public submitted written comments prior to the April 25, 2022 comment deadline.

The proposal was to repeal the rule. The rule governs the establishment of the Medical Board and obtaining consultations from the Medical Board or other providers. The System proposed repeal of the rule because statutory references to a Medical Board have been repealed and the Medical Board has been disbanded.

One member of the public presented comments in opposition to the repeal of this rule. The commenter advocated for rulemaking to address medical reviews and independent medical examinations (“IMEs”) by the System’s vendors and to address other matters regarding the disability and appeals programs.

Because the commenter did not identify any reasons why the current version of rule Chapter 202 should continue in effect, the Board repeals the rule.

At the Board’s regular meeting held on May 12, 2022, Ken Williams made the motion, seconded by Mark Brunton to repeal the rule and to adopt the basis statement. Seven Trustees voted in favor of the motion, and one (John Kimball) abstained. Motion to repeal the rule carried.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2022 to December 31, 2022
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), 17603(9)
Chapter number/title: Ch. 414, Required Minimum Distributions
Filing number: 2022-151
Effective date: 8/20/2022
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* Section 401(a)(9), and any Code requirements on the form of distribution.

Basis statement:

The proposal for rulemaking was noticed on June 14, 2022. A public hearing was held on July 14, 2022, at which no members of the public submitted comments. No members of the public submitted written comments prior to the July 25, 2022 comment deadline.

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. The proposed changes establish the form and timing of the payment of a required minimum distribution to a beneficiary of a deceased vested member who does not otherwise execute a benefit selection form in a timely manner.

While performing a final review of the proposed amended rule, staff noticed that section 1 of the rule included redundant numbering. The rule considered for adoption by the Board includes this correction.

At the Board's regular meeting held on August 11, 2022, Dick Metivier made the motion, seconded by Ken Williams to adopt the amended rule. Voted unanimously by those board members present.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2022 to December 31, 2022
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), 17921, 18521
Chapter number/title: **Ch. 509**, Determination of Inability to Perform the Essential Functions of the Employment Position
Filing number: **2022-187**
Effective date: 9/20/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule specifies the standard and definitions to be applied under 5 MRS §§ 17921 and 18521 in determining whether a disability applicant is unable to perform the essential functions of the employment position with reasonable accommodation.

Basis statement:

The proposal for rule-making was noticed on July 20, 2022. A public hearing was held on August 11, 2022, One member of the public provided oral and written comments at the public hearing. No other members of the public submitted written comments prior to the August 22, 2022 comment deadline.

This rule specifies the standard and definitions to be applied under 5 MRS §§ 17921 and 18521 in determining whether a disability applicant is unable to perform the essential functions of the employment position with reasonable accommodation. The amendments incorporate the provisions of PL 2021 ch. 277 that modified the definition of “disabled.” The amendments also make non-substantive changes and remove obsolete language.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2022 to December 31, 2022
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. 512 (New), Independent Medical Examinations
Filing number: 2022-099
Effective date: 5/31/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This new rule implements and describes procedures for conducting independent medical examinations for applicants for disability retirement benefits under 5 MRS §17106-B(2), as enacted by Public Law 2021 ch. 277.

Basis statement:

The proposal for rule-making was noticed on March 23, 2022. A public hearing was held on April 14, 2022. One member of the public provided oral and written comments at the public hearing. No other members of the public submitted written comments prior to the April 25, 2022 comment deadline.

The proposal is new rule Chapter 512, the purpose of which is to address reimbursement rates for attending Independent Medical Examinations (IME) and means for waiving IMEs under the new disability law, PL 2021 ch. 277. The proposed rule establishes the rate at which a member's representative who attends the member's IME is reimbursed for mileage and for time if the representative is a health care provider. The proposed rule also establishes the manner in which a member may waive an IME.

