

Annual List of Rulemaking Activity
Rules Adopted January 1, 2020 to December 31, 2020
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 580, 580-A, 580-B, 580-C, 585-A
Chapter number/title: Ch. 156, CO₂ Budget Trading Program
Filing number: 2020-196
Effective date: 8/30/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This filing updates the rules governing the Regional Greenhouse Gas Initiative to conform with the updated Model Rule published by RGGI, Inc. on December 19, 2017 and revised on December 14, 2018. The changes maintain Maine's participation in the program through 2030 and beyond by defining Maine's emissions cap and rate of cap reduction in alignment with the other participating states.

Basis statement:

The final rules establish the operating parameters for the state's participation in the Regional Greenhouse Gas Initiative (RGGI), a regional cap-and-trade program that limits and reduces CO₂ emissions from affected fossil fuel-burning power generation facilities. General statutory authority for ch. 156 and 158 is provided by 38 MRS §§ 585-A, 580, 580-A, 580-B, and 580-C.

RGGI member states periodically review and update the program to consider program successes, impacts, and design elements, and to allow stakeholders and interested parties to contribute to and participate in the operation of the program. When program review results in changes to the Model Rule, member states must align their rules and statutes with the Model Rule in order to assure compatibility among the individual regulations and fungibility of CO₂ allowances across all markets. Changes in the Model Rule incorporated in this rulemaking include the elimination of two offset categories, and the addition of an optional Emissions Containment Reserve, allowing states to withdraw a limited number of allowances from an auction if the bid price is below a pre-set threshold.

This rulemaking was initiated by the Board's posting of the Department's revised draft rule for a thirty-day written public comment period beginning on April 29, 2020 and closing on June 1, 2020. The comment period closed with no comments having been received, and no requests for a Public Hearing. After the close of the public comment period, the Department made several non-substantive housekeeping changes to the proposed ch. 156, clarifying the intent of a subparagraph and correcting internal references and grammar. No changes were made to the proposed ch. 158.

Fiscal impact of rule:

None. The program is self-funded and provides significant revenues for various energy-saving programs in Maine.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2020 to December 31, 2020
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 580, 580-A, 580-B, 580-C, 585-A
Chapter number/title: Ch. 158, CO₂ Budget Trading Program Auction Provisions
Filing number: 2020-197
Effective date: 8/30/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This filing updates the rules governing the Regional Greenhouse Gas Initiative to conform with the updated Model Rule published by RGGI, Inc. on December 19, 2017 and revised on December 14, 2018. The changes maintain Maine's participation in the program through 2030 and beyond by defining Maine's emissions cap and rate of cap reduction in alignment with the other participating states.

Basis statement:

The final rules establish the operating parameters for the state's participation in the Regional Greenhouse Gas Initiative (RGGI), a regional cap-and-trade program that limits and reduces CO₂ emissions from affected fossil fuel-burning power generation facilities. General statutory authority for ch. 156 and 158 is provided by 38 MRS §§ 585-A, 580, 580-A, 580-B, and 580-C.

RGGI member states periodically review and update the program to consider program successes, impacts, and design elements, and to allow stakeholders and interested parties to contribute to and participate in the operation of the program. When program review results in changes to the Model Rule, member states must align their rules and statutes with the Model Rule in order to assure compatibility among the individual regulations and fungibility of CO₂ allowances across all markets. Changes in the Model Rule incorporated in this rulemaking include the elimination of two offset categories, and the addition of an optional Emissions Containment Reserve, allowing states to withdraw a limited number of allowances from an auction if the bid price is below a pre-set threshold.

This rulemaking was initiated by the Board's posting of the Department's revised draft rule for a thirty-day written public comment period beginning on April 29, 2020 and closing on June 1, 2020. The comment period closed with no comments having been received, and no requests for a Public Hearing. After the close of the public comment period, the Department made several non-substantive housekeeping changes to the proposed ch. 156, clarifying the intent of a subparagraph and correcting internal references and grammar. No changes were made to the proposed ch. 158.

Fiscal impact of rule:

None. The program is self-funded and provides significant revenues for various energy-saving programs in Maine.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2020 to December 31, 2020
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 341-H, 420, 464(5); PL 2019 ch. 463
Chapter number/title: Ch. 584, Surface Water Quality Criteria for Toxic Pollutants
Filing number: 2020-024
Effective date: 2/16/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department amends the existing ch. 584: *Surface Water Quality Criteria for Toxic Pollutants*. This rule establishes ambient water quality criteria for toxic pollutants in the surface waters of the State and sets forth procedures that may be used to determine alternative statewide criteria or site-specific criteria adopted as part of a licensing proceeding. The purpose of the rulemaking is to implement Human Health Criteria based on updates to 38 MRS §466 sub-§10-A for the designated use of sustenance fishing, institute water effect ratios (WERs) for the Androscoggin and St. Croix rivers, as well as promulgate new ambient water quality criteria (AWQC) for copper in the Little Androscoggin River based on the Biotic Ligand Model (BLM), and introduce carbaryl in the non-priority pollutant list. The rule also updates AWQC for human health using methodology from the U.S. Environmental Protection Agency (USEPA) Human Health Ambient Water Quality Criteria 2015 update.

Basis statement:

This statement is adopted by the Department of Environmental Protection (Department or DEP) pursuant to the *Maine Administrative Procedure Act* (APA), 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.

