

18 Department of Administrative and Financial Services

18-125 Department of Administrative and Financial Services, Maine Revenue Services

2024-072: Chapter 815, Dirigo Business Incentives Program

Statutory Authority:	36 M.R.S. §§ 112, 5219-AAA
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	<i>The fiscal impact will likely be neutral. The rule is in line with the expectations of the fiscal estimate prepared for PL 2023, c. 412, Part J.</i>
Principal purpose:	<i>To establish rules for the Dirigo Business Incentives Program created by PL 2023, c. 412, Part J.</i>
Basis Statement:	<i>The basis for the proposed new rule is to establish rules for the Dirigo Business Incentives Program created by PL 2023, c. 412, Part J. The rule provides additional detail to definitions of eligible sectors and qualified business activity and specifies the process of applying for a letter of certification in order to clarify definitions and process for participants and agency staff.</i>

Statutory Authority:	36 M.R.S. § 112
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	None
Principal purpose:	<i>MRS is proposing to adopt a new Rule 101 to explain certain General Administrative Provisions. For now, this new Rule 101 will explain aspects of the reconsideration process related to interest and penalty accrual. Specifically, interest continues to accrue during the reconsideration process whereas penalties that otherwise would accrue are permanently abated during the reconsideration process until the underlying liability is considered “final.”</i>
Basis Statement:	<i>MRS is proposing to adopt a new Rule 101 to explain certain General Administrative Provisions. For now, this new Rule 101 will explain aspects of the reconsideration process related to interest and penalty accrual. Specifically, interest continues to accrue during the reconsideration process whereas penalties that otherwise would accrue are permanently abated during the reconsideration process until the underlying liability is considered “final.”</i>

18-125, Department of Administrative and Financial Services, Maine Revenue Services

2024-089: Chapter 102, Electronic Funds Transfer (EFT)

Statutory Authority:	36 M.R.S. § 112
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	None
Principal purpose:	<i>Maine Revenue Services is proposing to amend Rule 102 (“Electronic Funds Transfer (EFT)”) to impose an electronic funds transfer requirement on payers of Maine real estate withholding beginning in 2025 and to clarify the rule by removing obsolete provisions, adding clarifying language, and making other technical changes.</i>
Basis Statement:	<i>Maine Revenue Services is proposing to amend Rule 102 (“Electronic Funds Transfer (EFT)”) to impose an electronic funds transfer requirement on payers of Maine real estate withholding beginning in 2025 and to clarify the rule by removing obsolete provisions, adding clarifying language, and making other technical changes.</i>

18-125, Department of Administrative and Financial Services, Maine Revenue Services

2024-090: Chapter 104, Filing of Maine Tax Returns

Statutory Authority: 36 M.R.S. § 112

Type: Routine Technical

Emergency?: No

Fiscal impact: None

Principal purpose: *Maine Revenue Services is proposing to amend Rule 104 (“Filing of Maine Tax Returns”) to impose an electronic filing requirement on taxpayers and certain taxpayer representatives for the filing of the following Maine tax returns: corporate income tax returns filed after 2024 if the taxpayer is required to file the related federal return electronically; real estate withholding returns due on or after January 1, 2025; financial institutions franchise tax returns and insurance premiums tax returns filed after 2024; and returns for certain special taxes, such as the blueberry tax, cannabis excise tax, cigarette tax, gasoline distributor tax, special fuel supplier tax, and other special taxes, filed after 2024. A waiver from the electronic filing requirement may be obtained if the requirement causes undue hardship. The proposed amended rule deletes obsolete provisions and contains technical changes for clarification.*

Basis Statement: *Maine Revenue Services is proposing to amend Rule 104 (“Filing of Maine Tax Returns”) to impose an electronic filing requirement on taxpayers and certain taxpayer representatives for the filing of the following Maine tax returns: corporate income tax returns filed after 2024 if the taxpayer is required to file the related federal return electronically; real estate withholding returns due on or after January 1, 2025; financial institutions franchise tax returns and insurance premiums tax returns filed after 2024; and returns for certain special taxes, such as the blueberry tax, cannabis excise tax, cigarette tax, gasoline distributor tax, special fuel supplier tax, and other special taxes, filed after 2024. A waiver from the electronic filing requirement may be obtained if the requirement causes undue hardship. The proposed amended rule deletes obsolete provisions and contains technical changes for clarification.*

18-125, Department of Administrative and Financial Services, Maine Revenue Services

2024-091: Chapter 110, Requests for Advisory Rulings

Statutory Authority: 36 M.R.S. § 112, 5 M.R.S. § 9001(4)

Type: Routine Technical

Emergency?: No

Fiscal impact: None

Principal purpose: *MRS is proposing to amend Rule 110 (“Requests for Advisory Rulings”) in order to clarify that MRS may decline any request for advisory ruling. MRS is also proposing to make certain other clarifications, regarding terminology and method of submission.*

Basis Statement: *MRS is proposing to amend Rule 110 (“Requests for Advisory Rulings”) in order to clarify that MRS may decline any request for advisory ruling. MRS is also proposing to make certain other clarifications, regarding terminology and method of submission.*

18-125, Department of Administrative and Financial Services, Maine Revenue Services

2024-092: Chapter 202, Tree Growth Tax Law Valuations - 2024

Statutory Authority: 36 M.R.S. §§ 112, 576

Type: Routine Technical

Emergency?: No

Fiscal impact: None

Principal purpose: *The rule is being replaced to provide updated valuation rates for each forest type by region. 36 M.R.S. § 576 requires that the State Tax Assessor annually establish the value per acre for each forest type, by economic region, for parcels classified under the Tree Growth Tax Law.*

Basis Statement: *Amended Rule 202 provides an updated valuation rates for each forest type by region. 36 M.R.S. § 576 requires that the State Tax Assessor annually establish the value per acre for each forest type, by economic region, for parcels classified under the Tree Growth Tax Law.*

18-125, Department of Administrative and Financial Services, Maine Revenue Services

2024-093: Chapter 603, Maine Estate Tax After 2012

Statutory Authority:	36 M.R.S. § 112
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	None
Principal purpose:	<i>Maine Revenue Services is proposing to amend Rule 603 (“Maine Estate Tax After 2012”) to remove the requirement that a copy of the federal estate tax closing letter be attached to the Maine amended estate tax return. The change is effective on the date of adoption. Technical changes are added to enhance clarity.</i>
Basis Statement:	<i>Maine Revenue Services is proposing to amend Rule 603 (“Maine Estate Tax After 2012”) to remove the requirement that a copy of the federal estate tax closing letter be attached to the Maine amended estate tax return. The change is effective on the date of adoption. Technical changes are added to enhance clarity.</i>

18-125, Department of Administrative and Financial Services, Maine Revenue Services

2024-094: Chapter 805, Composite Filing

Statutory Authority: 36 M.R.S. § 112

Type: Routine Technical

Emergency?: No

Fiscal impact: None

Principal purpose: *Maine Revenue Services is proposing to amend Rule 805 (“Composite Filing”) to reflect that the composite filing of a pass-through entity on behalf of eligible persons (certain nonresident individuals, trusts, and estates) is, for taxable years beginning after 2022, a separate, unique tax type. The amended rule also proposes to clarify that entity income does not include an eligible person’s distributive share of Maine-source net income of an entity if that income is less than zero and to make other technical changes for clarification.*

Basis Statement: *Maine Revenue Services is proposing to amend Rule 805 (“Composite Filing”) to reflect that the composite filing of a pass-through entity on behalf of eligible persons (certain nonresident individuals, trusts, and estates) is, for taxable years beginning after 2022, a separate, unique tax type. The amended rule also proposes to clarify that entity income does not include an eligible person’s distributive share of Maine-source net income of an entity if that income is less than zero and to make other technical changes for clarification.*

18-125 Department of Administrative and Financial Services, Maine Revenue Services

2024-120: Chapter 803, Income Tax Withholding Reports and Payments

Statutory Authority:	36 M.R.S. § 112
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	None indicated
Principal purpose:	<i>Maine Revenue Services is proposing to amend Rule 803 (“Income Tax Withholding Reports and Payments”) to remove the requirement to file the annual reconciliation Form W-3ME for tax periods beginning on or after January 1, 2024 and to make related technical changes.</i>
Basis Statement:	<i>Maine Revenue Services is proposing to amend Rule 803 (“Income Tax Withholding Reports and Payments”) to remove the requirement to file the annual reconciliation Form W-3ME for tax periods beginning on or after January 1, 2024 and to make related technical changes.</i>

