

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry
Umbrella-Unit: **01-001**
Statutory authority: 7 MRS chg. 405A §2211
Chapter number/title: **Ch. 273**, Criteria for Listing Invasive Terrestrial Plants
Filing number: **2022-092**
Effective date: 5/24/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Invasive plants are a direct threat to what we value about Maine's natural and working landscapes. The aggressive growth of invasive plants increases costs for agriculture, can affect forest regeneration, threatens our recreational experiences, and reduces the value of habitats for mammals, birds and pollinators. Species like callery pear and Russian olive can form impenetrable thickets in forests and agricultural fields.

Invasive species are the second-greatest threat to global biodiversity after loss of habitat. Invading plants out compete native species by limiting sunlight, water, nutrients, and space. They change animal habitat by eliminating native foods, altering cover, and destroying nesting opportunities. Some invaders are so aggressive they leave no room for our natives.

Basis statement:

In 2007 the Department of Agriculture was directed by the legislature to study invasive terrestrial plants with stakeholder input. In February 2008 a report was presented to the joint standing committee on Agriculture, Conservation and Forestry which presented a list of criteria for evaluating invasive terrestrial plants. Subsequently the Department was directed to establish criteria for evaluating invasive terrestrial plants in rule.

In 2011-2012 the Department adopted rules which established the criteria for listing invasive, likely invasive and potentially invasive plants. Those criteria were used to develop a draft plant list by the Invasive Plant Workgroup which was appointed by the Commissioner of the Department of Agriculture, Conservation and Forestry.

In 2016, the Department proposed banning the sale and import of 33 terrestrial invasive plants and provided a process for nominating new plants as well as a petition process to remove plant varieties that are demonstrated not to be invasive. The rule also required periodic review and amendment of the list on a five-year basis. On January 1, 2018 the first list of 33 plants became officially banned.

The Department began the five-year review of Ch. 273 in the spring of 2021 and on March 30, 2022, the Secretary of State published a notice regarding the resulting proposed rule which added 30 new plants to the do-not-sell list and created a new watch list and a species of special concern category for plants that are not banned but may be invasive in very limited habitats. By this date well over 2000 companies and individuals representing the horticulture industry and environmental interests in the state had been notified electronically through the Department's GovDelivery lists and on many social media sites. A public hearing was held in Augusta on April 22, 2022 with three people representing horticulture businesses and two representing themselves. Four spoke in favor of the proposed rule and one spoke neither for nor against. Most of the comments were in support of the proposed listed plants. There were suggestions to move a few of the watch list plants to the do-not-sell list and one nursery owner spoke about the listing of *Rosa rugosa* as a species of special concern. This owner was concerned that adding signs or tags to the plants would effectively ban the plants since customers will be turned off by the labeling.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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The comment period ended on May 6, 2022. There were 7 email comments that registered concerns about plants on the proposed watch list because they are considered food plants. One email comment was from a grower that testified at the hearing and she wanted to clarify her concerns about the labeling of *Rosa rugosa* and reiterate the potential problems with also regulating the many antique hybrid roses that contain *Rosa rugosa* genes. She also suggested that Option 2 be adopted for Section IX requiring signs as opposed to labeling of individual *Rosa rugosa* plants. Five commenters supported the proposed rule but wanted to ban additional plants from the watch list. Three comments came from DACF employees who wanted to amend the Species of Special Concern category to Invasive Terrestrial Plant Species of Special Concern since that category was already utilized by Maine IF&W regarding endangered species. One person recommended adopting the option 1 in Section IX to require labels on *Rosa rugosa* and one other commenter wrote just in support of the rule as proposed.

The Department's staff reviewed the hearing record on May 10, 2022 and noted there were a few minor word changes requested which have been implemented. Because of a lack of comments regarding which option to adopt for Section IX, the Department suggests allowing nurseries that sell *Rosa rugosa* to choose which option best fits their business model.

The rule was adopted with the following changes. In Section I, item J, renamed "Species of Special Concern" to "Invasive Terrestrial Plant Species of Special Concern" and in item K, added the words "in wetlands or" following "...plants that are able to grow". The word "one" was changed to "all" in Section V as this was an oversight and Section II requires all the criteria to be met for a species to be listed as regulated. Finally, both options for signage and labeling of Invasive Terrestrial Plant Species of Special Concern were retained to allow plant sellers to choose which option best fits their business model.

Fiscal impact of rule:

There will be no significant change in the inspection process so there will be no fiscal impact to the Plant Health Program.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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Agency name: Department of Agriculture, Conservation and Forestry
Umbrella-Unit: **01-001**
Statutory authority: 22 MRS §2154
Chapter number/title: **Ch. 330**, License Fees to Manufacture and Sell Food and Beverages
Filing number: **2022-063**
Effective date: 4/26/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The principal reason for this amendment 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 Syrup Products have been added to the rule, DACF is updating the fee structure to include the cost of a Birch Syrup processing license to be the same as Maple Syrup processing.

Basis statement:

The principal reason for rule amendments to Chapter 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” 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 processing is being added to the rule, the department is updating the fee structure to include the licensing fee for Birch Syrup processing be the same as Maple Syrup processing.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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Agency name: Department of Agriculture, Conservation and Forestry
Umbrella-Unit: **01-001**
Statutory authority: 22 MRS §2154
Chapter number/title: **Ch. 347**, Birch and Maple Syrup Processing
Filing number: **2022-064**
Effective date: 4/26/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The principal reason for rule amendments to Chapter 347 Maple Syrup Processing 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.

Basis statement:

Chapter 347 Birch and Maple Syrup Processing of the Maine Department of Agriculture, Conservation & Forestry, Division of Quality Assurance establishes rules that are consistent with enactment by the 130th Legislature of “LD 416, An Act Regarding the Production and Sale of Birch Syrup and Birch Syrup Products” These amendments are necessary to incorporate good manufacturing practices and labeling standards for the processing of birch and maple syrup and birch and maple products into the rule.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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Agency name: Department of Agriculture, Conservation and Forestry
Umbrella-Unit: **01-001**
Statutory authority: 7 MRS §3906-B
Chapter number/title: **Ch. 701**, Rules Governing Animal Welfare
Filing number: **2022-011**
Effective date: 1/24/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The revisions proposed to these rules will improve accountability for animal facilities importing animals for sale or adoption and also improve standards of care all animal facilities. All other revisions represent typical rule maintenance.

Basis statement:

The revisions proposed to these rules will improve accountability for animal facilities importing animals for sale or adoption and also improve standards of care at all animal facilities. All other revisions represent typical rule maintenance.

Section I changes. Over the past several years, there have been many changes to the way people acquire pets and the level of care needed to maintain healthy animals. These proposed changes are the result of investigations of complaints to the department and the result of inspections of licensed facilities. These changes also remove the redundant civil violations that already exist in current law.

Section VI changes. These proposed changes improve and clarify the requirements for horse shelter and care of horses that are in poor health to ensure that they will receive proper care.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission

Umbrella-Unit: **01-015**

Statutory authority: 5 MRS §8054; 7 MRS §2954

Chapter number/title: **Ch. 3, Schedule of Minimum Prices, Order #02-22**

Filing number: **2022-015**

Effective date: 1/30/2022

Type of rule: Routine Technical

Emergency rule: Yes

Principal reason or purpose for rule:

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.

The final **February 2022** minimum Class I price is **\$24.89/cwt. plus \$1.04/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$28.23/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$4.27.**

Basis statement:

Pursuant to 5 MRS §8054 and 7 MRS §2954 the Maine Milk Commission conducted an emergency rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$18.36/cwt.** and a Class IV price of **\$19.88/cwt.** for **December 2021.**

The Class II price for **December 2021** is **\$19.84/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$24.89/cwt. plus \$1.63/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on January 21, 2022 and therefore should be passed on in minimum prices effective January 30, 2022. These prices also include a handling fee of \$2.33/cwt.**

The schedule of prices listed herein reflects the latest Class I, Class II, Class III and Class IV prices plus the minimum dealer, producer and retail margins adopted by the Commission's Orders (DM) Dealer Margins, (PM) Producer Margins, and (RM) Retail Margins. The Class I prices reflect a Processor Assessment of **\$.20/cwt.** as authorized by Commission Order #93-MPF. Any change in prices at any level from last month reflects the action taken today by the Commission for Class I, Class II, Class III and Class IV and Butterfat prices.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission

Umbrella-Unit: **01-015**

Statutory authority: 5 MRS §8054; 7 MRS §2954

Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #03-22**

Filing number: **2022-026**

Effective date: 2/27/2022

Type of rule: Routine Technical

Emergency rule: Yes

Principal reason or purpose for rule:

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.

