**State of Maine: Notice of Agency Rulemaking – November 29, 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: **65-407 - Public Utilities Commission**

CHAPTER NUMBER AND TITLE: **Ch. 313,** Amendments to Customer Net Energy Billing

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2023-P242**

BRIEF SUMMARY: The Public Utilities Commission initiates a rulemaking proceeding to amend its Net Energy Billing (NEB) rule, Chapter 313, to reflect recently enacted legislation.

PUBLIC HEARING: December 20, 2023 at 1:00pm at the Public Utilities Commission, 26 Katherine Drive, Hallowell, Maine 04347. Persons unable to attend this conference in person may elect to participate virtually by emailing pamela.kowalchuk@maine.gov at the Commission and requesting a Microsoft Teams invitation. Those unable to attend via video may participate by phone using the dial-in information that appears on the Microsoft Teams invitation (obtained as described above).

COMMENT DEADLINE***:*** January 5, 2024. Comments on the proposed rule may be filed electronically using the Commission’s Case Management System (CMS) or may be sent in writing to the Administrative Director on or before January 5, 2024. However, the Commission requests that interested persons file initial comments on the proposed amendments to the Rule using the Commission's CMS, in Docket No. 2023-00284, on or before Friday,December 8, 2023. Written comments should refer to the docket number of this proceeding, Docket No. 2023-00284, and be sent to the Administrative Director, Public Utilities Commission, 18 State House Station, Augusta, Maine 04333-0018.

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Liz Wyman, 18 State House Station, Augusta, ME 04333. Telephone: (207) 287-1321. Email: [Liz.Wyman@maine.gov](mailto:Liz.Wyman@maine.gov)

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*: None

STATUTORY AUTHORITY FOR THIS RULE: 35-A M.R.S. §§ 104, 111, 1301, 3209-A, 3209-B.

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

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

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: [Pamela.Kowalchuk@maine.gov](mailto:Pamela.Kowalchuk@maine.gov)

AGENCY: **02-030 -** Department of Professional and Financial Regulation, **Bureau of Consumer Credit Protection**

CHAPTER NUMBER AND TITLE: **Ch. 601,** Establishment of Rules to Implement 9-A M.R.S. Article 14 and Requirement for Licensing of Student Loan Servicers Through the Nationwide Multistate Licensing System (NMLS)

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2023-P243**

BRIEF SUMMARY: The rule establishes licensing and renewal requirements for student loan servicers, sets fees for servicers’ initial and renewal licenses, and sets out operating requirements for servicing student loans. It establishes the position of student loan ombudsman within the Bureau of Consumer Credit Protection.

PUBLIC HEARING: N/A

COMMENT DEADLINE: December 30, 2023

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Mark Susi, Staff Attorney, 35 State House Station, Augusta, ME 04333. Telephone: (207) 624-8527. Email: [Mark.E.Susi@maine.gov](mailto:Mark.E.Susi@maine.gov)

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*: None

STATUTORY AUTHORITY FOR THIS RULE: Title 9-A M.R.S. §14-109(H)

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*: Maine Student Loan Bill of Rights, 9-A M.R.S. Article 14

AGENCY WEBSITE: <https://www.maine.gov/pfr/consumercredit/index.shtml>

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: Mark.E.Susi@maine.gov

**AGENCY: 01-001 - Department of Agriculture, Conservation and Forestry**

CHAPTER NUMBERS AND TITLES: **Ch. 400,** Administrative Cost Grants; **Ch. 401,** Income Replacement; **Ch. 402,** Support for No-Cost Technical Assistance; **Ch. 403,** Infrastructure Investment Grants; **Ch. 404,** Assistance Obtaining New Loans; **Ch. 405,** Real Estate Purchases; **Ch. 406,** Competitive Research Grants; **Ch. 407,** Financial Support for Blood Serum Testing; **Ch. 408,** Financial Support for Mental Health Care

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER : **2023-P244 to 2023-P252**

DETAILED SUMMARY:These nine proposed rules are intended to implement certain strategies identified in the *Plan for Administration of the Fund to Address PFAS Contamination* (“PFAS Fund Plan”). The PFAS Fund Plan was developed through a public planning process to prioritize funding and implementation of the $60 million PFAS Fund created by Governor Mills with bipartisan legislative support in response to the discovery of multiple farms in Maine contaminated with per- and polyfluoroalkyl substances (PFAS).

