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February 7, 2024

Re: LD 2178, *Resolve, Regarding Legislative Review of Chapter 20: Rules for the Licensure of Adult Use Cannabis Establishments, a Major Substantive Rule of the Department of Administrative and Financial Services, Office of Cannabis Policy (EMERGENCY)*; LD 2186, *Resolve, Regarding Legislative Review of Chapter 30: Compliance Rules for Adult Use Cannabis Establishments, a Major Substantive Rule of the Department of Administrative and Financial Services, Office of Cannabis Policy (EMERGENCY)*; LD 2187, *Resolve, Regarding Legislative Review of Chapter 10: Rules for the Administration of the Adult Use Cannabis Program, a Major Substantive Rule of the Department of Administrative and Financial Services, Office of Cannabis Policy (EMERGENCY)*

Senator Hickman, Representative Supica, members of the Joint Standing Committee on Veterans and Legal Affairs:

I am Gabrielle Bérubé Pierce, the policy director for the Office of Cannabis Policy and I am pleased to be before you today to present the following rules that have been provisionally adopted by the Office of Cannabis Policy:

- Chapter 10, *Rules for the Administration of the Adult Use Cannabis Program*;
- Chapter 20, *Rules for the Licensure of Adult Use Cannabis Establishments*; and
- Chapter 30, *Compliance Rules for Adult Use Cannabis Establishments*.

Taken together, along with our routine technical rule regarding mandatory testing, Chapter 40, *Rules for the Testing of Adult Use Cannabis*, these rules are intended to replace the existing *Adult Use Cannabis Program Rule* when they are finally adopted by our office. We encourage this committee to support the final adoption of these rules in accordance with the *Maine Administrative Procedures Act*, Title 5, ch. 375.

Before I get into the content of each of the rules, I want to walk everyone through the major substantive rulemaking process undertaken by our office last year in order to implement statutory changes made last session, as well as changes identified by our office through regulatory lookback and discussions with stakeholders since we last updated the rules in 2022. The rules before you today represent the third round of major substantive rulemaking for the adult use program undertaken by OCP since the office was established five years ago. The first was completed in 2019 to implement the original *Adult Use Cannabis Program Rule*; the second, completed in 2022, implemented several substantial changes to the *Cannabis Legalization Act*. These rules,

as we explained in the forms and basis statements that accompany our rulemaking filing, represent the Office's good faith efforts to reduce compliance and administrative costs for licensees and stakeholders alike, update existing provisions to clarify program requirements, and implement statutory changes since the rules were last revised.

Simply put: these rules are two years in the making and represent not only those changes identified by industry stakeholders during the formal rulemaking process, but lessons learned from countless discussions with the broad constituencies represented by our office. When it comes to cannabis policy it's important to remember that it is not only cannabis businesses and consumers who have a stake in the programs we administer, but also the thousands of Mainers who are not cannabis entrepreneurs or consumers.

OCP and the legislature have a duty not only to the industry participants who frequent this committee, but also to municipal officials who are contemplating whether to opt-in to allow cannabis businesses in their towns, parents and school officials who are grappling year after year with how to discipline students for bringing cannabis to school and distributing it among their classmates, and public health researchers who are examining how the proliferation of cannabis businesses in certain communities impacts perceptions of risk and harm associated with the use of cannabis. It is imperative that policymakers consider all perspectives when developing cannabis policy, as the consequences extend far beyond the economic impacts on the cannabis industry.

In order to hear from these diverse voices, OCP has expanded our outreach efforts over recent years beyond the rulemaking process to provide myriad opportunities for the public to let us know what they think. Members of our leadership team have visited cannabis business owners and municipal officials across the state to hear about the challenges and opportunities facing their regions and we have fielded questions and concerns from hundreds of Mainers through community conversations, webinars, workgroups, roundtables, trainings, radio call-in programs and individual meetings. It is these discussions, as well as the insight and expertise developed through our administration of the adult use and medical cannabis programs, that prepared our office to engage in thoughtful and systemic regulatory lookback last year before we began rulemaking after the end of the first special session of the 131st legislature.