One member of the public presented comments in opposition to the repeal of this rule. The commenter did not object to the substance proposed in Chapter 512. Rather, the commenter opined that the proposed rule "...answers only the simplest procedural questions... (and that)...more clarification of procedures around Independent Medical Exams is necessary." The Board notes that the rule as proposed addresses the specific requirement of Chapter 277 that the Board establish reimbursement rates for IMEs. While the law does not specifically require the Board to define what constitutes a waiver of an IME, the Board determines that given the potential significance of waiving an exam, the guidance should be clear as to how an IME is waived. Because the commenter did not identify any reasons why the provisions proposed should not be adopted, the Board adopts the rule as proposed.

At the Board's regular meeting held on May 12, 2022, Dick Metivier made the motion, seconded by Shirrin Blaisdell to adopt the rule and its basis statement. Seven Trustees voted in favor of the motion, and one (John Kimball) voted in opposition. Motion to adopt the rule carried.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2022 to December 31, 2022
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. 702, Appeals of the Decisions of the Chief Executive Officer
Filing number: 2022-188
Effective date: 9/20/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule sets out the process for appeals of decisions of the Chief Executive Officer to the Board of Trustees. It provides for the appointment of a hearing officer to conduct an appeal and to prepare a recommended decision for action by the Board.

Basis statement:

The proposal for rule-making was noticed on July 20, 2022. A public hearing was held on August 11, 2022, One member of the public provided oral and written comments at the public hearing. No other members of the public submitted written comments prior to the August 22, 2022 comment deadline.

This rule sets out the process for appeals of decisions of the Chief Executive Officer to the Board of Trustees. It provides for the appointment of a hearing officer to conduct an appeal and to prepare a recommended decision for action by the Board. The amendments incorporate the provisions of PL 2021 ch. 277 that: (1) include a mechanism for the appellant to participate in selection of the hearing officer, and (2) provide a process for a successful appellant to receive attorney's fees. The changes also incorporate the title change from Executive Director to Chief Executive Officer and remove obsolete language.

One member of the public presented comments in opposition to the proposed amendments to this rule. The commenter did not object to the substance proposed in Chapter 702. Rather, the commenter opined that there should be additional amendments made to the rule, including changing the word "shall" to "must" in Section 14 of the rule. 1 MRS §71 provides regulatory rules of construction. Subsection 9-A states, in part, "(s)hall" and "must" are terms of equal weight that indicate a mandatory duty, action or requirement." Further, the Maine Legislative Drafting Guide states that "(s)hall is properly used to impose a duty on a person or body or to mandate action by a person or body" and that "(m)ust, rather than "shall," should be used when the subject is not a person or body." Based on this guidance, staff does not believe that any changes to the proposed rule are necessary in response to this comment, and the Board concurs.

The commenter also opined that the existing rule does not provide a mechanism for filing a complaint against a hearing officer. Section 16(2) of the existing rule provides clear guidance as to how a party can address what they believe to be an error in the hearing officer's recommended decision. Staff does not believe that any additional changes to the proposed rule are necessary in response to this comment, and the Board concurs.

The commenter added that consensus-based rulemaking should be used to address further policy issues regarding appeals and the disability program. Consensus-based rulemaking is not required, 5 MRS §8051-B. However, staff is initiating consensus-based rulemaking on these subjects. Because this comment did not identify any reasons why the amendments proposed should not be adopted, the Board adopts the amended rule as proposed.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

At the Board's regular meeting held on September 8, 2022, Shirrin Blaisdell made the motion, seconded by Dick Metivier to adopt the amended rule. Voted unanimously by those board members present.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2022 to December 31, 2022
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), 18801
Chapter number/title: Ch. 803, Participating Local District Consolidated Retirement Plan
Filing number: 2022-137
Effective date: 7/23/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The amendment to the rule sets the cost-of-living adjustment for the period September 1, 2021 to August 31, 2022, to 3.5%. The amendments also remove obsolete language and corrects cross-references.

Basis statement:

The proposal for rulemaking was noticed on May 18, 2022. A public hearing was held on June 9, 2022.