The final **March 2022** minimum Class I price is **\$26.13/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$29.42/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$4.39**.

Basis statement:

Pursuant to 5 MRS §8054 and 7 MRS §2954 the Maine Milk Commission conducted an emergency rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$20.38/cwt.** and a Class IV price of **\$23.09/cwt.** for **January 2022**.

The Class II price for **January 2022** is **\$22.83/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$26.13/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on February 17, 2022 and therefore should be passed on in minimum prices effective February 27, 2022. These prices also include a handling fee of \$0.47/cwt.**

The schedule of prices listed herein reflects the latest Class I, Class II, Class III and Class IV prices plus the minimum dealer, producer and retail margins adopted by the Commission's Orders (DM) Dealer Margins, (PM) Producer Margins, and (RM) Retail Margins. The Class I prices reflect a Processor Assessment of **\$0.20/cwt.** as authorized by Commission Order #93-MPF. Any change in prices at any level from last month reflects the action taken today by the Commission for Class I, Class II, Class III and Class IV and Butterfat prices.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission

Umbrella-Unit: **01-015**

Statutory authority: 5 MRS §8054; 7 MRS §2954

Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #04-22**

Filing number: **2022-048**

Effective date: 4/3/2022

Type of rule: Routine Technical

Emergency rule: Yes

Principal reason or purpose for rule:

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.

The final **April 2022** minimum Class I price is **\$27.63/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$30.92/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$4.63.**

Basis statement:

Pursuant to 5 MRS §8054 and 7 MRS §2954 the Maine Milk Commission conducted an emergency rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$20.91/cwt.** and a Class IV price of **\$24.00/cwt.** for **February 2022.**

The Class II price for **February 2022** is **\$23.79/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$27.63/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on March 24, 2022 and therefore should be passed on in minimum prices effective April 3, 2022. These prices also include a handling fee of \$0.47/cwt.**

The schedule of prices listed herein reflects the latest Class I, Class II, Class III and Class IV prices plus the minimum dealer, producer and retail margins adopted by the Commission's Orders (DM) Dealer Margins, (PM) Producer Margins, and (RM) Retail Margins. The Class I prices reflect a Processor Assessment of **\$0.20/cwt.** as authorized by Commission Order #93-MPF. Any change in prices at any level from last month reflects the action taken today by the Commission for Class I, Class II, Class III and Class IV and Butterfat prices.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
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Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission

Umbrella-Unit: **01-015**

Statutory authority: 5 MRS §8054; 7 MRS §2954

Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #05-22**

Filing number: **2022-068**

Effective date: 5/1/2022

Type of rule: Routine Technical

Emergency rule: Yes

Principal reason or purpose for rule:

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.

The final **May 2022** minimum Class I price is **\$28.70/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$31.99/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$4.73.**

Basis statement:

Pursuant to 5 MRS §8054 and 7 MRS §2954 the Maine Milk Commission conducted an emergency rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$22.45/cwt.** and a Class IV price of **\$24.82/cwt.** for **March 2022.**

The Class II price for **March 2022** is **\$24.76/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$28.70/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on April 21, 2022 and therefore should be passed on in minimum prices effective May 1, 2022. These prices also include a handling fee of \$0.47/cwt.**

The schedule of prices listed herein reflects the latest Class I, Class II, Class III and Class IV prices plus the minimum dealer, producer and retail margins adopted by the Commission's Orders (DM) Dealer Margins, (PM) Producer Margins, and (RM) Retail Margins. The Class I prices reflect a Processor Assessment of **\$0.20/cwt.** as authorized by Commission Order #93-MPF. Any change in prices at any level from last month reflects the action taken today by the Commission for Class I, Class II, Class III and Class IV and Butterfat prices.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission

Umbrella-Unit: **01-015**

Statutory authority: 5 MRS §8054; 7 MRS §2954

Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #06-22**

Filing number: **2022-097**

Effective date: 5/29/2022

Type of rule: Routine Technical

Emergency rule: Yes

Principal reason or purpose for rule:

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.

The final **June 2022** minimum Class I price is **\$29.12/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$32.21/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$4.77.**

Basis statement:

Pursuant to 5 MRS §8054 and 7 MRS §2954 the Maine Milk Commission conducted an emergency rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$24.42/cwt.** and a Class IV price of **\$25.31/cwt.** for **April 2022.**

The Class II price for **April 2022** is **\$25.71/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$29.12/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on May 19, 2022 and therefore should be passed on in minimum prices effective May 29, 2022. These prices also include a handling fee of \$0.47/cwt.**

The schedule of prices listed herein reflects the latest Class I, Class II, Class III and Class IV prices plus the minimum dealer, producer and retail margins adopted by the Commission's Orders (DM) Dealer Margins, (PM) Producer Margins, and (RM) Retail Margins. The Class I prices reflect a Processor Assessment of **\$0.20/cwt.** as authorized by Commission Order #93-MPF. Any change in prices at any level from last month reflects the action taken today by the Commission for Class I, Class II, Class III and Class IV and Butterfat prices.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission

Umbrella-Unit: **01-015**

Statutory authority: 5 MRS §8054; 7 MRS §2954

Chapter number/title: **Ch. 3, Schedule of Minimum Prices, Order #07-22**

Filing number: **2022-122**

Effective date: 7/3/2022

Type of rule: Routine Technical

Emergency rule: Yes

Principal reason or purpose for rule:

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.

The final **July 2022** minimum Class I price is **\$29.12/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$32.41/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$4.77.**

Basis statement:

Pursuant to 5 MRS §8054 and 7 MRS §2954 the Maine Milk Commission conducted an emergency rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$25.21/cwt.** and a Class IV price of **\$24.99/cwt.** for **May 2022.**

The Class II price for **May 2022** is **\$25.87/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$29.12/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on June 23, 2022 and therefore should be passed on in minimum prices effective July 3, 2022. These prices also include a handling fee of \$0.47/cwt.**

The schedule of prices listed herein reflects the latest Class I, Class II, Class III and Class IV prices plus the minimum dealer, producer and retail margins adopted by the Commission's Orders (DM) Dealer Margins, (PM) Producer Margins, and (RM) Retail Margins. The Class I prices reflect a Processor Assessment of **\$0.20/cwt.** as authorized by Commission Order #93-MPF. Any change in prices at any level from last month reflects the action taken today by the Commission for Class I, Class II, Class III and Class IV and Butterfat prices.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission
Umbrella-Unit: **01-015**
Statutory authority: 5 MRS §8054; 7 MRS §2954
Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #08-22**
Filing number: **2022-138**
Effective date: 7/31/2022
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

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.

The final **August 2022** minimum Class I price is **\$28.38/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$31.67/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$4.71.**

Basis statement:

Pursuant to 5 MRS §8054 and 7 MRS §2954 the Maine Milk Commission conducted an emergency rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$24.33/cwt.** and a Class IV price of **\$25.83/cwt.** for **June 2022.**

The Class II price for **June 2022** is **\$26.65/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$28.38/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on July 21, 2022 and therefore should be passed on in minimum prices effective July 31, 2022. These prices also include a handling fee of \$0.47/cwt.**

The schedule of prices listed herein reflects the latest Class I, Class II, Class III and Class IV prices plus the minimum dealer, producer and retail margins adopted by the Commission's Orders (DM) Dealer Margins, (PM) Producer Margins, and (RM) Retail Margins. The Class I prices reflect a Processor Assessment of **\$0.20/cwt.** as authorized by Commission Order #93-MPF. Any change in prices at any level from last month reflects the action taken today by the Commission for Class I, Class II, Class III and Class IV and Butterfat prices.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission

Umbrella-Unit: **01-015**

Statutory authority: 5 MRS §8054; 7 MRS §2954

Chapter number/title: **Ch. 3, Schedule of Minimum Prices, Order #09-22**

Filing number: **2022-156**

Effective date: 9/4/2022

Type of rule: Routine Technical

Emergency rule: Yes

Principal reason or purpose for rule:

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.

