Rulemaking Cover Sheet

2020-206

TO: **Secretary of State**
ATTN: **Administrative Procedure Officer,**
State House Station 101, Augusta, Maine 04333.

ACCEPTED FOR FILING
SEP 14 2020
SECRETARY OF STATE

1. **Agency:** Maine Department of Corrections

2. **Agency umbrella and unit number:** 03 201

3. **Title of rule:** Religious Services

4. **Chapter number assigned to the rule:** Ch. 10, Policy and Procedures Manual - Adult Subsection 2[illegible].3, Religious Services

5. **Date(s)/method(s) of notice:** Advertisements in the Legal Notices of July 29, 2020 and DOC's Website on July 21, 2020

6. **Date(s)/place(s) of hearing(s):** August 19, 2020 at 1:00 p.m. via a Zoom virtual meeting E

7. **Type:** ☐ new rule ☐ partial amendment(s) of existing rule

   ☐ suspension of existing rule ☐ repeal of rule ☐ emergency rule

   ☒ repeal and replace: complete replacement of existing chapter, with former version simultaneously repealed.

8. **Name/phone of agency contact person:** Mary Lucia, (20) 287-4681

9. **If a major substantive rule under Title 5, c. 375, sub-CII-A, check one of the following**

   ☐ **Provisional adoption** (prior to Legislative review) ☐ **Final adoption**

   ☐ **emergency adoption of major-substantive rule**

10. **Certification Statement:** I, Randall Liberty, hereby certify that the attached is a true copy of the rule(s) described above and lawfully adopted by

the Maine Department of Corrections on September 14, 2020

I further certify that all portions of this rule are adopted in compliance with the requirements of the Maine Administrative Procedure Act.

Signature: _____
(original signature, personally signed by the head of agency)

Printed name & title: Randall Liberty, Commissioner of Corrections

11. **Approved as to form and legality by the Attorney General on** 9/14/20 (date)

Signature _____ #4658
(original signature, personally signed by an Assistant Attorney General)

Printed Name: Alisa Ross, AAG

RECEIVED
SEP 14 2020
EMAIL
OFFICE OF THE SECRETARY OF STATE
AUGUSTA MAINE

EFFECTIVE DATE: SEP 21 2020

(2)

Rulemaking Cover Sheet

MAPA-1

TO: **Secretary of State**
ATTN: **Administrative Procedure Officer,**
State House Station 101, Augusta, Maine 04333.

1. **Agency:** Maine Department of Corrections

2. **Agency umbrella and unit number**: 03 201

3. **Title of rule:** Religious Services

4. **Chapter number assigned to the rule:** 10

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11. **Approved as to form and legality by the Attorney General on** 9/14/20. (date)

    Signature AN #4688.
    (original signature, personally signed by an Assistant Attorney General)

    Printed Name: Alisa Ross, AAG.

RECEIVED
PAPER
SEP 14 2020
OFFICE OF THE SECRETARY OF STATE
AUGUSTA MAINE

/*POLICY TITLE: RELIGIOUS SERVICES POLICY NUMBER: 24.3 CHAPTER 24: ADMINISTRATION OF PROGRAMS AND SERVICES		PAGE 1 OF 23
STATE of MAINE DEPARTMENT OF CORRECTIONS Approved by Commissioner:		PROFESSIONAL STANDARDS: See Section VIII
EFFECTIVE DATE: February 15, 2009	REVISION: September 21, 2020	CHECK ONLY IF APA [X]

I. AUTHORITY

The Commissioner of Corrections adopts this policy pursuant to the authority contained in 34-A M.R.S.A. Section 3048.

II. APPLICABILITY

All Departmental Adult Facilities

III. POLICY

The Department recognizes that prisoners have a constitutional right to practice their religions. Prisoners shall be allowed to practice their religions either individually or as a group through participation in scheduled religious activities unless the religion or activity presents a threat to safety, security, or the orderly management of the facility.

IV. DEFINITIONS

1. Audio CD – a compact disc is a digital audio disc on which sound, especially music, can be played, as well as audiobooks, speeches, etc. For the purposes of this policy, audio CDs include any future audio formats that may be developed.

2. Clergy - a trained leader who represents and is endorsed by a recognized religious group in the community or larger religious organization to administer sacraments, perform rites, counsel, instruct, or conduct group religious services and ceremonies. For Native Americans, this includes a Native American spiritual leader of a federally recognized tribe.

3. DVD – a digital video disc is a digital optical disc that displays stored information in a video format. For the purposes of this policy, video DVDs include any future video formats that may be developed.

4. Faith Review Committee - a panel of representative Department of Corrections staff who serve in an advisory capacity regarding religious accommodations as they relate to and impact safety, security, and orderly management.

5. Group Religious Service - a religious service, also called a worship service, or simply a service, that is a formalized period for worship, fellowship, and/or congregational participation.

6. Outdoor Multi-Faith Area - an outdoor area designated by the facility Chief Administrative Officer to accommodate outdoor group religious services and ceremonies.

7. Recognized Religion – for the purposes of this policy, a religion allowed to be practiced within the Department's adult facilities as listed on Attachment A, Recognized Religions and Allowable Religious Group Activities.

8. Religious Accommodation – a recognition of a religion allowed for practice within the Department's adult facilities; a religious activity; or a personal or group religious item.

9. Religious Activity - a religious activity is an individual practice, group religious service or ceremony, religious feast, observance of religious holy days, religious instruction, religious study (individual or group), religious counseling, participation in religious dietary practice, or special religious programming.

10. Religious Diet - dietary restrictions as a result of a mandatory religious tenet of a recognized religion.

11. Religious Fast – abstinence from food and/or drink as an element of private or public religious devotion. A fast may be practiced as a group or on an individual basis.

12. Religious Feast - a ceremonial event that includes a specific food item(s) in celebration or recognition of a major holy day. Each recognized religion may have a maximum of one religious feast meal per calendar year.

13. Religious Publications - publications of a religious nature printed and issued from a religious or secular press and distributed free of charge or for sale, including, but not limited to, religious formal books (Bible, Koran, or the equivalent), magazines, catalogs, brochures, flyers, pamphlets, tracts, newspapers, calendars, and music/song books.

14. Religious Volunteer – a person from the community, eighteen (18) years of age or older, and approved through the volunteer application process to assist a Chaplain, or other designated staff, in providing religious services to prisoners.

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VII. PROCEDURES

Procedure A: General

1. Prisoners have a constitutional right to practice their religions and shall be allowed to practice their religions either individually or as a group through participation in scheduled religious activities unless the religion or activity presents a threat to safety, security, or the orderly management of the facility. The facility Chief Administrative Officer, or designee, shall balance these rights based upon security needs and available space, time, and supervision.

2. Recognized religions are included in the Recognized Religions and Allowable Religious Group Activities list (Attachment A). Prisoners practicing one of these religions may engage in group religious activities, use group religious items, engage in individual religious activities, and possess personal religious items as set out in this policy and its applicable attachments.

