

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 5 MRS §8051; 38 MRS §§ 341-D, 341-H
Chapter number/title: **Ch. 4** (*New*), Rule Governing Hearings on Appeals of Certain Emergency or Administrative Commissioner Orders
Filing number: **2021-225**
Effective date: 11/3/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

The Department is recommending that the Board adopt a new rule, Chapter 4, *Rule Governing Hearings on Appeals of Certain Emergency or Administrative Commissioner Orders*, to govern proceedings in which hearings are held by the Board on appeals of certain emergency or unilateral administrative orders issued by the Commissioner. Some of the types of emergency or unilateral administrative orders issued by the Commissioner in the exercise of the Commissioner's statutory responsibility to protect public health, safety and welfare, and the environment are identified in section 2 of the proposed Chapter 4 rule.

Currently, the Department does not have in place specific procedural rules governing the conduct of such Board hearings. The Chapter 4 rule establishes procedures similar in nature to those set forth in the existing Department rule Chapter 3, *Rules Governing the Conduct of Licensing Hearings*. Chapter 3 does not apply to emergency or unilateral administrative orders issued by the Commissioner.

Fiscal impact of rule:

Chapter 4 provides a procedural framework for the Board to conduct certain types of hearings and is not anticipated to result in any fiscal impacts.

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Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §585-A
Chapter number/title: Ch. 100, Definitions Regulation
Filing number: 2021-033
Effective date: 2/9/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The amendments will clarify the geographic extent of the Ozone Transport Region within the State of Maine.

Basis statement:

On February 6, 2020, the Maine Board of Environmental Protection voted to authorize the submission on behalf of the Governor of a petition to the Environmental Protection Agency (EPA) Administrator, pursuant to Section 176A of the *Clean Air Act* (CAA), to remove certain portions of Maine from the Ozone Transport Region (OTR).

Section 176A(a)(2) of the CAA provides that the Administrator may remove any state or portion of a state from the OTR whenever the Administrator has reason to believe that control of emissions in that state or portion of the state will “not significantly contribute to the attainment of the standard [the ozone National Ambient Air Quality Standards (NAAQS)] in any area in the region.” The Department’s Section 176A(a)(2) petition is based on a technical demonstration that emissions from northern, western, and far eastern Maine are not significant contributors to nonattainment of the ozone standard in other states, nor do they interfere with maintenance or attainment of the ozone standard in those Maine municipalities that will remain in the OTR. The petition was submitted on February 24, 2020, and is currently being reviewed by EPA.

During its review of the Department’s petition, EPA notified the Department that amending the definition of “Ozone Transport Region” in the Department’s ch. 100, *Definitions Regulation*, is necessary to facilitate processing of the Department’s petition because the current State Implementation Plan-approved definition includes the entire state of Maine:

111. Ozone Transport Region. "Ozone Transport Region" (OTR) means that part of the State of Maine included in a region of states comprised of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area that includes the District of Columbia, established by Section 184 of the CAA for the control of interstate ozone air pollution. **For the State of Maine, the Ozone Transport Region includes all of the counties in the State.** (emphasis added)

Because EPA approval of the Department’s Section 176A Petition would reduce the geographic extent of the OTR in Maine, the Department proposed to revise the last sentence of this definition to eliminate the potential conflict with the OTR as modified through the petition process.

Fiscal impact of rule:

None.

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Agency name:	Department of Environmental Protection (DEP)
Umbrella-Unit:	06-096
Statutory authority:	PL 2021 ch. 192
Chapter number/title:	Ch. 147 (<i>New</i>), Hydrofluorocarbon Prohibitions
Filing number:	2021-262
Effective date:	1/4/2022
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The Department is adopting 06-096 CMR ch. 147, *Hydrofluorocarbon Prohibitions*, as a new rule in order to fulfill the requirements of Maine Public Law ch. 192 of 2021, approved by the Legislature last session and signed into law by the Governor on June 14, 2021. Hydrofluorocarbons, or HFCs, have been identified as powerful greenhouse gases, and as such are the focus of a multi-state effort to remove them from circulation to help fight climate change. The prohibitions and timetable in the law and in the proposed rule are the result of this collaborative effort, which included extensive consultation with industries involved in the manufacture and distribution of these substances.