The final **September 2022** minimum Class I price is **\$26.87/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$30.16/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$4.58.**

Basis statement:

Pursuant to 5 MRS §8054 and 7 MRS §2954 the Maine Milk Commission conducted an emergency rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$22.52/cwt.** and a Class IV price of **\$25.79/cwt.** for **July 2022.**

The Class II price for **July 2022** is **\$26.66/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$26.87/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on August 18, 2022 and therefore should be passed on in minimum prices effective September 4, 2022. These prices also include a handling fee of \$0.47/cwt.**

The schedule of prices listed herein reflects the latest Class I, Class II, Class III and Class IV prices plus the minimum dealer, producer and retail margins adopted by the Commission's Orders (DM) Dealer Margins, (PM) Producer Margins, and (RM) Retail Margins. The Class I prices reflect a Processor Assessment of **\$0.20/cwt.** as authorized by Commission Order #93-MPF. Any change in prices at any level from last month reflects the action taken today by the Commission for Class I, Class II, Class III and Class IV and Butterfat prices.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission

Umbrella-Unit: **01-015**

Statutory authority: 5 MRS §8054; 7 MRS §2954

Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #10-22**

Filing number: **2022-191**

Effective date: 10/2/2022

Type of rule: Routine Technical

Emergency rule: Yes

Principal reason or purpose for rule:

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.

The final **October 2022** minimum Class I price is **\$25.96/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$29.25/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$4.50**.

Basis statement:

Pursuant to 5 MRS §8054 and 7 MRS §2954 the Maine Milk Commission conducted an emergency rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$20.10/cwt.** and a Class IV price of **\$24.81/cwt.** for **August 2022**.

The Class II price for **August 2022** is **\$26.91/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$25.96/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on September 22, 2022 and therefore should be passed on in minimum prices effective October 2, 2022. These prices also include a handling fee of \$0.47/cwt.**

The schedule of prices listed herein reflects the latest Class I, Class II, Class III and Class IV prices plus the minimum dealer, producer and retail margins adopted by the Commission's Orders (DM) Dealer Margins, (PM) Producer Margins, and (RM) Retail Margins. The Class I prices reflect a Processor Assessment of **\$0.20/cwt.** as authorized by Commission Order #93-MPF. Any change in prices at any level from last month reflects the action taken today by the Commission for Class I, Class II, Class III and Class IV and Butterfat prices.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission
Umbrella-Unit: **01-015**
Statutory authority: 5 MRS §8054; 7 MRS §2954
Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #11-22**
Filing number: **2022-211**
Effective date: 10/30/2022
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

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.

The final **November 2022** minimum Class I price is **\$27.34/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$30.63/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$4.62.**

Basis statement:

Pursuant to 5 MRS §8054 and 7 MRS §2954 the Maine Milk Commission conducted an emergency rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$19.82/cwt.** and a Class IV price of **\$24.63/cwt.** for **September 2022.**

The Class II price for **September 2022** is **\$26.51/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$27.34/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on October 20, 2022 and therefore should be passed on in minimum prices effective October 30, 2022. These prices also include a handling fee of \$0.47/cwt.**

The schedule of prices listed herein reflects the latest Class I, Class II, Class III and Class IV prices plus the minimum dealer, producer and retail margins adopted by the Commission's Orders (DM) Dealer Margins, (PM) Producer Margins, and (RM) Retail Margins. The Class I prices reflect a Processor Assessment of **\$0.20/cwt.** as authorized by Commission Order #93-MPF. Any change in prices at any level from last month reflects the action taken today by the Commission for Class I, Class II, Class III and Class IV and Butterfat prices.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission

Umbrella-Unit: **01-015**

Statutory authority: 5 MRS §8054; 7 MRS §2954

Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #11-22**

Filing number: **2022-230**

Effective date: 12/4/2022

Type of rule: Routine Technical

Emergency rule: Yes

Principal reason or purpose for rule:

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.

The final **December 2022** minimum Class I price is **\$25.83/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$29.12/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$4.49**.

Basis statement:

Pursuant to 5 MRS §8054 and 7 MRS §2954 the Maine Milk Commission conducted an emergency rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$21.81/cwt.** and a Class IV price of **\$24.96/cwt.** for **October 2022**.

The Class II price for **October 2022** is **\$25.73/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$25.83/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on November 23, 2022 and therefore should be passed on in minimum prices effective December 4, 2022. These prices also include a handling fee of \$0.47/cwt.**

The schedule of prices listed herein reflects the latest Class I, Class II, Class III and Class IV prices plus the minimum dealer, producer and retail margins adopted by the Commission's Orders (DM) Dealer Margins, (PM) Producer Margins, and (RM) Retail Margins. The Class I prices reflect a Processor Assessment of **\$0.20/cwt.** as authorized by Commission Order #93-MPF. Any change in prices at any level from last month reflects the action taken today by the Commission for Class I, Class II, Class III and Class IV and Butterfat prices.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission
Umbrella-Unit: **01-015**
Statutory authority: 5 MRS §8054; 7 MRS §2954
Chapter number/title: **Ch. 3**, Schedule of Minimum Prices, **Order #01-23**
Filing number: **2022-255**
Effective date: 1/1/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

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.

The final **January 2023** minimum Class I price is **\$25.66/cwt. plus \$1.58/cwt.** for Producer margins and a **\$1.04/cwt.** that reflects premiums being offered and prevailing in Southern New England and **\$0.47/cwt.** handling fee for a total of **\$38.95/cwt.**, which includes a processor assessment of \$0.20/cwt. Thus the minimum retail price of a gallon of whole milk is set at **\$4.47.**

Basis statement:

Pursuant to 5 MRS §8054 and 7 MRS §2954 the Maine Milk Commission conducted an emergency rulemaking hearing to determine whether or not the minimum price payable to producers for milk should be immediately changed due to developments in milk pricing in southern New England.

Federal Order One Northeast Market Administrator announced a Class III price of **\$21.01/cwt.** and a Class IV price of **\$23.30/cwt.** for **November 2022.**

The Class II price for **November 2022** is **\$24.67/cwt.** as announced by the Federal Order One Northeast Market Administrator.

The Commission, in setting their minimum prices, recognized the Federal Order Class I price of **\$25.66/cwt. plus \$1.58/cwt. for cost of production and an over-order premium of \$1.04/cwt. as being prevailing in southern New England based on the evidence presented at the Commission hearing on December 22, 2022 and therefore should be passed on in minimum prices effective January 1, 2023. These prices also include a handling fee of \$0.47/cwt.**

The schedule of prices listed herein reflects the latest Class I, Class II, Class III and Class IV prices plus the minimum dealer, producer and retail margins adopted by the Commission's Orders (DM) Dealer Margins, (PM) Producer Margins, and (RM) Retail Margins. The Class I prices reflect a Processor Assessment of **\$0.20/cwt.** as authorized by Commission Order #93-MPF. Any change in prices at any level from last month reflects the action taken today by the Commission for Class I, Class II, Class III and Class IV and Butterfat prices.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission

Umbrella-Unit: **01-015**

Statutory authority: 7 MRS §2954

Chapter number/title: **Ch. 26**, Producer Margins

Filing number: **2022-123**

Effective date: 8/1/2022

Type of rule: Major Substantive

Emergency rule: No

Principal reason or purpose for rule:

The principal reason for this rule is the need to establish producer margins for milk sold within the State of Maine in accordance with 7 M.R.S. Section 2954.

Basis statement:

I. BACKGROUND AND STATUTORY FRAMEWORK

Pursuant to the Maine Milk Commission Law 7 M.R.S.A., Section 2951 *et seq.* the Commission entered into an agreement with the University of Maine's Department of Resource Economics and Policy to investigate the cost of milk production under Maine conditions. Section 2954 (2)(A) of the Milk Commission law gives us our direction for setting producer prices. Because of its importance to these proceedings in enacting a rule recognizing the cost of production for producers, the provision is set forth below:

"The minimum wholesale prices paid to producers are based on the prevailing Class I, Class II and Class III prices in southern New England except that, after investigation, the Maine Milk Commission may set different minimum wholesale prices paid to producers to reflect the costs of producing milk in this State."

In 1990, when Chapter 26 was first adopted, the statute read as below:

"The minimum wholesale price paid to producers shall be based on the prevailing Class I and Class II prices in southern New England and after investigation by the Maine Milk Commission, shall reflect as accurately as possible the increased costs of production".

The changes to the statute adopted in 1994 removed the mandatory language for this adjustment, giving the Commission discretion to recognize (or not) the full cost of producing milk in Maine, but only after investigating these costs.

Changes to the statute by Public Law Chapter 648 adopted in 2004, instruct the Commission to adopt target prices with production ranges for three different levels of production at their breakeven cost of production when a new Maine producer cost-of-production study is completed.

In this rulemaking the Commission is repealing and replacing Chapter 26 to recognize as instructed by statute, the cost of production and target prices with production ranges for four different levels of production at their breakeven cost of production.

