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## SUMMARY OF PUBLIC COMMENTS AND DEPARTMENT’S RESPONSE & LIST OF CHANGES MADE TO THE FINAL RULE

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### 10-144 CMR Ch. 263; Maine Comprehensive And Limited Environmental Laboratory Accreditation Rule (jointly with DEP (06-096 CMR))

Rule amendments proposed jointly by the Department of Health and Human Services - Maine Center for Disease Control and Prevention (Maine CDC) and Maine’s Department of Environmental Protection (DEP) were published on October 26, 2022. A public hearing was held on November 17, 2022, and was facilitated by Maine’s Board of Environmental Protection (Board) and Maine CDC. For the purpose of promulgating this rule, comments from the Board recorded for the proceeding are included in this summary document. Written comments were accepted through November 28, 2022. The Departments reviewed and considered public comments, which are summarized below along with responses explaining whether a change was implemented or not for the final adopted rule.

Commenter ID	Name	Affiliation	Date Received	Comment Format
1	Steven Pelletier, Robert Sanford	Members, Board of Environmental Protection	11/17/2022	Oral
2	Rebecca Labranche	A & L Laboratory and Granite State Analytical Services, LLC	11/17/2022	Written
3	Craig Douglas	Brunswick and Topsham Water District	11/22/2022	Written
4	Jim Todaro	Alpha Analytical	11/23/2022	Written (x2)
5	Jacquelyn Villinski	Maine Environmental Laboratory LLC	11/22/2022	Written

**Commenter 1** noted the shift from ‘shall’ to ‘will’ and asked to have the authority to designate an Accreditation Officer clarified. Commenter asked for the purpose of ‘limited’ in the title of the rule. Commenter noted the absence of testing related to PFAS specifically and asked whether those types of water quality reviews were considered for this rule. Commenter suggested there is ambiguity in the meaning of Section 7(A)(3) and expressed concerned that there may be a presumption of deficiency if a lab was not accredited.

**Response:** In response to this comment, the Department explained to the Board that the shall/will language change is a formatting convention for the agency rules, intending to reflect how the Department implements the regulations procedurally, and confirmed that the authority to designate an Accreditation Officer exists. (22 MRS §567). The Department explained the scope of the rule, which is to regulate testing conducted for public water systems compliance and, as such, PFAS testing would be under this umbrella of public water systems and waste water systems; and that, for reasons that a lab may be accredited for a small number of methods, the use of ‘limited’ in the title is germane to the rule. In response to comments, Section 7 is revised to further clarify that it is methods for which a lab is accredited. A lab may have some methods that are fully accredited, while others are provisional, and a lab may lose accreditation for specific methods – all while being an “accredited lab. In order to be accredited, the laboratory must have applied for and passed the assessment for at least one method and, if the accrediting officer identifies performance deficiencies, then the lab would not be accredited for that method.

**Commenter 2** supports the majority of proposed rule changes, but does not support adding actual mass/volume of sample analyzed to the components of the test reports, stating it is not required or valuable

for interpreting results for most drinking water methods and that would create an unnecessary burden for laboratories and possible confusion for end-users. Commenter 2 recommends that, to consider current industry practices, the rule includes the language ‘when appropriate’ to clarify that it only applies to methods where it is necessary. Commenter stated, “The addition of this information for methods where it is needed would be better served being added to section P. 4. n along with the other reporting requirements and included as ‘when appropriate’.” and proposed the following revision to page 47 of the proposed rule:

The test results with the units of measurement, when appropriate; whether data are calculated on a dry weight or an "as received" basis; the reporting or detection limit for each analyte with appropriate units of measurement; when appropriate; the actual mass/volume of sample analyzed and the counting error for each radiochemistry sample;

**Response:** In response to this comment, the proposed addition of actual mass/volume of sample analyzed to the list of components required for reports is not included in the adopted rule. The Departments have weighed the potential impact of this change on reporting labs and determined that Maine Laboratory Accreditation Program will continue to reach out to labs when it is necessary to have this data.

**Commenter 3** opposes the proposed change that adds actual mass/volume of sample analyzed to the components of the test reports, stating this creates an unnecessary burden for laboratories. Commenter 3 sees no value in this change and stated that this information is not required or valuable for interpreting results for most drinking water methods.

**Response:** In response to this comment, the proposed addition of actual mass/volume of sample analyzed to the list of components required for reports is not included in the adopted rule. The Departments have weighed the potential impact of this change on reporting labs and determined that Maine Laboratory Accreditation Program will continue to reach out to labs when it is necessary to have this data.

**Commenter 4** stated that it would be a “huge undertaking” involving “significant” time and costs to implement the change proposed to add actual mass/volume of sample analyzed to test reports and that the change would result in no value added. Commenter suggested that it may be more useful to indicate in a report narrative when less volumes are being used that may elevate reporting levels.

**Response:** In response to this comment, the proposed addition of actual mass/volume of sample analyzed to the list of components required for reports is not included in the adopted rule. The Departments have weighed the potential impact of this change on reporting labs and determined that Maine Laboratory Accreditation Program will continue to reach out to labs when it is necessary to have this data.

**Commenter 5** asked for the rationale for including actual mass/volume of sample analyzed to the laboratory report, stating that this will be burdensome and result in an additional expenses for labs. Commenter noted that the data is already recorded on bench sheets and note books and asked whether this data will increase the value to the client or the Department.

**Response:** In response to this comment, the proposed addition of actual mass/volume of sample analyzed to the list of components required for reports is not included in the adopted rule. The Departments have weighed the potential impact of this change on reporting labs and determined that Maine Laboratory Accreditation Program will continue to reach out to labs when it is necessary to have this data.

### Summary of Changes in Response to Comments and AAG Review

- Removed the proposed addition of actual mass/volume of sample analyzed to the components required for test reports. (Section 8 (P)(4).)
  - Non-substantive changes are made to Section 7(A) to clarify that a lab may not be granted accreditation for a method in accordance with this rule if the accrediting officer identifies performance deficiencies for that method.
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