



To the Department of Administrative and Financial Services  
Office of Marijuana Policy  
April 1, 2021

Mark Barnett  
125 Granite St  
Auburn ME 04210

#### PROPOSED RULE FEEDBACK

1.1. - Strike. Rule assigns the agency the unilateral authority to conduct administrative site inspections and searches of private property, personal effects and papers as well as vehicles outside the time frames indicative of normal hours of business operations without benefit of an administrative and or criminal search warrant granting such authority. This Rule implies a caregiver waives his rights to Fourth Amendment protection from unreasonable government intrusion into his or her personal affairs.

1.4. (63) – ‘Registered premises’ is used throughout the Proposed Rule to illegally restrict caregiver activities to fixed locations ‘approved’ by the OMP. There is no authority to impose this nor to require that ‘premises’ be ‘contiguous’. Remove all language referring to fixed location throughout Rule, outside of OMP authority.

2.1.1 (D) – Strike, major substantive. This provision will have an adverse impact on patients that are financially disadvantaged and or are significantly limited in accessing public or private transportation to and from appointments with medical providers. Requiring an in-person visit to certify a patient for those that do not have a primary medical provider restricts access to those that cannot afford to have a primary provider and will create economic damage to remote-practicing certifying medical providers. Requiring in person visits is also a significant COVID-19 risk for some.

2.1.2 (C) – Strike. Major substantive. This denies patients the ability to make a purchase of plants outside of retail stores or dispensaries, greatly increasing their costs for their medical marijuana.

2.2.1 (3) – Strike. The OMP has no statutory authority to compel a lease in any circumstances as a requirement of participation in this program, or at all.

5.1.1 (J) – Strike. The OMP may not restrict the sale of plants to caregivers operating a retail store. This is a clear violation of caregiver authorized conduct in statute:

E. Receive reasonable monetary compensation for costs associated with cultivating marijuana plants or assisting a qualifying patient with that patient's medical use of marijuana;

5.1.1 (O) – The OMP has no authority to abrogate a caregiver’s stator right to:



Q. Be organized as any type of legal business entity recognized under the laws of the State.

5.3.1 (A)(6) – Strike along with any and all language mandating behavior in a tracking system. Such language is present throughout this document, making it difficult to cite the number of invalid rules proposed. The OMP **may not** require participation, and may not create a punitive or limited structure for those who do not participate. The OMP may not require caregivers to agree to this as part of participation in the Program. That this is inconvenient for the OMP’s plan or a third-party contract is irrelevant. Statute clearly says:

B. The department shall develop and implement a statewide electronic portal through which registered caregivers, registered dispensaries, marijuana testing facilities and manufacturing facilities **MAY** submit to the department the records required... ..  
[emphasis our own)

Further, the tracking authorized in statute requires:

(1) Keep a record of all transfers of marijuana plants and harvested marijuana;

Nothing outside of transfers from one registrant to another or to a qualifying patient is required recordkeeping under Title 22 558-C. The OMP may not use Title 28-B as the basis for MMUMP rules.

5.3.2 (A, E, F, G3, H3, I5, G2, G5, H3, et al) – Strike. The OMP has no authority to compel these documents as a requirement for participation in this program, or at all. Title 22 provides no such authority. Title 28-B does, but that is a wholly separate program. Also, even if it did, these are clearly major substantive rules.

5.3.5 (D, E) – Strike ‘fingerprinting’. The Rule proposes a substantive policy initiative regarding the suitability of an individual attempting to satisfy criteria expressed in an application to become a caregiver. Current suitability is determined by a review of state criminal history (background check) that may or may not exist for an applicant by the Office of Marijuana Policy for the documentation of a disqualifying criminal conviction. The acquisition and subsequent likely catalogue of applicant fingerprint data is inconsistent with the Medicinal Marijuana Act. Fingerprinting is a substantive rule change and is not referenced or implied in any statute the department is authorized to regulate fingerprints unless caregiver is assisting a patient on school grounds.