In using this rule in the future to set prices, the Commission will also weigh other factors. For example, section 2954 (2) requires the Commission to consider public health and welfare in insuring an adequate supply of milk; prevailing prices in neighboring states; seasonality and other conditions affecting costs of production, transportation and marketing, including a reasonable return to producer, dealer and retailer; taking into consideration the public need for the establishment of retail milk prices at the lowest practicable levels. And, in

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

section 2954 (2)(D) of the Milk Commission law the Commission must also consider, among other things, the effect of pricing decisions on the ability of the Maine dairy industry to compete in supplying milk to Maine consumers, including the extent of any social and economic benefits of maintaining processing plants in different geographic regions or natural marketing areas of the State.

II. PRODUCER MARGIN

We recognize that the intent of the law is to reflect the cost of producing milk in Maine as accurately as possible in the minimum wholesale prices paid to producers. However, we note that the intent of the law also requires the Commission to consider the well-being of the whole dairy industry in Maine. Thus, the conclusions of the University study and updates thereto that are set forth in Section III below are hereby adopted as the cost of producing milk in Maine and will be used after the effective date of this rule as a guide in setting minimum producer prices. The entire study is attached as Appendix A.

III. CONCLUSIONS OF THE STUDY OF PRODUCING MILK IN MAINE

This project has derived a representative cost of production estimate for Maine dairy farmers. This estimate is based upon responses from the 2019 Cost of Production survey implemented by the University of Maine Cooperative Extension, The University of Maine School of Economics and the Maine Milk Commission. This survey was used to develop typical farm units to represent the dairy farming population as a whole. From these characteristic farms, economic engineering budgeting approaches were applied to value all factors used in dairy production following best practice budgeting approaches.

Overall, when all factors of production are accounted for, including variable operating expenses, overhead, depreciation and interest, the average long-run cost of producing milk is estimated at \$21.94/cwt for Maine dairy producers.

Based on information provided at public hearing on April 22, 2021 and a subsequent 30 day written comment period which ended May 24, 2021 and based on the most recent updates to the 2019 Cooperative Extension/University of Maine Determining the current cost of producing milk in Maine study, the Commission hereby adopts the following 4 levels of target prices, each representing a range of annual production. These are based on the findings of the most recent study conducted in accordance with 7 M.R.S.A. Section 2952-A subsection 3 to estimate the short-run break-even point within each tier.

Tier:	Annual Production Range:	Target Price:
One	0 - 16,790 hundredweight	\$23.05
Two	Over 16,790 to 49,079 hundredweight	\$21.44
Three	Over 49,079 to 76,800 hundredweight	\$20.93
Four	Over 76,800 hundredweight	\$20.21
Average		\$21.94

Fiscal impact of rule:

Estimated increase of \$6,985,591 in FY22 and \$7,676,522 in FY23 to the general fund.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Maine Milk Commission

Umbrella-Unit: **01-015**

Statutory authority: 7 MRS §2954

Chapter number/title: **Ch. 29** (*Repeal and Replace*), Dealer Margins

Filing number: **2022-038**

Effective date: 3/19/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The principal reason for this rulemaking is to update dealer margins. The margins adopted reflect the current cost of processing milk in Maine and will be used by the Maine Milk Commission in their monthly milk price setting meetings.

Basis statement:

Pursuant to 7 MRS §2954, the Maine Milk Commission is responsible for setting minimum wholesale and retail milk prices. Minimum wholesale prices paid to processors (dairies) are set to reflect the lowest price at which milk purchased from Maine producers can be received, processed, packaged, and distributed to retailers within the state at a just and reasonable return. 7 MRS §2954(2)(B).

To arrive at the dairy-processing price, also known as the dealer margin, the Maine Milk Commission first conducts a cost study that evaluates the operation of milk processing plants in Maine. The study uses current price data for supplies, labor, electricity, trucking, etc., to calculate a lowest achievable price. The lowest achievable price is the theoretical price at which a Maine dairy should be able to process milk from raw product to finished product and distribute it to retailers. *Cumberland Farms Northern, Inc. v. Me. Milk Comm'n*, 377 A.2d 84, 91-92 (Me. 1977). The lowest achievable price must also factor in a reasonable return on investment. *Id.* at 92. To arrive at the dealer margin, the Commission takes the lowest achievable price generated by the study and then adjusts it, as warranted, after considering the criteria set forth in 7 MRS §2954(2), including, without limitation, conditions specific to Maine processors and the need to make milk available to the public at the lowest possible prices. *Id.*; *Cumberland Farms Northern, Inc. v. Me. Milk Comm'n*, 428 A.2d 869, 877-78 (Me. 1981).

The procedure employed to arrive at the dealer margin includes both independent investigation and a public hearing. 7 MRS §2954(1); *Cumberland Farms Northern, Inc.*, 377 A.2d at 88. The Commission conducts a public hearing on the proposed dealer margin. After considering the input of processors, any other interested parties, and the public, the Commission adopts a rule establishing the dealer margin. This margin is the minimum return that processors are guaranteed until a new study is completed. Processors may obtain a higher price for a gallon of milk from retailers, but the price paid by retailers cannot be below the dealer margin. A new cost study is required every three years. 7 MRS §2952-A(3).

In June of 2021, the Commission contracted with Herbein & Co. of Reading, Pennsylvania to conduct a new dairy processing cost study to be used as the basis for setting new dealer margins. This is the sixteenth major pricing order the Commission has set and embodies continued improvement and refinement over earlier orders. With each new order the data, and the information made available and reviewed by the Commission, has become more detailed and specific.

The Commission received input from interveners, processors, and milk producers.

Fiscal impact of rule: None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Maine State Harness Racing Commission

Umbrella-Unit: **01-017**

Statutory authority: 8 MRS §§ 263-A, 263-C, 264, 267-A, 268, 272-B, 272-C, 279,
279-A, 279-E, 281, 298

Chapter number/title: **Ch. 21**, General Hearing Procedures

Filing number: **2022-094**

Effective date: 5/28/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To establish that Commission has the authority to modify a Judge's decision brought before them in the form of an appeal hearing. There also is clarification regarding the definition of an appeal hearing.

Basis statement:

The Commission proposed several revisions to Chapter 21. The revisions were extensive and encompassed a large portion of the chapter, and as such a repeal and replace proposal was initiated. In total, 16 sections were repealed due to redundancy and/or conflict with the Maine Administrative Procedures Act, Title 5, Chapter 375. A few other sections were partially repealed with the same justification. Additionally, a couple of other edits were proposed to improve clarity and align Chapter 21 with the language present in the statute. No comments were submitted to the Commission regarding the proposed amendments.

After review and deliberation, the Commission voted to adopt the amendments on April 19, 2022 after finding that the amendments best serve the public interest.

Fiscal impact of rule:

None

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Board of Pesticides Control

Umbrella-Unit: **01-026**

Statutory authority: Chapter 20—22 MRSA §§ 1471 A-X

Chapter number/title: **Ch. 20**, Special Provisions

Filing number: **2022-085**

Effective date: 5/16/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The proposed rules amendments were sought to address the directives in LD 264 passed by the 130th Maine Legislature. This resolve directs the Maine Board of Pesticides Control to amend rules regarding registration of pesticide products. The proposed amendments were written to incorporate these changes.

Chapter 20 – Three amendments are proposed:

1. Define “Perfluoroalkyl and Polyfluoroalkyl Substances” or “PFAS”.
2. Add a requirement for registrants to submit a confidential statement of formula to register their product with the state of Maine.
3. Add two affidavit requirements; one affidavit that asks registrants to disclose if their pesticide product has ever been stored in a fluorinated container and a second affidavit asking registrants to disclose if the formulation of the pesticide product contains any perfluoroalkyl or polyfluoroalkyl substances.

Basis statement:

Three amendments to Chapter 20 were proposed by the Board:

1. Define “Perfluoroalkyl and Polyfluoroalkyl Substances” or “PFAS”.
2. Add a requirement for registrants to submit a confidential statement of formula to register their product with the state of Maine.
3. Add two affidavit requirements; one affidavit that asks registrants to disclose if their pesticide product has ever been stored in a fluorinated container and a second affidavit asking registrants to disclose if the formulation of the pesticide product contains any perfluoroalkyl or polyfluoroalkyl substances.

The amendments to the proposed rule are in response to Public Law Chapter 83 and recent legislation from the 130th Maine Legislature LD 264: Resolve, Directing the Board of Pesticides Control To Gather Information Relating to Perfluoroalkyl and Polyfluoroalkyl Substances in the State. This law directs the Board of Pesticides Control to amend rules to require affidavits that disclose if Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) are present in pesticide product formulations or containers at the time of product registration with the State of Maine. Many of these substances (PFAS) have been identified as substances that many break down very slowly and can build up in people, animals, and the environment over time. Amending these rules would allow the Board to identify these substances in pesticide products at the time of registration from the company.