3. If a prisoner wishes to practice a religion solely by engaging in individual practices, e.g., prayer, meditation, reading, reflection, etc., that do not pose a threat to safety, security, or the orderly management of the facility, that religion does not have to be recognized, unless it involves a personal religious item (other than allowable religious publications and allowable religious audio CDs) or a scheduled individual religious activity.

4. Each facility Chief Administrative Officer, or designee, shall ensure that the religious services offered provide prisoners with the opportunity to participate in group religious activities as set forth in Recognized Religions and Allowable Religious Group Activities (Attachment A), where feasible and not contrary to safety, security, or the orderly management of the facility.

5. Each facility Chief Administrative Officer, or designee, shall ensure that group religious activities are scheduled equitably for all recognized religions. Efforts shall be made to schedule the religious activities at times consistent with the beliefs of the religion.

6. Based upon risk to safety, security, or orderly management of the facility, the facility Chief Administrative Officer, or designee, may postpone or cancel an individual or group religious activity. If re-scheduled, it shall be done in coordination with the facility Chaplain, or other designated staff. If the facility Chief Administrative Officer, or designee, postpones or cancels a religious activity, he or she shall:

   a. document the reason in CORIS under facility notes and/or incident report, as applicable, and, if postponed, note when the religious activity may be re-scheduled; and

   b. ensure that notification is made to:

      1) the facility Chaplain, or other designated staff;

      2) lobby staff if a volunteer was scheduled to participate;

      3) any volunteers scheduled to participate, if possible; and

      4) all appropriate staff.

7. There shall be at least one full-time Chaplain on staff in any facility with five hundred (500) or more prisoners to coordinate the religious services. The Chaplain shall have minimum qualifications of:

   a. at least one (1) unit (400 hours) of clinical pastoral education or equivalent specialized training;

   b. endorsement by the appropriate religious certifying body; and

   c. other qualifications as set forth in the Maine Bureau of Human Resources hiring requirements for the position of a Chaplain.

8. Smaller facilities shall provide religious services through a Chaplain, or other designated staff.

9. Approved religious volunteers from the community may be used to assist a Chaplain, or other designated staff, in providing religious services.

10. A prisoner:
    a. is not required to designate any religion;
    b. may designate his or her religion, if any, at intake at the receiving facility, and that religion shall be recorded in CORIS by intake staff;
    c. may designate, change, or remove his or her designated religion after intake by notifying in writing the Chaplain, or other designated staff, who shall record that in CORIS;
    d. is not required to participate in his or her designated religion's religious activities;
    e. may not change his or her religious designation more often than every ninety (90) days; and
    f. is permitted the opportunity to learn about other religions, including by attending worship services, but shall not be allowed to fully engage in the practices of other religions except when there is a change of religious designation as set out above and in compliance with the tenets of the religion.

11. Participation or non-participation in religious activities is a matter of voluntary choice on the part of each prisoner.

12. A prisoner may be counseled by facility health care staff, but not prohibited from participating in a religious activity such as a sweat lodge, Ramadan, etc., due to medical concerns.

13. The failure of a prisoner to adhere to all of his or her designated religion's beliefs shall not be a reason, in and of itself, to deny permission to participate in an activity of that religion (e.g., failure to strictly adhere to the religion's dietary requirements is not a sufficient reason to disallow participation in a religious feast, etc.).

14. If a prisoner's religion prohibits working in a job on a specified day and/or during specified hours, the prisoner shall not be required to work during those times provided the prisoner has designated that religion as set out above and notified his or her work supervisor reasonably in advance. However, the prisoner shall be required to work the necessary number of hours at other times in order to have full pay and/or the awarding of full good time.

15. Each facility Chief Administrative Officer shall designate one or more Outdoor Multi-Faith Areas to accommodate group religious services and ceremonies requiring an outdoor area except where facility design, lack of space, construction needs, or safety or security considerations would prohibit it. The following shall apply to an Outdoor Multi-Faith Area:
    a. it shall be in a suitable, secure, and private location;
    b. it shall be large enough to accommodate a group religious service and/or ceremony;

c. services and ceremonies shall be scheduled so that prisoners of different religions do not use an outdoor area at the same time together;

d. no religious symbols or objects shall be left in an area when not in use for a service or ceremony, except for immovable boulders, a gazebo, and a sweat lodge frame, etc.; and

e. it shall not be used for other activities when not being used for religious activities.

Procedure B: Chaplain's Responsibilities

1. The facility Chaplain, or other designated staff, is responsible to:

   a. plan, direct, conduct, coordinate, and ensure supervision of religious activities in consultation with and approval from the facility Chief Administrative Officer, or designee;

   b. ensure substantially equal status and protection for all recognized religions practiced by facility prisoners;

   c. develop a schedule of group religious activities that shall include the time, date, and location of each activity. This schedule shall then be posted in housing areas, the chapel area, and any other location approved by the facility Chief Administrative Officer, or designee;

   d. supervise all approved religious volunteers, and, in coordination with the Volunteer Coordinator, ensure appropriate training and orientation is provided to religious volunteers regarding facility rules and regulations, security requirements, code of conduct, etc.;

   e. to the extent possible, assist a prisoner in contacting clergy with the appropriate credentials when the prisoner's religion is not represented within the facility and supervise that clergy if ministering to the prisoner at the facility;

   f. arrange appropriate religious activities for prisoners in special management housing and restrictive housing units and other prisoners unable to access regular religious activities;

   g. develop and maintain relationships with religious resources in the community to augment the delivery of appropriate religious services on religious holy days or otherwise as needed to meet the requirements of diverse religions; and

   h. develop and maintain communications with recognized religious groups in the community.

2. The Chaplain shall:

   a. provide individual religious counseling to any prisoner who requests such services either through a prisoner's case manager or via request slip directly to the Chaplain, within the limit of staff resources; and

   b. complete eight (8) hours of chaplaincy services training annually.

3. The Chaplain, or other designated staff, shall have access to all areas of the facility where prisoners are allowed.

4. A prisoner providing clerical support to the Chaplain, or other designated staff, shall not have access to confidential information, including confidential information about other prisoners.

5. The facility Chaplain, or other designated staff, may maintain a lending library for religious publications, religious audio CDs, and religious DVDs to be used by a religious group for group use or by an individual prisoner belonging to that group.

6. The facility Chaplain, or other designated staff, may accept and oversee donations as set out in Procedure H below.

7. Pursuant to Department Policy (AF) 24.7, Prisoner Marriages:

   a. a prisoner's request for a marriage ceremony shall be directed to the prisoner's case manager; and

   b. the facility Chaplain shall not officiate or participate in any prisoner marriage ceremony.

Procedure C: Faith Review Committee

1. The Commissioner, or designee, shall establish a Department Faith Review Committee and designate a staff person at the management level to serve as chair of the committee. The chair's, or designee's, responsibilities include, but are not limited to:

   a. select committee members who shall be comprised of facility Chaplains, one or more facility security supervisors, one or more facility staff overseeing property matters, the Policy Development Coordinator, or designee, and any other staff determined appropriate;

   b. schedule meetings as necessary to review any religious accommodation requests made by prisoners using the Request for a Religious Accommodation form (Attachment B);

   c. schedule other meetings as necessary to fulfill the committee's other responsibilities; and

   d. maintain a written record of meetings to include documentation of committee recommendations.