18-125 Department of Administrative and Financial Services, Maine Revenue Services

2024-121: Chapter 811, Student Loan Repayment Tax Credit

Statutory Authority:	36 M.R.S. § 112
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	None stated
Principal purpose:	<i>Maine Revenue Services is proposing new Rule 811 (“Student Loan Repayment Tax Credit”) to clarify how individual income tax taxpayers may claim and calculate the Student Loan Repayment Tax Credit. The credit applies to taxable years beginning after 2021.</i>
Basis Statement:	<i>Maine Revenue Services is proposing new Rule 811 (“Student Loan Repayment Tax Credit”) to clarify how individual income tax taxpayers may claim and calculate the Student Loan Repayment Tax Credit. The credit applies to taxable years beginning after 2021.</i>

18-125 Department of Administrative and Financial Services, Maine Revenue Services

2024-171: Chapter 104, Filing of Maine Tax Returns

Statutory Authority:	36 M.R.S. § 112
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	N/A
Principal purpose:	<i>Maine Revenue Services is proposing to amend Rule 104 (“Filing of Maine Tax Returns”) to impose an electronic filing requirement beginning in 2025 on applicants and applicant representatives submitting applications for the refundable seed capital investment tax credit claimed by private venture capital funds and applications for the certified visual media production wage reimbursement. A waiver from the electronic filing requirement may be obtained if the requirement causes undue hardship.</i>
Basis Statement:	<i>Maine Revenue Services is proposing to amend Rule 104 (“Filing of Maine Tax Returns”) to impose an electronic filing requirement beginning in 2025 on applicants and applicant representatives submitting applications for the refundable seed capital investment tax credit claimed by private venture capital funds and applications for the certified visual media production wage reimbursement. A waiver from the electronic filing requirement may be obtained if the requirement causes undue hardship.</i>

18-125 Department of Administrative and Financial Services, Maine Revenue Services

2024-176: Chapter 806, Nonresident Individual Income Tax

Statutory Authority:	36 M.R.S. § 112
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	None
Principal purpose:	<i>Maine Revenue Services is proposing to amend Rule 806 (“Nonresident Individual Income Tax”) to repeal the provision that relates to income from an entity with a permanent business presence in Maine that currently appears in the section of the rule relating to the nonresident individual minimum taxability thresholds. Income from an entity with a permanent business presence in Maine is not an amount subject to the minimum taxability thresholds contained in 36 M.R.S. 5142(8-B). Repealing the provision will align the rule with Maine law and add clarity regarding the application of the taxability thresholds to business income. The rule also proposes related technical changes for consistency and makes other changes for clarity.</i>
Basis Statement:	<i>Maine Revenue Services is proposing to amend Rule 806 (“Nonresident Individual Income Tax”) to repeal the provision that relates to income from an entity with a permanent business presence in Maine that currently appears in the section of the rule relating to the nonresident individual minimum taxability thresholds. Income from an entity with a permanent business presence in Maine is not an amount subject to the minimum taxability thresholds contained in 36 M.R.S. 5142(8-B). Repealing the provision will align the rule with Maine law and add clarity regarding the application of the taxability thresholds to business income. The rule also proposes related technical changes for consistency and makes other changes for clarity.</i>

18-674 Department of Administrative and Financial Services, Maine Board of Tax Appeals

2024-211 Chapter 100, Maine Board of Tax Appeals Practice and Procedure

Statutory Authority:	36 M.R.S. § 151-D
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	<i>This rulemaking is not anticipated to have any fiscal impact.</i>
Principal purpose:	<i>This rule updates 18-674 C.M.R. ch. 100 § 105(1) to reflect changes made by P.L. 2023, c. 412 to 36 M.R.S.A. § 151(2)(C) limiting the jurisdiction of the Maine Board of Tax Appeals to matters where the amount in controversy is \$500,000 or less, which became effective October 25, 2023.</i>
Basis Statement:	<i>This rule updates 18-674 C.M.R. ch. 100 § 105(1) to reflect changes made by P.L. 2023, c. 412 to 36 M.R.S.A. § 151(2)(C) limiting the jurisdiction of the Maine Board of Tax Appeals to matters where the amount in controversy is \$500,000 or less, which became effective October 25, 2023.</i>

18-691 Department of Administrative and Financial Services, Office of Cannabis Policy

2024-228: Chapter 10, Rules for the Administration of the Adult Use Cannabis Program

Statutory Authority:	28-B M.R.S. Ch. 1, including PL 2023, c. 679
Type:	Major Substantive
Emergency?:	No
Fiscal Impact:	<i>This rule should have no fiscal impact on existing state resources.</i>
Principal purpose:	<p><i>This rulemaking updates the definitions, fees and other administrative requirements necessary to implement statutory changes made to the Cannabis Legalization Act, 28-B MRS, including PL 2023, ch. 6, Emergency (Signed March 15, 2023), and PL 2023, ch. 408, PL 2023, ch. 396, specifically changes to the authorized activity of tier 1, tier 2, and nursery cultivation facilities and products manufacturing facilities allowing for the sales of cannabis and cannabis products to consumers by delivery (except that nursery cultivation facilities may sell only immature cannabis plants, seedlings, cannabis seeds and agricultural or gardening supplies relating to the cultivation of cannabis); permitting the delivery of cannabis and cannabis products by authorized licensees to consumers at hotels or other private businesses, provided that the delivering licensee has obtained written consent from the owner or other authorized agent of the business to conduct such deliveries; permitting the return of cannabis or cannabis products from licensee to the licensee that transferred the cannabis or cannabis products to the returning licensee and provides for the testing of such returned cannabis or cannabis products; permitting the use of vehicle wraps by licensees; increasing the per package limit for edible cannabis products from 100 mg per package to 200 mg per package and increasing the possession limit for cannabis concentrates from 5 grams to 10 grams; creation of new definitions for the terms “permitted premises for a specified event,” “specified event,” and “specified event permit”; amendments to the application requirements for the issuance of a permit for cannabis stores to conduct sales at specified events; amendments to the limitations and conditions for cannabis stores to conduct sales at events – including repealing the prohibition on the sale of “smokable” cannabis or cannabis products at specified event; establishment of criteria for suspension/revocation of permit to conduct sales at an event; established criteria for DAFS’s approval or denial of a permit application for cannabis stores to conduct sales at a specified event to allow denial of such applications for “good cause”; and amendments to the requirements that the Department issue guidance to cannabis stores.</i></p> <p><i>This rulemaking is being conducted in preparation to repeal the Adult Use Cannabis Program Rule, 18-691 CMR, ch. 1, once this rule, and 18-691 CMR, chapters 20, 30 and 40 are finally adopted.</i></p>
Basis Statement:	<p><i>The Department of Administrative and Financial Services, Office of Cannabis Policy, is promulgating the Rules for the Administration of the Adult Use Cannabis Program, along with the Rules for the Licensure of Adult Use Cannabis Establishments, 18-691 CMR, ch. 20, Compliance Rules for Adult Use Cannabis Establishments, 18-691 CMR, ch. 30 and the Rules for the Testing of Adult Use Cannabis, 18-691 CMR, ch. 40 in anticipation of fully repealing the Adult Use Cannabis Program Rule, 18-691 CMR, ch. 1, once those four rules have been finally</i></p>

adopted.¹ The Office of Cannabis Policy (OCP) has the authority to “promulgate rules necessary to implement, administer and enforce [the Cannabis Legalization Act].” 28-B MRS § 104.

This rule is comprised of the administrative provisions, definitions and program fees from the original Adult Use Cannabis Program Rule, and incorporates statutory changes since the last time that rule was revised, specifically, PL 2021, ch. 628, PL 2023, ch. 6, Emergency (Signed March 15, 2023), PL 2023, ch. 408 and PL 2023, ch. 396. This rule also incorporates changes identified by the Office during its process of regulatory lookback and those identified by stakeholders through public comments during the public comment period for this rule.

In addition, the Office has attached to this basis statement a complete list of all comments received by the Office during the public comment period and the agency’s response to the same.

Statutory Changes

An Act To Allow the State’s Adult Use Marijuana Tracking System To Track Plants and Products by Group, PL 2021, ch. 628, amended the Cannabis Legalization Act, Title 28-B, ch. 1, to allow adult use cannabis cultivation facility licensees to track cannabis plants by group, as opposed to tracking each plant individually. As a result, this rule includes a definition of “group of cannabis plants” that reflects the statutory changes to 28-B MRS § 105 that describe a “group of cannabis plants” for the purposes of inventory tracking.