The proposed rules establish, inter alia, the eligibility criteria, administrative procedures, evaluation criteria, and appeals procedures for the following programs:

1. **Ch. 400, Administrative Cost Grants.** Commercial farms that have Department of Agriculture, Conservation and Forestry (DACF) confirmed unsafe levels of perfluoroalkyl and polyfluoroalkyl substances (PFAS) may apply to DACF for a one-time administrative grant. This grant is intended to compensate commercial farms for time expended on activities that are common to most farms upon the initial discovery of PFAS contamination, such as time spent with DACF field staff, time spent strategizing how to respond, and time spent communicating with customers.
2. **Ch. 401, Income Replacement.** Commercial farms that have stopped selling some or all products due to perfluoroalkyl and polyfluoroalkyl substances (PFAS) contamination may apply to the Department of Agriculture, Conservation and Forestry (DACF) for up to two years of lost income, adjusted for inflation.
3. **Ch. 402, Support for No-Cost Technical Assistance.** Commercial farms that have Department of Agriculture, Conservation and Forestry (DACF) confirmed unsafe levels of perfluoroalkyl and polyfluoroalkyl substances (PFAS) may apply to DACF for no-cost technical assistance to help guide their response to the discovery of PFAS or to implement mitigation strategies. Eligible producers may consult, contract, or work with service providers to obtain expert advice, estimates, drawings, plans, research, and technical or professional assistance related to modifying their operations in response to PFAS contamination.
4. **Ch. 403, Infrastructure Investment Grants.** Commercial farms that have Department of Agriculture, Conservation and Forestry (DACF) confirmed unsafe levels of perfluoroalkyl and polyfluoroalkyl substances (PFAS) may apply to DACF for grant funding for infrastructure projects that will help the commercial farm transition to new production methods or new types of production.
5. **Ch. 404, Assistance Obtaining New Loans.** Commercial farms that have Department of Agriculture, Conservation and Forestry (DACF) confirmed unsafe levels of perfluoroalkyl and polyfluoroalkyl substances (PFAS) may apply to DACF for assistance covering the cost of obtaining a guaranteed loan, commercial loan insurance, or environmental site assessments required by a lending institution for new loans when a new loan is necessitated by the discovery of PFAS contamination on the commercial farm and the new loan is related to the farm business.
6. **Ch. 405, Real Estate Purchases.** The Department of Agriculture, Conservation and Forestry (DACF) may purchase agricultural land contaminated by perfluoroalkyl and polyfluoroalkyl substances (PFAS) from commercial farms, along with appurtenant buildings, structures, and fixtures. DACF may purchase all or some of an eligible landowner’s real estate.
7. **Ch. 406, Competitive Research Grants.** The Department of Agriculture, Conservation and Forestry (DACF) hereby establishes the rules for a competitive grant program to fund research that will help commercial farmers make informed decisions about how to utilize agricultural property that has been impacted by perfluoroalkyl and polyfluoroalkyl substances (PFAS).
8. **Ch. 407, Financial Support for PFAS Blood Serum Testing.** The Fund to Address PFAS Contamination (PFAS Fund) may pay for costs not otherwise covered by health insurance for perfluoroalkyl and polyfluoroalkyl substances (PFAS) blood serum testing for persons who were exposed to PFAS through the land application of residuals in Maine.
9. **Ch. 408, Financial Support for Mental Health Care.** The Fund to Address PFAS Contamination (PFAS Fund) may pay for costs not otherwise covered by health insurance for mental health care for persons who were exposed to PFAS through the land application of residuals in Maine. Alternatively, the PFAS Fund may contract with mental health professionals to provide services to eligible individuals at no or low cost.

PUBLIC HEARING: Dec. 18, 2023, 1-4 pm, Deering 101, 90 Blossom Lane, Augusta, ME and via Zoom: <https://mainestate.zoom.us/webinar/register/WN_a_6xyqnLQoy88DqZus96_g> (preregistration required).

