**State of Maine: Notice of Agency Rulemaking – April 27, 2022**

**PROPOSALS**

## AGENCY: **99-346 - Maine State Housing Authority (MaineHousing)**

CHAPTER NUMBER AND TITLE: **Ch. 16**, Low-Income Housing Tax Credit Rule

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2022-P057**

BRIEF SUMMARY: The rule repeals and replaces the current ch. 16, *Low-Income Housing Tax Credit 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 the State’s housing credit ceiling for calendar years 2023 and 2024, as required pursuant to section 42 of the *Internal Revenue Code*.

PUBLIC HEARING: A public hearing will be held on Tuesday, May 17, 2022 at 9:30 a.m. at Maine State Housing Authority, 26 Edison Drive, Augusta, Maine. *To listen or testify virtually, please contact Gerrylynn Ricker no later than 5:00 p.m. on Thursday, May 12, 2022 at MaineHousing, 26 Edison Drive, Augusta, Maine 04330-6046; (207) 626-4600 (voice); 1-800-452-4668 (voice in state only); or 711 (Maine Relay) or via email:* *gricker@mainehousing.org.*

*Upon sufficient notice, appropriate communication auxiliary aids and services will be provided to persons with disabilities and persons with limited English proficiency.*

COMMENT DEADLINE: Friday, May 27, 2022 at 5:00 p.m.

## CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / AGENCY RULEMAKING LIAISON: Ashley Janotta, Chief Counsel, Maine State Housing Authority, 89 State House Station - 26 Edison Drive, Augusta, Maine, 04330-6046. Telephone: (207) 626-4600. Maine Relay 711. Email: ajanotta@mainehousing.org.

*Upon sufficient notice, this notice and the proposed rule will be made available in alternative formats for persons with disabilities and in alternative languages for persons with limited English proficiency.*

IMPACT ON MUNICIPALITIES OR COUNTIES: None

## AGENCY: **99-346 - Maine State Housing Authority (MaineHousing)**

CHAPTER NUMBER AND TITLE: **Ch. 24**, Home Energy Assistance Program

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2022-P058**

BRIEF SUMMARY: 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 low-income 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 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.

A copy of the proposed replacement rule may be found at [www.mainehousing.org](http://www.mainehousing.org).

PUBLIC HEARING: A public hearing will be held on Tuesday, May 17, 2022 at 9:30 a.m. at Maine State Housing Authority, 26 Edison Drive, Augusta, Maine. *To listen or testify virtually, please contact Gerrylynn Ricker no later than 5:00 p.m. on Thursday, May 12, 2022 at MaineHousing, 26 Edison Drive, Augusta, Maine 04330-6046; (207) 626-4600 (voice); 1 (800) 452-4668 (voice in state only); or 711 (Maine Relay) or via email: gricker@mainehousing.org.*

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COMMENT DEADLINE: Friday, May 27, 2022 at 5:00 p.m.

## CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / AGENCY RULEMAKING LIAISON: Ashley Janotta, Chief Counsel, Maine State Housing Authority, 89 State House Station - 26 Edison Drive, Augusta, Maine, 04330-6046. Telephone: (207) 626-4600. Maine Relay 711. Email: ajanotta@mainehousing.org.

*Upon sufficient notice, this notice and the proposed rule will be made available in alternative formats for persons with disabilities and in alternative languages for persons with limited English proficiency.*

IMPACT ON MUNICIPALITIES OR COUNTIES: None

## AGENCY: **99-346 - Maine State Housing Authority (MaineHousing)**

CHAPTER NUMBER AND TITLE: **Ch. 35**, State Low Income Housing Tax Credit Rule

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2022-P059**

BRIEF SUMMARY: 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 multi-family affordable housing in Maine. The law establishing the credit requires MaineHousing to recapture credit for noncompliance. This 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.

A copy of the proposed replacement rule may be found at [www.mainehousing.org](http://www.mainehousing.org).

PUBLIC HEARING: A public hearing will be held on Tuesday, May 17, 2022 at 9:30 a.m. at Maine State Housing Authority, 26 Edison Drive, Augusta, Maine. *To listen or testify virtually, please contact Gerrylynn Ricker no later than 5:00 p.m. on Thursday, May 12, 2022 at MaineHousing, 26 Edison Drive, Augusta, Maine 04330-6046; (207) 626-4600 (voice); 1 (800) 452-4668 (voice in state only); or 711 (Maine Relay) or via email:* *gricker@mainehousing.org**.*

*Upon sufficient notice, appropriate communications auxiliary aids and services will be provided to persons with disabilities and persons with limited English proficiency.*

COMMENT DEADLINE: Friday, May 27, 2022 at 5:00 p.m.

## CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / AGENCY RULEMAKING LIAISON: Ashley Janotta, Chief Counsel, Maine State Housing Authority, 89 State House Station - 26 Edison Drive, Augusta, Maine, 04330-6046. Telephone: (207) 626-4600. Maine Relay 711. Email: ajanotta@mainehousing.org.

*Upon sufficient notice, this notice and the proposed rule will be made available in alternative formats for persons with disabilities and in alternative languages for persons with limited English proficiency.*

IMPACT ON MUNICIPALITIES OR COUNTIES: None

**ADOPTIONS**

AGENCY: **02-380 - State Board of Nursing**; **02-392 - Board of Pharmacy**

CHAPTER NUMBERS AND TITLE: **Ch. 39-A** (*New* **-** Board of Pharmacy); **Ch. 1** (*New* -State Board of Nursing): Collaborative Drug Therapy Management

ADOPTED RULE NUMBERS: **2022-060** (Pharmacy), **2022-061** (Nursing)

CONCISE SUMMARY 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.