An Act to Clarify State Policy Regarding Cannabis Paraphernalia in the Maine Medical Use of Cannabis Act and the Cannabis Legalization Act, PL 2023, ch. 6, Emergency (Signed March 15, 2023) amended the Cannabis Legalization Act (and the Maine Medical Use of Cannabis Act, Title 22, ch. 558-C) to include a definition of “cannabis paraphernalia” and distinguished that “cannabis paraphernalia” from “tobacco products” as defined in 22 MRS § 1551. As a result, this rule contains a definition of “cannabis paraphernalia” that mirrors the one added to statute.

An Act to Clarify the Requirements for Off-Premises Sales by Cannabis Store Licensees, PL 2023, ch. 408, amended the Cannabis Legalization Act to update the requirements applicable to the conduct of off-premises sales by cannabis store licensees at “specified events” outside of the licensed premises of cannabis stores. That law created definitions of “permitted premises for a specified event”, “specified event”, and “specified event permit” that have been integrated into the definitions section of this rule. Changes included in that law also necessitated amendment of the definition of “limited access area” and “premises” originally included in the Adult Use Cannabis Program Rule, to accommodate the extension of retail sales to consumers at a location not within the licensed premises of a cannabis store. A fee for a specified event permit was also added to the fees section of the rule.

An Act to Amend the Adult Use Cannabis Laws, PL 2023, ch. 396, amended the Cannabis Legalization Act in a number of ways, including expanding the authorized

¹ With the exception of the *Rules for the Testing of Adult Use Cannabis*, 18-691 CMR, ch. 40, all other rules, Chapters 10, 20, and 30, are designated “major substantive” under the *Cannabis Legalization Act*, Title 28-B, ch. 1. 18-691 CMR, ch. 40 is exclusively related to mandatory testing in the Adult Use Cannabis Program, and those rules are designated “routine technical”. The Office intends to finally adopt Chapter 40 in late 2023 and will finally adopt Chapters 10, 20, and 30 following action by the 131st Legislature in 2024. Following final adoption of all four rules, the Office will take the steps required under the *Maine Administrative Procedures Act*, Title 5, ch. 375, necessary to repeal 18-691 CMR, ch. 1, the *Adult Use Cannabis Program Rule*.

activities for tier 1, tier 2 and nursery cultivation facilities and products manufacturing facilities, changes to the advertising and marketing restrictions of the law, and changes to the potency limits for packages of edible cannabis products and an increase in the amount of cannabis concentrate an adult consumer may possess; however, the only provision that necessitated additions to this rule was a new requirement that the Department specify in rule limitations on signs, advertising and marketing necessary to limit the appeal of such materials to individuals under 21 years of age. In response, OCP included in this rule a definition of “appealing to individuals under 21 years of age” to be used throughout the rules governing the adult use cannabis program. In order to accommodate the expansion of the kinds of cannabis establishments permitted to make retail sales by delivery to consumers, OCP also updated the definitions of “sales delivery manifest” and “sales order” to include those newly authorized establishment types.

Changes Identified Through Regulatory Lookback

In order to clarify program requirements and reduce compliance costs for program participants, the Office engaged in a process of regulatory lookback before drafting these rules. Through that process, OCP identified a number of terms that were commonly used within the program by OCP staff and program participants, but that had not been previously defined, or that had definitions in the Adult Use Cannabis Program Rule that did not align with the implementation of those terms in practice. Specifically, the Office added the following terms to this rule in order to ensure a shared understanding between regulators and program participants of the requirements of the adult use cannabis program “indoor”, “outdoor”, and “principal”, and added to the existing definition of “seedling” the commonly use terms “clones” and “tissue cultures”.

The definitions of “indoor” and “outdoor” were added to this rule in order to address longstanding confusion among program participants regarding whether non-permanent outbuildings like sheds, hoop houses and the like were considered “indoor” or “outdoor” for the purpose of cannabis cultivation. Definition of these terms is important because cultivation facility licensees are subject to different licensee fees and compliance requirements based upon whether a cultivation facility is an indoor, outdoor, or indoor and outdoor cultivation facility. In developing these definitions, OCP sought to incorporate both the common meaning of these terms and the shared understanding of the regulator and program participants regarding the same. The resulting definitions did not receive any public comments, indicating to OCP that the definitions proposed in the draft rule accurately reflected both the legislative intent for these terms and program participants’ understanding of the same.

The definition of “principal” was identified through the regulatory lookback process as a term that is commonly used within the program, but heretofore undefined. Because of the various vetting and disclosure requirements (e.g. review of tax compliance, child support obligations, criminal history records, etc.) applicable to individuals with direct or indirect financial interests or management or other fiduciary roles within a licensee’s business structure, OCP has used the term “principal” to identify those individuals required to undergo the most rigorous vetting requirements, and obtain from the Department an individual identification card, as opposed to those individuals and entities requiring only disclosure. As a result, OCP

defined the term “principal” in this rule, and revised that proposed definition (as well as the definition of “direct or indirect financial interests”) based upon feedback from attorneys Hannah King, Esq. and Jill Polster, Esq., who represent a number of cannabis businesses operating in Maine’s market.

The Office also struck from this rule the definition of “resident” used in the Adult Use Cannabis Program Rule and the Cannabis Legalization Act, because the decision in *United Cannabis Patients & Caregivers of Me. v. Me. Dep’t of Admin. & Fin. Servs.*, No. 1:20-cv-00388 (D. Me. Oct. 19, 2020) found that the residency requirement included in Title 28-B, ch. 1, is unconstitutional, and therefore unenforceable by the Department, under the Dormant Commerce Clause. As a result, the definition of “resident” is no longer needed for the administration of the rules governing the adult use cannabis program.

Changes Based Upon Public Comments

OCP received a total of 18 public comments regarding this rule, requesting generally modest revisions to the definitions section of the rule. As a result, OCP revised the definitions of “appealing to individuals under 21 years of age”, “direct or indirect financial interests”, “pre-packaged retail unit”. Specifically, OCP narrowed the scope of the definition of “appealing to individuals under 21 years of age” in order to reduce ambiguity in interpreting the same, adopting a version of the 5% equity interest threshold for equity and other financial interest holders proposed by Attorney King, and removed the opacity and tamper evident requirements from the definition of “pre-packaged retail unit” in response to comments on other proposed rules governing the adult cannabis program related to the elimination (and subsequent reinstatement in response to those comments) of exit packaging.

Conclusion

These rules reflect changes to the Cannabis Legalization Act impacting the definitions and fees applicable to licensees included in the Adult Use Cannabis Program Rule, as well as efforts to standardize common terminology used since the program’s inception but identified through the regulatory lookback process as previously undefined. This rule, along with the other rules governing the adult use cannabis program, is intended to replace the Adult Use Cannabis Program Rule, which will be repealed following final adoption of all rules affecting the adult use cannabis program.

Small Business Impact Statement required pursuant to 5 MRS § 8052(5-A):

The following businesses may be impacted by the requirements of this rule: All adult use cannabis licensees. As of November 2023, that includes: 88 cultivation facility licensees, 67 products manufacturing facility licensees, 132 cannabis store licensees, and 4 cannabis testing facility licensees.

The projected reporting and record-keeping costs of this rule are not applicable, this rule is not expected to require any additional reporting or record-keeping costs for licensees.

The probable impact of these costs is not applicable.