Thirteen comments were received. Several people agreed with the Board’s definition of PFAS. Other comments included: making affidavits publicly available, including contaminant reporting with the confidential statement of formula, and inquired about expanding the container requirements to all fluorinated containers. The Board responded that affidavits will

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

be publicly available, contamination of pesticides is handled at the federal level, and some members indicated that all fluorinated containers should be considered. Additionally, the Board also had comments about clarifying that affidavits were public and including all fluorinated containers in the rule.

Fiscal impact of rule:

Amendments in CMR 01-026 Chapter 20, the Board of Pesticides Control must incorporate annual affidavit submission into the existing pesticide product registration process. The expected fiscal impact of this effort is \$75,000 to integrate PFAS reporting into existing pesticide product registration software (MEPRLS).

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Board of Pesticides Control

Umbrella-Unit: **01-026**

Statutory authority: 5 MRS §§ 8051 *et seq.*; 7 MRS §§ 601-610; 22 MRS §1471(A-D,M)

Chapter number/title: **Ch. 41**, Special Restrictions on Pesticides Use

Filing number: **2022-181**

Effective date: 9/20/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The proposed rules amendments were sought to address the directives in the following bills passed by the 130th Maine Legislature: LD 316 and LD 155. These resolves direct the Maine Board of Pesticides Control to amend rules regarding the list of State of Maine restricted use pesticides. The proposed amendments were written to incorporate these changes.

Chapter 41 – Two amendments are proposed:

1. Add a new section pertaining to neonicotinoids (dinotefuran, clothianidin, imidacloprid or thiamethoxam) to restrict registration and prohibit use in outdoor residential landscapes for the purposes of managing pests in turf and ornamental vegetation. Add an allowance for management of invasive invertebrate pests in ornamental vegetation and an emergency permitting process.
2. Add a new section prohibiting the use of chlorpyrifos, except for licensed applicators who obtain a use permit from the Board to apply chlorpyrifos products purchased prior to December 31, 2022.

Basis statement:

The amendments to the proposed rule are in response to Public Law Chapter 33 and recent legislation from the 130th Maine Legislature LD 155: Resolve, Directing the Board of Pesticides Control To Prohibit the Use of Certain Neonicotinoids for Outdoor Residential Use and Public Law Chapter 105 and LD 316: An Act To Prohibit the Use of Chlorpyrifos. These laws direct the Board of Pesticides Control to amend rules to make four active ingredients of neonicotinoid pesticides and all chlorpyrifos products restricted use. Neonicotinoid substances have been attributed to pollinator decline and are widely used in Maine for ornamental and turf management. The US EPA has revoked the food tolerances for all chlorpyrifos products, citing several concerns for human health and safety. Exemptions laid out in this chapter include allowing certified applicators to use neonicotinoid products for invasive species management in ornamental vegetation and allowing growers to apply for use permits from the Board to use up existing stock of chlorpyrifos.

Zero comments were received, however the current proposed language incorporates significant public comment regarding Section 6 from the previous rulemaking hearing on January 14, 2022. The Board responded by considering these comments and incorporating them into the newly proposed rules. No significant comments were received for Section 7 of the rule, regarding chlorpyrifos.

Fiscal impact of rule:

State restrictions of products in CMR 01-026 Chapter 41 will likely have fiscal impacts for applicators that seek replacements to the four neonicotinoid chemistries that will no longer be permitted in residential landscapes. Pesticide products selected to replace the now prohibited chemistries may be more expensive. The dollar value of this impact is unknown but is thought to be less than \$1,000,000. EPA recently cancelled food tolerances for one of the active

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

ingredients (chlorpyrifos) newly restricted in Chapter 41. This federal cancellation and subsequent national prohibition of use create a potential fiscal impact that is unrelated to the proposed rule amendments.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Bureau of Parks and Lands

Umbrella-Unit: **01-670**

Statutory authority: 12 MRS §1893(3)(A)(1)

Chapter number/title: **Ch. 8**, Rules for Snowmobile Club Trail Maintenance
Grant-In-Aid Program

Filing number: **2022-013**

Effective date: 1/29/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The amendment will change the snowmobile club grant application filing deadline from December 31st to December 1st and change the deadline for club grant reimbursement filing from April 30th to May 15th to align with the municipal grant deadlines in Chapter 7. Also, update all references to the “Off Road Vehicle Division” to “Off Road Recreational Vehicle Office”.

Basis statement:

The Bureau of Parks and Lands, Off Road Recreational Vehicle Office, administers a Snowmobile Club Grant Program and a Snowmobile Municipal/County Grant Program. The grant application and grant reimbursement submission deadlines for these two programs do not match. This causes confusion for volunteers administering these separate grants. Bringing the due dates in alignment with each other will eliminate this confusion.

The Office proposes changing the snowmobile club grant filing deadline date from December 31st to December 1st and changing the deadline for grant reimbursement filing from April 30th to May 15th this will align the due dates with the Municipal/County grant deadlines in chapter 7.

Also, the Bureau intends to change all references to the “Off Road Vehicle Division” to the “Off Road Recreational Vehicle Office”; this change corrects the title of the program.

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Land Use Planning Commission (LUPC)

Umbrella-Unit: **01-672**

Statutory authority: 12 MRS §§ 685-A(3),(7-A) 685-C(5)

Chapter number/title: **Ch. 2, Definitions**

Filing number: **2022-249**

Effective date: 12/30/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The Land Use Planning Commission is proposing these amendments to improve efficiency and clarity in siting, evaluating, and permitting solar energy generation facilities, in response to increased solar development across the Commission's service area. The primary objectives of this rulemaking are to define size classes for solar energy generation facilities, and to specify which Land Use Subdistricts will allow solar energy generation facilities. Revisions also clarify existing definitions and standards related to solar energy facilities that qualify as accessory structures.

Basis statement:

The primary objective of this rulemaking was to revise the Commission's rules regarding solar energy generation facilities. These amendments help improve efficiency and clarity in siting, evaluating, and permitting solar energy generation facilities. Key changes in this rulemaking include the creation of defined size classes for solar energy generation facilities in Chapter 2, and specifying which Land Use Subdistricts will allow solar energy generation facilities in Chapter 10. Revisions also clarify existing definitions and standards related to solar energy development qualifying as accessory structures.

Over the course of 2021 and early 2022, Commission staff conducted research and outreach on solar development in Maine. Efforts included review of certain municipal ordinances and current regulatory approaches in Maine, analysis of LUPC permitting records, discussions with regional staff and Maine DEP staff, and outreach to conservation organizations and the solar development industry. Staff have also followed the outcomes of statewide stakeholder processes and legislative changes.

Fiscal impact of rule:

Revisions to Chapter 2, Definitions will not have a fiscal impact. Pursuant to 12 M.R.S. §695-A(7-A)(B), this provision does not apply to Chapter 10, Land Use Districts and Standards.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Land Use Planning Commission (LUPC)

Umbrella-Unit: **01-672**

Statutory authority: 12 MRS §§ 685-A(7-A), 689

Chapter number/title: **Ch. 10**, Land Use Guidance Maps (Amended Zoning Maps):
Zoning Petition: **ZP 659B** (Frenchtown Twp. — Piscataquis County) (Maine Land Use Planning Commission Staff);
Zoning Petition: **ZP 710B** (T1 R8 WELS and T1 R9 WELS — Piscataquis County) (Matthew Polstein – Hammond Ridge Development Corporation, LLC)

Filing number: **2022-018**

Effective date: 1/26/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

This memo and attachment is to notify your office of Commission actions to amend certain Land Use Guidance Maps, and that notice of said changes has been published in the *Kennebec Journal* newspaper. A current copy of the map has been placed on file as required.

Basis statement:

Pursuant to 12 MRS §§ 685-A(7-A) and 689, the Maine Land Use Planning Commission hereby gives notice of its approval of certain amendments to official Land Use Guidance Maps and that these changes have been placed on file with the appropriate County Registry of Deeds:

ZONING PETITION	PETITIONER OR COPETITIONER	LOCATION
ZP 659B	Maine Land Use Planning Commission Staff	Frenchtown Twp Piscataquis County
ZP 710B	Matthew Polstein, Hammond Ridge Development Corp. LLC	T1 R8 WELS Penobscot County
		T1 R9 WELS Piscataquis County

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Land Use Planning Commission (LUPC)

Umbrella-Unit: **01-672**

Statutory authority: 12 MRS §§ 685-A(7-A), 689

Chapter number/title: **Ch. 10**, Land Use Guidance Maps (Amended Zoning Maps):
Zoning Petition: **ZP 776A** (Unity Twp. – Kennebec County) (Three
Corners Solar, LLC; Michael Alvarez)

Filing number: **2022-036**

Effective date: 1/27/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

This memo and attachment is to notify your office of Commission actions to amend certain Land Use Guidance Maps, and that notice of said changes has been published in the *Kennebec Journal* newspaper. A current copy of the map has been placed on file as required.

