**State of Maine: Notice of Agency Rulemaking – February 22, 2023**

**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.

**PROPOSALS**

AGENCY: **29-250** - Secretary of State (SOS), **Bureau of Motor Vehicles (BMV)**

CHAPTER NUMBER AND TITLE: **Ch. 3**, Physical, Emotional and Mental Competence to Operate a Motor Vehicle

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2022-P172** *(2nd publication)*

BRIEF SUMMARY: These rules are being amended to reflect changes and/or updates in health care, to more closely align with some recent research on medical conditions and their impact on safe operation of a motor vehicle, and to decrease the burden on drivers, healthcare providers and Bureau of Motor Vehicle staff in reviewing and processing certain medical conditions. They describe the standards to be used by the Secretary of State in determining physical, emotional and mental competence of persons to operate motor vehicles. The rules establish a reporting system that requires persons to submit medical information to the Secretary of State. Persons found incompetent to operate a motor vehicle in accordance with procedures outlined in these rules may have their driving privileges suspended, revoked or restricted.

The changes reflect recommendations from Medical Advisory Board members through December 13, 2022, and include revisions based on public comment on a prior version of the proposed rule.

PUBLIC HEARING: N/A

COMMENT DEADLINE: March 24, 2023

CONTACT PERSON FOR THIS FILING / BMV RULEMAKING LIAISON / SMALL BUSINESS IMPACT INFORMATION: Tina Corkum, Bureau of Motor Vehicles, 29 State House Station, Augusta, Maine 04333-0029. Telephone: (207) 624-9000. Fax: (207) 624-9013. TTY: Use Maine Relay 711. Email: PublicComment.SOS@Maine.gov (primary). Tina.B.Corkum@Maine.gov.

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None

STATUTORY AUTHORITY FOR THIS RULE: 29-A MRS §1258

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

AGENCY WEBSITE: [www.maine.gov/sos/bmv](http://www.maine.gov/sos/bmv) .

**ADOPTIONS**

AGENCY: **95-648 - Efficiency Maine Trust**

CHAPTER NUMBER AND TITLE: **Ch. 5** *(New)*, Commercial Property Assessed Clean Energy (C-PACE) Program Regulations

ADOPTED RULE NUMBER: **2023-023**

CONCISE SUMMARY: This new rule governs the implementation of the Efficiency Maine Trust’s (the Trust’s) Commercial Property Assessed Clean Energy (C-PACE) Program. C-PACE allows qualifying commercial real property owners to access an attractive type of financing to undertake qualifying energy efficiency and clean energy improvements on their buildings and repay the investment over time. Like other project financing, C-PACE relies on borrowed capital from a lender to pay for the upfront costs associated with energy efficiency or renewable energy improvements. Unlike other project financing, the borrowed capital is secured by a property tax assessment with an associated lien on the subject property. The rule enumerates underwriting standards, quality assurance provisions, and how the program will be administered, whether administered by the Trust (or its agent) or by a municipality, as provided by the *Commercial Property Assessed Clean Energy Act* (35-A MRS §§ 10201 *et seq*.).

EFFECTIVE DATE: February 18, 2023

AGENCY CONTACT PERSON / RULEMAKING LIAISON: Nat Haslett, Manager for Regulatory and Legislative Affairs, Efficiency Maine Trust, 168 Capitol Street - Suite 1, Augusta, ME 04330. Telephone: (207) 553-3068. Email: Nat.Haslett@EfficiencyMaine.com.

WEBSITE: <https://www.efficiencymaine.com/>.

AGENCY: **01-001** – Department of Agriculture, Conservation and Forestry (DACF), **Division of Animal and Plant Health**

CHAPTER NUMBER AND TITLE: **Ch. 274**, Rules for Growing Hemp

ADOPTED RULE NUMBER: **2023-024**

CONCISE SUMMARY: These rules establish the requirements for becoming licensed to grow hemp, including fees, application and licensing processes, and procedures for monitoring the growth of hemp. The rules also describe the sampling and inspection processes and the potential penalties for violation of the rules or statutes.