18-691 Department of Administrative and Financial Services, Office of Cannabis Policy

2024-229: Chapter 30, Compliance Rules for Adult Use Cannabis Establishments

Statutory Authority: 28-B M.R.S. Ch. 1

Type: Major Substantive

Emergency?: No

Fiscal Impact: *This rule should not have any impact on existing state resources.*

Principal purpose: *This rulemaking updates the compliance requirements necessary to implement statutory changes made to the Cannabis Legalization Act, 28-B MRS, including PL 2023, ch. 6, Emergency (Signed March 15, 2023), and PL 2023, ch. 408, PL 2023, ch. 396, specifically changes to the authorized activity of tier 1, tier 2, and nursery cultivation facilities and products manufacturing facilities allowing for the sales of cannabis and cannabis products to consumers by delivery (except that nursery cultivation facilities may sell only immature cannabis plants, seedlings, cannabis seeds and agricultural or gardening supplies relating to the cultivation of cannabis); permitting the delivery of cannabis and cannabis products by authorized licensees to consumers at hotels or other private businesses, provided that the delivering licensee has obtained written consent from the owner or other authorized agent of the business to conduct such deliveries; permitting the return of cannabis or cannabis products from licensee to the licensee that transferred the cannabis or cannabis products to the returning licensee and provides for the testing of such returned cannabis or cannabis products; permitting the use of vehicle wraps by licensees; increasing the per package limit for edible cannabis products from 100 mg per package to 200 mg per package and increasing the possession limit for cannabis concentrates from 5 grams to 10 grams; creation of new definitions for the terms “permitted premises for a specified event,” “specified event,” and “specified event permit”; amendments to the application requirements for the issuance of a permit for cannabis stores to conduct sales at specified events; amendments to the limitations and conditions for cannabis stores to conduct sales at events – including repealing the prohibition on the sale of “smokable” cannabis or cannabis products at specified event; establishment of criteria for suspension/revocation of permit to conduct sales at an event; established criteria for DAFS’s approval or denial of a permit application for cannabis stores to conduct sales at a specified event to allow denial of such applications for “good cause”; and amendments to the requirements that the Department issue guidance to cannabis stores.*

This rulemaking is being conducted in preparation to repeal the Adult Use Cannabis Program Rule, 18-691 CMR, ch. 1, once this rule, and 18-691 CMR, chapters 10, 20 and 40 are finally adopted.

Basis Statement: *The Department of Administrative and Financial Services, Office of Cannabis Policy, is promulgating the Compliance Rules for Adult Use Cannabis Establishments, along with the Rules for the Administration of the Adult Use Cannabis Program, 18-691 CMR, ch. 10, the Rules for the Licensure of Adult Use Cannabis Establishments, 18-691 CMR, ch. 20, and the Rules for the Testing of Adult Use Cannabis, 18-691 CMR, ch. 40 in anticipation of fully repealing the Adult Use Cannabis Program Rule, 18-691 CMR, ch. 1, once those four rules have been finally adopted.² The Office of Cannabis*

² With the exception of the *Rules for the Testing of Adult Use Cannabis*, 18-691 CMR, ch. 40, all other rules, Chapters 10, 20, and 30,

Policy (OCP) has the authority to “promulgate rules necessary to implement, administer and enforce [the Cannabis Legalization Act].” 28-B MRS § 104.

This rule is comprised of the compliance requirements from the original Adult Use Cannabis Program Rule, and incorporates statutory changes since the last time that rule was revised, specifically, PL 2023, ch. 6, Emergency (Signed March 15, 2023), PL 2023, ch. 408 and PL 2023, ch. 396. This rule also incorporates changes to clarify provisions addressed in guidance documents previously issued by the Office, changes identified by the Office through regulatory lookback, as well as changes identified by stakeholders through public comments during the public comment period for this rule.

In addition, the Office has attached to this basis statement a complete list of all comments received by the Office during the public comment period and the agency’s response to the same. Also attached for readers’ convenience is a list of those public comments accepted by the Office and integrated into the provisionally adopted rule. Finally, attached to this basis statement is an e-mail chain and attachments from Dr. David Nathan, on behalf of Doctors for Cannabis Regulation, regarding the changes made to the department-required warning statement to be included on the labels of cannabis and cannabis products, that is discussed in the “changes identified through regulatory lookback” section below.

Statutory Changes

An Act to Clarify State Policy Regarding Cannabis Paraphernalia in the Maine Medical Use of Cannabis Act and the Cannabis Legalization Act, PL 2023, ch. 6, Emergency (Signed March 15, 2023) amended the Cannabis Legalization Act (and the Maine Medical Use of Cannabis Act, Title 22, ch. 558-C) to include definitions of “cannabis paraphernalia” and distinguished that “cannabis paraphernalia” from “tobacco products” as defined in 22 MRS § 1551. One of the consequences of that change was an expansion of the kinds of adult use cannabis and cannabis products that can be delivered to consumers. Previously, because items like pre-rolled cannabis cigarettes (commonly referred to as “joints”), rolling papers, or cannabis concentrate cartridges (commonly referred to as “vapes” or “vape carts”) could not be delivered to consumers because those cannabis items also fell under the definition of “tobacco products”, and tobacco products may not be delivered to consumers. As a result, the Compliance Rules for Adult Use Cannabis Establishments removed restrictions included in the Adult Use Cannabis Program Rule regarding the delivery of so-called “tobacco products”, allowing delivery of the same inventory available at cannabis stores operating in the program.

An Act to Clarify the Requirements for Off-Premises Sales by Cannabis Store Licensees, PL 2023, ch. 408, amended the Cannabis Legalization Act to update the requirements applicable to the conduct of off-premises sales by cannabis store licensees at “specified events” outside of the licensed premises of cannabis stores. Specifically, that law amends the compliance requirements regarding permits for cannabis stores to conduct sales at specified events by:

are designated “major substantive” under the *Cannabis Legalization Act*, Title 28-B, ch. 1. 18-691 CMR, ch. 40 is exclusively related to mandatory testing in the Adult Use Cannabis Program, and those rules are designated “routine technical”. The Office intends to finally adopt Chapter 40 in late 2023 and will finally adopt Chapters 10, 20, and 30 following action by the 131st Legislature in 2024. Following final adoption of all four rules, the Office will take the steps required under the *Maine Administrative Procedures Act*, Title 5, ch. 375, necessary to repeal 18-691 CMR, ch. 1, the *Adult Use Cannabis Program Rule*.

1. *Amending the limitations and conditions for cannabis stores to conduct sales at events – including repealing the prohibition on the sale of “smokable” cannabis or cannabis products at specified events;*
2. *Establishing criteria for suspension or revocation of permits to conduct sales at a specified event; and*
3. *Identifying the criteria for DAFS’ approval or denial of a permit application for cannabis stores to conduct sales at a specified event, including provisions allowing denial of such applications for “good cause”.*

In response, OCP included in this rule security and inventory tracking requirements regarding the conduct of sales by cannabis stores at specified events. Also included in this rule are provisions regarding suspension and revocation of specified event permits, as well as a process for reciprocal suspension or revocation of such permits in the event that landowner or municipal authority to conduct these events is revoked.

An Act to Amend the Adult Use Cannabis Laws, PL 2023, ch. 396, amended the Cannabis Legalization Act in a number of ways, including expanding the authorized activities for tier 1, tier 2 and nursery cultivation facilities and products manufacturing facilities, changes to the advertising and marketing restrictions of the law, and changes to the potency limits for packages of edible cannabis products and an increase in the amount of cannabis concentrate an adult consumer may possess. Specifically, the law amended the Cannabis Legalization Act as follows:

1. *Permitting tier 1, tier 2, and nursery cultivation facilities and products manufacturing facilities to conduct sales of cannabis and cannabis products to consumers by delivery (except that nursery cultivation facilities may sell only immature cannabis plants, seedlings, cannabis seeds and agricultural or gardening supplies relating to the cultivation of cannabis);*
2. *Permitting delivery of cannabis and cannabis products by authorized licensees to adult use consumers at hotels or other private businesses, provided that the delivering licensee has obtained written consent from the owner or other authorized agent of the business to conduct such deliveries;*
3. *Permitting the return of cannabis or cannabis products from a licensee to the licensee that transferred the cannabis or cannabis products to the returning licensee and providing for the testing of such returned cannabis or cannabis products;*
4. *Requiring the Department to specify in rule limitations on signs, advertising and marketing necessary to limit the appeal of such materials to individuals under 21 years of age;*
5. *Permitting the use of “vehicle wraps” by licensees; and*
6. *Increasing the per package THC limit for edible cannabis products from 100 mg per package to 200 mg per package and increasing the possession limit for cannabis concentrates from five grams to ten grams.*

In response, OCP included in this rule provisions:

1. *Regarding the newly authorized activities of tier 1, tier 2 and nursery cultivation facilities, as well as products manufacturing facilities, to include compliance requirements for retail sales of cannabis and cannabis products to consumers by delivery, including requirements that cultivation facility and products manufacturing facility licensees conducting such retail sales*

separate their inventory for delivery from that intended for wholesale transfers to other licensees;

2. Requiring licensees that intend to conduct retail sales to consumers by delivery at businesses, including hotels and motels, obtain and retain written consent from a business owner or their agent on forms provided by the Department;
3. Regarding the inventory tracking, testing and packaging, and as applicable, resale, of cannabis and cannabis products returned by a cultivation facility, products manufacturing facility and cannabis store licensees to the licensee that originally transferred the cannabis or cannabis products to it;
4. Implementing the Office's new definition of "appealing to individuals under 21 years of age" included in 18-691 CMR, ch. 1, in the advertising and marketing requirements applicable to licensees;
5. Removing a prohibition from the Adult Use Cannabis Program Rule regarding the use of so-called "vehicle wraps" for advertising and marketing purposes; and
6. Adjusting the per package potency limit of edible cannabis products from 100 mg of THC per package to 200 mg of THC per package, and adjusting the retail sales limits to reflect the increase in the personal possession limit for cannabis concentrate from five grams per person to ten grams per person.