Under the current rule, cost-of-living adjustments (COLA) are paid to eligible retirees based on the Consumer Price Index for All Urban Consumers (CPI-U), up to a maximum of 2.5%. The CPI-U for the twelve-month period ending June 30, 2021 was 5.4%. The proposed amendment to the rule authorizes the payment of an additional 1.0% cost-of-living adjustment effective September 2021 to eligible retirees. The proposed amendments also remove obsolete language and correct cross-references.

No members of the public provided comments at the public hearing. Two individuals submitted written comments prior to the June 20, 2022 comment deadline. One individual did not specifically address the proposals of the rule, but instead suggested that a new class of COLA recipients be established to address retirees for whom benefits are reduced by the Social Security Windfall Elimination Provision (WEP). The other individual commented in favor of the proposed changes to the COLA provision.

The PLD Advisory Committee was provided with information about the cost-of-living adjustment provision and discussed various options to address the unusually high inflation. Committee members reached consensus that an additional 1.0% COLA should be provided to eligible retirees, in line with the additional COLA provided to eligible retirees from the State-sponsored plans. 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 without modification. The Board declined to establish a new class of COLA recipients as part of this rulemaking and requested that staff bring the individual's comment to the PLD Advisory Committee for future consideration.

At the Board's regular meeting held on July 14, 2022, Dick Metivier made the motion, seconded by Henry Beck to adopt the amended rule. Voted unanimously by all trustees present.

Fiscal impact of rule:

None

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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, 1100-AA
Chapter number/title: Ch. 601, The Maine State Grant Program, *Amendment 12*
Filing number: 2022-192
Effective date: 10/10/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule conforms the governing program rule with statutory changes made by the 129th Legislature with respect to adult learners. The rule defines “adult learner” and extends from ten semesters to twelve semesters the length of time during which adult learners may avail themselves of the grant. It also makes certain technical changes with respect to punctuation and spacing in the current rule.

Basis statement:

This rule defines criteria necessary to be met for student and institution eligibility for participation on the Maine State Grant Program and establishes a procedure for awarding grants.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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, 1100-AA
Chapter number/title: Ch. 619, Foreign Credentialing and Skills Recognition Revolving Loan Program, *Amendment 1*
Filing number: 2022-004
Effective date: 1/9/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The rule amendment makes adjustments necessary in order for the Authority to implement the Foreign Credentialing and Skills Recognition Revolving Loan Program as amended by the Legislature recently by PL 2021 ch. 133. The program has been amended to:

1. Add as an eligible loan expense the costs of the filing fee for an immigrant's initial work permit application;
2. Define "initial work permit";
3. Ensure that a change in federal regulations will not require a future statutory amendment of the provision of the program governing eligibility under the program; and
4. Change a specific time-frame in the provision governing program eligibility while waiting for asylum to an unspecified time period while waiting on an application for asylum or other immigrant benefit or relief.

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:

The amendment is not anticipated to have any fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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 §12953; PL 2021 ch. 483(H)
Chapter number/title: Ch. 620 (New), Maine Health Care Provider Loan Repayment Pilot Program
Filing number: 2022-043
Effective date: 3/29/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The rule is promulgated in order for the Authority to implement the *Maine Health Care Provider Loan Repayment Pilot Program* as enacted by the Legislature through PL 2021 ch. 483 (part H).

