

**Annual List of Rule-Making Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A(5)*

**Umbrella-Unit:** 94-270  
**Statutory authority:** 1 M.R.S. § 1003(1), 21-A M.R.S. § 1126  
**Chapter number/title:** **Ch. 2**, Hearing Procedures; **Ch. 3**, Maine Clean Election Act and Related Provisions  
**Filing number:** 2023-113, 2023-114  
**Effective date:** 8/27/2023  
**Type of rule:** Major Substantive  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The Commission wishes to conform its rules to statute and make minor administrative changes to the Maine Clean Election Act program.

**Basis statement:**

**Chapter 2, §§ 2 & 6(1) – Procedures for Commission Hearings**

*Factual and policy basis for amendments:* Chapter 2 of the Commission’s rules sets out procedures for conducting hearings. The Commission is authorized to hold hearings on complaints concerning legislative ethics and appeals of staff determinations on Maine Clean Election Act funding. 1 M.R.S. § 1013(2), 21-A M.R.S. § 1125(14)(B). In addition, when facts are disputed or a witness’ credibility is in question, the Commission has held discretionary hearings on matters of campaign finance compliance. The Commission’s hearings are considered “adjudicatory proceedings” as defined in the Maine Administrative Procedure Act (APA). 5 M.R.S. § 8002(1). Consequently, the hearing procedures in the APA apply to Commission hearings. 5 M.R.S. § 9051(1).

The Commission last amended its Chapter 2 rules in 1998. In this rulemaking, the Commission proposed updates to these rules to conform them to the Maine APA.

Chapter 2, § 2 addresses the Commission’s procedures for providing notices of hearings. The Commission proposed eliminating the mandatory newspaper publication for *all* hearings, and instead conforming its notice procedures to the APA. In practice, the Commission provides notices to persons whose legal rights, duties and privileges are at issue by U.S. Mail and electronic mail, and sends an email notice to all persons who have signed up to receive notifications of Commission meetings.

Chapter 2, § 6(1) addresses the standards for the admissibility of evidence in Commission hearings. Currently, this subsection sets out a standard that is slightly different than the APA. The proposed amendments were intended to eliminate the potential argument in future hearings that the Commission intentionally adopted a standard that is different than the APA. Adopting the APA language will provide the Commission with the latitude to accept verbal hearsay into evidence, which is permissible under the APA. For reasons of expediency or to expand the scope of information that may be considered, there are situations in which the Commission may wish to admit a statement that was made outside of a hearing as recounted by a hearing witness. This could eliminate the need to call additional witnesses when the sworn testimony of the hearing witness is viewed as reliable.

**Annual List of Rule-Making Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A(5)*

**Chapter 3, Maine Clean Election Act and Related Provisions**  
**§ 2(4) - Qualifying Contributions**

*Factual and policy basis for amendment:* Candidates collect \$5 qualifying contributions (QCs) and submit them to the Commission in order to qualify for Maine Clean Election Act (MCEA) funding. A QC is not a general campaign donation to the candidate. Rather, it is a payment by a Maine voter to the Maine Clean Election Fund to demonstrate the voter's support for the candidate's qualification to receive MCEA funding. The QCs are deposited in the Maine Clean Election Fund to partially underwrite the costs of the program.

Candidates may collect QCs by check, cash (which the candidate converts to a money order), or online. When the candidates are ready to qualify for the MCEA program or to receive supplemental payments, the candidate submits the QCs and accompanying documentation to the Commission. The department staff reviews the QCs and documents to make sure they meet technical requirements to be considered valid. Most QCs are found to be valid, but some are invalid for a variety of reasons.

As soon as the Commission staff reviews a candidate's submission of QCs, the checks and money orders are delivered to the State's central accounting office for deposit into the Maine Clean Election Fund. Many Maine residents balance their checkbooks. The Commission has found that if the Commission holds on to checks too long, candidates inquire why the department has not deposited their supporters' checks. Also, the Commission believes it is a responsible practice not to have the checks and money orders in its custody too long.

Every election year, a few candidates request that the checks or money orders be returned to them if these payments are not going to be counted toward MCEA funding. In 2022, the Commission received exactly two such requests. Because the Commission arranges for the prompt deposit of the checks and money orders after its review, the department's internal policy has been the Commission may not return the checks or money order to the candidates.

The Commission proposed a new § 2(4)(N) to its Chapter 3 rules that would formalize this policy. The current practice of promptly depositing checks and money orders maximizes the Commission's efficiency in making payments to candidates. To hold a subset of checks or money orders within the office after the staff's review for possible return to candidates would add a layer of administrative burden that would reduce the department's efficiency in performing its core duties. Given the tens of thousands of QCs the Commission receives, that investment of time would not be justified by a few requests from candidates for the return of their QCs. While \$5 is a meaningful amount to some contributors, it is still a small amount compared to the staff time of holding QCs within the Commission's office for possible return to candidates.

**Fiscal impact of rule:**

The Commission anticipates that the rule amendments will not have a fiscal impact on the State, the municipalities and counties of Maine, and will not impose an economic burden on small businesses.