Changes Based Upon Previously Issued Guidance³

As the Office has implemented the requirements of and amendments to the Cannabis Legalization Act, Title 28-B, ch. 1, it has made a practice of periodically issuing guidance to clarify provisions of the rules promulgated pursuant to that law in response to repeated inquiries from program participants, as well as findings of licensee noncompliance by OCP's compliance team.

This rule reflects guidance issued by OCP clarifying the implementation of "group tracking" of "groups" of cannabis plants as required by P.L. 2021, ch. 628, based upon the reconfiguration of the inventory tracking system to accommodate that new plant tracking option. The rule also includes provisions necessary to clarify the packaging requirements for single-serve cannabis drinks to ensure that such edible cannabis products are child resistant and tamper evident.

Changes Identified Through Regulatory Lookback

In addition to the integration of guidance documents indicated above, in order to clarify program requirements and reduce compliance costs for program participants, the Office engaged in a process of regulatory lookback before drafting these rules. Through that process, OCP identified that single-serve cannabis drink packaging issue discussed above. OCP also identified through this process improvements to the warning statements required to be printed on the labels of all cannabis and cannabis products.

Specifically, OCP determined, based upon feedback from Dr. David Nathan, on behalf of Doctors for Cannabis Regulation, that the warning statement included in the Adult Use Cannabis Program Rule should be updated to better conform with the standards for cannabis labels identified by Doctors for Cannabis Regulation and

³ "Guidance Documents", Office of Cannabis Policy Website, available at: <https://www.maine.gov/dafs/ocp/resources/guidance-documents> (Accessed November 6, 2023).

other medical professionals: readability, warnings based upon scientific evidence, and brevity. To correct this deficiency, OCP changed the language of the warning statement to conform with the ASTM International consensus standard “ASTM D8441” for the International Intoxicating Cannabinoid Product Symbol. An e-mail and attached memorandum from Dr. Nathan are included as an appendix to this basis statement. As indicated on the attached public comments and responses document, OCP received several comments and questions from the public regarding the implementation of this new warning statement. In response, OCP indicated that it would provide more detailed guidance regarding the implementation of the warning statement at the time these rules are finally adopted, however, it is the intention of the Office to permit licensees to use up any existing packaging with the current warning statement for at least one year after the effective date for this new rule.

Changes Based Upon Public Comments

In response to public comments, which mirrored industry feedback over the past two years, OCP updated this rule to allow cultivation facility licensees to accept transfers of gifts of seeds in addition to the seedlings those licensees were already authorized to accept under the Adult Use Cannabis Program Rule.

In response to public comments indicating confusion regarding the definition of “appealing to individuals under 21 years of age” included in 18-691 CMR, ch. 10 (in response to a statutory directive that OCP make rules regarding the same) that impacted provisions of this rule, OCP made changes to that definition in 18-691 CMR, ch. 10 to clarify and narrow the scope of that definition. While those comments were submitted in response to this rule, the changes necessitated were incorporated into 18-691 CMR, ch. 10.

Additionally, OCP accepted comments from Jill Polster, Esq. and Alex McMahan regarding the addition of a “knowing” mens rea before the prohibition on allowing adult use consumers to open packaging containing cannabis or cannabis products on the licensed premises of a cannabis store.

In an attempt to simplify packaging requirements and reduce packaging waste, OCP originally proposed in this rule the elimination of so-called “exit packaging”. However, OCP a number of comments from the public that licensees wanted the flexibility of meeting the opacity and tamper evident requirements for packaging either through the retail packaging for each individual retail unit or the exit packaging used by cannabis store licensees. In response, OCP revised the rule to allow the opacity and tamper evident requirements to be met using either retail packaging or exit packaging.

Conclusion

In general, these rules reflect the good governance practice of regulatory lookback and continue the practice of rightsizing compliance requirements for program participants while ensuring that OCP has the ability to protect public health and safety.

Small Business Impact Statement required pursuant to 5 MRS § 8052(5-A):

The following businesses may be impacted by the requirements of this rule: All adult use cannabis licensees. As of November 2023, that includes: 88 cultivation facility licensees, 67 products manufacturing facility licensees, 132 cannabis store licensees, and 4 cannabis testing facility licensees.

The projected reporting and record-keeping costs of this rule are related to

compliance with the inventory tracking requirements of this rule and those costs amount to: \$40/month fee to access the state's inventory tracking system, Metrc; and 45¢ per plant for plant tags (for cultivation facility licensees) and 25¢ per package tag (for cultivation facility and products manufacturing facility licensees). The probable impact of these costs is negligible, as licensees are already required to comply with these requirements under existing program rules and recordkeeping through the state's inventory tracking system is a statutory requirement under 28-B MRS § 105.

Seed-to-sale inventory tracking is standard across regulated cannabis markets in the United States, at this time, there are no less costly, reasonable alternatives to the state's inventory tracking system. The contract for the state's inventory tracking system vendor was awarded through the state's competitive procurement process.

Statutory Authority:	28-B M.R.S. Ch. 1
Type:	Major Substantive
Emergency?:	No
Fiscal Impact:	<i>This rule should have no fiscal impact on existing state resources.</i>
Principal purpose:	<p><i>This rulemaking updates the licensing requirements necessary to implement statutory changes made to the Cannabis Legalization Act, 28-B MRS, including PL 2023, ch. 6, Emergency (Signed March 15, 2023), and PL 2023, ch. 408, PL 2023, ch. 396, specifically changes to the authorized activity of tier 1, tier 2, and nursery cultivation facilities and products manufacturing facilities allowing for the sales of cannabis and cannabis products to consumers by delivery (except that nursery cultivation facilities may sell only immature cannabis plants, seedlings, cannabis seeds and agricultural or gardening supplies relating to the cultivation of cannabis); permitting the delivery of cannabis and cannabis products by authorized licensees to consumers at hotels or other private businesses, provided that the delivering licensee has obtained written consent from the owner or other authorized agent of the business to conduct such deliveries; permitting the return of cannabis or cannabis products from licensee to the licensee that transferred the cannabis or cannabis products to the returning licensee and provides for the testing of such returned cannabis or cannabis products; permitting the use of vehicle wraps by licensees; increasing the per package limit for edible cannabis products from 100 mg per package to 200 mg per package and increasing the possession limit for cannabis concentrates from 5 grams to 10 grams; creation of new definitions for the terms “permitted premises for a specified event,” “specified event,” and “specified event permit”; amendments to the application requirements for the issuance of a permit for cannabis stores to conduct sales at specified events; amendments to the limitations and conditions for cannabis stores to conduct sales at events – including repealing the prohibition on the sale of “smokable” cannabis or cannabis products at specified event; establishment of criteria for suspension/revocation of permit to conduct sales at an event; established criteria for DAFS’s approval or denial of a permit application for cannabis stores to conduct sales at a specified event to allow denial of such applications for “good cause”; and amendments to the requirements that the Department issue guidance to cannabis stores.</i></p> <p><i>This rulemaking is being conducted in preparation to repeal the Adult Use Cannabis Program Rule, 18-691 CMR, ch. 1, once this rule, and 18-691 CMR, chapters 10, 30 and 40 are finally adopted.</i></p>
Basis Statement:	<p><i>The Department of Administrative and Financial Services, Office of Cannabis Policy, is promulgating the Rules for the Licensure of Adult Use Cannabis Establishments, along with the Rules for the Administration of the Adult Use Cannabis Program, 18-691 CMR, ch. 10, the Compliance Rules for Adult Use Cannabis Establishments, 18-691 CMR, ch. 30, and the Rules for the Testing of Adult Use Cannabis, 18-691 CMR, ch. 40 in anticipation of fully repealing the Adult Use Cannabis Program Rule, 18-691 CMR, ch. 1, once those four rules have been finally adopted.⁴ The Office of Cannabis</i></p>

⁴ With the exception of the *Rules for the Testing of Adult Use Cannabis*, 18-691 CMR, ch. 40, all other rules, Chapters 10, 20, and 30,

Policy (OCP) has the authority to “promulgate rules necessary to implement, administer and enforce [the Cannabis Legalization Act].” 28-B MRS § 104.

