Notice of Agency Rulemaking Proposal

AGENCY: Maine Department of Corrections

CHAPTER NUMBER AND TITLE: 10, Sec. 20.2 Drug and Alcohol Testing

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

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

BRIEF SUMMARY: The primary reason this rule is being proposed for repeal and replacement is to create a policy that governs adult facility prisoners only, removing provisions from the current rule that apply to adults under community supervision, and also to update the current rule, which was adopted in 2002 and has not been revised since.

Copies of the proposed rule are available upon request by contacting the Department contact person or on the Department of Corrections website at https://www.maine.gov/corrections/PublicInterest/policies.shtml/. Pursuant to Maine law, interested parties are publicly notified of the proposed rulemaking and are provided an opportunity for comment. Written comments may be submitted by mail, e-mail or fax to the contact person before the end of the comment period. To ensure the comments are considered, they must include your name and the organization you represent, if any.

Date, time and location of PUBLIC HEARING (if any): January 6, 2020 at 2:00 p.m. in the Maine Department of Corrections Board Room in the Tyson Building (Third Floor), 25 Tyson Drive, Augusta, ME

COMMENT DEADLINE: January 16, 2020

CONTACT PERSON FOR THIS FILING (include name, mailing address, telephone, fax, TTY, email):

Mary Lucia
Department of Correction
111 SHS
Augusta ME 04333
Phone: (207) 287-4681
Fax: (207) 287-4370
mary.a.lucia@maine.gov

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT (if different): N/A

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

STATUTORY AUTHORITY FOR THIS RULE: Title 34-A sections 1402, 1403, and 3032
SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (if different): N/A

AGENCY WEBSITE: https://www.maine.gov/corrections/

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: mary.a.lucia@maine.gov

* Check one of the following two boxes.
☒ The summary provided above is for publication in both the newspaper and website notices.
☐ The summary provided above is for the newspaper notice only. Title 5 §8053, sub-§5 & sub-§7, ¶D. A more detailed summary is attached for inclusion in the rulemaking notice posted on the Secretary of State’s website. Title 5 §8053, sub-§3, ¶D & sub-§6.

Please approve bottom portion of this form and assign appropriate AdvantageME number.

APPROVED FOR PAYMENT (authorized signature) DATE: ____________________________

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Additional Information for the Web (if any)

DETAILED SUMMARY:

If this proposal is adopted, the adult prisoner drug and alcohol testing policy will be updated in numerous respects, including, but not limited to, by adding definitions and other clarifying provisions. Also, the reasons for testing will be expanded to add testing upon intake; prior to transfer to a minimum security facility or minimum security housing unit; and being housed in a minimum security facility or minimum security housing unit. Reasons for testing set out in the current rule: random basis; condition of being in a substance abuse program; condition of being in a community program; and reasonable suspicion are retained. Further explanation will be added to what constitutes reasonable suspicion for testing. Provisions are added to describe the possible consequences of testing positive for a nonprescribed drug or for alcohol, testing negative for a prescribed drug prone to trafficking, refusing to submit to a test, tampering with a test, etc.

Regarding the testing process, provisions have been added that cross-reference the DOC’s policy on search of transgender and intersex prisoners; incorporate the new classes of disciplinary violations that relate to drug testing; and reflect the latest recommendations on providing water to prisoners who fail to produce a urine specimen immediately. Provisions are also added to encourage prisoners to admit the accuracy of test results. If prisoners do not admit the accuracy of urine results and there is no other evidence of drug or alcohol use, confirmation testing is now required. The alcohol breath testing process is also updated.