EFFECTIVE DATE: February 19, 2023

AGENCY CONTACT PERSON / SMALL BUSINESS IMPACT INFORMATION / DACF RULEMAKING LIAISON: Shannon Ayotte, Department of Agriculture, Conservation and Forestry (DACF), 22 State House Station, Augusta, ME 04333. Telephone: (207) 287-5976. Email: Shannon.Ayotte@Maine.gov.

DACF WEBSITE: <https://www.maine.gov/dacf/index.shtml>.

AGENCY: **13-188 - Department of Marine Resources (DMR)**

CHAPTER NUMBER AND TITLE: **Ch. 11**, Scallops: **11.08**, Targeted Closures: **(10)** Narraguagus/Pigeon Hill Rotational Area; **(11)** Cobscook, Whiting & Dennys Bays; **(12)** Lower Blue Hill Bay/Jericho Bay Rotational Area

ADOPTED RULE NUMBER: **2023-025**

CONCISE SUMMARY: The Commissioner adopts this emergency rulemaking to establish scallop conservation closures in the Narraguagus/Pigeon Hill and Lower Blue Hill/Jericho Bays Rotational Areas (Zone 2) and Cobscook, Whiting and Dennys Bays in Zone 3. The Department is concerned that continued harvesting for the remainder of the 2022-2023 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2022 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 MRS §6171(3)(A).

EFFECTIVE DATE: February 19, 2023

DMR 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). Email: Melissa.Smith@Maine.gov.

DMR RULEMAKING WEBSITE: <http://www.maine.gov/dmr/rulemaking/>.

DMR WEBSITE: <https://www.maine.gov/dmr/>.

DMR RULEMAKING LIAISON: Deirdre.Gilbert@Maine.gov.

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

CHAPTER NUMBER AND TITLE: **Ch. 301**, Supplemental Nutrition Assistance Program (SNAP) Rule: Alpha Index, and Sections: 111-1, 111-6, 222-2, 222-4, 222-5, 444-2, 444-5, 444-8, 444-10, 555-3, 555-4, 555-5, 666-9, 777-4, 999-1, and 999-3.

**SNAP Rule #223P**, Omnibus Rule Change 2022

ADOPTED RULE NUMBER: **2023-026**

CONCISE SUMMARY: The adoption of this final rule effectuates many changes required by state statute or federal regulation. The adopted rule aligns Maine policy with various federal waivers and options. The adopted rule makes non-substantive changes to improve the readability and inclusivity of the manual and reduces the use of stigma inducing language.

Consistent with multiple extensions of SNAP Waiver 2055 received from Food and Nutrition Services (FNS), the Department proposed to extend the waiver of most interview requirements through December 31, 2022. Since the rule was proposed, an extension has been granted to the Department, to waive most interview requirements through March 31, 2023. The rule has been amended to reflect the new date of March 31, 2023. Changes to Sections 222-4(2)(A), 444-5(2)(B)(4)(a), and 666-9(1)(C)(1) are retroactive to January 1, 2022. 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.

Maine exercises an option for Broad Based Categorical Eligibility under 7 CFR §273.2(j)(2) which has included a 185% Federal Poverty Level (FPL) test. This figure is not included in the figures updated by FNS each federal fiscal year per 7 CFR §273.9(a)(4), it is updated as soon as the FPLs are published. The 2022 year’s FPLs were published at <https://aspe.hhs.gov/poverty-guidelines> on January 19. See also, Annual Update of the HHS Poverty Guidelines, Federal Register 87:14 (January. 21, 2022) p. 3315, <https://www.govinfo.gov/content/pkg/FR-2022-01-21/pdf/2022-01166.pdf>. The Department incorporated these figures effective January 12, 2022. Further, the Department increased this income limit from 185% of the FPL to 200% as permitted under 7 CFR §273.2(j)(2)(ii)(A) and required by 22 M.S §3104(13) effective July 1, 2022. Retroactive rulemaking is permissible under 22 M.S §42(8) as these changes afford this benefit to more residents of the State of Maine and do not adversely impact applicants, participants, beneficiaries, or providers. Changes to Section 444-8(2) and Section 999-3 Chart 4 make SNAP benefits and the related SNAP Employment and Training (E&T) services available to more Maine households.