Implementation of this rule will help achieve the state's greenhouse gas emission reduction requirements set forth in 38 MRS Section 576-A.

Basis statement:

Hydrofluorocarbon (HFC) compounds were introduced as replacements for chlorofluorocarbons (CFCs) when it was discovered that CFCs were interfering with the atmosphere's ozone layer. While that effort was successful, it has since been determined that HFCs are extremely powerful greenhouse gases, with hundreds to thousands of times the global warming potential of carbon dioxide. In an effort to reduce the harmful effects of HFCs, and in furtherance of the Governor's climate-related goals, the Legislature enacted Public Law 2021 ch. 192, *An Act To Limit the Use of Hydrofluorocarbons To Fight Climate Change*. This law requires the Department to establish very specific rules regarding the use of HFCs in the state.

The EPA has finalized a rule under the federal American Innovation in Manufacturing Act requiring a gradual phase-down of HFC use by 2036. Maine is among a number of states that have chosen to act more swiftly to restrict these dangerous chemicals. The prohibitions in this rule are tailored to HFCs for which alternatives are available and affordable, and the rule allows an affected person to petition for an exemption. The rule also defers to preemptive federal regulation in the event of a conflicting regulatory requirements.

Public notice of this rulemaking was published in the Secretary of State's weekly rulemaking notices on October 27, 2021, and a public hearing was held before the Board on November 18, 2021. The public comment period closed on November 29, 2021. One comment was received in testimony at the public hearing, and comments were received from five parties during the comment period, including a comment from the party who testified at the hearing.

Fiscal impact of rule:

None.

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Agency name:	Department of Environmental Protection (DEP)
Umbrella-Unit:	06-096
Statutory authority:	38 MRS §576-A(4)
Chapter number/title:	Ch. 167 <i>(New)</i> , Tracking and Reporting Gross and Net Annual Greenhouse Gas Emissions
Filing number:	2021-143
Effective date:	7/7/2021
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

38 MRS §576-A(4) requires the Department to adopt rules by July 1, 2021, to track and report to the Legislature gross and net annual greenhouse gas emissions in the State. This rule establishes methods for measuring and estimating greenhouse gas emissions from various source categories, and for calculating gross and net annual greenhouse gas emissions for the State as a whole.

Basis statement:

As stated in 38 MRS §576-A, “By July 1, 2021, the Department shall adopt rules to track and report to the Legislature on gross annual greenhouse gas emissions and net annual greenhouse gas emissions.” The proposed ch. 167 establishes methods for the calculation of annual greenhouse gas emissions as required, outlining the methods, data sources, and assumptions used to compile and report these inventories.

These emissions estimates will be used to assess Maine’s progress toward meeting the gross greenhouse gas reductions set out in 38 MRS §576-A(1) and (3). The Department will use these methods to measure progress toward these reductions and toward the goals of the climate action plan described in 38 MRS §577. The net emissions estimate will be used to gauge Maine’s progress toward the 2045 carbon neutrality goal as described in Governor Mills’s executive order dated September 23, 2019.

Fiscal impact of rule:

The rule does not impose a compliance requirement on any entity, and therefore does not directly impose any costs on any regulated entities. The rule establishes methods for the calculation of gross and net annual greenhouse gas emissions in the State for the purpose of assessing attainment of the reduction goals set out at 38 MRS §§ 576-A(1), (2) and (3).