This rule is comprised of the licensing requirements from the original Adult Use Cannabis Program Rule, and incorporates statutory changes since the last time that rule was revised, specifically, PL 2023, ch. 408 and PL 2023, ch. 396. This rule also incorporates changes to clarify provisions addressed in guidance documents previously issued by the Office as well as changes identified by stakeholders through public comments during the public comment period for this rule.

In addition, the Office has attached to this basis statement a complete list of all comments received by the Office during the public comment period and the agency’s response to the same. Also attached for readers’ convenience is a list of those public comments accepted by the Office and integrated into the provisionally adopted rule.

Statutory Changes

An Act to Clarify the Requirements for Off-Premises Sales by Cannabis Store Licensees, PL 2023, ch. 408, amended the Cannabis Legalization Act to update the requirements applicable to the conduct of off-premises sales by cannabis store licensees at “specified events” outside of the licensed premises of cannabis stores. Specifically, that law amends the application requirements for the issuance of a permit for cannabis stores to conduct sales at specified events by:

4. Amending the limitations and conditions for cannabis stores to conduct sales at events – including repealing the prohibition on the sale of “smokable” cannabis or cannabis products at specified events;
5. Establishing criteria for suspension or revocation of permits to conduct sales at a specified event; and
6. Identifying the criteria for DAFS’ approval or denial of a permit application for cannabis stores to conduct sales at a specified event, including provisions allowing denial of such applications for “good cause”.

In response, OCP included in this rule a process by which cannabis store licensees can apply for and receive from the Department a permit to conduct off-premises sales of cannabis and cannabis products at “specified events”, including provisions related to local and landowner approval prior to submission of a permit application to the Department, as well as a requirement that applicants provide a diagram of the permitted premises as part of their application materials.

An Act to Amend the Adult Use Cannabis Laws, PL 2023, ch. 396, amended the Cannabis Legalization Act to expand the activities authorized under tier 1, tier 2 and nursery cultivation facility licenses, as well as activities authorized for products manufacturing facility licensees, while expanding the places where licensees can deliver cannabis and cannabis products to adult use consumers. Specifically, the law amended the activities authorized under the Cannabis Legalization Act as follows:

7. Permitting tier 1, tier 2, and nursery cultivation facilities and products manufacturing facilities to conduct sales of cannabis and cannabis products to consumers by delivery (except that nursery cultivation facilities may sell

are designated “major substantive” under the *Cannabis Legalization Act*, Title 28-B, ch. 1. 18-691 CMR, ch. 40 is exclusively related to mandatory testing in the Adult Use Cannabis Program, and those rules are designated “routine technical”. The Office intends to finally adopt Chapter 40 in late 2023 and will finally adopt Chapters 10, 20, and 30 following action by the 131st Legislature in 2024. Following final adoption of all four rules, the Office will take the steps required under the *Maine Administrative Procedures Act*, Title 5, ch. 375, necessary to repeal 18-691 CMR, ch. 1, the *Adult Use Cannabis Program Rule*.

- only immature cannabis plants, seedlings, cannabis seeds and agricultural or gardening supplies relating to the cultivation of cannabis);
8. Permitting delivery of cannabis and cannabis products by authorized licensees to adult use consumers at hotels or other private businesses, provided that the delivering licensee has obtained written consent from the owner or other authorized agent of the business to conduct such deliveries; and
 9. Permitting the return of cannabis or cannabis products from a licensee to the licensee that transferred the cannabis or cannabis products to the returning licensee and providing for the testing of such returned cannabis or cannabis products.

In response, OCP included in this rule provisions expanding the authorized activities of tier 1, tier 2 and nursery cultivation facilities, as well as products manufacturing facilities, to include retail sales of cannabis and cannabis products to consumers by delivery. OCP also included in this rule provisions requiring licensees that intend to conduct sales to consumers by delivery to update with the Department their facility plan of record to indicate the same. The rule also includes provisions expanding the authorized activities of cultivation facility, products manufacturing facility and cannabis store licensees to include returns of cannabis or cannabis products to the licensee that originally transferred the cannabis or cannabis products to it.

Changes Based Upon Previously Issued Guidance⁵

As the Office has implemented the requirements of and amendments to the Cannabis Legalization Act, Title 28-B, ch. 1, it has made a practice of periodically issuing guidance to clarify provisions of the rules promulgated pursuant to that law in response to repeated inquiries from program participants, as well as findings of licensee noncompliance by OCP's compliance team.

This rule reflects guidance issued by OCP related to adult use cultivation facilities that are co-located with medical cannabis cultivation areas maintained by registered caregivers or registered dispensaries, as well as guidance regarding the calculation of plant canopy grown in noncontiguous outdoor cultivation areas by a cultivation facility licensee. Specifically, this rule requires licensees to obtain approval from the Department for a change of the licensee's facility plan of record prior to designating a cultivation room or area for the cultivation of medical cannabis or adult use cannabis if the room or area was previously designated for the cultivation of cannabis for adult use or medical use cannabis, respectively. In addition, this rule specifies that OCP will be measuring mature plant canopy for noncontiguous outdoor cultivation areas in a way that reflects the noncontiguous cultivation areas identified on the cultivation facility licensee's facility plan of record.

Changes Based Upon Public Comments

In an attempt to simplify packaging requirements and reduce packaging waste, OCP originally proposed in this rule the elimination of so-called "exit packaging". However, OCP received a number of comments from the public that licensees wanted the flexibility of meeting the opacity and tamper evident requirements for packaging

⁵ "Guidance Documents", Office of Cannabis Policy Website, available at: <https://www.maine.gov/dafs/ocp/resources/guidance-documents> (Accessed November 6, 2023).

either through the retail packaging for each individual retail unit or the exit packaging used by cannabis store licensees. In response, OCP revised the rule to allow the opacity and tamper evident requirements to be met using either retail packaging or exit packaging.

OCP included a requirement in this rule that products manufacturing facilities using extraction equipment that utilizes “inherently hazardous substances” in the extraction process must submit proof that the equipment has been inspected and certified by a professional engineer licensed in Maine within the past 24 months. Hannah King, Esq. indicated in her comments that each “inspection and certification” would cost products manufacturing facilities \$25,000 per inspection, and Alex McMahan, on behalf of MEDCo, indicated that other professionals, such as municipal code inspectors, might be sufficient to inspect the equipment.

Because it is OCP’s understanding that municipal staff rely on the State’s licensing requirements to ensure the safe operation of this equipment, it was determined that the other professionals suggested by Mr. McMahan would not suffice for the purpose of these re-inspections and re-certifications. Therefore OCP sought a quote from one of the professional engineers who is responsible for inspecting and certifying inherently hazardous substance extraction equipment, who indicated that before airfare and lodging, the cost of such an inspection would be around \$3,300. As a result, OCP revised the rule to allow such re-inspections and re-certifications to be done remotely, as opposed to in-person, thus negating the travel costs associated with this requirement.

Conclusion

In general, these rules reflect the good governance practice of regulatory lookback and continue the practice of reducing application and renewal requirements for program participants while ensuring that OCP has all information required for it to determine applicants’ eligibility for licensure. Where OCP has included new requirements applicable to licensees, those requirements have been in response to statutory changes enacted since the rules governing the adult use cannabis program were last revised in 2022; except that OCP did add a new requirement that manufacturers engaged in inherently hazardous substance extraction show proof that their extraction equipment has been inspected and certified by a professional engineer within the 24 months preceding the application for renewal of the products manufacturer’s license. OCP’s research regarding the cost of this re-inspection and re-certification found that the cost of this service by a professional engineer would be around \$3,300 once every 2 years.

Small Business Impact Statement required pursuant to 5 MRS § 8052(5-A):

The following businesses may be impacted by the requirement that products manufacturers show proof of that their inherently hazardous substance extraction equipment has been inspected and certified within the last 24 months: products manufacturing facility licensees.