5.3.5 (F, G) – Strike ‘national criminal history record checks’. Rule violates the confidentiality of caregiver identity when personal data is shared with Federal authorities placing applicant in a potentially adverse position with federal law enforcement authorities who continue to pursue criminal prosecution of cannabis related criminal conduct. National criminal history record checks would allow sharing of OMP confidential caregiver information and is a substantive rule change and is not referenced or implied in



any statute. The department is only authorized to regulate fingerprints or share caregiver information with the FBI or other law enforcement outside the state of Maine unless the caregiver is assisting a patient on school grounds.

5.4.1 (B) – Limit is too low for general commercial activity of a lab. This represents an unreasonable limitation on labs' processing capacity.

5.4.2 (B) – Limit is too low for general commercial activity of a lab. This represents an unreasonable limitation on labs' processing capacity.

5.7.1 (E, F) – The OMP may only acquire materials in E through the formal inspection process. The OMP has no authority to make this a requirement of application or renewal of participation in the program. Item F, once again, may not be made a requirement of application or renewal of participation in the program, nor required at all.

5.7.1 (G) & 5.8.2 – The OMP may not require local authorization for registered caregivers that are not operating retail stores. As per Title 22 Chapter 558-C Section. 2429-D (3) this rule is in conflict with statute and should be corrected to add that "registered caregiver" are exempt from requiring local authorization.

5.9.1 (C)– Once again, the OMP may not require any of the items in C except for item 4.

6.1.1 (D) – Once again, the OMP may not require this at all.

6.1.1 (F) – Major substantive, strike. To require a registrant to be responsible for the conduct of assistants, qualifying patients, contractors and visitors is a substantive rule change and creates a burden of liability for actions the registrant may not be aware of.

6.1.1 (H) – Far too broad, remove 'periods of apparent activity'.

6.1.2 (B) – The OMP may not require caregiver activities to be location specific. Strike.

6.1.2 (D) – The OMP may not require retail stores to prohibit entry to adults aged 18 and over. Major substantive even if authority existed in statute, which it does not.

6.1.3 – This entire section is major substantive rulemaking. Strike any language outside of statute or submit major substantive rules.

6.1.3 (D)(4) – The OMP may not compel such records 'upon request' without a formal investigation, nor may any LEO. Conducting a legal business within the state of Maine does not remove an individual's Constitutional right to protections from search and seizure. IN GENERAL, not just specific to this section,



the OMP may not conduct any searches within any home without a warrant without very explicit conditions. Strike.

6.2.2 – Where to begin. The OMP has no statutory authority for any of these items beyond G, H, I, J. Strike all beyond G, H, I, J. Each and every other item violates business law, contract law, and represents major substantive rulemaking.

6.2.3 – Comical. So each home to which a delivery is made must be pre-approved by the OMP? Major substantive, and both arbitrary and capricious.

6.2.3 (B) – Caregiver activities are not location specific in statute. Strike. Major substantive.

6.2.4 (G)(1)(b)(iii) – Statute provides a clear definition of canopy, and this is not it. Strike and replace with statutory definition.

6.2.7 (A) – Major substantive rulemaking. Strike.

6.2.8 – The most egregious example of overreach perhaps in this entire document. The OMP has no authority to prohibit conduct that is not explicitly prohibited in rule or in law. Strike.

6.2.8 (K) – The OMP may not prohibit this conduct if it is between two registered caregivers, or a registered caregiver and their assistant. Strike or specify conditions that comply with statute. Also, major substantive.

6.7.3 (a)(4)(b) – If the marijuana product is owned by the caregiver or by the dispensary, the OMP may not prohibit this conduct. Strike.

7 – All of section 7 is invalid except where voluntary participation is implied. Strike all language that conflicts with statute.

B. The department shall develop and implement a statewide electronic portal through which registered caregivers, registered dispensaries, marijuana testing facilities and manufacturing facilities **MAY** submit to the department the records required... ...  
[emphasis our own)

7.1.3 (D) – This item really shows the OMP's hand. Track and trace is complicated enough to easily put people out of compliance, and for an omission? Misstatement? Is there intent considered here? This is an open-ended and draconian item aimed solely at assigning fines up to \$10,000 per 'violation'. The OMP further has no basis to claim that issues in tracking software represent a threat to the public safety. What planet is this Office living on?