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Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §576-A
Chapter number/title: Ch. 168 (New), Statewide Greenhouse Gas Emissions Regulation
Filing number: 2021-237
Effective date: 11/28/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule requires a reduction from 1990 levels of gross emissions of greenhouse gases from all sources in the State and all sectors of the State economy of 45 percent by the year 2030 and 80 percent by the year 2050 in accordance with 38 MRS §576-A.

Basis statement:

The adopted rule translates the statewide percentage reduction requirements as established in statute into tonnage reductions based on million metric tons of carbon dioxide equivalents (MMTCO_{2e}) for gross greenhouse gas emissions as calculated pursuant to the Department's rule, 06-096 CMR ch. 167. Statutory requirements for greenhouse gas emission reductions were established in 38 MRS §576-A. By January 1, 2030, statewide annual greenhouse gas emissions must be reduced to a level at least 45% below the 1990 gross annual greenhouse gas emissions (or baseline) level, with emissions being reduced at least 80% below the 1990 baseline level by January 1, 2050. These percentages translate to 14.41 MMTCO_{2e} for 2030 and 26.62 MMTCO_{2e} for 2050.

Fiscal impact of rule:

The rule does not impose a compliance requirement on any entity, and therefore does not directly impose any costs on any regulated entities. Any decrease in statewide GHG emissions the Department may require in order to meet the reductions required in this rule will be proposed in subsequent rules and will satisfy the criteria in 38 MRS §§ 576-A(4)(A)-(C).

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Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 341-D(1-B), 1304(1,1-B, 13 & 13-A), 1310-N(9), 1301 *et seq.*
Chapter number/title: Ch. 400, Maine Solid Waste Management Rules
Filing number: 2021-034
Effective date: 2/9/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

On January 13, 2020, the Department received a citizen petition to initiate rulemaking to amend ch. 400, *Maine Solid Waste Management Rules*, to “clarify requirements for Public Benefit Determinations relating to approval of waste facilities, by ensuring that the definition of ‘waste that is generated within the State’ accurately describes the sources of waste materials disposed in the State, and by requiring Public Benefit Determinations to include consideration of the impacts on health and welfare environmental justice and equal protections for communities where waste facilities operate.”

Basis statement:

Note: This statement was adopted by the Department pursuant to the *Maine Administrative Procedure Act*, 5 MRS §8052(5), which requires agencies, at the time of adoption of any rule, to also adopt a written statement explaining the basis for the rule.

Background and Purpose. On January 13, 2020, the Department of Environmental Protection received a Petition to Require Agency Rulemaking, submitted pursuant to 5 MRS §8055 and signed by 257 qualified State of Maine voters, thereby requiring the Department to initiate rulemaking and hold a public hearing. The petition requested specific amendments to 06-096 CMR ch. 400 (*Maine Solid Waste Management Rules: General Provisions*) to: “clarify requirements for Public Benefit Determinations relating to approval of waste facilities, by ensuring that the definition of ‘waste that is generated within the State’ accurately describes the sources of waste materials disposed in the State, and by requiring Public Benefit Determinations to include consideration of the impacts on health and welfare, environmental justice and equal protections for communities where waste facilities operate.”

Rule development. On March 5, 2020, the Board of Environmental Protection voted to post the proposed changes to public hearing pursuant to 5 MRS §8055. Notice of rulemaking was posted on the Department of Environmental Protection website and comments were accepted beginning on April 9, 2020. A public hearing was held on September 17, 2020 via video conference as authorized by PL 2019 ch. 617. The comment period was closed on September 28, 2020. Subsequently, the Department prepared a proposed draft rule for consideration by the Board of Environmental Protection that addressed the regulatory provisions identified in the rulemaking petition and included the statutory definition of “bypass”, a provision of PL 2019 ch. 291.

Fiscal impact of rule:

Due to the nature of the proposal as a citizen petition, it is difficult to determine the potential fiscal impact. At this time, the Department does not anticipate a significant fiscal impact.