2. Prior to a meeting of the Faith Review Committee to review a religious accommodation request, the chair, or designee, shall conduct a preliminary inquiry that includes:

   a. a review of the request form and all supporting documentation;

   b. input from other appropriate Department staff, if needed;

c. information from clergy, other practitioners of the religion, texts of or other reliable writings about the religion, or any other research necessary to determine the factual background of the request, if needed; and

d. dissemination of all of the above to the Faith Review Committee for review prior to the meeting.

3. The Faith Review Committee shall:

   a. meet within ninety (90) days of receipt of a Request for Religious Accommodation form (Attachment B) by a facility Chaplain, or other designated staff.

   b. make recommendations to the Commissioner, or designee, on approval or disapproval on any religious accommodation request that is not currently allowed, to include:

      1) a request to add a religion to the Recognized Religions and Allowable Religious Group Activities list (Attachment A);

      2) a request to add a personal item to the Allowed Personal Religious Items list (Attachment C);

      3) a request to add a group religious item to the Allowed Group Religious Items list (Attachment D); or

      4) a request to allow a new group or individual religious activity.

4. The Faith Review Committee may recommend that the request be:

   a. approved; or

   b. denied in whole or in part based upon risk to safety, security, or orderly management.

5. The Commissioner, or designee, shall make the final decision within thirty (30) days of the committee's recommendation and shall inform the chair, or designee, of the decision. The chair, or designee, shall inform the Committee of the decision.

6. The Policy Development Coordinator, or designee, shall, if necessary, in accordance with Department Policy 1.7, Developing, Implementing, and Revising Departmental Policies initiate a revision of the policy and/or revise any applicable attachment(s) to reflect the decision(s).

7. The Faith Review Committee Chair, or designee, shall document on the form all decisions made and shall forward a copy of the completed Request for Religious Accommodation form to all facility Chief Administrative Officers, or other designated staff, and the facility Chaplains.

8. Upon receipt of the notification, the Chaplain who received the request shall notify the prisoner(s) who submitted the request of the decision(s).

9. In addition, the Faith Review Committee shall:

   a. meet at least bi-annually to review the Department's religious services to determine whether they remain within the scope of best correctional practices and appropriate religious accommodations and make appropriate recommendations to the Commissioner, or designee;

   b. if requested by a facility Chief Administrative Officer, or designee, make recommendations to the Commissioner, or designee, on whether to remove a recognized religion or withdraw approval of a religious activity or personal or group religious item on the basis of safety, security, or orderly management;

   c. make recommendations to the Commissioner, or designee, on other matters as determined by the Commissioner, or designee; and

   d. assist the Chaplains, and other designated staff, in identifying and developing religious resources in the community and sources for religious property items.

10. Nothing in this policy precludes the Commissioner, or designee, from removing a recognized religion or withdrawing approval of a religious activity or personal or group religious item at any time for any reason related to safety, security, or orderly management.

11. The Commissioner, or designee, is the final authority for all decisions made pursuant to this procedure (i.e., there is no administrative level of appeal).

Procedure D: Group Religious Activities

1. The facility Chief Administrative Officer, or designee, shall designate appropriate locations with the necessary space, equipment, and furnishings for the holding of group religious activities.

2. Where feasible and not contrary to safety, security, or orderly management of the facility, religious activities as set out in Recognized Religions and Allowable Religious Group Activities (Attachment A) shall be allowed consistent with the beliefs of the religion.

3. Any group religious activities shall be scheduled through the Chaplain, or other designated staff, with the approval of the Chief Administrative Officer, or designee.

4. The facility administrator in charge of security, or designee, in consultation with the Chief Administrative Officer, or designee, shall determine the appropriate security requirements for group religious activities, which shall include either direct or indirect supervision.

5. The holding of a group religious activity is contingent upon the availability of sufficient staff and/or volunteers to supervise the activity, as determined

necessary as set out above. Every reasonable effort shall be made to ensure that sufficient staff and/or volunteers are available.

6. The minimum number of prisoners required to establish, maintain, and hold a scheduled group religious activity is two (2) or more prisoners.

7. If fewer than two (2) prisoners attend a scheduled group religious activity for three (3) consecutive times, the activity may be removed by the Chaplain, or other designated staff, from the schedule. The activity may be reinstated at a later date upon written request when the minimum number of participants have joined the group and are actively participating.

8. Scheduled group religious activities may be conducted by:
   a. the Chaplain;
   b. other designated staff;
   c. approved volunteers;
   d. a prisoner, if the following requirements are met:
      1) the facility Chief Administrative Officer, or designee, has given authorization for a prisoner to facilitate the religious activity after consultation with the Chaplain;
      2) the prisoner has been trained by clergy of his or her religion or as otherwise recommended by the Chaplain, or other designated staff; and
      3) the prisoner has not been found guilty of a disciplinary violation within the previous ninety (90) days and has no disciplinary matter pending.

9. Any approval for a prisoner to conduct a group religious activity shall be reviewed on an annual basis by the Chaplain, or other designated staff.

10. If the group religious activity is conducted by a volunteer or a prisoner, a description of the activity and any materials/resources to be used may be subject to prior approval by the Chaplain, or other designated staff.

11. A group religious activity may be disallowed or modified if the activity is used as a cover for other, non-religious activities, or if other safety, security, or orderly management considerations require that the activity be disallowed or modified, as determined by the Chief Administrative Officer, or designee.

12. A prisoner may be barred from participation in a group religious activity if the prisoner is using the activity as a cover for other, non-religious activities, commits a disciplinary violation during or otherwise related to the group religious activity, or if other safety, security, or orderly management considerations require that the prisoner be barred from the activity, as determined by the Chief Administrative Officer.

13. When the number of prisoners who may participate in a group religious activity is limited due to the location in which the activity takes place or the nature of the activity, the Chaplain, or other designated staff, shall, if possible, ensure equitable participation in the activity, e.g., by additional scheduling of the activity, allowing prisoners to participate on a rotating basis, etc.

14. In the case of a Native American sacred pipe or sweat lodge ceremony, any prisoner who wishes to participate must have notified the Chaplain, or other designated staff, in writing at least thirty (30) days in advance of the ceremony of the prisoner's desire to participate in the ceremony.

15. If a prisoner who wishes to participate in a Native American sacred pipe or sweat lodge ceremony is not an enrolled member of a federally recognized tribe, the prisoner must have designated the Native American religion at least sixty (60) days in advance of the ceremony and must have participated in at least one other group activity of the religion. The Chief Administrative Officer, or designee, after consultation with the Chaplain, or other designated staff, may also require the prisoner to first attend an orientation session(s) to ensure that he or she is educated as to the significance of the ceremony.

16. A newly received prisoner or a prisoner transferred from another jurisdiction or another Departmental facility may participate in the ceremony providing that there is documentation of having met the requirements as set forth in this procedure.

Procedure E: Religious Feast Meal

1. Each recognized religion may have a maximum of one religious feast meal per calendar year.

2. Where program space and security considerations allow, prisoners who are celebrating a religious feast meal shall be allowed to eat their meal together as a group.

