**State of Maine: Notice of Agency Rulemaking – January 3, 2024**

**NOTICE OF STATE RULEMAKING**

**Public Input for Rules**

Notices are published each Wednesday to alert the public regarding state agency rulemaking. You may obtain a copy of any rule by notifying the agency contact person. You may also comment on the rule, and/or attend the public hearing. If no hearing is scheduled, you may request one - the agency may then schedule a hearing, and must do so if 5 or more persons request it. If you are disabled or need special services to attend a hearing, please notify the agency contact person at least 7 days prior to it. **Petitions**: you can petition an agency to adopt, amend, or repeal any rule; the agency must provide you with petition forms, and must respond to your petition within 60 days. The agency must enter rulemaking if the petition is signed by 150 or more registered voters, and may begin rulemaking if there are fewer. You can also petition the Legislature to review a rule; the Executive Director of the Legislative Council (115 State House Station, Augusta, ME 04333, phone (207) 287-1615) will provide you with the necessary petition forms. The appropriate legislative committee will review a rule upon receipt of a petition from 100 or more registered voters, or from "...any person who may be directly, substantially and adversely affected by the application of a rule..." (Title 5 §11112). **World‑Wide Web**: Copies of the weekly notices and the full texts of adopted rule chapters may be found on the internet at: <http://www.maine.gov/sos/cec/rules>. There is also a list of rulemaking liaisons (<http://www.maine.gov/sos/cec/rules/liaisons.html>), who are single points of contact for each agency.

**NOTICE**

AGENCY: **29-250** - Department of Secretary of State, **Bureau of Corporations, Elections and Commissions**

RULE TITLE OR SUBJECT: **Request for Comments on the *Maine Administrative Procedure Act* (APA)**

CONCISE SUMMARY: By the end of January, 2024, the Secretary of State must file an annual report to the Governor and the Joint Standing Committee on State and Local Government regarding the *Administrative Procedure Act*. The purpose of this notice is to solicit, from state agencies and the public, recommendations for improvements to the rulemaking process. We will include a summary on these recommendations in the report. Please submit comments via email or U.S. postal mail.

STATUTORY AUTHORITY: 5 MRS §8056-A

PUBLIC HEARING: None

DEADLINE FOR COMMENTS: January 26, 2024

AGENCY CONTACT PERSON: Melissa Packard, Department of Secretary of State, 101 State House Station, Augusta, ME 04333. Telephone: (207) 624-7650. Fax: (207) 287-6545. Email: Rulemaking.CEC@maine.gov

WEBSITE: <http://www.maine.gov/sos/cec/rules/index.html>.

**PROPOSALS**

AGENCY: **10-149 -** Department of Health and Human Services, **Office of Aging and Disability Services**

CHAPTER NUMBER AND TITLE: **Ch. 1,** Adult Protective Services System, *(Repeal Proposed);* **Ch. 2, Section 1,** Adult Protective Services System, *(Adoption Proposed)*

TYPE OF RULE:Routine Technical

# PROPOSED RULE NUMBER: **2023-P253, 2023-P254** *(Second publication, public hearing rescheduled)*

BRIEF SUMMARY: The Department is proposing comprehensive amendments of the Adult Protective Services System rule, and the recodification of the rule as 10-149 C.M.R. Chapter 2, Section 1 - Adult Protective Services System.

 This proposed rulemaking seeks to make the following changes:

 The regulations governing programs administered by the Office of Aging and Disability Services (OADS) are currently divided into two Titles in the Code of Maine Rules: Title 10, Unit 149 (formerly the Office of Elder Services) and Title 14, Unit 197 (formerly the Office of Adults with Cognitive and Physical Disability Services). OADS is completing the process of combining these two former State agencies into one by eliminating use of 14-197 and creating a single comprehensive OADS Policy Manual under 10-149. The rulemaking also proposes formatting corrections in conformance with other OADS regulations, use of gender-neutral language, and clarifying edits.