No public hearing was held on the draft rule; however, the Authority did receive three separate comments on the proposed rule from interested parties Northern Light Health; MaineHealth; and the Maine Primary Care Association. Northern Light Health's comments focused on the prioritization of applicants section (section 2(D)) of the draft rule. They recommended that the following professions be added to the list of prioritized applications: pharmacists (they are in great demand currently and typically incur large student debt); licensed clinical professional counselors (there is demand for their services and they must have a master's degree in order to practice); and health care technicians (including respiratory therapists, surgical technicians, and imaging technicians). MaineHealth submitted comments, as well. They first suggested that the proposed definition of "Maine health care provider" in section 1(B) be amended to ensure that only those individuals who have met state education and certification standards are covered. They also suggested that a definition of "employer" be included in the rule's definitions and that it be limited to Maine-based organizations in order to preclude participation by temporary "traveler" or contracted employees from out-of-state. MaineHealth also suggested that program funding be maximized and that the Authority consider reducing in section 2(C)(1) the maximum awards (\$25,000 per year or up to \$75,000 or 50% of their outstanding loan balance, whichever is lesser). They further suggested clarification of portions of the prioritized professions section, such as the proposed criteria of "access to health care" to include clear requirements such as access to care standards and number of vacancies in a given area. They also suggested that criteria be added to reflect how the Authority will identify the need for health care professionals in a given region. With respect to the list of prioritized professions, MaineHealth suggested striking from the list occupational therapists; physical therapists; and speech therapists. The workforce shortage in these areas is not as high in their view. They suggested adding to the list medical assistants; respiratory therapists; surgery technicians; MRI technicians; and ultrasonographers. In their view, these are the professions most critical to supporting community needs and are experiencing the greatest shortages. They also cited a strong need to recruit and retain more of these particular professions. Finally, they suggested a minor amendment to section 2, Sub-section F (Breach of Loan Repayment Agreement). They suggested adding "and/or employment" after contract because many of their positions are employed and not contracted out. The Maine Primary Care Association also submitted comments. They first noted that it would be ideal to make the program, which is now termed a "pilot" funded with \$1 million in one-time American Rescue Plan Act of 2021 (ARPA) funding, permanent with ongoing funding. Allowing for annual renewal would in their view make the program more beneficial and encourage more participation. They

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

also disagreed with the rule's proposed disallowance of participation by individuals who are currently or have previously benefitted from similar other health care loan or loan repayment programs, whether administered by the Authority or others. They believe this may discourage participation and creates an additional barrier for such access. The association finally suggested that the program highly prioritize providers that accept Medicaid patients.

The Authority agreed with many of the suggestions received from stakeholders and incorporated them into an amended, revised rule. The Authority added a definition of "employer" in section 1(B) of the rule to ensure that the program focused on Maine-based employers. It also added language in the application section (section 2(A)(6) of the rule) requiring that a statement of intent include the applicant's intent to establish residency in the state. In section 2(B) of the rule, the Authority sought to make clear as to program eligibility that an applicant must not be currently benefitting (but may have benefitted previously) from FAME-administered loan or loan repayment program, or from ones administered by another entity. In section 2(D) of the rule, with respect to prioritization of applicants, the Authority clarified that, with respect to access to health care criteria, it will consider the population where the health care provider intends to practice generally, such as number of vacancies within a local provider system; timeliness of appointments and for the population where the health care provider intends to practice; and whether they or their employer accept Medicaid. Also in this subsection, the Authority clarified that, with respect to the need for specific health care practitioners in a given employment region, it would consider measures such as available state or industry labor data and other information related to vacancy rates, or professions needed most in the area in order to maintain access to the most critical services. The Authority added the following occupations to the list of prioritized professions in section 2(D) of the rule: licensed clinical professional counselors; medical assistants; pharmacists; and health care technicians, including, but not limited to, respiratory therapists, surgical technicians, and imaging technicians such as MRI technicians and ultrasonographers. The Authority rejected MaineHealth's suggestion to strike from the list occupational therapists; physical therapists; and speech therapists. In section 2(F), with respect to possible breach of a loan repayment agreement, the Authority added the words "and/or employment" to the following sentence: "In the event that an employer chooses not to renew the contract and/or employment of any individual receiving loan repayment, the Authority is not under any obligation to locate another employer which will accept the individual." Finally, the Authority rejected the suggestion by MaineHealth to reduce in section 2(C)(1) of the rule the maximum award amounts (\$25,000 per year or up to \$75,000 or 50% of their outstanding loan balance, whichever is lesser) in order to maximize limited funding. These amounts are set forth in the governing statute, however, and the Authority is not at liberty to unilaterally amend them. Further, the statutory language states "up to" certain amounts, thereby giving the Authority some flexibility as to precise award amounts. The Authority agreed partially with the Maine Primary Care Association's comment that the rule's proposed disallowance in section 2(B)(5) of participation by individuals who are currently or have previously benefitted from similar other health care loan or loan repayment programs, whether administered by FAME or others. The Authority decided to prohibit only concurrent/simultaneous participation and not consecutive participation by program participants in similar loan or loan repayment programs. The Authority did agree with the association's suggestion to give some priority to participants who accept Medicaid patients by adding it as a consideration in section 2(D)(1)(a) when assessing the access to health care criteria for prioritization of applicants.