3. The religious group shall request the feast meal be scheduled through the Chaplain, or other designated staff, at least thirty (30) days in advance in writing. The request shall include:

    a. the approximate number of prisoners involved;

    b. food item(s) requested; and

    c. date and time.

4. The Chaplain, or other designated staff, shall provide this information to the Food Service Manager, or designee.

5. The feast meal shall take the place of a regular meal in the dining hall or other designated area and shall be prepared using food items on the regular facility menu.

6. Any cooking shall be done in the facility kitchen by regular kitchen workers.

7. If the religious feast includes a food item not on the regular facility menu, the Chaplain, or other designated staff, shall so inform the Food Service Manager, or designee, or shall purchase the item through an authorized facility practice. The special food item shall be provided only if it is readily available from a commercial source at a cost that does not put the cost of the feast meal per participating prisoner above the facility's average cost for a regular prisoner dinner meal or special occasion meal (for example, Thanksgiving meal), whichever is higher.

8. Food items, whether regular or special, may not be brought or sent into the facility by volunteers, visitors, or staff, except that the Chaplain, or other designated staff, may bring in the special food item.

9. The prisoner must have designated that religion at least sixty (60) days prior to the feast, have participated in at least one group activity of the religion prior to the feast, and, have notified the Chaplain, or other designated staff, in writing at least thirty (30) days in advance of the prisoner's desire to participate in the feast. The Chief Administrative Officer, or designee, after consultation with the Chaplain, or other designated staff, may also require a prisoner wishing to participate in a group religious feast to first attend an orientation session(s) to ensure that he or she is educated as to the significance of the feast.

10. A newly received prisoner or a prisoner transferred from another jurisdiction or another Departmental facility may participate in the feast providing that there is documentation of having met the requirements as set forth in this procedure.

11. A prisoner may be allowed to participate in a maximum of one religious feast per calendar year.

12. If a ceremonial plate of food is set aside as a spiritual offering, it shall be taken outside the facility immediately after the completion of the ceremony by a religious volunteer or staff, but under no circumstances is it to be brought back into the facility.

13. If there is only one practitioner of a recognized religion, the individual may be provided the religious feast consistent with the above, as applicable.

Procedure F: Religious Diets and Fasts

1. The Department's Food Service Manager, or designee, shall ensure that the master menu provides alternative entrees to the extent it is feasible within Departmental resources for prisoners who wish to observe the religious dietary practices of recognized religions.

2. In accordance with Department Policy (AF) 16.2, Menu Planning and Meal Preparation and Service, menus shall be reviewed and approved by a qualified dietitian or nutritionist to ensure that prisoners who observe religious dietary practices have access to nutritionally adequate meals.

3. The facility Food Service Manager, or designee, shall ensure that necessary information is provided to prisoners to enable them to self-select the alternative entrees appropriate to their religious dietary practices, including the providing of information about food items containing meat or meat by-products as set out in Department Policy (AF) 16.2, Menu Planning and Meal Preparation and Service, General.

4. A prisoner who wishes to participate in a religious diet and:

   a. has access to the food service line shall self-select the alternative entree from the food service line; or

   b. does not have access to the food service line shall complete the Religious Diet form (Attachment E) and submit it to the Chaplain, or other designated staff, for approval or denial. A denial may occur if the prisoner submitted the form fewer than ninety (90) days after a prior form was submitted, the prisoner has not made a timely designation of that religion, or for any other reason based on safety, security, or orderly management of the facility.

5. A prisoner who does not have access to the food service line and who has been approved for the religious diet shall be provided alternative entrees consistent with the religion's dietary practices for a minimum of ninety (90) days unless a dietary change is determined by health care staff to be medically necessary.

6. After ninety (90) days, the alternative entrees shall continue to be provided unless and until the prisoner submits a new Religious Diet form to have the religious diet changed or discontinued.

7. If a recognized religion's dietary practices necessitate a change in the times of meals (e.g., so that all meals are served between sunset and sunrise during Ramadan), a prisoner wishing to participate in the practice shall notify the Chaplain, or other designated staff, at least thirty (30) days in advance in writing.

8. The Chaplain, or other designated staff, shall provide to the facility Food Service Manager, or designee, a list of prisoners to whom the change applies and the beginning and ending dates of the requested change.

9. The Food Service Manager, or designee, shall arrange for the prisoners to receive the meals at the special times for the approved duration and shall ensure that the meals are consistent with the religion's dietary practices (e.g., do not contain pork or pork by-products). If the change requires food items different from those in meals provided at the regular times, the menu shall be reviewed and approved by a qualified dietitian or nutritionist to ensure that the prisoners have access to nutritionally adequate meals.

10. A prisoner requesting to participate in a religious practice requiring a change in meal times must have designated that religion at least sixty (60) days prior to the beginning date, have participated in at least one religious group activity of the religion prior to the beginning date, and, have notified the Chaplain, or other designated staff, in writing of the prisoner's desire to participate in the practice

necessitating the change of meal times at least thirty (30) days in advance of the beginning date. The Chief Administrative Officer, or designee, after consultation with the Chaplain, or other designated staff, may also require the prisoner to first attend an orientation session(s) to ensure that he or she is educated as to the significance of the practice.

11. A newly received prisoner or a prisoner transferred from another jurisdiction or Departmental facility may participate provided that there is documentation of the requirements having been met as set forth in this procedure.

12. A prisoner who receives meals at special times in substitution for meals at the regular times shall not be allowed to have meals at the regular times for the duration of the religious practice (e.g., for the duration of Ramadan), unless a reversion to regular meal times is determined by health care staff to be medically necessary.

13. All food shall be prepared in the facility kitchen by regular kitchen workers.

14. A prisoner shall inform the Chaplain, or other designated staff, in writing if he or she intends to fast for religious reasons for more than seventy-hours (72) hours. If the prisoner intends to engage in such a fast, the Chaplain, or other designated staff, shall inform the Unit Manager, the Shift Commander, and the Health Services Administrator (HSA), or designee, so they may determine whether or not to implement hunger strike protocols or to take other appropriate action.

15. A prisoner who fasts for religious reasons shall not be given extra meals. Except as set out above with respect to a religion's dietary practices that necessitate a change in the times of meals, a prisoner who fasts for religious reasons shall not be given delayed meals.

Procedure G: Access by Clergy and Volunteers from the Community

1. Any prisoner shall be permitted to receive individual religious counseling and ministering from a clergy of his or her religion through the professional visiting process as set forth in Department Policy (AF), 21.4, Prisoner Visitation.

2. Clergy are allowed to have professional visits with prisoners as set out Department Policy, 21.4, Prisoner Visitation, if:

   a. the clergy is endorsed by a recognized religious group in the community or larger religious organization to serve in the capacity of clergy;

   b. the clergy provides documentation of these credentials;

   c. the credentials are verified by the Chaplain, or other designated staff; and

   d. the clergy passes a security background check.

3. If the above requirements are met and it is recommended by the facility Chaplain, or other designated staff, the facility Chief Administrative Officer, or designee, shall approve the professional visit unless there is reasonable suspicion that allowing the visit would facilitate criminal activity or violation of facility rules or

would create a risk to safety, security, or orderly management of the facility or unless contact between the prisoner and proposed visitor is prohibited under any Departmental policy.