Of the 67 licensed products manufacturing facilities operating in the adult use cannabis program, 15 have indicated to OCP that they extract cannabis using inherently hazardous substances.

For those 15 products manufacturing facility licensees that will be required to comply with this inspection and certification requirement, the average cost to the licensee will be approximately \$3,300 biennially. Such inspections and certifications must be

done by a professional engineer licensed in the state.

In order to ensure the safety of such extraction equipment and the employees who use it, there are no less costly means for ensuring that equipment is properly maintained, installed and serviced.

Statutory Authority:	28-B M.R.S. Ch. 1
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	<i>This rulemaking should not have an impact on existing state resources.</i>
Principal purpose:	<p><i>This rulemaking updates the requirements for the mandatory testing of adult use cannabis and cannabis products necessary to implement statutory changes made to the Cannabis Legalization Act, 28-B MRS, including PL 2023, ch. 6, Emergency (Signed March 15, 2023), and PL 2023, ch. 408, PL 2023, ch. 396, specifically changes to the authorized activity of tier 1, tier 2, and nursery cultivation facilities and products manufacturing facilities allowing for the sales of cannabis and cannabis products to consumers by delivery (except that nursery cultivation facilities may sell only immature cannabis plants, seedlings, cannabis seeds and agricultural or gardening supplies relating to the cultivation of cannabis); permitting the delivery of cannabis and cannabis products by authorized licensees to consumers at hotels or other private businesses, provided that the delivering licensee has obtained written consent from the owner or other authorized agent of the business to conduct such deliveries; permitting the return of cannabis or cannabis products from licensee to the licensee that transferred the cannabis or cannabis products to the returning licensee and provides for the testing of such returned cannabis or cannabis products; permitting the use of vehicle wraps by licensees; increasing the per package limit for edible cannabis products from 100 mg per package to 200 mg per package and increasing the possession limit for cannabis concentrates from 5 grams to 10 grams; creation of new definitions for the terms “permitted premises for a specified event,” “specified event,” and “specified event permit”; amendments to the application requirements for the issuance of a permit for cannabis stores to conduct sales at specified events; amendments to the limitations and conditions for cannabis stores to conduct sales at events – including repealing the prohibition on the sale of “smokable” cannabis or cannabis products at specified event; establishment of criteria for suspension/revocation of permit to conduct sales at an event; established criteria for DAFS’s approval or denial of a permit application for cannabis stores to conduct sales at a specified event to allow denial of such applications for “good cause”; and amendments to the requirements that the Department issue guidance to cannabis stores.</i></p> <p><i>This rulemaking is being conducted in preparation to repeal the Adult Use Cannabis Program Rule, 18-691 CMR, ch. 1, once this rule, and 18-691 CMR, chapters 10, 20 and 30 are finally adopted.</i></p>
Basis Statement:	<i>The Department of Administrative and Financial Services, Office of Cannabis Policy, is promulgating the Rules for the Testing of Adult Use Cannabis, along with the Rules for the Administration of the Adult Use Cannabis Program, 18-691 CMR, ch. 10, Rules for the Licensure of Adult Use Cannabis Establishments, 18-691 CMR, ch. 20, and Compliance Rules for Adult Use Cannabis Establishments, 18-691 CMR, ch. 30, in anticipation of fully repealing the Adult Use Cannabis Program Rule, 18-691 CMR,</i>

ch. 1, once those four rules have been finally adopted.⁶ The Office of Cannabis Policy (OCP) has the authority to “promulgate rules necessary to implement, administer and enforce [the Cannabis Legalization Act].” 28-B MRS § 104. **The Department is delaying the effective date of this finally adopted, routine technical rule until the effective date for the major substantive rules that accompany it. Specifically, this rule will not go into effect and OCP will not enforce this rule until the earliest effective date for any of the following rules: Rules for the Administration of the Adult Use Cannabis Program, 18-691 CMR, ch. 10, Rules for the Licensure of Adult Use Cannabis Establishments, 18-691 CMR, ch. 20, and Compliance Rules for Adult Use Cannabis Establishments, 18-691 CMR, ch. 30. Until that time, the Adult Use Cannabis Program Rule, 18-691 CMR, ch. 1, shall remain in full force and effect.**

This rule is comprised of the mandatory testing and sample collection provisions from the original Adult Use Cannabis Program Rule, and incorporates statutory changes since the last time that rule was revised, specifically, PL 2023, ch. 396. This rule also incorporates changes to clarify provisions addressed in guidance documents previously issued by the Office, as well as changes identified by stakeholders through public comments during the public comment period for this rule.

In addition, the Office has attached to this basis statement a complete list of all comments received by the Office during the public comment period and the agency’s response to the same.

Statutory Changes

An Act to Amend the Adult Use Cannabis Laws, PL 2023, ch. 396, amended the Cannabis Legalization Act in a number of ways, including expanding the authorized activities for tier 1, tier 2 and nursery cultivation facilities and products manufacturing facilities, allowing for returns of cannabis or cannabis products to the licensee that transferred those items to another licensee, changes to the advertising and marketing restrictions of the law, and changes to the potency limits for packages of edible cannabis products and an increase in the amount of cannabis concentrate an adult consumer may possess; however, the only provisions that necessitated additions to this rule were the allowance for the return and resale of some cannabis and cannabis products and the new limited authorization for some licensees besides cannabis stores to conduct sales of cannabis and cannabis products to consumers by delivery. As a result, OCP clarified that all cannabis and cannabis products, regardless of which cannabis establishment type is conducting the retail sale of the same, must be tested prior to sale to a consumer and exempted some returned cannabis and cannabis products, that had undergone and passed all mandatory testing previously, from some of the mandatory testing requirements of the rule.

⁶ With the exception of the *Rules for the Testing of Adult Use Cannabis*, 18-691 CMR, ch. 40, all other rules, Chapters 10, 20, and 30, are designated “major substantive” under the *Cannabis Legalization Act*, Title 28-B, ch. 1. 18-691 CMR, ch. 40 is exclusively related to mandatory testing in the Adult Use Cannabis Program, and those rules are designated “routine technical”. The Office intends to finally adopt this rule in late 2023 and will finally adopt Chapters 10, 20, and 30 following action by the 131st Legislature in 2024. Following final adoption of all four rules, the Office will take the steps required under the *Maine Administrative Procedures Act*, Title 5, ch. 375, necessary to repeal 18-691 CMR, ch. 1, the *Adult Use Cannabis Program Rule*.

Changes Based Upon Previously Issued Guidance⁷

As the Office has implemented the requirements of and amendments to the Cannabis Legalization Act, Title 28-B, ch. 1, it has made a practice of periodically issuing guidance to clarify provisions of the rules promulgated pursuant to that law in response to repeated inquiries from program participants, as well as findings of licensee noncompliance by OCP's compliance team.

This rule reflects guidance issued by OCP regarding the implementation of the final statutorily required analyte category for mandatory testing – “pesticides”. When the Office launched the adult use program in 2020, in the midst of the global COVID-19 pandemic, it required only a limited panel of mandatory tests, based upon the authority granted under 28-B MRS § 602 to “temporarily waive mandatory testing requirements under [section 602] for any contaminant or factor for which the department has determined that there exists no licensed testing facility in the State capable of and certified to perform such testing.” Since that time, OCP has worked with the Maine CDC's Cannabis Testing Facility Certification Program and the existing licensed and certified cannabis testing facilities to bring online additional analyte categories for mandatory testing as those testing facilities demonstrated proficiency in testing those additional analyte categories. That process was described in the Adult Use Cannabis Program Rule, but is no longer necessary in light of the implementation of all statutorily required tests. OCP issued guidance documents to all current and prospective adult use cannabis establishment licensees periodically between the beginning of the program and June 2023 regarding the onboarding of additional analyte categories, and those additions are reflected in this rule.

Changes Based Upon Public Comments

OCP received a total of 12 public comments regarding this rule, many of which were questions rather than requests for changes to the rule. As a result, OCP made revisions only to clarify that licensees may not split or otherwise divide or subcontract the testing of samples for mandatory testing in order to have one testing facility test the sample for some analyte categories while another testing facility tests for the other analytes. OCP also clarified that remediation of adult use cannabis or cannabis products found to contain harmful contaminants cannot be done by combining the failed batch of cannabis or cannabis products with cannabis or cannabis products that have passed mandatory testing, in order to dilute the overall contaminants in the cannabis or cannabis product.