After several of the suggestions were incorporated into an amended draft rule, a second thirty-day comment period was held. The Authority received just one set of comments this time. MaineHealth expressed its appreciation to FAME for incorporating several of its prior comments, and again renewed its recommendation that the Authority considering lowering award amounts in order to stretch dollars across more practitioners. The board again rejected

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

this suggestion, however, and no further modifications were made to the amended draft rule prior to its adoption.

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:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-S sub-§5

Agency name: **Maine Commission on Indigent Legal Services**
Umbrella-Unit: **94-649**
Statutory authority: 4 MRS §§ 1804(2)(F), (3)(B), (3)(F), (4)(D); PL 2021 ch. 398 §A-22
Chapter number/title: **Ch. 301**, Fee Schedule and Administrative Procedures for Payment of Commission Assigned Counsel
Filing number: **2022-007**
Effective date: 1/17/2022
Type of rule: Major Substantive/Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Pursuant to 4 MRS §1804(3)(F), the Commission is required to establish the rate of compensation for court appointed and Commission assigned counsel. This rule amendment makes permanent the emergency rule adopted in July 2021 which raised the hourly rate paid to attorneys to \$80 per hour pursuant to a legislative appropriation for that purpose. This rule also sets the fee amounts that trigger presumptive review for specific case types and provides for some discretion for the Executive Director to authorize payment of a voucher submitted after 90 days of the triggering date upon a showing of good cause.

Basis statement:

Since July 1, 2015, MCILS Rules Chapter 301, Section 2, has authorized a rate of Sixty Dollars (\$60.00) per hour for time spent on an assigned case. Court appointed counsel operating under the MCILS system have been withdrawing from that system in part because the rate of payment for work on assigned cases did not permit counsel to operate cost efficiently. MCILS relies on appointed counsel to discharge its constitutional and statutory obligations. In sec. A-22 of the supplemental appropriations bill passed by the Legislature for fiscal years 2021-2022 and 2022-2023, the Legislature appropriated sufficient funds to pay lawyers \$80.00/hr. for the 2021-2022 fiscal year and the 2022-2023 fiscal year. Section 2 was amended on July 21, 2021 by emergency rulemaking to permit MCILS to pay appointed counsel the \$80 per hour provided by the Legislature. The rule amendment also sets the fee amounts that trigger presumptive review for specific case types and provides for some discretion for the Executive Director to authorize payment of a voucher submitted after 90 days of the triggering date upon a showing of good cause.

Fiscal impact of rule:

The rate increase contained in this permanent rule will increase the cost of providing indigent legal services by \$5,732,980 in fiscal year 2021-2022 and by \$5,732,980 in fiscal year 2022-2023.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-S sub-§5

Agency name: **Maine Commission on Indigent Legal Services**
Umbrella-Unit: **94-649**
Statutory authority: 4 MRS §§ 1804(2)(F), (3)(B), (3)(F), (4)(D); PL 2021 ch. 398 §A-22
Chapter number/title: **Ch. 301**, Fee Schedule and Administrative Procedures for Payment Court or Commission Assigned Counsel
Filing number: **2022-100**
Effective date: 6/23/2022
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

Pursuant to 4 MRS §1804(3)(F), the Commission is required to establish the rate of compensation for court appointed and Commission assigned counsel. This rule amendment makes permanent the emergency rule adopted in July 2021 which raised the hourly rate to attorneys to \$80 per hour pursuant to a legislative appropriation for that purpose.