COMMENT DEADLINE: December 28, 2023

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Beth Valentine, PFAS Fund Director, 22 State House Station, Augusta, ME 04333-0022, 207-313-0962, [Beth.Valentine@maine.gov](mailto:Beth.Valentine@maine.gov)

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*:  The proposed rule is not expected to impose any cost on municipalities or counties.

Notably, unlike private landowners, DACF will not pay property tax on PFAS-contaminated property it purchases. To avoid a loss of revenue to municipalities, DACF may pay an “in lieu of” fee (Ch. 405).

STATUTORY AUTHORITY FOR THIS RULE: 7 MRS Ch 10-D, §320-K - §320-L and PL 2021, Ch. 635.

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

AGENCY WEBSITE: [PFAS Fund Advisory Committee: Maine Department of Agriculture, Conservation and Forestry](https://www.maine.gov/dacf/about/commissioners/pfasfund/advisory-committee.shtml)

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: [Shannon.Ayotte@maine.gov](mailto:Shannon.Ayotte@maine.gov)

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);* **Chapter 2, Section 1,**  Adult Protective Services System, (*Adoption Proposed)*

TYPE OF RULE:Routine Technical

PROPOSED RULE NUMBER: **2023-P253, 2023-P254**

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 will be held at 9:00 am Eastern Time (US and Canada) on Wednesday, December 20, 2023, 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 Saturday, December 30, 2023.

CONTACT PERSON FOR THIS FILING**:** 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](mailto:Esther.Miller@maine.gov) Phone: 207-441-8349, Fax: 207-287-9915, TTY: 711 (Deaf or Hard of Hearing)

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT: N/A

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](mailto:Emily.A.Cathcart@maine.gov)

AGENCY: **01-001 - Department of Agriculture, Conservation and Forestry**

CHAPTER NUMBER AND TITLE: **Ch. 213,** Rules For the Maine Salmonella enteritidis (“SE”) Risk Reduction and Surveillance Program for Commercial Egg-Type Flocks

TYPE OF RULE*:* Major Substantive

PROPOSED RULE NUMBER : **2023-P255**

BRIEF SUMMARY: The Maine Salmonella enteritidis (“SE”) Risk Reduction and Surveillance Program for commercial Egg-Type Flocks is intended to prevent SE-contaminated eggs from entering the commercial food supply. Its provisions are an enhancement of the US Food and Drug Administration’s (“FDA”) Final Rule on the Prevention of Salmonella Enteritidis in Shell Eggs During Production, Storage, and Transportation. All commercial egg-producing facilities are required to participate in the program. Adherence to the program rules will be monitored by Department of Agriculture, Conservation and Forestry Staff.

PUBLIC HEARING: Dec 18, 2023, 1PM, Rm 310, Deering Bldg, 90 Blossom Ln, Augusta

COMMENT DEADLINE: December 28, 2023

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Dr. Stefanie Bolas, 28 SHS, Augusta, ME 04333-0028. Phone: 207-215-6727. Email: [Stefanie.Bolas@maine.gov](mailto:Stefanie.Bolas@maine.gov)

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*: None

STATUTORY AUTHORITY FOR THIS RULE: 7 MRS §1758

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*: FDA’s Egg Safety Rule, Prevention of Salmonella Enteritidis in Shell Eggs During Production, Storage, and Transportation, 21 CFR Parts 16 and 118, July 9, 2009

AGENCY WEBSITE: <https://www.maine.gov/dacf/ahw/animal_health/>

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: [Shannon.Ayotte@maine.gov](mailto:Shannon.Ayotte@maine.gov)

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

CHAPTER NUMBER AND TITLE: **Ch. 3,** Electric Efficiency and Conservation Programs

