**State of Maine: Notice of Agency Rulemaking – February 3, 2021**

**PROPOSALS**

AGENCY: **10-144** - Department of Health and Human Services(DHHS), **Office of MaineCare Services (OMS) - Division of Policy**

CHAPTER NUMBER AND TITLE: **Ch. 101**, MaineCare Benefits Manual (MBM): **Ch. II Section 101**, Medical Imaging Services

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P011**

CONCISE SUMMARY: The Department is proposing to add section 101.04-8, Low Dose Computed Tomography (LDCT), to cover the screening of lung cancer to provide earlier detection with smaller amounts of radiation than a traditional Computed Tomography scan. The Department will cover the screening when the member meets the following criteria:

1. Is 55-77 years of age;

2. Is asymptomatic;

3. Has a tobacco smoking history of at least 30 pack-years (one pack-year = smoking one pack per day for one year; 1 pack = 20 cigarettes);

4. Is a current smoker or one who has quit smoking within the last 15 years; and

5. Has received a written order for lung cancer screening with LDCT.

Also, the Department is proposing section 101.01-5 to add a definition for LDCT. Additionally, section 101.03-2, Prior Authorization Requirements, is being updated. Finally, the Department proposes minor and technical edits.

See <http://www.maine.gov/dhhs/oms/rules/index.shtml> for rules and related rulemaking documents.

PUBLIC HEARING: No public hearing scheduled. *During the Civil State of Emergency declared by the Governor, public hearings are now closed to the public physically attending. During this State of Emergency, the Department will be providing a 30-day comment period instead of a public hearing.*

*PUBLIC NOTICED: February 3, 2021*

DEADLINE FOR COMMENTS: Comments must be received by 11:59 p.m. on March 5, 2021.

OMS CONTACT PERSON / SMALL BUSINESS IMPACT INFORMATION: Cari Philbrick, Comprehensive Health Planner II, MaineCare Services, 109 Capitol Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 624-4031. Fax: (207) 287-6106. TTY: 711 (Deaf or Hard of Hearing). Email: Cari.Philbrick@Maine.gov .

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

STATUTORY AUTHORITY: 22 MRS §§ 42, 3173; 22-A MRS §205

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*:

OMS WEBSITE: <https://www.maine.gov/dhhs/oms> .

E-MAIL FOR OVERALL AGENCY RULEMAKING LIAISON: Kevin.Wells@Maine.gov

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

CHAPTER NUMBER AND TITLE: **Ch. 3,** Schedule of Minimum Prices, **Order #03-21**

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P012**

BRIEF SUMMARY: 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.

PUBLIC HEARING:February 18, 2021, Thursday, starting at 4:00 p.m. *Because* *of the COVID-19 Public Health Emergency and pursuant to 1 MRS §403-A, enacted by PL 2020 c. 617 part G (eff. March 18, 2020), this hearing could be held remotely by telephonic conference. Directions on how to attend the hearing telephonically will be posted on the Milk Commission website and sent to the interested persons list in advance of February 18, 2021. If the civil emergency is not extended the meeting will be held in Room 101, Deering Building, Augusta, Maine.*

COMMENT DEADLINE:February 18, 2021

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / MMC RULEMAKING LIAISON: Tim Drake, Maine Milk Commission, 28 State House Station, Augusta, ME 04333. Telephone: (207) 287-7521. Email: Tim.Drake@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None

STATUTORY AUTHORITY FOR THIS RULE: 5 MRS §8054; 7 MRS §2954

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*:

AGENCY WEBSITE:<http://www.maine.gov/dacf/milkcommission/index.shtml> .

DACF RULEMAKING LIAISON: Shannon.Ayotte@Maine.gov .

AGENCY: **10-144** - Department of Health and Human Services (DHHS), **Office for Family Independence (OFI)**

CHAPTER NUMBER AND TITLE: **Ch. 609**, Food Supplement-Employment and Training (FSET) Program Rules, **FSET Rule #5** – Bachelors Programs Approved

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P013**

BRIEF SUMMARY: Effective October 1, 2020, this rulemaking proposes to expand Maine’s FSET post-secondary educational opportunities for FSET participants to include some 4-year degree programs that lead to high wage, in demand occupations, as defined by the Maine Department of Labor at 12-597 ch. 2, *Rule Governing the Competitive Skills Scholarship Program*.