Therefore, when we sat down at the end of July to write these rules, we looked not only at the laws enacted since the rules were last updated, but at the issues identified by our constituents, staff, and industry stakeholders over the years.¹ We defined terms commonly used within the program to ensure a shared understanding among regulators and program participants, we struck references to the residency requirement that were found unenforceable by the U.S. District Court, we provided additional clarity regarding the packaging requirements for single serve cannabis beverages, and we updated the content of mandatory warnings to conform with emerging research regarding labeling

¹ These rules implement the following laws passed since the Office last undertook major substantive rulemaking: PL 2021, ch. 628, PL 2023, ch. 6, Emergency (Signed March 15, 2023), PL 2023, ch. 408 and PL 2023, ch. 396.

uniformity.² Additionally, we clarified existing rule provisions to reflect guidance previously issued by the Office.³

On August 15th of last year, we made drafts of all the rules available for review by the public and began accepting comments on the rules immediately, via e-mail, USPS mail and online submissions. In addition to online submissions, we held a public hearing in-person at our office in Augusta on September 6th. At the hearing we heard testimony from eight members of the public, including one legislator, and responded to several questions asked by those testifying. Following the hearing we continued to accept written public comments, as well as audio and video recordings of public comments, until 11:59 pm on September 17th. We reviewed all of the comments received online and in person, compiled them into a document along with the agency's response to each comment, and have attached those comments and responses to the basis statements submitted for each rule.⁴ We then updated the rules to reflect the public comments accepted and submitted those rules for form and legality review by the Office of the Attorney General. Once the AG's office affirmed that the rules were in the appropriate form pursuant to the *Maine Administrative Procedure Act* and legally consistent with the *Cannabis Legalization Act*, the rules were timely submitted to the legislature during the "legislative acceptance period" at the beginning of this year.⁵

Which brings us to the matter before you today – legislative review of these provisionally adopted major substantive rules.⁶ While we provided much greater detail in the legal filings accompanying the rules, I will give a brief overview of the content of each of the rules before taking your questions.

Beginning with Chapter 10, *Rules for the Administration of the Adult Use Cannabis Program*, this rule includes 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. Chapter 10 also incorporates changes identified by the Office during its process of regulatory lookback such as defining the terms "indoor" and "outdoor" with respect to cultivation areas and the term "principal" with respect to the licensing process; as well as those changes identified by stakeholders through public comments during the public comment period for this rule, such as reconsidering the elimination of "exit packaging" and revising the proposed definition of "appealing to individuals under 21 years of age".

² See generally "Basis Statements" for 18-691 CMR, ch. 10, 20 and 30, included in rulemaking materials submitted to the Joint Standing Committee on Veterans and Legal Affairs and filed with Secretary of State.

³ *Id.* See also "Guidance Documents", available at: <https://www.maine.gov/dafs/ocp/resources/guidance-documents>

⁴ In total, OCP received 19 written comments from 7 individuals for Chapter 10, 19 written comments from 7 individuals for Chapter 20, and 103 written comments from 18 individual for Chapter 30. A complete list of all comments received by OCP, along with the Office's response, is included in the rulemaking packets for each rule.

⁵ Additional information regarding the legal requirements for major substantive rulemaking can be found in the *Maine Administrative Procedures Act*, Me. Rev. Stat. Title 5, chapter 375.

⁶ The scope of legislative review for major substantive rules timely filed with the Legislature during the legislative acceptance period is specified in 5 MRS § 8072.

Turning next to Chapter 20, *Rules for the Licensure of Adult Use Cannabis Establishments*, this rule includes the licensing requirements from the original *Adult Use Cannabis Program Rule* and incorporates statutory changes since the last time that rule was revised. This rule also incorporates changes to clarify provisions addressed in guidance documents previously issued by the Office, such as requirements applicable to co-location of adult use and medical cannabis business operations, the manner in which plant canopy is measured for outdoor cultivation areas, and changes identified by stakeholders through public comments during the public comment period for this rule. The latter changes include permitting bi-annual recertification of inherently hazardous substance equipment to be done remotely to reduce recertification costs for manufacturers. This rule, as well as Chapter 30, also required revisions to address comments received regarding the elimination of “exit packaging” throughout the rules governing the adult use cannabis program.