Basis statement:

Since July 1, 2015, MCILS Chapter 301 Section 2, has authorized a rate of Sixty Dollars (\$60.00) per hour for time spent on an assigned case. Court appointed counsel operating under the MCILS system have been withdrawing from that system in part because the rate of payment for work on assigned cases did not permit counsel to operate cost efficiently. MCILS relies on appointed counsel to discharge its constitutional and statutory obligations. In Sec. A-22 of the supplemental appropriations bill passed by the Legislature for fiscal years 2021-2022 and 2022- 2023, the Legislature appropriated sufficient funds to pay lawyers \$80.00/hr. for the 2021-2022 and the 2022-2023 fiscal years. Section 2 was amended on July 21, 2021 by emergency rulemaking to permit MCILS to pay appointed counsel the \$80 per hour provided by the Legislature. The rule amendment proposed here will make the changes adopted in the emergency rule permanent. The rule amendment also sets the fee amounts that trigger presumptive review for specific case types and provides for some discretion for the Executive Director to authorize payment of a voucher submitted after 90 days of the triggering date upon a showing of good cause.

Fiscal impact of rule:

The rate increase contained in this permanent rule will increase the cost of providing indigent legal services by \$5,732,980 in fiscal year 2021-2022 and by \$5,732,980 in fiscal year 2022-2023

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-S sub-§5

Agency name: **Maine Commission on Indigent Legal Services**
Umbrella-Unit: **94-649**
Statutory authority: 4 MRS §§ 1804(2)(G), (3)(A), (4)(D)
Chapter number/title: **Ch. 303** (*New*), Procedures Regarding Legal Research Access and Materials
Filing number: **2022-222**
Effective date: 11/12/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

MCILS received funding from the 130th Legislature to allow it to provide online legal research services at no cost to its rostered attorneys who provide direct client services and to allow those attorneys to seek reimbursement for necessary legal research materials. Providing access to these materials works to fulfil the Commission's statutory mission of providing efficient, high quality representation to indigent clients.

Fiscal impact of rule:
\$275,000.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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), 4741(14); Section 42 of the *Internal Revenue Code of 1986* as amended.
Chapter number/title: **Ch. 16** (*Repeal and replace*), Low Income Housing Tax Credit Rule
Filing number: **2022-134**
Effective date: 7/13/2022
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 years 2023 and 2024, as required pursuant to Section 42 of the *Internal Revenue Code*. The rule repeals and replaces the current Chapter 16, *Low-Income Housing Tax Credit Rule*, regarding the allocating and administering of the credit for calendar years 2021 and 2022.

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*.

Fiscal impact of rule:

The 2023 State of Maine ceiling of federal low-income housing tax credits is projected to raise approximately \$30,500,000 of private investor capital, and the 2024 State of Maine ceiling of federal low-income housing tax credits is projected to raise approximately \$31,000,000 of private investor capital. The private investor capital generated by the federal low-income housing tax credits will be used to develop affordable housing for low-income persons. Additionally, it is estimated that 1,400 jobs a year will be created with this investment. The rule will not impose any costs on municipalities or counties for implementation or compliance.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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), 4741(18); 42 USCA §§ 11301 *et seq.*
Chapter number/title: Ch. 19 (*Repeal and replace*), Homeless Solutions Rule
Filing number: 2022-233
Effective date: 12/7/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This replacement rule repeals and replaces in its entirety the current *Homeless Solutions Rule* in order to (i) revise and update language where appropriate; (ii) add language regarding the new regionalized homeless response system; (iii) address concerns regarding bed utilization; and (iv) make changes to the funding formula allocation.