Maine Department of Health and Human Services recently renewed its formal partnership with the Maine Department of Labor’s Competitive Skills Scholarship Program (CSSP) to include the CSSP program in its array of FSET services. This change will allow co-enrolled FSET and CSSP participants to most efficiently participate in educational programming. As detailed in its website at <http://www.mainecareercenter.gov/cssp.shtml>, the program includes “certificate programs and two- and four-year degrees – training for industry recognized credentials, and support leading to skilled, well-compensated jobs with anticipated high employment demand.” The Department of Labor maintains this [list of jobs](http://www.mainecareercenter.gov/docs/2019/CSSPHWIDlist.pdf) considered high-wage, in demand occupations, which have an average wage at or above the average wage for all occupations in Maine and are projected to have a minimum number of job openings annually. In partnering with the CSSP program, Maine DHHS staff will utilize the expertise of the Maine Department of Labor to identify which occupations are high wage, in demand occupations, and support the degrees needed accordingly through its FSET program. The rulemaking also clarifies that participants may be co-enrolled with more than one FSET provider only when the providers are delivering different components of services, as defined in the rule.

Effective March 8, 2021, this rulemaking proposes to strike language disallowing reimbursement for on the job training or work experience. This change aligns Maine’s policy with new federal rules adding subsidized employment as an allowable component.

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.

This amendment is expected to be annually cost neutral, as the same number of participants will be served, and providers will be held to the established budgets and caps for services and participant reimbursements in their contracts or Memorandum of Understanding as previously approved.

See <http://www.maine.gov/dhhs/ofi/rules/index.shtml> for rules and related rulemaking documents.

PUBLIC HEARING: None.

COMMENT DEADLINE: Monday, March 8, 2021.

CONTACT PERSON FOR THIS FILING: Patricia Dushuttle, Special Projects Manager, Department of Health and Human Services, Office for Family Independence, 109 Capitol Street – 11 State House Station, Augusta, ME 04330-6841. Telephone: (207) 624-6907. Fax: (207) 287-3455. TT Users Call Maine Relay – 711. Email: Patricia.Dushuttle@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None anticipated.

STATUTORY AUTHORITY FOR THIS RULE: 22 MRS §42(1), (8)

OFI RULES WEBSITE: <http://www.maine.gov/dhhs/ofi/rules/index.shtml> .

OFI WEBSITE: <https://www.maine.gov/dhhs/ofi> .

OFI RULEMAKING LIAISON: Dan.Cohen@Maine.gov .

DHHS RULEMAKING LIAISON: Kevin.Wells@Maine.gov .

AGENCY: **09-137 – Department of Inland Fisheries and Wildlife (IFW)**

CHAPTER NUMBER AND TITLE: **Ch. 24**, Licensed Guides (Recreational Classification)

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P014**

BRIEF SUMMARY: The Department of Inland Fisheries and Wildlife is proposing to amend rules as they pertain to the testing process for the recreational classification for licensed guides. Exams will be created to accommodate hunting and recreational classifications as well as fishing and recreational classifications. The proposed rule would also enable currently licensed hunting and/or fishing guides to pay the $100 exam fee, take a written exam and upgrade their license to include the recreational classification. Please contact the agency contact person for a complete copy of the proposed rule.

PUBLIC HEARING: None scheduled.

COMMENT DEADLINE: March 5, 2021

CONTACT PERSON FOR THIS FILING: Becky Orff, Inland Fisheries and Wildlife, 284 State Street - 41 State House Station, Augusta, ME 04333. Telephone: (207) 287-5202. Fax: (207) 287-6395. Email: Becky.Orff@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: No fiscal impact anticipated.

STATUTORY AUTHORITY FOR THIS RULE: 12 MRS §§ 10104, 12851

IFW WEBSITE: [www.maine.gov/ifw](http://www.maine.gov/ifw) .

IFW RULEMAKING LIAISON: Becky.Orff@Maine.gov .