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Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §1295
Chapter number/title: **Ch. 424** (*Repeal and replace*), Solid Waste Management Rules: Lead Management Regulations
Filing number: **2021-214**
Effective date: 10/19/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department repeals and replaces Chapter 424, *Solid Waste Management Rules: Lead Management Regulations*. Chapter 424 contains the State's program requirements for lead remediation and related activities in residential dwelling units and child-occupied facilities.

This rulemaking is necessitated by changes to EPA requirements for how lead hazards are cleared. The Department was notified by EPA in June, 2020, that clearance tolerance for lead hazards would be lowered (40 CFR 745). This resulted in changes to work practice sections of Chapter 424. The Department's Chapter 424 Definitions and Work practice sections were amended to reflect this change. The Department is also adopting changes to the work practice sections, the soil hazards section and the hazard handling sections of 424. In addition, definitions were better aligned with EPA definitions.

Basis statement:

This rulemaking updates the rule through incorporation of revised and new regulations promulgated by U.S. Environmental Protection Agency (USEPA) regarding how lead hazards are cleared. (40 C.F.R. 745) As part of USEPA's efforts to reduce childhood lead exposure, and in coordination with the President's Task Force on Environmental Health Risks and Safety Risks to Children, USEPA reevaluated the 2001 dust-lead clearance levels (DLCL). Effective March 8, 2021, USEPA lowered the DLCL from 40 micrograms per square foot (µg/ft²) to 10 µg/ft² for floors, and from 250 µg/ft² to 100 µg/ft² for window sills. Conforming with the changes in the USEPA standards required changes to definitions, work practice, soil hazards and hazard handling sections of Chapter 424. Due to the extensive changes the Department repealed and replaced Chapter 424.

Fiscal impact of rule:

None.

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Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 341-D(1-C), 341-H, 1304(1), 1319-O
Chapter number/title: Ch. 850 thru 858, Hazardous Waste Management Rules
Filing number: 2021-202 thru 210
Effective date: 10/6/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The principal reason for this rulemaking is to amend the rules as part of an ongoing RCRA authorization plan the Department has established with EPA to incorporate federal regulatory standards and changes as may be necessary to ensure Maine's rules are as stringent as the federal program.

Basis statement:

This rulemaking updates the rules through incorporation of revised and new regulations promulgated by U.S. Environmental Protection Agency (USEPA) under the *Solid Waste Disposal Act*, as amended by the *Resource Conservation and Recovery Act of 1976* (RCRA), as amended, 42 U.S.C.A. 6901, *et seq.* These regulations include 40 C.F.R. 260 to 273, 40 C.F.R. 279, and 40 C.F.R. 761.

This rulemaking amends the rules, consistent with an ongoing RCRA authorization plan established between the Department and USEPA in order for the State of Maine to maintain its RCRA program authorization and its delegated authority to administer the RCRA hazardous waste program in Maine.

These amended rules address or incorporate federal standards and updates for: new hazardous waste listings (ch. 850), waste exclusions (ch. 850), drip pads for wood preservative wastes and waste munitions (chs. 851, 854, 855 and 856), land disposal restrictions (ch. 852), hazardous waste air emissions (chs. 851, 854, 855, and 856), landfills, surface impoundments, and incinerators (chs. 854, 855, and 856), hazardous waste manifests, including EPA's e-Manifest rules (chs. 851 and 857), and import/export of hazardous waste (chs. 851, 853, 857, and 858). These updates to Maine's rules generally incorporate by reference the 2019 version of the Code of Federal Regulations (C.F.R.), which is the most recent published version.

In addition to updating state regulations for consistency with current federal RCRA regulations, the amendments also update regulatory citations throughout the rules to conform with the Department's "Legal Citation Standard Operating Procedure", correcting and/or clarifying certain existing provisions, and incorporating consistent language throughout the chapters.

Fiscal impact of rule:

Regulated entities have been expected to comply with the existing rules and many of the federal rules which are now being incorporated in these updates. As a result, no significant fiscal impacts are expected.