

Notice of Agency Rule-making Proposal

AGENCY: 13-188-Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 100 Grievance Procedures for the Handicapped

TYPE OF RULE (*check one*): Routine Technical Major Substantive

PROPOSED RULE NUMBER (*leave blank; to be assigned by Secretary of State*):

BRIEF SUMMARY: On June 23, 2021, Public Law 2021, Chapter 348, section 58 was enacted. This provision directs all state agencies to discontinue the use of the terms “Handicap, Handicapped, and Hearing Impaired” in all laws, rules, and official documents. In compliance with the law, DMR undertook a review of laws, regulations, and official documents under its jurisdiction. Chapter 100 of DMR’s regulations is titled “Grievance Procedures for the Handicapped,” which was adopted in 1984 and needs to be updated in compliance with the recently enacted law and is generally out of date. However, in the years following DMR’s implementation of Chapter 100, the State of Maine adopted a disability-related Nondiscrimination Policy and Grievance Procedure, which applies to all agencies. The state’s Nondiscrimination Policy and Grievance Procedure is codified in Chapter 50 of the Maine Department of Labor’s regulations. Therefore, this proposed rule would repeal Chapter 100 and DMR would follow the state’s Nondiscrimination Policy and Grievance Procedure rather than maintaining and updating a separate regulation.

Date, time and location of PUBLIC HEARING (*if any*): None scheduled

COMMENT DEADLINE: January 16, 2022

CONTACT PERSON FOR THIS FILING (*include name, mailing address, telephone, fax, TTY, e-mail*):

NAME: Amanda Ellis

MAILING ADDRESS: 21 State House Station, Augusta, Maine 04333-0021

E-MAIL: dmr.rulemaking@maine.gov

TELEPHONE: 207-624-6573

FAX: 207-624-6024

TTY: 207-624-6500 (Deaf/Hard of Hearing)

Hearing facilities: If you require accommodations due to disability, please contact Meredith Mendelson at 207-624-6553.

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT (*if different*): Same

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES (*if any*): None

STATUTORY AUTHORITY FOR THIS RULE: PL 2021, Chapter 348, Section 58

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (*if different*): Same

AGENCY WEBSITE: <http://www.maine.gov/dmr/rulemaking/>

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: dmr.rulemaking@maine.gov

* *Check one of the following two boxes.*

X *The summary provided above is for publication in both the newspaper and website notices.*

The summary provided above is for the newspaper notice only. Title 5 §8053, sub-§5 & sub-§7, ¶D. A more detailed summary is attached for inclusion in the rule-making notice posted on the Secretary of State’s website. Title 5 §8053, sub-§3, ¶D & sub-§6.

CHAPTER 100

GRIEVANCE PROCEDURES FOR THE HANDICAPPED

TITLE INDEX

~~Chapter 100 – Grievance Procedures for the Handicapped~~

~~DEPARTMENT OF MARINE RESOURCES~~

~~Chapter 100 – Grievance Procedures for the Handicapped~~

~~Maine Department of Marine Resources has adopted the following internal grievance procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by federal regulations implementing Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794).~~

~~Section 504 states, in part, that “No otherwise qualified handicapped individual ... shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...”~~

~~This 504 grievance procedure is not meant to preclude other avenues of relief for the grievant.~~

~~The law and regulations may be examined in the office of:~~

~~Personnel Officer
Bureau of Administrative Services
Department of Marine Resources
21 State House Station
Augusta, Maine 04333-0021
Telephone: (207) 624-6567~~

~~who has been designated to coordinate the efforts of Marine Resources to comply with the regulations.~~

- ~~1. A complaint must be filed in writing or verbally with 180 days of the alleged violation with the Personnel Officer who is the Agency 504 Coordinator, contain the name and address of the person filing it, and describe the action alleged to be prohibited by the regulations.~~
- ~~2. The Personnel Officer who is the Agency 504 Coordinator or his designee shall conduct an investigation to determine the validity of the complaint. The investigation shall include an opportunity for the grievant, by requesting an informal conference within 30 days of filing the complaint, to confront the people responsible for the action complained against. The 504 Coordinator shall, immediately upon receipt of the complaint, inform the grievant in writing of his right to request a conference. If the grievant requests and participates in a conference, he shall have an opportunity to present evidence and arguments on all issues, to cross-examine any person present and testifying, and to be represented at the conference. The 504 Coordinator shall be responsible for creating and maintaining a record or report of the conference. If the grievant does not request a conference, he shall still have the right to present evidence such as documents and written statements to the 504 Coordinator for consideration during investigation. The Agency 504 Coordinator shall provide the Agency head with a written report of the findings of the investigation, including the record or report of the informal conference, if such a conference occurred.~~
- ~~3. The agency head shall issue a written decision with 60 days of the date the complaint was filed describing what action, if any, she/he will take regarding the complaint.~~

4. ~~The Personnel Officer who is the 504 Coordinator will maintain the 504 complaint files of the agency for two years.~~

~~CHAPTER 100~~

~~GRIEVANCE PROCEDURES FOR THE HANDICAPPED~~

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~~EFFECTIVE DATE:~~

~~December 11, 1984~~

~~October 24, 2005~~

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Amanda Ellis, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021 Telephone: (207) 624-6573; web address: <http://www.maine.gov/dmr/rulemaking/>

CHAPTER NUMBER AND RULE: Chapter 100 Grievance Procedures for the Handicapped

STATUTORY AUTHORITY: PL 2021, Chapter 348, Section 58

DATE AND PLACE OF PUBLIC HEARING(S): None scheduled

COMMENT DEADLINE: January 16, 2022

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [see §8057-A(1)(A)&(C)]

In compliance with PL 2021, chapter 348, section 58, DMR undertook a review of laws, regulations, and official documents under its jurisdiction. Chapter 100 of DMR's regulations is titled "Grievance Procedures for the Handicapped," which was initially adopted by the agency in 1984 and would need to be updated in compliance with the recently enacted law. However, in the years following DMR's implementation of Chapter 100, the State of Maine adopted a disability-related Nondiscrimination Policy and Grievance Procedure, which applies to all agencies. The state's Nondiscrimination Policy and Grievance Procedure is codified in Chapter 50 of the Maine Department of Labor's regulations. Therefore, this proposed rule would repeal Chapter 100 and DMR would follow the state's Nondiscrimination Policy and Grievance Procedure rather than maintaining a separate regulation.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? ___ YES ___ NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [see §8057-A(1)(B)&(D)]

Since DMR is subject to the state's Nondiscrimination Policy and Grievance Procedure, the repeal of this rule would have no tangible impact on the agency or other stakeholders. Following Chapter 50 also provides for consistency between agency and state mandated procedure. The repeal of Chapter 100 would also help ensure that DMR's regulations do not contain any of the specified terms contained in PL 2021, chapter 348, section 58.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) [see §§8057-A(1)(E) & 8063-B]: The provisions of PL 2021, Chapter 348, Section 58; and consultation with the state's ADA Accessibility Coordinator, and the Office of the Maine Attorney General.

ESTIMATED FISCAL IMPACT OF THE RULE: [see §8057-A(1)(C)]

Enforcement of these proposed amendments will not require additional activity in this agency.

FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:

[see §8057-A(2)(A)]

INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED AND HOW THEY WILL BE AFFECTED: [see §8057-A(2)(B)]

BENEFITS OF THE RULE: [see §8057-A(2)(C)]

Note: If necessary, additional pages may be used.