

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Efficiency Maine Trust
Umbrella-Unit: 95-648
Statutory authority: 35-A MRS §§ 10110, 10104
Chapter number/title: Ch. 3, Electric Efficiency and Conservation Programs
(formerly Ch. 380)
Filing number: 2018-197
Effective date: 9/22/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose for proposing this rule is to amend the existing rule so that it accurately reflects changes that have been made by the Maine Legislature to the statute. The principal sections of statute that have been changed appear at 35-A MRS §10104(4) and §10110. These sections of statute have shifted the duty of planning and administering electric efficiency and conservation programs from the Maine Public Utilities Commission to the Efficiency Maine Trust, and they have changed the funding level from a fixed rate to a level sufficient to save all energy efficiency that is cost-effective, reliable and achievable which must be modeled by the Trust and then reviewed and approved by the Commission.

Basis statement:

I. Summary

This presents the factual and policy basis for the amendments to Ch. 3 - the rule for *Electric Efficiency and Conservation Programs of the Efficiency Maine Trust*. The rule was approved by vote of the Board of Trustees on August 22, 2018.

II. Background

Through Title 35-A MRS §10110, the Maine Legislature directs the Efficiency Maine Trust (the Trust) to plan and implement energy conservation programs to help reduce energy costs for electricity consumers in the State by the maximum amount possible. The statute directs the Trust to ensure that the conservation programs are cost effective and that program budgets are apportioned in a manner that allows consumers to have a reasonable opportunity to participate in one or more conservation programs. The statute requires that a portion of program budgets be directed to programs targeting low-income consumers and small business consumers, and that the Trust identify in a three-year plan all electricity conservation opportunities that are cost-effective, achievable and reliable and to develop in the plan a budget sufficient to capture those opportunities. The Trust must also submit that plan for approval to the Efficiency Maine Trust Board of Trustees (the Board) and subsequently to the Maine Public Utilities Commission (PUC). The costs for the approved budgets, net of other revenue streams that the Board dedicates to the electricity conservation budgets, will be included in rates of Maine's transmission and distribution utilities. The rules that the Trust must adopt to implement the Act are routine technical rules under the *Administrative Procedure Act* (APA). See 5 MRS §8071.

The electric efficiency and conservation programs pre-date the establishment of the Trust. Prior to these programs being assigned to the Trust through the enactment of the Efficiency Maine Trust Act in 2009, the programs were planned and implemented by the PUC. Using its statutory authority, the PUC completed a rulemaking proceeding in 1987 to adopt an earlier version of this rule, under the title *Demand Side Energy Management Programs By Electric Utilities*. Substantive revisions were made by the PUC to the rule in 1989, 1999 and 2002.

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The Trust's staff (Staff) discussed proposed amendments to the existing *Electric Efficiency and Conservation Programs Rule* with the Program Committee of the Trust Board on June 20, 2018. Staff then submitted an official rulemaking proposal package to the Secretary of State on July 3, 2018. The Public Notice of Rulemaking Proposal was published on the Trust's website on July 9, 2018 and was emailed, with a link to the proposed rule amendments, to the Trust's contact list that receives notices of all official Board meetings. It was subsequently published in local newspapers on July 11, 2018. The Trust held a public hearing at its Augusta office on July 31, 2018 and accepted written comments through August 10, 2018.

The general purpose of the amendments proposed through this rulemaking is to update the rule to reflect changes made by the Legislature to Title 35-A MRS §10104 and §10110. These statutory changes pertain to shifting the planning and implementation functions of the program to the Trust and requiring the Trust to develop program plans and budgets in a "Triennial Plan" for review and approval by the Board and subsequently by the PUC. The amendments retain the overall structure of the existing rule as well as the discretion and flexibility that the Commission originally established to enable programs to make timely changes reflecting market realities.

The amendments also provide clarifications to the definitions that will be used for low-income residential customers and small business customers seeking to participate in the programs, and the share of total program budgets that will be allocated to these customer classes. The amendments also modify language regarding the discount rate for utility ratepayer procurement funds.