4. If the professional visit is approved, the Chaplain, or other designated staff, shall schedule the visit.

5. If the clergy will be using space outside the facility visiting area, the clergy shall also complete the same training and follow the same rules as required for approved volunteers as set out in Department Policy 26.1, Community Volunteers Programs, General Guidelines.

6. Clergy shall be permitted to bring only religious publications and the sacraments for communion or other religious rites or, if applicable, Native American medicines into the facility provided the items pass facility security inspection and there is no risk to safety, security, or orderly management of the facility. The clergy shall take all items with him or her upon leaving the facility.

7. Approved volunteers, whether or not clergy, may also assist prisoners in observing their religious beliefs, e.g., by conducting group religious services and ceremonies; providing religious education; facilitating a study group; and facilitating other religious activities. A volunteer shall not conduct group religious services and group religious ceremonies or provide counseling unless qualified.

8. For a prisoner restricted to non-contact visits, all contact with clergy and approved volunteers shall occur in a non-contact visit area.

Procedure H: Donations

1. In coordination with the Chief Administrative Officer, or designee, the Chaplain, or other designated staff, may accept donations of religious publications, religious audio CDs, and religious DVDs, and other allowable personal and group religious items, with the exception of food items, from recognized religious groups in the community or larger religious organizations.

2. The Chaplain, or other designated staff, shall disclose to any potential donor that any donation of an item may not be earmarked for use by a specific prisoner or for use by a specific religious group.

3. Donations of items shall not be accepted from family or friends of prisoners or other private individuals, or organizations largely consisting of family or friends of prisoners. However, a religious publication may be shipped directly from the source to a prisoner or religious group as set out in Procedures I and J below.

4. In coordination with the Chief Administrative Officer, or designee, the Chaplain, or other designated staff, may accept monetary donations as specified by the following:

    a. the Chaplain, or other designated staff, shall inform any potential donor that:

1) funds may not be earmarked for use by a specific religious group or a specific prisoner; and

2) all monetary donations shall be placed in a dedicated trust account to benefit all religious groups in the facility.

b. the donated money shall be managed by the facility's business office.

5. The Chaplain, or other designated staff, may request expenditures from this account provided they are approved by the facility Chief Administrative Officer, or designee, and are, to the extent possible, used to benefit all religious groups in the facility equitably.

Procedure I: Personal Religious Items, Publications, and Audio CDs

1. In accordance with Department Policies (AF) 10.1, Prisoner Allowable Property, (AF) 21.2, Prisoner Mail, and this policy and providing the following passes a facility security inspection, a prisoner may acquire:

   a. approved personal religious items as listed on the Allowable Personal Religious Items list, (Attachment C), if the prisoner has designated that religion as his or her preference;

   b. religious publications that do not contain prohibited material as set out in Department Policy (AF) 21.2, Prisoner Mail; and

   c. religious audio CDs that do not contain prohibited material as set out in Department Policy (AF) 21.2, Prisoner Mail.

2. The facility Chief Administrative Officer, or designee, shall make a determination on the design for any item required in the Allowable Personal Religious Items list (Attachment C) to have an approved design, e.g., "Prayer blanket (... approved design only...)."

3. If allowed, a personal religious item, religious publication, and/or religious audio CD shall be added to the prisoner's allowable property inventory and shall be subject to all the rules that govern prisoner property, including being subject to a security inspection at any time.

4. A prisoner may have personal religious items for only one designated religion, except that a prisoner who is an enrolled member of a federally recognized tribe may have personal religious items for both the Native American religion and another recognized religion which the prisoner has designated.

5. Any prisoner may have allowable religious publications and allowable religious audio CDs for any recognized religion or religions.

6. A prisoner may acquire personal religious item(s):

   a. from the facility canteen/commissary;

b. through a donation of the item made to the Chaplain, or other designated staff, for distribution at the staff's discretion. A donated item may not be earmarked for an individual prisoner; or

c. if the item is not available as set out above, the Chaplain, or other designated staff, may assist the prisoner to order the item through an approved vendor at the prisoner's expense.

7. A prisoner who wishes to acquire a personal religious item shall order it from the facility canteen/commissary if it is available and may not purchase it from an outside vendor merely because the item offered by the outside vendor comes in a different style, color, size, or similar characteristic, or has a different cost.

8. To the extent feasible, the Chaplain, or other designated staff, shall maintain for each recognized religion information about outside vendors from which prisoners may acquire personal religious items, religious publications, and/or religious audio CDs if those items are not available in the canteen/commissary.

9. Religious headwear may be brought in at intake to the receiving facility if the headwear is consistent with headwear allowed to other prisoners and is in accordance with the prisoner's designated religion.

10. The Department shall not use public monies or monies from the Prisoner Benefit Fund to provide personal religious items, except that the Chaplain, or other designated staff, may use these monies to provide approved religious headwear to replace unapproved religious headwear brought in by a prisoner at intake to a receiving facility. This does not prevent the use of public monies for the replacement of or reimbursement for item(s) lost or damaged due to the fault of staff, as set out in Policy 10.1 (AF), Prisoner Allowable Property.

11. If a prisoner changes his or her designated religion, the prisoner shall be required to dispose of any personal religious items for his or her former religion (other than allowable religious publications and allowable religious audio CDs) within thirty (30) days by following the nonallowable property disposition process set out in Department Policy (AF) 10.1, Prisoner Allowable Property. All religious items of the former religion must be disposed of prior to the prisoner being allowed to acquire religious items for another religion that the prisoner designates.

12. Unless there is a reasonable belief of an immediate risk to safety or security, the prisoner shall be allowed to present a personal religious item to staff for visual security inspection and, unless there is a reasonable belief of an immediate risk to safety or security, any manual security inspection (search) by staff shall be conducted in such a way as not to damage the item. At all times, staff shall act with respect for the religious items.

13. A prisoner wearing religious headwear is subject to the following requirements:

    a. the religious headwear must not obscure the face; and

    b. the religious headwear shall be removed upon the request of security staff for the purposes of a security inspection.

14. A prayer blanket or prayer rug must either be stored or folded and placed on the end of the prisoner's bed when not in use for religious activities.

15. A religious item is deemed contraband if the item is used for other than its authorized purpose, misused or abused, modified from its original state, tampered with, not properly stored, or taken by the prisoner to an unauthorized location.

16. The prisoner shall follow all work area health and safety requirements as they apply to religious items, including headwear and items worn around the neck, waist, or elsewhere on the body.

17. To the extent feasible, the Chaplain, or other designated staff, shall maintain a library of religious publications for each recognized religion, including each religion's formal book (Bible, Koran, or equivalent), to supplement religious publications in the facility library.

18. A prisoner may acquire personal religious publications:
    a. through the mail in accordance with Department Policies (AF) 10.1, Prisoner Personal Property and (AF) 21.2, Prisoner Mail;
    b. through a donation of the publication made to the Chaplain, or other designated staff, for distribution at the staff's discretion. A donated publication may not be earmarked for an individual prisoner; and
    c. if the publication is not available as set out above, the Chaplain, or designated staff, may assist the prisoner to order the publication through an approved vendor at the prisoner's expense.