The Department implemented various budgeting figures in Section 999-3 as required by 7 CFR §273.9(d). It requires that SNAP income and asset limits, maximum and minimum allotments, standard deductions, maximum shelter deductions, homeless shelter deductions, standard utility allowances (SUAs) and income change reporting thresholds are updated each year, effective October 1. This year, the United States Department of Agriculture (USDA) COLA Memos FY2022, issued August 9 and 16, 2022, provided more generous income limits, maximum and minimum allotments, standard deductions, maximum shelter deduction, homeless shelter deduction, asset limits, and income change reporting thresholds. Each state agency is charged with determining SUAs and having those approved by USDA. The utility allowance values were calculated using The Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor, and were submitted to and approved by USDA. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these changes afford this benefit to more residents of the State of Maine and do not adversely impact applicants, participants, beneficiaries, or providers. Changes to Section 999-3 are intended to make SNAP benefits and the related SNAP E&T services available to more Maine households and increase the benefit amounts for some.

The Department updated the open sections consistent with the recent change of the terms “Food Supplement” and “Food Supplement Program” to “Supplemental Nutrition Assistance Program” and, by extension, their associated abbreviations to “SNAP” or other substitutable terms. This update is consistent with the terminology used in federal law and regulation as well as signage and other materials seen throughout the state and nation. Further, PL 2021 c. 398 Part OO made this change throughout Maine’s revised statutes. This change is reflected in all uses of the terms and abbreviations in sections included in this adopted rule (unless they refer only to a time prior to the statutory change). The “FS” is removed from all section numbers. Similarly, references to “coupons” are updated to “benefits” as coupons are no longer issued.

The Department effectuates the following changes to improve the readability of the manual and improve the ease of making references and citations within the manual. Where practical, phrases are converted to active voice. To the extent possible, text is rephrased to provide an objective set of rules rather than instructions to Department staff. Some text is moved within a section to consolidate information, reduce redundancies, or improve the flow. Some terms are eliminated for consistency. (E.g. the term “agency” would be replaced with “Department” when referring to Maine’s Department of Health and Human Services.) Gender specific terms are converted to gender neutral terms in the interest of inclusivity. The enumeration of paragraphs, subparagraphs and so on, and the representation of numbers are updated as part of an ongoing, office-wide effort at standardization and clarity. Outdated abbreviations, such as JTPA, are eliminated or updated. Stigma inducing language has been updated. (E.g. “alcohol treatment centers” are changed to “centers for the treatment of Substance Use Disorders”.)

The Department has changed all references to “recertification form” to “renewal form” consistent with the renaming of this document in print and online.

The Department added consistency to the language related to the submission of applications, renewals, and six-month-reports, and meeting interview requirements. These forms can, now, be submitted on paper, electronically, or telephonically. Further, interviews may be completed in person, by phone, or, in some cases, through Department established video conferencing sites. Language that referenced “showing up” for an interview or submitting a form in a specific medium is updated accordingly.

The adopted rule provides more clarity around questionable information (which would require verification) and unclear information (which sometimes triggers the need for an interview). Instances of “questionable” information sections in this rulemaking are replaced with language specifying “contradictory to information known to or received by the Department.” The definition of “questionable information” in Section 999-1 is modified to use “contradictory to” rather than “inconsistent with” in the same context. It is necessary to retain the definition as some sections not being reviewed as part of this rulemaking use the term “questionable information”. A definition of “unclear information” is added to Section 999-1.

The adopted rule clarifies Section 111-1(2) that a parent can be a separate household from their child(ren) for the duration of a court order granting a third-party guardianship of the child(ren). This change reduces confusion for applicants, participants and Department staff as the current rule does not specify a timeframe.