Basis statement:

Pursuant to 12 MRS §§ 685-A(7-A) and 689, the Maine Land Use Planning Commission hereby gives notice of its approval of certain amendments to official Land Use Guidance Maps and that these changes have been placed on file with the appropriate County Registry of Deeds:

ZONING PETITION

ZP 776A

**PETITIONER OR
COPETITIONER**

Three Corners Solar, LLC
Michael Alvarez

LOCATION

Unity Twp.,
Kennebec County

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Land Use Planning Commission (LUPC)

Umbrella-Unit: **01-672**

Statutory authority: 5 MRS §§ 8052(1), 8055; 22 MRS §§ 2421 *et seq.*; 28-B MRS §§ 101
et seq.; 12 MRS §§ 685-A(1), (8-A)

Chapter number/title: **Ch. 10**, Land Use Districts and Standards (Citizen Petition to
Prohibit Certain Marijuana Uses in the D-GN2 Subdistrict)

Filing number: **2022-041**

Effective date: 3/29/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

This rulemaking is in direct response to the citizen petition filed with the Maine Land Use Planning Commission pursuant to 5 MRS §8055.

Basis statement:

On February 26, 2021, the Commission received a citizens' petition to prohibit certain marijuana related businesses from the D-GN2 subdistrict. Pursuant to 5 MRS §8055 and as certified by each applicable municipal registrar, the petition contains signatures of 191 registered voters of the State. Key proposed changes to the rules include the prohibition of most medical marijuana and adult use marijuana development involving cultivation, extraction, processing, manufacturing, testing, or sale, within D-GN2 subdistricts.

On May 4, 2021, Commission staff met with the petition representative to correct or otherwise confirm staff interpretation of the redlined revisions submitted as part of the petition. Consequently, the revisions posted to rulemaking include the original revisions proposed by the petition (option 1) and text offered by the Maine land Use Planning Commission staff as a clearer alternative approach (option 2) that would have the same outcomes as proposed by the petition. The staff provided alternative was neither in support of, nor in opposition to the petition or its intended outcomes.

The revisions adopted as part of this rule amendment are not intended and will not be construed to grant local authorization pursuant to 28-B MRS §403 to operate adult use marijuana establishments in the DGN2 subdistrict or in any of the related townships or plantations.

PUBLIC NOTICE OF RULEMAKING

At a meeting held on April 14, 2021, pursuant to 5 MRS §8055, the Commission directed staff to post the rulemaking petition and the staff's alternatively worded option to initiate rulemaking on the proposal. Pursuant 5 MRS §8052(1), the Commission directed staff to include and schedule a public hearing.

Notice of the rulemaking was provided in the Secretary of State's consolidated rulemaking notice on May 26, 2021. The Secretary of State's notice appeared in the *Bangor Daily News*, *Kennebec Journal*, *Portland Press Herald*, **Lewiston Sun-Journal**, and the *Central Maine Morning Sentinel*. Email notice was also provided to approximately 1,867 individuals subscribing to one or more of the Commission's GovDelivery lists regarding: rulemaking, public hearings, Franklin County, marijuana, and the prospective zoning plan for the Rangeley Lakes Region, Pursuant to the *Maine Administrative Procedure Act* (5 MRS §§ 8001 *et seq.*), the same notice was provided to the petition representative; officials of Dallas Plantation, Rangeley Plantation, and Sandy River Plantation; to the sole existing marijuana business in the Rangeley Plan area; and to each identifiable trade or industry

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

group (i.e., Maine Office of Marijuana Policy, Maine Cannabis Industry Association, Medical Marijuana Caregivers of Maine, and Maine Cannabis Consultants). The notice of the rulemaking and the proposed revisions were also posted on the Commission's web site.

On June 8, 2021, staff submitted information and questions for public consideration. The information provided context and posed questions, the answers to which would be particularly valuable to the Commission in considering the rulemaking petition and the intended outcomes. The information and questions were provided to the petition representative, were posted on the Commission's website with the draft rule revisions, and were posted in the chat at the start of the public hearing.

The public hearing was held on June 16, 2021. Due to the 2019 coronavirus (COVID-19) pandemic, Public Law 2019 ch. 617, this hearing was conducted through virtual means (i.e., via audio & video conferencing, including a phone-in option).

The record remained open until July 19, 2021 to allow interested persons to file written statements with the Commission, and for an additional 14 days until August 2, 2021 to allow interested persons to file written statements in rebuttal of statements filed during the comment period.

At a meeting held on October 13, 2021, staff offered the Commission a draft basis statement and draft rule revisions, both responding to comments and materials submitted during the hearing and comment process. At that meeting, the Commission directed staff to reopen the hearing record to post the staff recommended revisions (dated October 6, 2021) to a 30-day comment period, and that notice of the opportunity need only be provided through digital means. On October 19, 2021, notice of the comment opportunity was provided to the petition representative, and the 1,913 individuals subscribing to one or more of the Commission's GovDelivery lists regarding: rulemaking, public hearings, Franklin County, marijuana, and the prospective zoning plan for the Rangeley Lakes Region.

The record remained open until November 22, 2021 to allow interested persons to file written statements with the Commission.

Changes to Chapter 10 after Petition Submitted

This rulemaking petition was submitted on February 26, 2021, and it, along with an alternative option provided by Commission staff, was submitted for public comment on May 26, 2021. On November 1, 2021, extensive revisions to ch. 10 became effective. Among those revisions, most subdistricts listed in section 10.21 through 10.23, including the D-GN2 subdistrict, were revised to relocate special exception criteria and lake management classification provisions to other sections of the rule. These changes affected introductory provisions in each subdistrict regarding uses allowed by permit and uses allowed by special exception, and the alpha-numeric designations of certain sub-sections. While the larger ch. 10 rulemaking and this Citizens' Petition rulemaking were on separate yet parallel tracks, they were poised to become effective concurrently. After the Commission elected, at its October 13, 2021 meeting, to extend the process for the Citizens' Petition rulemaking to facilitate additional public review and comment, this Citizens' Petition rulemaking became out of sync with the separate ch. 10 revisions. The petition, as initially proposed, now contains citations, formatting, and language that is outdated and inconsistent with the current structure of ch. 10 following the November 1, 2021 revisions. Accordingly, the Commission finds that minor changes in language, citations, and formatting to the rule as initially proposed are necessary in order to maintain consistency and coherency within the Commission's rules and obtain the desired result of the rule change in light of the subsequent changes to ch. 10 as a whole.

Fiscal impact of rule:

Not applicable.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Land Use Planning Commission (LUPC)
Umbrella-Unit: **01-672**
Statutory authority: 12 MRS §§ 685-A(7-A), 689
Chapter number/title: **Ch. 10**, Land Use Guidance Maps (Amended Zoning Maps):
Zoning Petition: **ZP 783A, ZP 772A, ZP 787, ZP 786**
Filing number: **2022-124**
Effective date: 6/22/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This memo and attachment is to notify your office of Commission actions to amend certain Land Use Guidance Maps, and that notice of said changes has been published in the *Kennebec Journal* newspaper. A current copy of the map has been placed on file as required.

Basis statement:

Pursuant to 12 MRS §§ 685-A(7-A) and 689, the Maine Land Use Planning Commission hereby gives notice of its approval of certain amendments to official Land Use Guidance Maps and that these changes have been placed on file with the appropriate County Registry of Deeds:

ZONING PETITION	PETITIONER OR COPETITIONER	LOCATION
ZP 783A	Cross Road Solar, LLD Bradfield and Judith Lyon	Greenfield Twp. Penobscot County
ZP 772A	Three Rivers Solar, LLC Elliot Jordan & Sons, Inc.	T16 MD BPP Hancock County
ZP 787	Jestin & Carrie Merchant	Connor Twp. Aroostook County
ZP 786	Jeff Carr	Lakeville Plt. Penobscot County

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Land Use Planning Commission (LUPC)
Umbrella-Unit: **01-672**
Statutory authority: 12 MRS §§ 685-A(7-A), 689
Chapter number/title: **Ch. 10**, Land Use Guidance Maps (Amended Zoning Maps):
Zoning Petition: **ZP224D, ZP788, ZP789**
Filing number: **2022-146**
Effective date: 7/15/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This memo and attachment is to notify your office of Commission actions to amend certain Land Use Guidance Maps, and that notice of said changes has been published in the *Kennebec Journal* newspaper. A current copy of the map has been placed on file as required.