Conclusion

These rules reflect changes to the Cannabis Legalization Act impacting the mandatory testing requirements applicable to cannabis and cannabis products offered for sale to consumers in the Adult Use Cannabis Program Rule. This rule, along with the other rules governing the adult use cannabis program, is intended to replace the Adult Use Cannabis Program Rule, which will be repealed following final adoption of all rules affecting the adult use cannabis program.

Small Business Impact Statement required pursuant to 5 MRS § 8052(5-A):

⁷ “Guidance Documents”, Office of Cannabis Policy Website, available at: <https://www.maine.gov/dafs/ocp/resources/guidance-documents> (Accessed November 6, 2023).

The following businesses may be impacted by the requirements of this rule: All adult use cannabis licensees. As of November 2023, that includes: 88 cultivation facility licensees, 67 products manufacturing facility licensees, 132 cannabis store licensees, and 4 cannabis testing facility licensees.

The projected reporting and record-keeping costs of this rule are not applicable, this rule is not expected to require any additional reporting or record-keeping costs for licensees.

The probable impact of these costs is not applicable.

18-553 Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations

2024-249: Chapter 20, Powerball Rules

Statutory Authority:	8 MRSA §374 and 8 MRSA §372, sub-§2, ¶I
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	<i>No known fiscal impact.</i>
Principal purpose:	<i>To update the Powerball Rules to allow players to add an option called “Double Play” for an extra \$1 per play. This new game feature allows players to win additional prizes in a second drawing held after the Powerball drawing.</i>
Basis Statement:	<p><i>This amendment updates the existing rules governing the rules of Powerball. This amendment makes necessary changes to allow an option called “Double Play” to the existing Powerball game. Double Play allows players the opportunity to use their existing Powerball numbers to win prizes in a separate drawing. There is an additional charge of \$1 per play to add the Double Play option. In addition, there are technical changes to clarify language, and fix typographical errors.</i></p> <p><i>Copies of the rule are available by contacting the Maine Bureau of Alcoholic Beverages and Lottery Operations, 8 State House Station, Augusta, Maine 04333-0008.</i></p>

18-691 Department of Administrative and Financial Services, Maine Revenue Services

2024-253; 5, Rules for the Certification of Cannabis Testing Facilities

Statutory Authority: Title 28-B, Chapter 1 (Cannabis Legalization Act)

Type: Routine Technical

Emergency?: No

Fiscal impact: *This rule should not have any impact on existing state resources.*

Principal purpose: *Revisions to this rule incorporates legislative changes enacted in P.L. 2023, ch. 679 and guidance previously issued by OCP regarding the process by which cannabis testing facilities report equipment failures to OCP and Maine CDC and the conduct of testing during those periods of equipment downtime, as well providing requirements applicable to “demonstrations of capability” by testing facility licensees, adding a requirement that microbial analyses that use plating methods use a plate reader to read all plates, clarifying sample homogenization requirements, clarifying circumstances when a cannabis testing facility can retest samples of cannabis or cannabis products that had previously failed mandatory testing, updating all cross references to reflect references to statute and the rules governing the adult use cannabis program necessitated by legislative changes to Title 28-B, ch. 1, and reformatting the rule to reflect the Secretary of State’s required rule format.*

Basis Statement: *The Department of Administrative and Financial Services, Office of Cannabis Policy, is promulgating revisions to the Rules for the Certification of Cannabis Testing Facilities, 18-691 C.M.R., ch. 5, to incorporate legislative changes to the Cannabis Legalization Act, Title 28-B, ch. 1, enacted during the second session of the 131st Maine Legislature, specifically PL 2023, chapter 679, An Act to Protect Liberty and Advance Justice in the Administration and Enforcement of the Cannabis Legalization Act and the Maine Medical Use of Cannabis Act.*

In addition to changes necessitated by legislative action, the revisions to the rule reflect the incorporation of guidance regarding mandatory testing issued by the Office of Cannabis Policy to current and prospective adult use licensees since the rule was last subject to revision in 2022.

Next, these revisions incorporate public comments received by the Office of Cannabis Policy pursuant to the public comment period for this rulemaking. On July 2, 2024, the Office of Cannabis Policy conducted an in-person public hearing at its offices in Augusta. No members of the public attended this hearing, so it is important to note that all comments received by the office were written comments. A complete list of the public comments received by the Office of Cannabis Policy during the rulemaking period, as well as the agency’s response to those comments, is attached to this Basis Statement.

Statutory Changes

P.L. 2023, ch. 679 necessitated a number of changes to the major substantive rules governing the adult use cannabis program (18-691 CMR, chapters 10, 20 and 30) that in turn required several changes to the requirements of the Rules for the Certification of Cannabis Testing Facilities.

First, a number of cross references to the rules governing the adult use cannabis program included in the rule required updating to reflect references to the newly adopted rules. References to 18-691 CMR, chapter 1, the previous Adult Use Cannabis Program Rule have been replaced with references to rules that have been reorganized and approved for final adoption by the 131st Legislature in accordance with P.L. 2023,

ch. 679, Part E.

Second, the rule was updated to reflect explicit authorization to permit licensees to retest samples of cannabis or cannabis products once for potency at the request of the licensee that submitted the sample for mandatory testing. P.L. 2023, ch. 679 specified that retesting for potency could only be done with a portion of the original representative, composite sample submitted for mandatory testing by the licensee to a cannabis testing facility. This rule was updated to reflect authorization for such retesting and to specify the minimum sample retention period for such mandatory test samples to ensure that licensees can request retesting. The rule was also updated to reflect the reporting requirements applicable to such retests for potency.

Changes Based on Previous Guidance from the Office of Cannabis Policy

As the Office has implemented the requirements of and amendments to the Cannabis Legalization Act, Title 28-B, ch. 1, it has made a practice of periodically issuing guidance to clarify provisions of the rules promulgated pursuant to that law in response to repeated inquiries from program participants, as well as findings of licensee noncompliance by OCP's compliance team.

This rule reflects guidance issued by OCP regarding the process by which cannabis testing facilities report equipment failures to OCP and Maine CDC and the conduct of testing during those periods of equipment downtime.

The rule has also been updated to add a requirement that microbial analyses that use plating methods use a plate reader to read all plates and to clarify sample homogenization requirements and the circumstances when a cannabis testing facility can retest samples of cannabis or cannabis products that had previously failed mandatory testing. The rule has also been updated to clarify the requirements applicable to testing facilities' "demonstrations of capability" during the certification and annual recertification process. These changes reflect guidance given to cannabis testing facility licensees to address deficiencies identified through the annual recertification process and through OCP and Maine CDC's compliance efforts with cannabis testing facility licensees.

Additionally, this rule has been updated to require applicants for certification and licensure as a cannabis testing facility to obtain certification for all required analytes and matrices as opposed to "at least one" required analyte category. This change was in response to the implementation of mandatory testing for all analyte categories in 2023 with the addition of pesticides testing to the mandatory testing requirements. Before that time, OCP was in the process of implementing a gradual roll out of mandatory testing requirements to ensure the testing program had sufficient capacity to continue mandatory testing. Once all mandatory analyte categories were required, cannabis testing facilities were required to be able to conduct all mandatory tests in order to offer such testing to licensees.

Changes in Response to Public Comments

OCP received a total of 21 comments from four individuals and made changes to the rule in response to comments from two individuals, Randall Query from the American Association for Laboratory Accreditation (A2LA) and Barry Chaffin of Nova Analytic Labs.

Mr. Query recommended that the rule be updated to reflect a more detailed definition of the term "accredited" and that proposed definition was incorporated in full.

Mr. Chaffin recommended some changes to the timing of mandatory testing for

certain analyte categories in certain matrices. Specifically, OCP updated the rule to reflect that pesticides and metals testing is required for all cannabis concentrates and only for cannabis flower or trim that is intended to be sold to consumers. OCP updated the rule to reflect that “fresh frozen” flower be dried (but not cured) prior to being submitted for mandatory testing in response to a question from Mr. Chaffin. Finally, OCP accepted Mr. Chaffin’s comments to require a cannabis testing facility that uses a plate reader to read microbial test results from a plate to retain the “raw data” from that plate reader to ensure the integrity and traceability of results reported using such methodology.

Conclusion

In sum, the Office of Cannabis Policy based the revisions included in this rule on statutory changes made by the second session of the 13th Legislature, integration of existing guidance published by the Office of Cannabis Policy and public comments received by the office during the public comment period.