19. Other persons ordering publications for prisoners must order them from the same sources as prisoners are allowed to order from and must have them shipped directly from the source. In the case of books, there must be a packing list/invoice included as set out in Department Policy (AF) 10.1, Prisoner Allowable Property.

20. A prisoner may acquire personal religious audio CDs:
    a. through the facility canteen/commissary;
    b. through the mail from the same sources as books may be ordered from in accordance with Department Policies (AF) 10.1, Prisoner Personal Property and 21.2, Prisoner Mail;
    c. through a donation of the audio CD made to the Chaplain, or other designated staff, for distribution at the staff's discretion. A donated audio CD may not be earmarked for an individual prisoner; or
    d. if the audio CD is not available as set out above, the Chaplain, or other designated staff, may assist the prisoner to order the audio CD through an approved vendor at the prisoner's expense.

21. A prisoner may not acquire personal religious DVDs but may be permitted to borrow a group religious DVD at the discretion of the Chaplain, or other designated staff.

Procedure J: Group Religious Items

1. Each facility Chief Administrative Officer, or designee, shall ensure recognized religious groups have access to religious publications, religious audio CDs, religious DVDs, and allowable group religious items as listed in Allowable Group Religious Items (Attachment D).

2. The facility Chief Administrative Officer, or designee, shall make a determination on the design for any item required in the Allowable Group Religious Items list (Attachment D) to have an approved design, e.g., "Group prayer rug (... approved design only)."

3. A group religious item is not the property of any individual prisoner, even if the prisoner purchased it for the group, but belongs to the group as a whole.

4. A recognized religious group may acquire group religious items for use in group religious ceremonies (Attachment D) provided the item passes facility security inspection:

   a. from the facility canteen/commissary by an individual prisoner as a donation to the group;

   b. through a donation of the item made to the Chaplain, or other designated staff, for distribution to the appropriate religious group at the staff's discretion; or

   c. if the item is not available as set out above, the Chaplain, or other designated staff, may assist the group to order the item from an approved religious vendor at the expense of one or more prisoners as a donation to the group.

5. A prisoner who wishes to acquire a group religious item for donation to the group shall order it from the facility canteen/commissary if it is available and may not purchase it from an outside vendor merely because the item offered by the outside vendor comes in a different style, color, size, or similar characteristic, or has a different cost.

6. If approved by the Chief Administrative Officer, or designee, a Native American spiritual leader may bring in Native American religious medicines and/or a sacred pipe for a group ceremony, provided the item passes facility security inspection. Any unused tobacco and the pipe shall be removed from the facility by the spiritual leader after the completion of the ceremony.

7. If approved by the Chief Administrative Officer, or designee, clergy may bring in up to one (1) ounce of wine for a group religious service, provided the container of wine passes a facility security inspection; only the clergy consumes the wine;

and any unused portion of the wine is disposed of or removed from the facility by the clergy after the completion of the group service.

8. The Department shall not use public monies to provide group religious items. This does not prevent the use of public monies for the replacement of or reimbursement for item(s) lost or damaged due to the fault of staff.

9. Monies from the Prisoner Benefit Fund may only be used to provide publications, audio CDs, and DVDs, and minor other items for a religious group, e.g., candles, a feast food item, etc. These shall be provided substantially equally to all recognized religions. These monies shall not be used to purchase major items, e.g., prayer oils, clothing, rugs, blankets, etc.

10. A recognized religion group may acquire religious publications provided the publication passes facility security inspection and does not contain prohibited material as set out in Department Policy (AF) 21.2, Prisoner Mail:

    a. through the mail in accordance with Department Policy (AF) 21.2, Prisoner Mail by an individual prisoner for donation to the group;

    b. through a donation of the publication made to the Chaplain, or other designated staff, for distribution to the appropriate religious group at the staff's discretion; or

    c. if the publication is not available as set out above the Chaplain, or other designated staff, may assist the group to order the publication from an approved vendor at the expense of one or more prisoners as a donation to the group.

11. Other persons ordering publications for the group must order them from the same sources as prisoners are allowed to order from and must have them shipped directly from the source. In the case of books, there must be a packing list/invoice included as set out in Department Policy (AF) 10.1, Prisoner Allowable Property.

12. A recognized religious group may acquire group religious audio CDs and/or DVDs provided the CD and/or DVD passes facility security inspection and does not contain prohibited material as set out in Department Policy (AF) 21.2, Prisoner Mail:

    a. through the commissary (audio CDs);

    b. through the mail from the same sources as books (audio CDs) may be ordered from in accordance with Department Policies (AF) 10.1, Prisoner Personal Property and 21.2, Prisoner Mail;

    c. through a donation of the audio CD or DVD made to the Chaplain, or other designated staff, for distribution to the appropriate religious group at the staff's discretion; or

    d. if the audio CD or DVD is not available as set out above, the Chaplain, or other designated staff, may assist the group to order the audio CD or DVD

through an approved vendor at the expense of one or more prisoners as a donation to the group.

13. After being allowed to the group, a group religious item is subject to a security inspection at any time. Unless there is a reasonable belief of an immediate risk to safety or security, any manual inspection (search) by staff shall be conducted in such a way as not to damage the item. At all times, staff shall act with respect for the religious items.

14. The facility Chaplain, or other designated staff, may provide religious audio CDs and/or DVDs for group use. These shall be maintained by the Chaplain, or other designated staff.

15. Except for items loaned to a group or a member of the group by the Chaplain, or other designated staff, all group religious items shall be stored in the group's locker or other location as required by the Chief Administrative Officer, or designee.

16. A religious item is deemed contraband if the item is used for other than its authorized purpose, misused or abused, modified from its original state, tampered with, not properly stored, or taken by the group or a member of the group to an unauthorized location.

Procedure K: Request for an Additional Religious Accommodation

1. To request consideration of adding a religious accommodation that is not currently allowed within the Department's adult facilities, a prisoner shall submit a completed Request for Religious Accommodation (Attachment B) to the Chaplain, or other designated staff, for any of the following;
   a. a religion;
   b. an individual or group religious activity; or
   c. a personal or group religious item.

2. The adding of a religious accommodation does not require the involvement of a religious group outside the Department.

3. Any request for an additional religious activity shall be submitted by the prisoner at least one hundred twenty (120) days in advance of the activity to permit a decision to be made prior to the desired date.

4. The Chaplain, or other designated staff, shall:
   a. confirm that the requested religion, activity, or item is not currently approved and has not been the subject of a request for at least one (1) year; and
   b. if the above is confirmed and the request is complete, forward the request to the Chair of the Faith Review Committee for consideration in accordance with Procedure C.

Procedure L: Name Changes for Religious Purposes

1. Department policy addressing legal name changes shall be followed should a prisoner elect to change his or her name for religious purposes.

Procedure M: Advisory Groups

1. The Commissioner, or designee, may establish an advisory group consisting of community representatives from the various recognized religions to assist the Department in providing religious services to prisoners.