Basis statement:

Pursuant to 12 MRS §§ 685-A(7-A) and 689, the Maine Land Use Planning Commission hereby gives notice of its approval of certain amendments to official Land Use Guidance Maps and that these changes have been placed on file with the appropriate County Registry of Deeds:

ZONING PETITION	PETITIONER OR COPETITIONER	LOCATION
ZP 224D	Pingree Associates	Big Ten Twp Somerset County T11 R16 WELS Aroostook County
ZP 788	Scott Harding, Brian Thornton, David & Leah Gelbar	Sapling Twp Somerset County
ZP 789	Weeks Leen's Lodge Corp.	Grand Lake Stream Plt Washington County

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Land Use Planning Commission (LUPC)
Umbrella-Unit: **01-672**
Statutory authority: 12 MRS §§ 685-A(7-A), 689
Chapter number/title: **Ch. 10**, Land Use Guidance Maps (Amended Zoning Maps):
Zoning Petition: **ZP 790**
Filing number: **2022-231**
Effective date: 11/18/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This memo and attachment is to notify your office of Commission actions to amend certain Land Use Guidance Maps, and that notice of said changes has been published in the *Kennebec Journal* newspaper. A current copy of the map has been placed on file as required.

Basis statement:

Pursuant to 12 MRS §§ 685-A(7-A) and 689, the Maine Land Use Planning Commission hereby gives notice of its approval of certain amendments to official Land Use Guidance Maps and that these changes have been placed on file with the appropriate County Registry of Deeds:

ZONING PETITION

ZP 790

**PETITIONER OR
COPETITIONER**

Brian & Amanda Steans

LOCATION

Albany Twp
Oxford County

Fiscal impact of rule:

N/A

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Land Use Planning Commission (LUPC)

Umbrella-Unit: **01-672**

Statutory authority: 5 MRS §§ 8052(1), 8055; 22 MRS §§ 2421 *et seq.*; 28-B MRS §§ 101
et seq.; 12 MRS §§ 685-A(1), (8-A)

Chapter number/title: **Ch. 10**, Land Use Districts and Standards (Solar Energy)

Filing number: **2022-250**

Effective date: 12/30/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The Land Use Planning Commission is proposing these amendments to improve efficiency and clarity in siting, evaluating, and permitting solar energy generation facilities, in response to increased solar development across the Commission's service area. The primary objectives of this rulemaking are to define size classes for solar energy generation facilities, and to specify which Land Use Subdistricts will allow solar energy generation facilities. Revisions also clarify existing definitions and standards related to solar energy facilities that qualify as accessory structures.

Basis statement:

The primary objective of this rulemaking was to revise the Commission's rules regarding solar energy generation facilities. These amendments help improve efficiency and clarity in siting, evaluating, and permitting solar energy generation facilities. Key changes in this rulemaking include the creation of defined size classes for solar energy generation facilities in Chapter 2, and specifying which Land Use Subdistricts will allow solar energy generation facilities in Chapter 10. Revisions also clarify existing definitions and standards related to solar energy development qualifying as accessory structures.

Over the course of 2021 and early 2022, Commission staff conducted research and outreach on solar development in Maine. Efforts included review of certain municipal ordinances and current regulatory approaches in Maine, analysis of LUPC permitting records, discussions with regional staff and Maine DEP staff, and outreach to conservation organizations and the solar development industry. Staff have also followed the outcomes of statewide stakeholder processes and legislative changes.

Fiscal impact of rule:

Revisions to Chapter 2, Definitions will not have a fiscal impact. Pursuant to 12 M.R.S. §695-A(7-A)(B), this provision does not apply to Chapter 10, Land Use Districts and Standards.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Agriculture, Conservation and Forestry,
Land Use Planning Commission (LUPC)

Umbrella-Unit: **01-672**

Statutory authority: 12 MRS §§ 685-A (1), (7-A), (8-A), 685-C(5)

Chapter number/title: **Ch. 10**, Land Use Districts and Standards (Moosehead Regional Planning)

Filing number: **2022-251**

Effective date: 3/29/2022

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The Maine Land Use Planning Commission has adopted amendments to Chapter 10, *Land Use Districts and Standards*, to implement actions stemming from the 2020-2022 Moosehead Regional Planning Process. The amendments allow for the modification of Location of Development criteria resulting from regional planning processes addressing the location of development through a balanced and comprehensive process. Specifically, the changes refine the Commission's application of the Location of Development criteria in the Moosehead region by providing for the removal of ten minor civil divisions from primary and secondary locations, and for the removal of primary locations around certain Management Class 3 lakes in the region. The amendments also reorganize and clarify the section to better distinguish the primary and secondary locations designated based on application of the adjacency principle versus changes made as the result of a balanced and comprehensive regional planning process.

Basis statement:

FACTUAL AND POLICY BASIS FOR THE RULE AMENDMENT:

Overview

The primary objective of this rulemaking is to implement actions stemming from the 2020-2022 Moosehead Regional Planning Process. The amendments allow for the modification of Primary and Secondary Locations, which are part of the Commission's application of the Location of Development policy (also called the adjacency principle), resulting from a balanced and comprehensive regional planning process. The proposed revisions also remove Primary and Secondary Locations in the Moosehead Region (thereby limiting the potential for rezoning for certain types of commercial and residential development) in ten minor civil divisions and in certain shorefront areas around Management Class 3 (MC-3) lakes. The amendments also reorganize and clarify the section to better distinguish the Primary and Secondary Locations designated based on application of the Location of Development policy, versus changes made as the result of a balanced and comprehensive regional planning process.

Key changes to the rules include:

- Primary and Secondary Locations. The revisions modify Section 10.08-A of Chapter 10 to allow for adjustments to the locational factors that apply to adoption or amendment of land use district boundaries through a comprehensive regional planning process. Examples of regional planning processes include prospective zoning or community guided planning and zoning as described in the Comprehensive Land Use Plan and applicable Commission guidance documents.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

- Moosehead Region. The revisions remove Primary and Secondary Locations from the following minor civil divisions (MCDs) and Management Class 3 lakes in the Moosehead Region:
 - Big Moose Township (entire MCD)
 - Bowdoin College Grant West (entire MCD) - Lily Bay Township (entire MCD)
 - Long Pond Township (entire MCD)
 - Misery Township (entire MCD)
 - Misery Gore Township (entire MCD)
 - Rockwood T2R1 NBKP (entire MCD)
 - Sandwich Academy Grant (entire MCD)
 - Sapling Township (entire MCD)
 - Taunton and Raynham Academy Grant (entire MCD excluding the Primary Location around the portion of Brassua Lake within the township)
 - Indian Pond (entire shoreline)
 - Brassua Lake (Portions of the shoreline in Brassua Township, Rockwood Strip T2 R1 NBKP, and Sandwich Academy Grant)
 - Long Pond (Portion of shoreline in Long Pond Township)

This rulemaking implements the Location of Development component of the revised Moosehead Regional Planning Package proposed in September 2022. Zoning Petition 791 implements the companion prospective zoning component of the proposal and includes information and public comments related to the specific areas proposed to be rezoned for development as a result of the planning process.

Background on the Location of Development Rules

The Location of Development policy provides an initial screen for where new zones for development of a residential subdivision or commercial businesses¹ can be proposed. The policy guides most development toward existing development and away from undeveloped areas. This helps lower tax burdens, ensures land remains available for forestry, agriculture, and recreation, and promotes the health of existing communities.

The Location of Development policy changed fundamentally with the 2019 Adjacency and Subdivision Rulemaking. It shifted to a new system that:

- Pre-identifies locations (called Primary and Secondary Locations) suitable for most types of development near a town where services can be provided based on distance from rural hubs and public roads; and
- Allows for recreation-dependent or resource-dependent development to locate farther from town (and outside of Primary or Secondary Locations).

During the 2019 Adjacency and Subdivision Rulemaking process, Primary and Secondary Locations were added or removed in specific places based on local or regional input about service provision, access, and other topics. When the 2019 Location of Development rule changes were adopted, the Commission recognized that further refinement would likely be necessary in some regions, and if undertaken should be based on a community planning process.