 Pursuant to P.L. 2019, Ch. 661, § 3, the proposed rule provides that Adult Protective Services (APS) substantiations of reports of suspected abuse, neglect, or exploitation of dependent or incapacitated adults will result in the listing of substantiated persons on a Substantiation Registry. The proposed rule defines “APS Substantiation Registry,” and states who will be listed on the Registry, including final determinations in other venues that afforded the party due process and an opportunity to appeal.

 Consistent with the Adult Protective Services Act, this rulemaking also broadens the category of caregivers who may be substantiated for having abused, neglected, or exploited their clients, from those who assist adults with intellectual disabilities or autism to those who support any incapacitated or dependent adult. The proposed rule also amends the definitions of “Dependent Adult” and “Incapacitated Adult” to better align with definitions provided in Maine law.

 Section numbering in the rule is changed to maintain consistent formatting across the Department’s rules, including numbering the Summary as Section 1.01.

Section 1.04 describes the responsibility of APS staff for documentation, review, determinations, and report closures.

 Section 1.05-3 (previously codified as Section 1.04-3) includes a new provision requiring the Department to provide Maine’s Protection and Advocacy Agency with APS records when requested.

 Section 1.07 (previously codified as Section 1.06) eliminates the characterization of substantiations in the extant rule as either Level I or Level II Substantiations. This section retains, with limited clarifications, the examples of actions or omissions that justify substantiation, and states that an investigation may result in one of four conclusions: “Substantiated,” “Substantiated – Other,” “Not Substantiated,” and “Unable to Determine.”

 Section 1.08 was added to the rule for organizational clarity. This section now includes (1) the Department’s responsibility to provide written notice to the alleged perpetrator of a substantiation; (2) due process and appeal rights of the alleged perpetrator; and (3) hearing procedures as described in the Administrative Hearings Regulations, 10-144 C.M.R. Chapter 1. Subsection 1.08 also states when a registry listing may be made based on a determination in another proceeding.

PUBLIC HEARING:The public hearing originally scheduled for Wednesday, December 20, 2023 was postponed due to statewide storm-related closures and power and internet outages. The public hearing will be held at 9:00 am Eastern Time (US and Canada) on Monday, January 22, 2024, at the Department of Health and Human Services, 109 Capitol St., Augusta, ME. An online option is available via Zoom at <https://mainestate.zoom.us/j/89436187868?pwd=MlRzUmUrY2hUL2g3bVB3aGxHK0NUdz09>

Meeting ID: 894 3618 7868

Passcode: 14211389

COMMENT DEADLINE:The Department will accept e-mail and standard mail comments until 11:59 PM Eastern Time (US and Canada) on Thursday, February 1, 2024.

# CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Esther Miller, Maine Department of Health and Human Services Office of Aging and Disability Services, 41 Anthony Avenue 11 State House Station, Augusta, Maine 04333-0011. EMAIL: Esther.Miller@maine.gov Telephone: 207-441-8349, FAX: 207-287-9915, TTY: 711 (Deaf or Hard of Hearing)

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES:The Department anticipates that this rulemaking will not have any impact on municipalities or counties.

STATUTORY AUTHORITY FOR THIS RULE:22 M.R.S. §§ 42(1) and 3470 *et seq.*; 34-B

M.R.S. §§ 5465, 5604-A(4)

# SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: N/A

AGENCY WEBSITE:<https://www.maine.gov/dhhs/oads>

# EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON:

Emily.A.Cathcart@maine.gov

**ADOPTIONS**

AGENCY: **13-188 - Department of Marine Resources**

CHAPTER NUMBER AND TITLE: **Ch. 11.08,** Targeted Closures: (8) Roque Island Harbor and Little Kennebec Bay in Englishman Bay Rotational Area; (9) Harrington River in Addison Rotational Area

ADOPTED RULE NUMBER: **2023-252**

CONCISE SUMMARY: The Commissioner adopts this emergency rulemaking to establish scallop conservation closures of the Harrington River in Addison RA and Roque Island Harbor and Little Kennebec Bay portion of the Englishman’s Bay RA (Zone 2). The Department is concerned that continued harvesting for the remainder of the 2023-2024 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2023 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. For these reasons, the Commissioner hereby adopts an emergency closure of Maine’s scallop fishery in these areas as authorized by 12 M.R.S. §6171(3)(A).