Finally, Chapter 30, *Compliance Rules for Adult Use Cannabis Establishments* includes the compliance requirements from the original *Adult Use Cannabis Program Rule*, and incorporates statutory changes since the last time that rule was revised. Specifically, this rule includes new requirements applicable to off-premises sales at specified events by cannabis store licensees; requirements applicable to tier 1, tier 2, and nursery cultivation facilities, as well as products manufacturing facilities conducting retail sales to consumers via delivery; provisions regarding returns of cannabis and cannabis products from one licensee to another; and revisions to the packaging, labeling, and inventory tracking requirements necessary to implement these new authorized activities. Additionally, the rules include revisions to the inventory tracking requirements to accommodate the “group tracking” of cannabis plants and revisions to the packaging, labeling and marketing provisions to address recent statutory changes regarding the same. This rule also incorporates changes identified by stakeholders through public comments during the public comment period for this rule.

On the whole, we are very proud of the years of work and collaborative problem solving that resulted in the rules before you today. As you will see in our filings, we received a total of 141 comments regarding various portions of the 3 rules before you. Many of those comments were related to the same issues – the requirements applicable to the new authorized activities outlined in Chapter 30, the impact of the proposed elimination of “exit packaging,” and questions regarding the implementation timeline for new packaging and labeling requirements included in the rules. Where the recommended changes aligned with the statutory requirements for the program, our office was generally in the position to accept those comments in part or full. Of the 141 comments received, OCP accepted 57 comments across the three rules. Another 40 of the comments received by the office were “general comments” with no specific change to the rules requested, while the remaining 44 comments were requesting changes that required statutory change to the *Cannabis Legalization Act*.

We understand that there may be provisions that were overlooked or revisions that were missed, and we appreciate the Legislature’s role in addressing those technical changes.

However, it is also our expectation that the expertise of our office and the substantial deliberation and effort that went into the development of these legally sound, practical and administrable rules will guide the committee's review of these rules and recommendations to the 131st Legislature.

As always, we thank the committee for its consideration and we will do our best to answer any questions you may have.

Major Substantive Rulemaking for the AUCP

Rulemaking Timeline

OCP received **141** public comments on the proposed rules

40%

were accepted
in full or in part

31%

would require a
statutory change

28%

did not request a
specific change

18-691 C.M.R. ch. 10, *Rules for the Administration of the AUCP*

This major substantive rulemaking updates the definitions, fees, and other administrative requirements of the AUCP

- » **19** public comments submitted on the proposed rules
- » **2** comments accepted
- » **12** comments accepted in part
- » **2** general comments
- » **3** comments rejected (statutory change required)

18-691 C.M.R. ch. 20, *Rules for the Licensure of Adult Use Cannabis Establishments*

This major substantive rulemaking updates the licensing requirements of the AUCP

- » **19** public comments submitted on the proposed rules
- » **5** comments accepted
- » **3** comments accepted in part
- » **6** general comments
- » **5** comments rejected (statutory change required)

18-691 C.M.R. ch. 30, *Compliance Rules for Adult Use Cannabis Establishments*

This major substantive rulemaking updates the compliance requirements of the AUCP

- » **103** public comments submitted on the proposed rules
- » **17** comments accepted
- » **18** comments accepted in part
- » **32** general comments
- » **36** comments rejected (statutory change required)

June 2022

OCP launches statewide community listening tour, conducts several other stakeholder engagement events over the next year

July 2023

OCP drafts updated AUCP rules based on regulatory lookback findings and stakeholder feedback

August 15, 2023

OCP posts proposed rules online, public comment period begins

September 6, 2023

OCP hosts a public hearing on the proposed rules

September 17, 2023

Public comment period ends

Fall/Winter 2023

Rules updated to reflect the public comments accepted, submitted for form and legality review by the Office of the Attorney General

January 2024

Rules timely submitted to the Legislature and provisionally adopted by OCP