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2023-P256**

BRIEF SUMMARY: The Efficiency Maine Trust (the Trust) proposes amendments to the rule governing the implementation of its Electric Efficiency and Conservation Programs. The proposed updates reflect changes to the Efficiency Maine Trust Act resulting from the recent enactment of P.L. 2023, Ch. 328, An Act to Enact the Beneficial Electrification Policy Act. These changes pertain to the Trust’s activities to advance the policy of beneficial electrification and to the inclusion of certain cost-effective beneficial electrification measures in the determination of maximum achievable cost-effective (MACE) resources in the Trust’s Triennial Plan. The Trust also proposes updates to the rule to reflect changes made by the Legislature in recent years to 35-A M.R.S.A. §10104(4) and to 35-A M.R.S.A. §10110(2), which describe goals that the Trust must advance in its triennial plans and criteria for conservation programs. A public hearing will be held at the address below on December 19, 2023. Comments on the proposed rule may be provided in writing if submitted prior to January 5, 2024. Requests for a copy of the draft rule may be directed to the Contact Person for this filing. More information is available online at [www.efficiencymaine.com/rulemaking](http://www.efficiencymaine.com/rulemaking).

PUBLIC HEARING: December 19, 2023, 9:00 AM at the Offices of the Efficiency Maine Trust, 168 Capitol St, Suite 1, Augusta, ME 04330. The option to participate by phone and online video conferencing will also be available.

COMMENT DEADLINE: January 5, 2024

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Nat Haslett, Manager for Regulatory and Legislative Affairs, 168 Capitol Street, Suite 1, Augusta, ME 04330. Telephone: (207) 553-3068, Fax – (207) 213-4153. Email: [Nat.Haslett@effiencymaine.com](mailto:Nat.Haslett@effiencymaine.com)

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*: No change

STATUTORY AUTHORITY FOR THIS RULE: 35-A M.R.S.A. §§10102, 10103, 10104, 10105, 10106, 10109, 10110

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

AGENCY WEBSITE: [www.efficiencymaine.com](http://www.efficiencymaine.com)

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: [Nat.Haslett@efficiencymaine.com](mailto:Nat.Haslett@efficiencymaine.com)

AGENCY: **12-172 -** Department of Labor, **Bureau of Unemployment Compensation**

CHAPTER NUMBER AND TITLE: **Ch. 14,** Education Institutional Employees

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2023-P257**

DETAILED SUMMARY:Repealsand replaces the rule to clarify the analysis as to whether an education institution employee is eligible for unemployment benefits during an established and customary vacation period. In particular, this Rule clarifies the criteria for determining whether an “annual written reasonable assurance” exists and defining a “contract” as those terms are used in 26 M.R.S. § 1192(7). The rule further provides clarity and guidance on when adjunct faculty may qualify for unemployment benefits, as directed by Resolves 2023, Ch. 38.

PUBLIC HEARING: Tuesday, December 19, 2023 at 9:00 a.m., at the Maine Department of Labor, Frances Perkins Conference Room, 45 Commerce Dr., Augusta, ME 04330

COMMENT DEADLINE: Friday, January 5, 2024

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

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

STATUTORY AUTHORITY FOR THIS RULE: 26 MRS §1082(1) and Resolves 2023, ch.38

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

AGENCY WEBSITE: [https://www.maine.gov/labor/proposedrulemaking/](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.maine.gov%2Flabor%2Fproposedrulemaking%2F&data=04%7C01%7CJohn.L.Rioux%40Maine.gov%7Cc587b0cc66dd4c6882e008d9d5223572%7C413fa8ab207d4b629bcdea1a8f2f864e%7C0%7C0%7C637775165159189394%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=SYytkCFa4Pf0uDFJnsVO10csMwXP0vi8xnIy7K1krFQ%3D&reserved=0)

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: [Isaac.H.Gingras@maine.gov](mailto:Isaac.H.Gingras@maine.gov)

AGENCY: **12-172** - Department of Labor, **Bureau of Unemployment Compensation**

CHAPTER NUMBER AND TITLE: **Ch. 27,** Work-Share Rules

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2023-P258**

DETAILED SUMMARY:This is a new Rule to set forth the procedures and requirements for employers who choose to participate in Maine’s Short-Term Compensation Program, known as the Work-Share Program. this Rule provides additional guidance and clarifies definitions and processes set forth in 26 M.R.S. § 1198 of the Employment Security Act.