AGENCY: **01-017** – Department of Agriculture, Conservation and Forestry (DACF), **Maine State Harness Racing Commission**

CHAPTER NUMBERS AND TITLES:

**Ch. 7**, Racing

**Ch. 9**, Sire Stakes

**Ch. 13**, Pari-Mutuel

TYPE OF RULES: Routine Technical

PROPOSED RULE NUMBERS: **2021-P015, P016, P017**

BRIEF SUMMARY:

**Chapter 7, Racing**

The proposed amendments add language regarding trainer responsibilities, specifically pertaining to ensuring the correct horse is raced and when horses are permitted to leave the paddock. There are updates to whip specifications and language from United State Trotting Association’s whipping rules to provide clarification on the acceptable uses of a whip. The amendments pay out purses to six places, revise the language for coupled entries and remove the Querrion rule. Finally, a few subsections were moved and placed under a more logical section.

**Chapter 9, Sire Stakes**

The proposed amendments prohibit the coupling of horses entered into a Sire Stakes race, as well as the segregation of horses with common ownership into separate divisions during the draw. There is also a proposed amendment to eliminate subsection that states Sire Stakes participants must adhere to the 45 day rule found in ch. 7.

**Chapter 13, Pari-Mutuel**

The proposed amendments add a table illustrating the minimum wagers as they pertain to the various types of betting pools, provides clarification as to when certain types of bets can be accepted, and removes outdated language and practices.

**PUBLIC HEARING**: 10:00 a.m. on February 24, 2021, via video conference:

<https://us02web.zoom.us/j/87838351859?pwd=MGQwZ2hsSGl6TmpxV2dlOW1ybzRYZz09> . Meeting ID: 878 3835 1859. Passcode: 775501

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+19292056099,,87838351859# US (New York)

Dial In Number: 929 205 6099 US (New York)

COMMENT DEADLINE: 5:00 p.m. on March 8, 2021

CONTACT PERSON FOR THESE FILINGS / SMALL BUSINESS IMPACT INFORMATION / HARNESS RACING RULEMAKING LIAISON: Henry Jennings, Harness Racing, 28 State House Station – 99 Blossom Lane, Augusta, ME 04333. Telephone: (207) 287-7543. Fax: (207) 287-7548. Email: Henry.Jennings@Maine.gov .

IMPACT ON MUNICIPALITIES OR COUNTIES: none

STATUTORY AUTHORITY FOR THIS RULE: 8 MRS §§ 263-A, 264, 267-A, 268, 272-B, 272-C, 279, 279-A, 279-E, 281, 298

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: None

HARNESS RACING COMMISSION WEBSITE: <https://www.maine.gov/dacf/harnessracing/index.shtml> .

DACF RULE-MAKING LIAISON: Shannon.Ayotte@Maine.gov

AGENCY: **12-179** – Department of Labor (DOL), **Board of Occupational Safety and Health**

CHAPTER NUMBER AND TITLE: **Ch. 3**, Occupational Safety and Health Standards for Construction Industry Employment in the Public Sector

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P018**

BRIEF SUMMARY: To update the rule to incorporate changes to the Federal Occupational Safety and Health Administration regulations, 29 CFR Part 1926, including changes to standards for Beryllium and Cranes and Derricks in Construction: Railroad Roadway Work:

**DETAILED SUMMARY:**To update the rule to incorporate changes to the Federal Occupational Safety and Health Administration regulations, 29 CFR part 1926, including changes to standards for Beryllium and Cranes and Derricks in Construction: Railroad Roadway Work:

Key Provisions of the Beryllium Standards for General Industry, Construction, and Shipyards (Effective Date September 30, 2020).

**\*** Set a permissible exposure limit (PEL) for beryllium of 0.2 µg/m3, averaged over 8-hours.

**\*** Set a short-term exposure limit for beryllium of 2.0 µg/m3, over a 15-minute sampling period.

**\*** Require employers to: use engineering and work practice controls (such as ventilation or enclosure) to limit worker exposure to beryllium; provide respirators when controls cannot adequately limit exposure; limit worker access to high-exposure areas; develop a written exposure control plan; and train workers on beryllium hazards.

**\*** Require employers to make available medical exams to monitor exposed workers and provides medical removal protection to workers identified with a beryllium-related disease.

<https://www.osha.gov/beryllium/rulemaking>

The final rule adds certain exemptions and clarifications to recognize the unique equipment and circumstances in railway roadway work. The rule also reflects that some OSHA requirements, with regard to the operation of railroad roadway maintenance machines equipped with cranes, are preempted by Federal Railroad Administration (FRA) regulations. (Effective Date November 15, 2020).