Fiscal impact of rule:

No change.

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Agency name: Efficiency Maine Trust
Umbrella-Unit: 95-648
Statutory authority: 35-A MRS §§ 10111, 10104
Chapter number/title: Ch. 4, Natural Gas Energy Conservation Programs (*formerly Ch. 480*)
Filing number: 2018-198
Effective date: 9/22/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose for proposing this rule is to amend the existing rule so that it accurately reflects changes that have been made by the Maine Legislature to the statute. The principal sections of statute that have been changed appear at 35-A MRSA §10104(4) and §10111. These sections of statute have shifted the duty of planning and administering natural gas conservation programs from the gas utilities to the Efficiency Maine Trust, and they have changed the funding level from a fixed percentage of utility revenues to an amount sufficient to meet a standard that must be reviewed and approved by the Public Utilities Commission.

Basis statement:

I. Summary

This presents the factual and policy basis for the amendments to Ch. 4 (formerly Ch. 480) - the rule for *Natural Gas Energy Conservation Programs of the Efficiency Maine Trust*.

II. Background

Pursuant to 35-A MRS §10111, the Legislature directs the Efficiency Maine Trust (the Trust) to plan and implement energy conservation programs for customers of natural gas utilities that operate in Maine. The statute directs the Trust to ensure that the conservation programs are cost effective and that program budgets are apportioned in a manner that allows consumers to have a reasonable opportunity to participate in one or more conservation programs. The statute requires that a reasonable portion of program budgets be directed to programs targeting low-income consumers and small business consumers. The statute further directs the Trust to identify in a three-year plan all natural gas conservation opportunities that are cost-effective, achievable and reliable and to develop in the plan a budget sufficient to capture those opportunities. The Trust must also submit that plan for approval to the Efficiency Maine Trust Board of Trustees (the Board) and subsequently to the Maine Public Utilities Commission (PUC). The costs for the approved budgets will be included in rates of the natural gas utilities. The rules that the Trust must adopt to implement the Act are routine technical rules under the Administrative Procedure Act (APA). See 5 MRS §8071.

The natural gas energy conservation programs pre-date the establishment of the Trust. Prior to these programs being assigned to the Trust through the enactment of the *Efficiency Maine Trust Act* in 2009, the programs were overseen by the PUC and implemented by participating natural gas utilities. Using its statutory authority, the PUC conducted a rulemaking proceeding in 2005-2006 and adopted Ch. 480, *Natural Gas Energy Conservation Programs Rule*.

The Trust's staff (Staff) discussed proposed amendments to the existing *Natural Gas Energy Conservation Programs Rule* with the Program Committee of the Trust Board on June 20, 2018. Staff then submitted an official rulemaking proposal package to the Secretary of State on July 3, 2018. The Public Notice of Rulemaking Proposal was published the Trust's website on July 9, 2018 and was emailed, with a link to the proposed rule amendments, to the Trust's contact list that receives notices of all official Board meetings. It was subsequently

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published in local newspapers on July 11, 2018. The Trust held a public hearing at its Augusta office on July 31, 2018 and accepted written comments through August 10, 2018.

The general purpose of the amendments adopted through this rulemaking is to update the rule to reflect changes made by the Legislature to Title 35-A MRS §10104 and §10111. These statutory changes pertain to shifting the planning and implementation functions of the program to the Trust and requiring the Trust to develop program plans and budgets in a "Triennial Plan" for review and approval by the Board and subsequently by the PUC. The amendments retain the overall structure of the existing rule, as well as the discretion and flexibility that the PUC originally established to enable programs to make timely changes reflecting market realities.

The amendments also provide clarifications to the definition that will be used for low-income residential customers seeking to participate in the programs, and the share of total program budgets that will be allocated to the low-income and small business customer classes. The amendments also modify language regarding the discount rate for utility ratepayer procurement funds.

Fiscal impact of rule:

No change.