The Department updated language in Section 111-6 related to job quit penalties to clarify that not all work registration exemptions apply to job quit. Further edits clarify the minimum job characteristics to remedy a job quit disqualification and removed any language that could be interpreted to apply the disqualification to the entire household. These changes intend to reduce confusion for applicants, participants and Department staff.

The Department clarifies Section 444-10 that disqualifications for non-compliance with another means tested program are applied based on the policy in effect at the time of the infraction. Further, language is added to Section 555-3, consistent with 7 CFR §273.11(j), articulating that SNAP benefits may not be increased based on a decrease in other means tested benefits that results from noncompliance.

Per 7 CFR §273.9(d)(6)(iii)(E), the Department updates Section 555-5(7)(B) to use standard utility allowances (SUA) for all households with qualifying expenses. Further, the Department will apply each SUA in full to any household paying a portion of the qualifying expenses. This standardization reduces confusion for applicants, participants, and Department staff; reduce the burden on many households, including those with self-employment, to provide documentation; and increase benefit amounts for many households.

In addition to the other modifications detailed in this document, the adopted rule updates Section 444-2, Self-employment, Migrant Farm Workers, and Contract Employees. Language is clarified and standardized to “largest income source anticipated for the 12 month periods” rather than the less specific and inconsistent terms “major source of support,” “supplements,” etc. Clarification is added that verification is not only for income, but for self-employment related assets and expenses as well. The allowable expense for child or adult care meals is updated consistent with 7 CFR §273.11(b)(3)(i). Clarification is added that the application of shelter expenses in the case of business use of the home is at the household’s discretion. The method of determining business use of the home expenses is clarified. Clarification is added related to when rental income is treated as earned or unearned income. Although this clarification is redundant to information in Sections 555-2 and 555-3, the Department believes it warrants reiteration. The formulas for determining business use of the home expenses in rental situations are made more precise. Each of these changes add to the clarity of this section and streamline the process for applicants, participants and Department staff. Relatedly, a definition of “Roomer” is added to Section 999-1 to distinguish this situation from other rental income.

In addition to the other modifications to Section 444-8 detailed in this document, the Department removed references to the publication of the 130% and 100% Federal Poverty Level figures. These figures are not adopted upon publication in the Federal Register, but are adopted at the start of the Federal Fiscal Year consistent with their adoption by Food and Nutrition Services.

In addition to the other modifications to Section 555-4, Excluded Income, detailed in this document, the Department removed the reference to the SCSEP program being administered by the ABLE network. As the ABLE network no longer administers this program.

In addition to the other modifications detailed in this document, the Department updated Section 555-5, Deductions. A summary, introductory paragraph and a description of the reason for some standard deductions have been added. The exclusion of premiums paid for Office for Family Independence health policies from the excess medical deduction is eliminated consistent with 7 CFR §273.9(d)(3). The paragraph on Dependent Care Deductions is significantly reworked to add clarity without making substantive changes. Clarification has been added as to what expenses related to service animals are deductible. When expenses related to a live-in attendant could be applied either as a medical or a dependent care expense, they will be counted as a dependent care expense as this application is to the recipients benefit. Verification requirements for Excess Medical Deductions are simplified consistent with 7 CFR §273.2(f)(8)(i)(A). Each of these changes adds to the clarity of this section and streamline the process for applicants, participants, and Department staff.

The adopted rule updated language around reporting of unissued benefits to comport the timelines with those in 7 CFR §273.17(a)(1). This change increased the amount of time participants have to notify the Department of issuance problems. Further, Section 777-4, Replacement of Benefits is simplified as follows: Reference to benefits being destroyed are removed as that language was specific to physical coupons and does not apply to electronic benefits; and separate processes related to a disaster declaration is eliminated as the disaster declaration constitutes the verification required in the general process.

See <https://www.maine.gov/dhhs/about/rulemaking> for rules and related rulemaking documents.

EFFECTIVE DATE: March 1, 2023

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