EFFECTIVE DATE: December 24, 2023

DRM CONTACT PERSON: Melissa Smith, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021; TELEPHONE: (207) 441-5040; FAX: (207) 624-6024; TTY: (888) 577-6690 (Deaf/Hard of Hearing); E-MAIL: Melissa.Smith@maine.gov
DMR RULEMAKING LIAISON: Deirdre Gilbert; Email: .DMR.rulemaking@Maine.gov
DMR RULEMAKING WEBSITE: <http://www.maine.gov/dmr/rulemaking/>
DMR WEBSITE: <http://www.maine.gov/dmr/>

AGENCY: **03-201 - Maine Department of Corrections**

CHAPTER NUMBER AND TITLE: **Ch. 1,** Detention and Correctional Standards for Counties and Municipalities

ADOPTED RULE NUMBER: **2023-253**

CONCISE SUMMARY:The purpose for this rule is to add and revise jail standards to fulfill recent statutory requirements related to the follow subjects as they affect jail inmates: affirmation of a transgender inmate’s consistently held gender identity; grievance process for complaints of violations of jail standards; transportation of females to and from medical appointments and privacy during appointments; access to menstrual products; protection of confidential attorney-client communications; additional requirements for approval of home release monitoring for domestic violence offenders; and jail boards of visitors.

EFFECTIVE DATE: January 1, 2024

AGENCY CONTACT PERSON/RULEMAKING LIAISON:Mary Lucia, Maine Department of Corrections, 111 State House Station, Augusta, Maine 04333. Telephone:(207) 530-0983.  Email: Mary.A.Lucia@Maine.gov
MDOC WEBSITE: <https://www.maine.gov/corrections/>

AGENCY: **01-015 –** Department of Agriculture, Conservation and Forestry, **Maine Milk Commission**

CHAPTER NUMBER AND TITLE: **Ch. 3,** Schedule of Minimum Prices, Order #01-24

ADOPTED RULE NUMBER: **2023-254**

CONCISE SUMMARY:Minimum January 2024 Class I price is $21.73/cwt. plus $1.63/cwt. for Producer Margins, an over-order premium of $1.04/cwt as being prevailing in Southern New England and $0.47/cwt. handling fee for a total of $25.07/cwt. that includes a $0.20/cwt Federal promotion fee.

EFFECTIVE DATE: December 31, 2023

AGENCY CONTACT PERSON/ RULEMAKING LIAISON: Julie-Marie R. Bickford, Maine Milk Commission, DACF, 28 State House Station, Augusta ME 03333. Telephone: (207) 287-7521. Email Julie-Marie.Bickford@Maine.gov
MMC RULES WEBSITE: <https://www.maine.gov/dacf/milkcommission/statutes_rules.shtml>.
COMMISSION WEBSITE: <https://www.maine.gov/dacf/milkcommission/index.shtml>

AGENCY: **26-239 - Office of the Attorney General**

CHAPTER NUMBER AND TITLE: **Ch. 500,** Rules for Law Enforcement Collection of Traffic Stop Data to Eliminate Profiling

ADOPTED RULE NUMBER: **2023-255**

CONCISE SUMMARY:The proposed rules establish the categories of data that all law enforcement agencies shall collect for all motor vehicle stops in the State for alleged traffic infractions, the deadlines for quarterly reports of that data to the Office of the Attorney General, and the retention period for the data. The collected data will be the basis for analysis and report back to the Legislature by the Office of the Attorney General, regarding evidence of profiling in traffic stops and recommendations for elimination of any profiling activity and ongoing data collection regarding such activity.

EFFECTIVE DATE: December 31, 2023

AGENCY CONTACT PERSON:Vivian Mikhail, Office of the Attorney General, 6 State House Station,Augusta, Maine 04333. Telephone: (207) 626-8584 Email: Vivian.Mikhail@Maine.gov.

AGENCY WEBSITE: <https://www.maine.gov/ag/>.
AGENCY RULEMAKING LIAISON: Aaron.Frey@Maine.gov.