Basis statement:

This rule repeals and 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) adds language regarding the new regionalized homeless response system; (iii) addresses concerns regarding bed utilization; and (iv) makes changes to the funding formula allocation.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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** (*Repeal and replace*), Home Energy Assistance Program Rule
Filing number: **2022-021**
Effective date: 2/15/2022
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

This emergency amendment to the rule establishes the Low Income Credit Program which provides a one-time bill credit for low income electricity customers of Central Maine Power and Versant. MaineHousing has determined that emergency adoption of the amendment is necessary based on the following findings:

1. The Maine Housing Authorities Act requires MaineHousing to administer HEAP in the State of Maine in accordance with rules adopted under the *Maine Administrative Procedure Act*. The existing rule needs to be amended to allow for a one-time bill credit for low-income electricity customers
2. As a result of dramatic increases in the price of natural gas and oil, Maine ratepayers have large increases in their energy costs this winter. Central Maine Power's and Versant Power's standard offer rates increased by more than 80% on January 1, 2022. The average monthly increase for the residential customers of those utilities is approximately \$30/month. These increases have occurred at the same time as large increases in home heating costs and transportation costs driven by the same increases in fossil fuel prices that drove up electricity supply rates. These increases disproportionately harm customers whose incomes are at or below 150% of the Federal Poverty Level.
3. Current rising inflation in the price of other necessities further disproportionately harms those whose incomes are at or below 150% of the Federal Poverty Level.
4. In addition, the pandemic has also widened gaps in wealth, employment, housing, and access to health care across the United States.
5. The Low Income Bill Credit Program is needed to protect the Power Companies' customers whose household incomes are at or below 150% of the Federal Poverty Level.
6. Emergency adoption is needed to provide the funds for the Power Companies to make the one-time bill credits to their most vulnerable customers by March 30, 2022, because beginning on April 15, 2022, customers with past-due bills will be at significantly greater risk of having their electricity disconnected for nonpayment.
7. Immediate adoption of the emergency amendment is necessary to avoid an immediate threat to public health, safety, and general welfare.

Fiscal impact of rule:
None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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** (*Repeal and replace*), Home Energy Assistance Program Rule
Filing number: **2022-135**
Effective date: 7/13/2022
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, heat pumps, and heating system repair and replacement funds to income eligible households in the State of Maine. This replacement rule: allows for Categorical Income Eligibility for Households receiving TANF or SNAP assistance; expands the time period in which eligible medical expenses can be deducted for income determination; allows for HEAP Categorical Income Eligibility for Weatherization, CHIP and Heat Pump programming; and permits TANF Supplemental Benefits to be sent to HEAP Vendors pre-delivery in the same manner as regular HEAP Benefits. 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, 2022 to December 31, 2022
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, 4722(1)(L)
Chapter number/title: **Ch. 29** (*Repeal and replace*), Multi-family Mortgage Loans
Filing number: **2022-180**
Effective date: 9/19/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This replacement rule repeals and replaces in its entirety the current Multi-family Mortgage Loans rule. The rule provides the framework and basic requirements for MaineHousing Multi-family lending programs and governs the allocation of resources for such programs, program design, the publication and distribution of program guides, eligibility standards, loan standards, construction and rehabilitation requirements, management requirements, and potential selection criteria. This replacement rule: adds an additional New Construction and Rehabilitation Requirement for Developments Financed with Project Labor Agreement Funds.

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. This replacement rule: adds an additional New Construction and Rehabilitation Requirement for Developments Financed with Project Labor Agreement Funds.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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, 4741.1; 36 MRS §5219-WW
Chapter number/title: **Ch. 35** (*Repeal and replace*), State Low Income Housing Tax Credit Rule
Filing number: **2022-136**
Effective date: 7/13/2022
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 State Low Income Housing Tax Credit Rule. The rule provides for the allocation and administration of the state affordable housing tax credit, a refundable credit for the development and preservation of certain affordable multifamily rental housing in Maine. The law establishing the credit requires MaineHousing to recapture credit for noncompliance and provides for a lien to enforce repayment of recapture. The replacement rule adds procedures for determining what constitutes noncompliance that causes recapture and when recapture is calculated and collected. The new procedures limit recapture to material noncompliance that is not corrected within a reasonable period of time and, except in cases of severe or repeated noncompliance, will defer recapture to the end of the 15-year compliance period and limit recapture to the period of noncompliance to maintain the affordability of the projects, particularly the very low-income units, to the greatest extent possible during the compliance period and to minimize the financial impact on the projects.

Fiscal impact of rule:

\$10,000,000 per year tax credits.