Exemptions:

**\*** Flash-butt welding trucks, a specialized piece of equipment used in railroad work that meets the technical definition of a crane, but does not present the types of safety hazards that OSHA intended to address in the crane standard; and

**\*** Using rail stops and rail clamps; restricting out-of-level work; prohibiting dragging a load sideways; having a boom-hoist limiting device for hydraulic cylinder equipped booms; and following manufacturer's guidance for the use and modification of equipment.

Operator training and certification will follow FRA's regulatory requirements.

<https://www.osha.gov/news/newsreleases/trade/09142020> .

**PUBLIC HEARING**: None, unless requested pursuant to 5 MRS §8052(1).

COMMENT DEADLINE: March 4, 2021

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / DOL RULEMAKING LIAISON: Isaac H. Gingras, Department of Labor, 54 State House Station, Augusta, Maine 04333-0054. Telephone: (207) 626-6232. Email: Isaac.H.Gingras@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*:

STATUTORY AUTHORITY FOR THIS RULE: 26 MRS §565

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*:

DOL WEBSITE: <http://www.maine.gov/labor> .

**ADOPTIONS**

AGENCY: **18-125** - Department of Administrative & Financial Services (DAFS), **Maine Revenue Services (MRS)**

CHAPTER NUMBER AND TITLE: **Ch. 812**, Credit for Educational Opportunity

ADOPTED RULE NUMBER: **2021-027**

CONCISE SUMMARY: The following changes to Rule 812 are being adopted:

The criteria for determining which degrees will be considered Science, Technology, Engineering, and Mathematics (“STEM”) for refundability of the Credit for Educational Opportunity (“Credit”) have been updated.

For Bachelor’s and graduate degrees that are awarded simultaneously, Rule 812 has been updated to clarify how qualifying taxpayers should apportion tuition and fees to each degree when calculating the Credit.

The changes previously adopted by emergency Rule 812, effective October 21, 2020, have been made permanent. These changes reconcile two provisions in 36 MRS §5217-D(2)(B), allowing Maine Revenue Services to consider the payment amount that would be due but for forbearance or deferment when calculating the Credit. These changes further provide that, if the payment amount due but for forbearance or deferment cannot be established, the benchmark loan payment as determined under 36 MRS §5217-D(1)(A) will be used instead.

Lastly, a new definition of “regional accrediting association” has been added to Rule 812 for purposes of defining “accredited non-Maine community college, college or university” in 36 MRS §5217-D(A-1). This new definition will help determine if degrees from accredited non-Maine educational institutions (including non-U.S. educational institutions) are eligible for the Credit.

EFFECTIVE DATE: January 28, 2021

MRS CONTACT PERSON / SMALL BUSINESS IMPACT INFORMATION / DAFS RULEMAKING LIAISON: Alex Weber, General Counsel, Maine Revenue Services, 51 Commerce Drive – 24State House Station, Augusta, ME 04330. Telephone: (207) 624-9712. Email: Alexander.J.Weber@Maine.gov .

MRS WEBSITE: <https://www.maine.gov/revenue/> .

DAFS RULEMAKING LIAISON: Anya.Trundy@Maine.gov .

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

CHAPTER NUMBER AND TITLE: **Ch. 3**, Schedule of Minimum Prices, **Order #02-21**

ADOPTED RULE NUMBER: **2021-028** *(Emergency)*

CONCISE SUMMARY: Minimum February 2021 Class I price is $18.79/cwt. plus $1.63/cwt. for Producer Margins, an over-order premium of $1.04/cwt. as being prevailing in Southern New England and $2.33/cwt. handling fee for a total of $23.99/cwt. that includes a $0.20/cwt. Federal promotion fee.

EFFECTIVE DATE: January 31, 2021

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / MMC RULEMAKING LIAISON: Tim Drake, Maine Milk Commission, 28 State House Station, Augusta, ME 04333. Telephone: (207) 287-7521. Email: Tim.Drake@Maine.gov .

AGENCY WEBSITE:<http://www.maine.gov/dacf/milkcommission/index.shtml> .

DACF RULEMAKING LIAISON: Shannon.Ayotte@Maine.gov .