PUBLIC HEARING: Tuesday, December 19, 2023 at 9:00 a.m., at the Maine Department of Labor, Frances Perkins Conference Room, 45 Commerce Dr., Augusta, ME 04330

COMMENT DEADLINE: Friday, January 5, 2024

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

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

STATUTORY AUTHORITY FOR THIS RULE: 26 MRS §§ 1082(1) and 1198

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

AGENCY WEBSITE: [https://www.maine.gov/labor/proposedrulemaking/](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.maine.gov%2Flabor%2Fproposedrulemaking%2F&data=04%7C01%7CJohn.L.Rioux%40Maine.gov%7Cc587b0cc66dd4c6882e008d9d5223572%7C413fa8ab207d4b629bcdea1a8f2f864e%7C0%7C0%7C637775165159189394%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=SYytkCFa4Pf0uDFJnsVO10csMwXP0vi8xnIy7K1krFQ%3D&reserved=0)

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: [Isaac.H.Gingras@maine.gov](mailto:Isaac.H.Gingras@maine.gov)

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

CHAPTER NUMBER AND TITLE: **Ch. 301,** Supplemental Nutrition Assistance Program (SNAP) Manual; Sections 777-4 and 999-1 (SNAP Rule #229P – Electronic Benefit Theft)

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2023-P259**

BRIEF SUMMARY:Pursuant tothe Consolidated Appropriations Act 2023 (CAA 2023), Public Law 117-328, Division HH, Title IV § 501, EBT Benefit Fraud Prevention requirements, the Department proposes to amend the SNAP Manual, Sections 777-4 to align with the requirements of the CAA 2023. The proposed rule changes will provide clarity on the Department’s procedure and timeframes for replacement of SNAP benefits determined to have been stolen through card skimming, card cloning, or similar fraudulent methods. The U.S.D.A. – Food and Nutrition Services approved the Department’s Plan for the Replacement of Electronically Stolen EBT Benefits on August 10, 2023, retroactive to October 1, 2022. This rule change would be effective retroactive to October 1, 2022. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as this update provides a benefit to SNAP recipients or beneficiaries and does not adversely impact applicants, participants, beneficiaries, or providers.

In addition, definitions for Card Cloning, Card Skimming, and Phishing would be added to Section 999-1.

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

STATUTORY AUTHORITY FOR THIS RULE:22 M.R.S. §§ 42(1) and (8); 3104

PUBLIC HEARING:No public hearing is scheduled.

COMMENT DEADLINE: Tuesday, January 2, 2024, at 5:00 p.m. ET. Written public comments may be submitted via the link at <https://www.maine.gov/dhhs/about/rulemaking>

CONTACT PERSON FOR THIS FILING:Ian Miller, Senior Program Manager – SNAP, Department of Health and Human Services, Office for Family Independence, 109 Capitol Street, Augusta, ME 04330-6841. Telephone: (207) 624-4138. Fax: (207) 287-3455. TT Users Call Maine Relay – 711. Email: [Ian.Miller@maine.gov](mailto:Ian.Miller@maine.gov)

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES:None anticipated.

AGENCY WEBSITE: [https://www.maine.gov/dhhs/ofi](https://www.maine.gov/dhhs/ofi/arules)

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON:

[Emily.A.Cathcart@maine.gov](mailto:Emily.A.Cathcart@maine.gov)

**ADOPTIONS**

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

CHAPTER NUMBER AND TITLE: **Ch. 301,** Supplemental Nutrition Assistance Program (SNAP) Manual; Section 999-2; SNAP Rule #230A – ABAWD Geographic Exemptions

ADOPTED RULE NUMBER: **2023-238**

CONCISE SUMMARY: Federal Supplemental Nutrition Assistance Program (SNAP) regulations provide that certain able-bodied adults without dependents (ABAWDs) are subject to a maximum of three months of benefits over a 36-month period, unless they work 80 hours per month or participate in and comply with requirements of a work program. Individuals who reside in certain geographic areas can qualify for an exception to this time limit under 7 C.F.R. § 273.24(f).