7.1.3 (H)(4) – This is a violation of a caregiver’s authorize activities, and must be struck. Again:

B. The department shall develop and implement a statewide electronic portal through which registered caregivers, registered dispensaries, marijuana testing facilities and manufacturing facilities **MAY** submit to the department the records required... ... [emphasis our own)

7.2.3 (1-2) – Clear violations of qualifying patients’ privacy rights protected by Maine statute. Strike.

7.2.5 – Generally, the paperwork requirements in this Rule represent an unreasonable burden on caregivers and patients. The existing trip ticket system and sales receipts provide sufficient information. The OMP cannot require participation in tracking software.

B. The department shall develop and implement a statewide electronic portal through which registered caregivers, registered dispensaries, marijuana testing facilities and manufacturing facilities **MAY** submit to the department the records required... ... [emphasis our own)

8 – Generally, all references to inventory tracking system must be struck. May not be required, per statute.

8.1.1 –Rule incorrectly defines the manufacture of medicinal products and the production of consumable beverages as sharing a regulatory commonality thereby imposing prohibitive costs on the production of medicinal tinctures with a likely adverse consequence for both caregivers and their medical consumers. Requiring bottle beverage manufacturing facility licenses without allowing tinctures to be exempt will create an undue burden on patients and caregivers. This will directly affect patient access to important medicine in a very substantive way. These beverage license requirements will create significant barriers for most small caregivers. Tinctures are a very commonly used medicine for patients. The costs for the equipment and facility requirements to license every caregiver manufacturing tincture will be cost prohibitive and thus create access restrictions to important strains used in tinctures and will create a significant impact on access to medicine for the patients. Major substantive. Strike.

8.1.1 (B) – Strike. Major substantive rulemaking. Ecological nightmare. Patient confusion. Drug War mentality towards marijuana. Unreasonable quantity of area dedicated to text not mandated by statute. Back to the drawing board.

8.2.1 (B) (4)(b) – Absurdly tight variances, unreasonable burden, does not accurately reflect organic nature of material which dries and loses weight. Strike.

8.2.2 (A) – The OMP may only make rules surrounding packagaing and labeling for final sale to a qualifying patient. Strike any language referring to transfers that are not taxable by sales tax.



8.2.2 – Generally, any items referring to THC content must be struck. The OMP may not mandate testing.

8.2.2 (A)(1) (a) – Only final packaging must be child-resistant, this is not authorized by statute.

8.2.2 (B)(7) – Nutritional fact panels may only be required as they are required for any food licenses. Under certain defined sales limits, nutritional fact panels may not be required.

8.2.3(B)(3) – Health claim prohibited elsewhere in rule. Strike.

8.2.3(B)(4) – Patently absurd. Wasteful. Strike.

9 – Broadly, this section leaves far too much open to interpretation given the severity of a possible violation. Reconsider vague nature of rules.

9 (D)(7) – Clear violation of caregivers’ authorized conduct in statute. The OMP may not restrict these if all participants have registration cards and patient identification cards. Strike.

9 (G)(3) – Unreasonable standard. Strike.

10 (A) – The OMP has no authority to require the measuring of waste nor its tracking. Strike.

11 – This entire sections violated caregivers’ authorized activity. The OMP may not further restrict caregiver activities simply to pretend it is offering a ‘low-compliance’ option. Strike this entire section. Not to mention that the OMP is violating numerous Constitutionally-protected rights for home-based caregivers.

11.3.3 – Clearly major substantive rulemaking. Strike.

11.3.6 (C)(3) – Strike this absurdity.

12.1.1 – The OMP has no authority to prohibit activities that are not explicitly enumerated in rule or law. Strike.

12.1.2 (2,3,4) – The OMP has no authority to require this, caregivers activities are not location-specific by statute. Strike.

12.1.2 (B) - Clear violation of caregivers’ authorized conduct in statute. The OMP may not restrict these if all participants have registration cards and patient identification cards. Strike.



M A I N E  
**CRAFT CANNABIS**  
A S S O C I A T I O N

Mark Barnett  
Maine Craft Cannabis Association, Auburn

I am also entering into the record our testimony against the Proposed Rules for the Committee's review. We will also be uploading our testimony against the Draft Rule prior which we believe provides a clear display of the OMP's disdain for the medical program it is supposed to be caring for.