EFFECTIVE DATE: April 25, 2022

AGENCY CONTACT PERSONS:

**Nursing**: Jessica A. Richardson, FNP-C, AGACNP-BC, Assistant Executive Director (Rulemaking Liaison), Board of Nursing, 158 State House Station, Augusta, ME 04333-0158. Telephone: (207) 287-1147. Email: Jessica.A.Richardson@Maine.gov.

**Pharmacy**: Geraldine Betts, Administrator, Board of Pharmacy, 35 State House Station, Augusta ME 04333. Telephone: (207) 624-8625. Email: Geraldine.L.Betts@Maine.gov.

STATE BOARD OF NURSING WEBSITE: <https://www.maine.gov/boardofnursing/>.

BOARD OF PHARMACY WEBSITE: <https://www.maine.gov/pfr/professionallicensing/professions/board-pharmacy>.

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

CHAPTER NUMBER AND TITLE: **Ch. 330**, Higher Opportunity for Pathways to Employment (HOPE) Program Rules (Sections 1, 2, 3, 4, 5, and 7): **HOPE Rule #101** – Internet Access, Updates to Eligible Careers and Degree Programs, Increased Program Participant Cap, and Additional Updates

ADOPTED RULE NUMBER: **2022-062**

CONCISE SUMMARY: 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.

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 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.mainelaw.maine.edu/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.

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

EFFECTIVE DATE: April 25, 2022

AGENCY CONTACT PERSON: Sheri Wilkens, HOPE Program Manager, Department of Health and Human Services - Office for Family Independence, 109 Capitol Street – 11 State House Station, Augusta, ME 04333-0011. Telephone: (207) 624-4103. Fax: (207) 287-3455. TT Users Call Maine Relay – 711. Email: Sheri.Wilkens@Maine.gov .

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

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

DHHS WEBSITE: <https://www.maine.gov/dhhs/>.

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

AGENCY: **01-001** - Department of Agriculture, Conservation and Forestry (DACF), **Division of Quality Assurance and Regulations**

CHAPTER NUMBER AND TITLE: **Ch. 330**, License Fees to Manufacture and Sell Food & Beverages

ADOPTED RULE NUMBER: **2022-063**

CONCISE SUMMARY: The principal reason for rule amendments to ch. 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", 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 Product have been added to the rule, the department ls updating the fee structure to include the cost of a Birch Syrup processing license to be the same as Maple Syrup processing.

EFFECTIVE DATE: April 26, 2022

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

DIVISION ADDRESS / PHONE: 28 State House Station, Augusta, Maine 04330-0028. Telephone: (207) 287-3841.

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

AGENCY: **01-001** - Department of Agriculture, Conservation and Forestry (DACF), **Division of Quality Assurance and Regulations**

CHAPTER NUMBER AND TITLE: **Ch. 347**, Birch and Maple Syrup Processing

ADOPTED RULE NUMBER: **2022-064**

CONCISE SUMMARY: The rule amendment update of ch. 347, *Maple Syrup Processing*, introduces good manufacturing practice requirements for birch syrup and birch products and is not a significant change as the process for birch and maple syrup are similar and use the same equipment. The rule change incorporates current labeling standards for maple syrup and maple products and those standards are the same for birch syrup and birch products made consistent by LD 416, “An Act Regarding the Production and Sale of Birch Syrup and Birch Syrup Products” legislation.

EFFECTIVE DATE: April 26, 2022

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

DIVISION ADDRESS / PHONE: 28 State House Station, Augusta, Maine 04330-0028. Telephone: (207) 287-3841.

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

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

CHAPTER NUMBER AND TITLE: **Ch. 8**, Landings Program (Atlantic Halibut Reporting)

ADOPTED RULE NUMBER: **2022-065**

CONCISE SUMMARY: This rule updates the frequency of harvester reporting for Maine’s halibut fishery, implementing a requirement for commercial harvesters to submit trip level 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.

EFFECTIVE DATE: April 26, 2022

DMR CONTACT PERSON: Amanda Ellis, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333. Telephone: (207) 624-6573. Fax: (207) 624-6024. TTY: (207) 633-9500 (Deaf/Hard of Hearing). Email: dmr.rulemaking@maine.gov.

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

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

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

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

CHAPTER NUMBER AND TITLE: **Ch. 41**, Atlantic Menhaden (2022 Harvest Start Date)

ADOPTED RULE NUMBER: **2022-066**

CONCISE SUMMARY: 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.

EFFECTIVE DATE: April 26, 2022

DMR CONTACT PERSON: Amanda Ellis, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333. Telephone: (207) 624-6573. Fax: (207) 624-6024. TTY: (207) 633-9500 (Deaf/Hard of Hearing). Email: dmr.rulemaking@maine.gov.

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

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

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

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

CHAPTER NUMBER AND TITLE: **Ch. 115**, *Vibrio parahaemolyticus* Control Plan

ADOPTED RULE NUMBER: **2022-067**

CONCISE SUMMARY: 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.

EFFECTIVE DATE: April 26, 2022

DMR CONTACT PERSON: Amanda Ellis, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333. Telephone: (207) 624-6573. Fax: (207) 624-6024. TTY: (207) 633-9500 (Deaf/Hard of Hearing). Email: dmr.rulemaking@maine.gov.

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