The Department submitted a request to the U.S.D.A. – Food and Nutrition Services (FNS) to waive these work requirements for certain ABAWDs residing in geographic areas that have unemployment rates at or above 10% or have insufficient jobs for recipients residing in those areas. The geographic areas include 260 qualifying cities, towns, unorganized territories, townships, and reservations that qualify individually or as part of a federally defined labor market area. U.S.D.A. – FNS approved the Department’s waiver request on September 27, 2023. ABAWDs residing in these areas will no longer have to meet the work requirements to receive SNAP effective retroactive to October 1, 2023. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as this update provides a benefit to nearly 2,000 SNAP recipients who meet the ABAWD definition and does not adversely impact applicants, participants, beneficiaries, or providers.

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

EFFECTIVE DATE: November 26,2023

AGENCY CONTACT PERSON:Patricia Dushuttle, Special Projects Program Manager – SNAP, Office for Family Independence, Department of Health & Human Services, 109 Capitol Street, Augusta, ME 04333. Phone: (207) 624-6907/ Fax: (207)287-3455, TT Users Call Maine Relay – 711. Email: [Patricia.Dushuttle@maine.gov](mailto:Patricia.Dushuttle@maine.gov)

OFI WEBSITE: <https://www.maine.gov/dhhs/ofi>.  
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AGENCY: **10-144 -** Department of Health and Human Services, **Office of MaineCare Services, Division of Policy**

CHAPTER NUMBER AND TITLE: Ch. 101, MaineCare Benefits Manual, **Chapter III, Section 67,** Principles of Reimbursement for Nursing Facilities

ADOPTED RULE NUMBER: **2023-239**

CONCISE SUMMARY: This letter gives notice of adopted rule: 10-144 C.M.R. Chapter 101, MaineCare Benefits Manual, Chapter III, Section 67, Principles of Reimbursement for Nursing Facilities.

The Department adopts the following changes to 10-144 C.M.R., Chapter 101, Ch. III, Section 67, Principles of Reimbursement for Nursing Facilities:

* Removes language that stated the Department is seeking approval from CMS for changes where approval has been granted, and adds CMS approval language where the Department is seeking CMS approval.
* Changes the date of the most recently filed cost report for purposes of subsequent rebasing from the report available by April 1st of the re-basing year to the report available by June 1st of the re-basing year, to ensure the Department uses the most recent cost reports available.
* Principle 13.2 (Cost Reports): The Department made two changes: (1) To comply with the Social Security Act, 42 U.S.C. Section 1320a-7k(d), if a nursing facility determines from the cost report that the nursing facility owes moneys to the Department, it must submit 100% (changed from 50%) of the amount owed to the Department with its filed cost report; and (2) In compliance with P.L. 2023, ch. 121, added a requirement that if it is determined that the Department owes the facility money, the Department must reimburse at least seventy-five percent (75%) of the settlement pursuant to the facility’s cost reports within ninety (90) days of receipt.
* Adds a list of twenty items that nursing facilities must submit as supporting documentation with the cost report to support a more accurate analysis of costs.
* Principle 13.4: The Department adopts changes that formalize the process for the Division of Audit to accept cost reports for completeness and adequacy of all supporting documentation. The acceptance review should be completed within 45 days of receipt of the cost report. The Division of Audit will continue to perform what were previously known as uniform desk reviews on each cost report that has been accepted. The term “audit” has been substituted for the previous term “uniform desk review.” The Department deleted the rule requirement that such audits be completed within three hundred and sixty five (365) days after receipt of an acceptable cost report filing. The Department made changes to the final rule from the proposed rule, after receiving comments and also Office of Attorney General review, to clarify the provision.
* Adds health savings accounts and flexible spending accounts to the list of Direct Care Cost Components.
* Adds background checks and software costs and licensing fees to the list of allowable costs for the routine component of the rate.
* Principle 17.4.2.6 (Purchased Central Office services): Adds “Purchased Central Office Services” to the list of Administration Functions under Routine Cost Components to clarify that Central Office services purchased from another provider are only allowable to the extent they are actual costs, as a service provided by a related party. After comments, the Department added clarifying language to the final rule, clarifying that the nursing facility providing this service to another nursing facility, would not be reimbursed for the cost of providing the service.
* Clarifies the Motor Vehicle Allowance to state that only one vehicle per facility is allowed as a Routine Cost Component.
* Removes language stating that allowable costs not specified for inclusion in another cost category shall be included in the Fixed Costs Component as those costs fall under the Routine Cost Component, not the Fixed Costs Component.
* Principle 18.5.1(Interest Expense) The Department made two changes: (1) Added clarifying language that Interest Expenses must be for a purpose related to patient care; and (2) Added a new provision (f) with clarifying language that loan principal payments need to be applied to the allowable portion of debt first, consistent with *CMS The Provider Reimbursement Manual, Part I, Chapter 2 (Interest Expense), Publication #15-1.*
* Principle 18.12 (Payment for High MaineCare Utilization): The Department made two changes: (1) Clarifies that Payment for High MaineCare Utilization is based on the number of resident days and not the number of residents; and (2) Added a new provision, with a retroactive effective date of July 1, 2021, pursuant to Resolves 2021, ch. 171, so that any nursing facility whose MaineCare resident days constitute more than 80% of the nursing facility’s total number of resident days will receive a High MaineCare Utilization Payment of $0.60 per resident day for each one percentage of MaineCare resident days above 80%, and this payment is not subject to cost settlement and must be retained by the nursing facility in its entirety.
* Principle 22.3.4.3 (Add On to Support Essential Support Worker): In compliance with 22 M.R.S. Section 7402 (Essential support worker reimbursement), the Department added a new provision which creates an Essential Support Worker Add-On reimbursement to the direct care rate to increase cost reimbursement caps as necessary to enable providers to cover labor costs for essential support workers as defined in 22 M.R.S. Section 7401(3) that equals at least 125% of the minimum wage established in 26 M.R.S. Section 664(1), and by increasing related taxes and benefits accordingly. This add-on is not case mix adjusted. Pursuant to P.L. 2021, ch. 398, Sec. AAAA-5, this additional reimbursement has a retroactive effective date of July 1, 2022.
* Changes the facility allowance to receive an annual inflation adjustment based on the Consumer Price Index under the Prospective Per Diem Rate for Rates for Facilities Recently Sold, Renovated or New Facilities.
* Eliminates the requirement that Remote Island Nursing Facilities must maintain Medicaid utilization of ninety-five percent or more.
* Principle 44 (Special Wage Allowances): The Department made the following changes:

In compliance with P.L. 2019, ch. 533, the Department added a provision for Special Wage Allowances for January 1, 2020 to June 30, 2021 to provide for wages and wage-related benefits in both the direct care cost component and route care cost component. This reimbursement has been approved by CMS. The rule also notes that a Special Wage Allowance for the period January 1 through June 30, 2022, was authorized and reimbursed under the Section 67 Principle 34 Extraordinary Circumstances Allowance. Note that, consistent with P.L. 2019, ch. 533, Sections 1, 2 and 3, the Special Wage Allowance is not continued past the January 1 through June 30, 2022 period because the rebasing required under 22 M.R.S. Section 1708(3)(F) is based on 2020 or a later calendar year as a base year and the rebased rates have incorporated the costs of contract labor, wages and allowable benefits and taxes that were reported on each nursing facility’s cost report for its fiscal year ending in calendar year 2020.

* Makes other, non-substantive grammatical corrections.

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

EFFECTIVE DATE: November 26, 2023

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AGENCY:  **01-001 - Department of Agriculture, Conservation and Forestry**

CHAPTER NUMBER AND TITLE: **Ch. 275,** Emerald Ash Borer Quarantine

ADOPTED RULE NUMBER: **2023-240**

CONCISE SUMMARY:This chapter establishes a quarantine against the Emerald Ash Borer (Agrilus planipennis) (EAB) to prevent its movement to uninfested parts of the State to protect Maine's forest and timber resources. This proposal extends the quarantined area in the Northern Aroostook County area and into multiple new counties in southern Maine. These measures help protect over 60% of the ash resource that is still outside the current quarantine areas of Maine.

EFFECTIVE DATE: November 26, 2023

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**EAB Quarantine:** <https://www.maine.gov/dacf/mfs/forest_health/invasive_threats/eab/index.shtml>

**Department of Agriculture, Conservation and Forestry:** <https://www.maine.gov/dacf>.