The Moosehead Regional Planning Project has been a community-guided planning process resulting from the unexpected termination of the Moosehead Lake Region Concept Plan, which encompassed over 400,000 total acres. The Plan and accompanying permanent conservation easement were influential in economic development and other planning efforts in the region in recent years. At the time of the 2019 Adjacency rulemaking, the Concept Plan was in place. When the Concept Plan was terminated, a large amount of acreage formerly

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

designated for future development became available for consideration in a regional planning process. Regional planning was possible because the acreage was no longer pre-determined for development, and because the landowner agreed not to submit any development proposals to allow for the Commission to complete a regional planning and zoning process.

Planning Process Summary

When the Moosehead Lake Region Concept Plan was terminated in July of 2020, the entire area subject to the Concept Plan, including identified development areas, was rezoned to the General Management Subdistrict, or to a range of protection subdistricts based on resources present such as streams, shorefront, steep slopes, wetlands, and wildlife habitat. As part of the termination process, Weyerhaeuser Company and Weyerhaeuser NR Company, the property owner, agreed to provide an opportunity for residents and stakeholders to participate in planning for future land uses in these areas. The goal was to seek input about what types of development would be suitable in certain areas and to ensure adequate protections for highly valued natural resources. LUPC staff, with stakeholder input, designed and led a regional planning process with a goal of final Commission approval of any zoning changes or rule revisions by the end of 2022.

Staff first obtained feedback from the community on the proposed regional planning process, including geographic scope, community concerns, and areas appropriate for conservation or development. This feedback was used to develop a map-based online survey to gather more in-depth information from the public and other stakeholders about locations that matter to them. The initial feedback and survey data were used to develop four Discussion Scenario Maps of future land use scenarios involving zoning changes and/or rule changes (e.g., removal of Primary or Secondary Locations). In the fall of 2021, staff sought community feedback on the Discussion Scenario Maps by posting them to the project website and hosting both in person and virtual public meetings in the Moosehead Region.

Feedback on the Discussion Scenario Maps from written comments and public meetings, combined with additional research and deliberation, were all synthesized to develop a draft Maine Land Use Planning Commission Moosehead Regional Planning Package that was presented to the Commission at its regular business meeting on May 11, 2022. With Commission input, during the summer of 2022, staff sought community feedback on the draft package through written comments, public meetings, and targeted outreach to potentially affected landowners, and then used this feedback to refine the proposals. At its regular business meeting on September 12, 2022, the Commission posted the revised Moosehead Regional Planning Package to a 30-day public comment period.

Changes to the Location of Development Policy in the Moosehead Region

Removing Primary and Secondary Locations from minor civil divisions (MCDs) in the Moosehead Region was broadly supported as a strategy through public and stakeholder comments on the Discussion Scenarios. Many commenters recommended locations in additional MCDs be removed beyond those suggested in the Scenarios. Based on this feedback, and on subsequent community outreach, the rule revisions remove Primary and Secondary Locations in ten MCDs, along with shorefront areas on several lakes in the region. The goal is to minimize the intensity and rate of future residential and commercial development in these locations.

To balance removal of Primary and Secondary Locations in the region, the Commission will simultaneously consider rezoning six locations to development subdistricts to accommodate future growth and help concentrate development near Rural Hubs as desired by stakeholders. By taking this balanced approach, the Commission is guiding development to

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

pre-identified locations in the region, and limiting the types, intensity, and rate of development that can occur outside of those locations.

The minor civil divisions and the factors considered/basis for removal for the Moosehead Region are described in Table 1 below.

Table 1. Minor Civil Divisions Removed from Primary and Secondary Locations

Minor Civil Division	Resources Present	Factors Considered/Basis for Removal
Big Moose Township	Moosehead Lake, Big Moose Mountain, Burnham Pond, Indian Pond, Mountain View Pond, East Outlet, Eagle Rock Trail, Big Moose Trail	<ul style="list-style-type: none"> • Broad public support for removal • Current Primary and Secondary Locations include sensitive resources • Existing and proposed development zones can accommodate growth near Greenville, and which may allow for businesses serving visitors to the ski area • Limits the intensity of any future development on portions of the back side of the mountain • Some rezoning options remain available for the ski area (e.g., expanding the D-GN or rezoning to D-PD)
Bowdoin College Grant West	Upper Wilson Pond	<ul style="list-style-type: none"> • No public road access in existing Secondary Location • Limited area available for development
Lily Bay Township	Moosehead Lake, Lily Bay State Park, Burgess Brook, North Brook, Lily Bay Brook, Tussle Lagoon	<ul style="list-style-type: none"> • Broad public support for removal • Broad support for limiting development potential in Lily Bay Township
Long Pond Township	Long Pond, Moose River, Mountain Brook, Twelvemile Bog, Fogg Pond, Churchill Stream, Northern Forest Canoe Trail	<ul style="list-style-type: none"> • Support for limiting development on the southeastern portion of Long Pond • Current Primary and Secondary Locations include sensitive resources (e.g., rare plants, and an extensive complex of wetlands) • Limited area available for development
Misery Township	North Branch Stream, Misery Stream, Misery Ridge	<ul style="list-style-type: none"> • Broad public support for removal • Limited area available for development
Misery Gore Township	West Outlet, Misery Stream, Misery Ridge	<ul style="list-style-type: none"> • Broad public support for removal • Limited area available for development
Rockwood T2R1 NBKP	Brassua Lake, Demo Pond, Twelvemile Bog, Stony Brook	<ul style="list-style-type: none"> • Limited access to existing Secondary Location • Remote location • Area unavailable for development
Sandwich Academy Grant	Brassua Lake, Moose River, Long Pond Mountain	<ul style="list-style-type: none"> • Removal of Primary and Secondary Locations in adjacent townships • Limited area available for development

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Sapling Township	Moosehead Lake, East Outlet, Indian Pond, West Outlet, Misery Ridge, Churchill Stream	<ul style="list-style-type: none"> • Broad public support for removal • Limited area available for development
Taunton and Raynham Academy Grant	Blue Ridge, Brassua Lake, Moosehead Lake, West Outlet, Misery Stream	<ul style="list-style-type: none"> • Broad public support for removal • Current Primary and Secondary Locations include sensitive resources (Blue Ridge, West Outlet) • Development zones added to focus new development near Rockwood

This amendment to Section 10.08-A,C of Chapter 10 also removes Primary Locations around certain MC-3 lakes, or around portions of certain MC-3 lakes within designated MCDs, as a result of the formal regional planning process. The Lakes Management Program, which was adopted by the Commission in the early 1990’s after extensive public input, is intended to provide comprehensive protection for lakes (2010 CLUP, pg. 288), and applies jurisdiction-wide. Part of providing comprehensive protection for lakes includes guiding development toward suitable waterbodies, and away from unsuitable waterbodies. Management classifications assigned to specific lakes were intended to be permanent and stable over time and are one of the mechanisms that implement this goal.

The establishment of Primary Locations around MC-3 lakes is a result of the 2019 Adjacency and Subdivision Rulemaking and was intended to implement the “adjacency waiver” described in the Commission’s Comprehensive Land Use Plan (CLUP) for proposals to rezone for development if certain criteria can be met (e.g., soils must be suitable and the proposal must not result in water quality impacts). This concept was broadly applied to all MC-3 lakes throughout the jurisdiction, including Indian Pond, Long Pond, and Brassua Lake in the Moosehead Region.

Based on the more detailed information about these waterbodies obtained during the planning process, this rulemaking removes the Primary Locations around all or portions of these MC-3 lakes and is an appropriate fine-tuning of the Location of Development policy based on a robust regional planning process. Specific information about changes for each of these lakes is presented in Table 3 below.

Table 3. Certain MC-3 Lake Shorefront Removed from Primary Locations

Lake	MCDs included	Factors Considered/Basis for Removal
Indian Pond (entire waterbody)	Big Moose Township, Chase Stream Township, Indian Stream Township, Sapling Township	<ul style="list-style-type: none"> • Critically important resource for remote recreational tourism • East and West Outlets converge in northeastern end • Limited area available for development • Wildlife value and diverse riparian area
Brassua Lake (portions of waterbody)	Brassua Township, Rockwood Strip T2 R1 NBKP, Sandwich Academy Grant	<ul style="list-style-type: none"> • Part of undeveloped “western room” • Wildlife habitat value • Limited area available for development

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Long Pond (portion of waterbody in LUPC jurisdiction)	Long Pond Township	<ul style="list-style-type: none">• Remote recreation value• Current Primary Location includes sensitive resources (rare plants)• Wildlife habitat value• Limited area available for development.
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Fiscal impact of rule:
Not applicable.