2. The Commissioner, or designee, may request Native American spiritual leaders designated by the federally recognized tribes in Maine to assist the Department in providing religious services to Native American prisoners.

3. A facility Chief Administrative Officer, or designee, may establish an interfaith council of prisoner representatives from recognized religions to provide input about religious services for prisoners at a facility.

4. A facility Chief Administrative Officer, of designee, may approve a prisoner as an interfaith representative only if the prisoner has not been found guilty of a disciplinary violation within the previous ninety (90) days and has no disciplinary matter pending.

5. A prisoner who is found guilty of a disciplinary violation after being approved as an interfaith council representative shall be terminated from the facility interfaith council. A prisoner who agrees to an informal resolution of a disciplinary violation after being approved as a council representative may be terminated from the council representative position by the facility Chief Administrative Officer, or designee.

Procedure N: Unauthorized Activities

1. The following activities are never authorized:
   a. animal sacrifice or depictions of animal sacrifice;
   b. casting spells, putting curses, or fortune-telling, if any of these is for, against, or about another person (this does not include praying for the well-being of another person);
   c. disparagement of other religions, races, ethnicities, or other groups;
   d. encryption or use of code;
   e. inflicting self-injury or inflicting injury on another;
   f. martial arts training or practice;
   g. nudity;
   h. profanity;
   i. sexual acts;

j. use of a drug other than as prescribed by a facility health care provider;

k. use of alcohol or marijuana;

l. use or possession of animal parts other than as specifically allowed in an attachment to this policy;

m. use, display or possession of weapons or what appears to be a weapon;

n. any conduct constituting a disciplinary violation or criminal act; or

o. any other conduct that could reasonably be construed as a threat to safety, security or the orderly management of the facility.

BASIS STATEMENT

The primary reason this rule was adopted was to repeal and replace the previous rule, which was adopted in 2009, and has not been updated since. The adopted rule creates a rule governing many aspects of religious services for adult facility prisoners. It explains, while not requiring a prisoner to designate a religious preference, how a prisoner may designate a religious preference or change a religious preference. The adopted rule, among other things, provides procedures for a prisoner to practice his or her religion either individually or in a group setting; outlines the responsibilities of a facility chaplain; addresses the scheduling of religious activities; includes a process for a prisoner to request a religious accommodation; makes provisions for approved volunteers to provide religious services; establishes a Faith Review Committee; addresses religious dietary requirements; describes how a prisoner may acquire approved religious property; allows the Commissioner to establish advisory groups; and lists unauthorized activities.

MAINE DEPARTMENT OF CORRECTIONS

SUMMARY OF AND RESPONSES TO PUBLIC COMMENTS

Chapter Number and Title of Rule: Chapter 10, Subsection. Sec. 24.3 Religious Services

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The Department of Corrections scheduled a public hearing for August 19, 2020, via a Zoom virtual meeting, to obtain public comments on the proposed revision of the above stated rule. No members of the public attended the public hearing. August 31, 2020 was the written comment deadline.

One written comment was received from Prisoner Randall B. Hofland, MDOC # 116217.

Comment and Response:

1. **Comment:** The commenter states the requirement that the cost of a religious feast (if involving a special food item not on the regular menu) not cost more than the facility's average cost per participating prisoner for a regular prisoner dinner meal is unconstitutional. The commenter states that a religious group's annual religious feast should not be based on the cost of a regular meal, but should be based on the cost of "special occasion meals" such as meals served on the 4th of July, Thanksgiving, and Christmas, which he assumes are more costly than regular meals.

   Response: The Department of Corrections does not agree that the provision at issue is unconstitutional, but does agree to adopt this suggestion. Therefore, the wording in Procedure E.7. will be changed to read as follows:

   > If the religious feast includes a food item not on the regular facility menu, the Chaplain, or other designated staff, shall so inform the Food Service Manager, or designee, or shall purchase the item through an authorized facility practice. The special food item shall be provided only if it is readily available from a commercial source at a cost that does not put the cost of the feast meal per participating prisoner above the facility's average cost for a regular prisoner dinner meal or special occasion meal (for example, Thanksgiving meal), whichever is higher.

A set of written comments was received from Prisoner Nathan Goodwin, MDOC # 117369.

1. **Comment:** The commenter is concerned about the apparent ability of the Faith Review Committee to make decisions with no ability of a prisoner to appeal from those decisons.

   Response: This is a misreading of Procedure C. The Faith Review Committee makes only recommendations. The Commissioner, or designee, makes the actual decisions, and there is no administrative level of appeal from those decisions. This will not be changed, as the Commissioner is the highest authority within the Department. However, to make this procedure clearer, the paragraph about there being no administrative level of appeal from the decisions of the Commissioner, or designee, has been moved to a different place in the procedure and reworded slightly.

2. **Comment**: The commenter states that Procedure E.13 (which concerns a feast meal being provided to a prisoner who is the only practitioner of a recognized religion) does not make sense because it appears the prisoner woiuld be required to meet all of the same

requirements as prisoners who are provided a feast meal as part of a group, including the requirement to have participated in a group activity of the religion prior to the feast, even though, in the case of a solo practitioner, there would be no group to hold such an activity.

Response: It was not the intent to require this. To make this clearer, the term "as applicable" has been added to the procedure.

3. **Comment:** The commenter believes that Procedure F.14 (which requires notification to the Chaplain and other staff if a prisoner is fasting for more than nine meals or more than 72 hours) violates certain religious beliefs that fasting should be kept a secret.

   Response: Such notification is necessary to at least two compelling state interests (prisoner health and safety). In the context of a correctional setting, such notification is necessary so that the health of a prisoner who is fasting may be monitored. Further, this notification might be needed for safety reasons, e.g., to keep a prisoner who is weak from fasting from operating dangerous machinery. This will not be changed. However, to make the procedure clearer, it has been slightly reworded.

4. **Comment:** The commenter states that Procedure F.15 (which does not allow the provision of delayed meals to a prisoner who has been fasting) is inconsistent with Procedure F.7 (which refers to accommodating religious dietary practices necessitating a change in the times of meals, such as during Ramadan).

   Response: Although Ramadan is often referred to as a time of fasting, there was no intent to apply Procedure F.15 to this situation. This procedure has been reworded to make this clearer.

5. **Comment:** The commenter would like to see the removal of the prohibiton on earmarking donated items for use by a specific religious group found in Procedure H.2.

   Response: This will not be done. There are at least two reasons for this prohibition: one is to prevent the introduction of contraband, including, but limited to, drugs, and the other is to allow the Chaplain to distribute donated items where they are most needed.

6. **Comment:** The commenter states that the prohibition on using public monies to provide religious items found in Procedure I.10 is not followed in practice as such monies are used to replace items broken or missing due to the fault of staff.

   Response: It was not the intent to prohibit the use of public monies in such situations. In fact, another policy of the Department allows this. The wording of this procedure has now been reworded accordingly, as has Procedure J.8, which refers to group religious items.

7. **Comment:** The commenter asks that Procedure N.1.b. be reworded to make it clear that the prohibition on casting spells is referring to doing so with respect to another person for the purpose of causing harm, so that there is no prohibiton on the casting of spells to clear a room of negative energy prior to a religious ceremony, for example.