Maine law, 38 MRS §420(2), requires the Department to regulate toxic substances in the surface waters of the State pursuant to state water quality criteria, consisting of levels set forth in federal water quality criteria as established by the United States Environmental Protection Agency (EPA) pursuant to the *Federal Clean Water Act* (CWA) Section 304(a) or pursuant to adoption of alternative statewide or site-specific criteria found to be protective of the most sensitive designated use of the water body.

This rulemaking revises an existing Maine DEP rule, 06-096 CMR ch. 584, effective date July 29, 2012, with an original effective date of May 17, 1993. The original rule was established in response to amendments to the CWA in 1987 and amendments to 38 MRS §420 enacted in 1991, both of which required Maine to develop comprehensive rules dealing with toxic pollutants in licensed wastewater discharges. The Department established and has managed a surface waters toxics control program since at least the effective date of the original rule.

The purpose of these revisions is to: calculate and establish human health criteria for toxic pollutants (HHC) to protect the new sustenance fishing designated use (SFDU) established as a subcategory of the applicable fishing designated use for certain specified segments of waterbodies in the State within Maine's water classification program, 38 MRS §§ 464-470, as specified by PL 2019 ch. 463 (*An Act to Protect Sustenance Fishing*, or LD 1775); institute water effect ratios (WERs) for the Androscoggin and St. Croix rivers; promulgate new ambient water quality criteria (AWQC) for copper in the Little Androscoggin River based on the Biotic Ligand Model (BLM); and introduce carbaryl in the non-priority pollutant list. Further, these revisions also establish updated Maine AWQC for 94 existing HHC for all waters not expressly subject to the new SFDU using the methodology and final

Annual List of Rulemaking Activity
Rules Adopted January 1, 2020 to December 31, 2020
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

values from the EPA Human Health Ambient Water Quality Criteria 2015 updates (2015 HHC updates), except for aluminum, copper, and selenium, which are not being updated at this time, and by also using Maine-specific fish consumption rates (FCRs) as applicable. The Department anticipates that the revised rule will operate successfully within the Department's existing program.

Fiscal impact of rule:

This rule revision is anticipated to result in no appreciable increased costs to the regulated community or to the Department.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2020 to December 31, 2020
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 341-H, 1694
Chapter number/title: Ch. 890 (New), Designation of PFOS and Its Salts as Priority Chemicals
Filing number: 2020-167
Effective date: 7/28/2020
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The final rule designates perfluorooctane sulfonic acid (“PFOS”) and specific salts of PFOS as priority chemicals and requires reporting for certain categories of product that contain these regulated chemicals and that when used or disposed of will likely result in a child under 12 years of age or a fetus being exposed to these chemicals. The final rule applies to manufacturers of specified product categories that contain intentionally added amounts of these chemicals and seeks to gather information which would clarify the prevalence of use of the listed chemicals.

The designation of PFOS and its salts as Priority Chemicals meets the statutory criteria for designation as specified in 38 MRS §1694(1). Maine CDC concurrence for the proposed rule is based on the chemicals’ category 1A reproductive toxicity classification on the Globally Harmonized System of Classification and Labelling of Chemicals (GHS). The Department hereby accepts and adopts by reference the Maine CDC PFOS Priority Designation Concurrence Letter, dated February 23, 2018, which is attached and incorporated into this Basis Statement. The Department also accepts and adopts by reference the underlying science, data, and documents that Maine CDC developed and utilized with respect to its February 23, 2018 letter.

As this chapter applies to manufacturers or distributors of certain products, the fiscal impacts will fall mainly on manufacturers of consumer products which contain intentionally added amounts of the proposed priority chemicals. Filing the required report information with the Department is expected to impose only nominal costs. Regulated entities are also expected to pay a one-time reporting fee to the Department to cover the costs associated with information management. This fee is dependent upon the number of regulated products and the concentration of the priority chemical in each.

The proposed rule was originally posted for Departmental rulemaking with a public comment period beginning April 3, 2019. A Department public hearing was held on April 23, 2019, and the comment period closed May 6, 2019. After the close of this initial public comment period, new information about the prevalence of PFOS in Maine’s biosolids highlighted the continuing possibilities of exposure and caused the Department to undertake revisions to the draft rule. This initial rulemaking period terminated with no formal action by the Commissioner. Effective September 19, 2019, responsibility for all rulemaking shifted to the Board of Environmental Protection. A new rulemaking proceeding was initiated by the Board’s posting of the Department’s revised draft rule for a thirty-day written public comment period beginning on October 2, 2019 and closing on November 4, 2019. Before the close of the comment period six requests for a public hearing were received. The comment period was reopened on January 1 and the Board held a public hearing on January 23, 2020. The Department made changes to the draft rule to include specific salts of PFOS and other minor

Annual List of Rulemaking Activity
Rules Adopted January 1, 2020 to December 31, 2020
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

changes, and the Board reopened the comment period on February 3, 2020. This final comment period closed on March 9, 2020.

Fiscal impact of rule:

Because the proposed rule applies to manufacturers or distributors of certain products, the fiscal impacts will fall mainly on manufacturers of consumer products which contain intentionally added amounts of the proposed priority chemical. Filing the required report information with the Department is expected to impose only nominal costs. Regulated entities are also expected to pay a one-time reporting fee to the Department to cover the costs associated with information management. This fee is dependent upon the number of regulated products and the concentration of the priority chemical in each.