   Response: That this prohibiton is about spells aimed at another person has been made clearer.

8. **Comment:** The commenter asks that the exception to the possession of animal parts specify a feather instead of referring to an attachment to the policy. He believes this is the only exception and thinks it will be easier to put it into the policy instead of the attachment.

   Response: This will not be done. It is hard to predict situations that might arise in the future, and should another exception arise, it would be difficult to rewrite the policy, which would require going through the rulemaking process, to accommodate the exception. Referring to an attachment is the more flexible and accommodating option.

In addition, besides fixing typos, a few minor changes were made to the proposed rule, primarily as a result of the legal review by the Attorney General's Office, as follows:

1. The second sentence in the definition of "religious" feast was reworded to be identical with Procedure E.1.

2. Procedure A.2. in the proposed rule was split into two paragraphs in the adopted rule and the wording was rearranged for the sake of clarity.

3. The word "allowable" was inserted in a few places in front of "religious publcations" and "religious audio CDs" for the sake of consistency with the rest of the provisions in the policy.

Wismer, Don

From: Lucia, Mary A.
Sent: Monday, September 14, 2020 1:17 PM
To: Wismer, Don
Cc: Sleek, Diane E
Subject: Adopted Rule: CHAPTER 10, Subsection 24.3, Religious Services
Attachments: MAPA 4 - Notice of Agency Rule-making Adoption.docx; signed MAPA 1.pdf; Adopted Rule 24.3 RELIGIOUS SERVICES.docx; Basis Statement.docx; Summary of and Responses to Public Comments.docx; Rulemaking Fact Sheet.docx; Administrative Procedure Act Checklist.docx

Dear Don:

Disregard the email that Diane sent on 9/10/2020 as we made some changes to the rule and to the Summary of and Responses to Comments. I have attached the paperwork for the adopted CHAPTER 10, Subsection 24.3 Religious Services rule to this email:

1. Notice of Agency Rule-making Adoption (MAPA-4);
2. Rule-making Cover Sheet (MAPA-1);
3. adopted rule (repeal and replace);
4. Basis Statement;
5. Summary of and Responses to Public Comments;
6. Rulemaking Fact Sheet; and
7. Administrative Procedure Act Checklist.

The EFFECTIVE DATE of this rule will be September 21, 2020.

Please advise me if anything else is needed. I will be dropping off the hard copies later today. Thanks,

Mary Lucia
Policy Development Coordinator
Maine Department of Corrections
111 SHS
Augusta, ME 04333
☎ Tel: (207) 287.4681 (office)
Fax: (207) 287-4370
E-mail: mary.a.lucia@maine.gov

STATE OF MAINE
DEPARTMENT OF CORRECTIONS
111 STATE HOUSE STATION
AUGUSTA MAINE
04333-0111

JANET T. MILLS
GOVERNOR

RANDALL A. LIBERTY
COMMISSIONER

September 14, 2020

Mr. Don Wismer
Secretary of State's Office
Cross Building, 4th Floor
SHS #101
Augusta, ME 04333

RE: Adopted Rule: CHAPTER 10, Subsection 24.3, Religious Services

Dear Don:

I have enclosed the paperwork for the adopted CHAPTER 10, Subsection 24.3 Religious Services rule in this envelope:

1. one copy of the Notice of Agency Rule-making Adoption (MAPA-4);
2. two originals of the Rule-making Cover Sheet (MAPA-1);
3. two copies of the adopted rule (repeal and replace);
4. two copies of the Basis Statement;
5. two copies of the Summary of and Responses to Public Comments;
6. two copies of the Rulemaking Fact Sheet; and
7. two copies of the Administrative Procedure Act Checklist.

The EFFECTIVE DATE of this rule will be September 21, 2020.

Please advise me if anything else is needed. Thanks,

Sincerely,

Mary Lucia

Mary Lucia
Policy Development Coordinator

PHONE: (207) 287-2711 (TTY) MAINE RELAY 711 FAX: (207) 287-4370

revised 8-2019

Rulemaking Fact Sheet

(5 MRSA §8057-A)

AGENCY: Maine Department of Corrections

NAME, ADDRESS, PHONE NUMBER, EMAIL OF AGENCY CONTACT PERSON:

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

CHAPTER NUMBER AND RULE TITLE: 10, Sec. 24.3 Religious Services

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

STATUTORY AUTHORITY: Title 34-A sections 1403 and 3048

DATE, TIME AND PLACE OF PUBLIC HEARING: August 19, 2020 at 1:00 p.m. via a Zoom virtual meeting.

COMMENT DEADLINE: August 31, 2020

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [*see* §8057-A(1)(A) & (C)]

The primary reason this rule was adopted was to repeal and replace the previous rule, which was adopted in 2009, and has not been updated since. The adopted rule creates a rule governing many aspects of religious services for adult facility prisoners. It explains, while not requiring a prisoner to designate a religious preference, how a prisoner may designate a religious preference or change a religious preference. The adopted rule, among other things, provides procedures for a prisoner to practice his or her religion either individually or in a group setting; outlines the responsibilities of a facility chaplain; addresses the scheduling of religious activities; includes a process for a prisoner to request a religious accommodation; makes provisions for approved volunteers to provide religious services; establishes a Faith Review Committee; addresses religious dietary requirements; describes how a prisoner may acquire approved religious property; allows the Commissioner to establish advisory groups; and lists unauthorized activities.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? ___YES _X NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [*see* §8057-A(1)(B)&(D)]

To allow prisoners to practice their religions either individually or as a group through participation in scheduled religious activities while incarcerated in the Maine Department of Corrections facilities.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) [*see* §§8057-A(1)(E) & 8063-B]

Feedback from Departmental staff familiar with the current rule and its implementation.

ESTIMATED FISCAL IMPACT OF THE RULE: None [*see* §8057-A(1)(C)]

FOR EXISTING RULES WITH FISCAL IMPACT OF $1 MILLION OR MORE, ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS: [*see* §8057-A(2)(A)]

INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED AND HOW THEY WILL BE AFFECTED: [*see* §8057-A(2)(B)]

BENEFITS OF THE RULE: [*see* §8057-A(2)(C)]

Administrative Procedure Act
CHECKLIST

Agency: **MAINE DEPARTMENT OF CORRECTIONS**

Chapter Number and Title of Rule: Ch. 10, Sec. 24.3 Religious Services

PROPOSED RULE:

1. Was this rule listed on the last regulatory agenda? yes

2. Date of notification of:

Anyone on mailing list	July 20, 2020
Any trade, industry or professional group	n/a
Any trade publications	n/a

3. Date Notice of Rulemaking Proposal (MAPA-3) sent to Secretary of State: July 20, 2020

4. Date Fact Sheet sent to Executive Director of Legislative Council: July 20, 2020

5. Date of publication in Secretary of State's rule-making ad.: July 29, 2020

6. Date of hearing(s): August 19, 2020 7. Comment deadline: August 31, 2020

ADOPTED RULE:

8. Was comment deadline extended or comment period reopened? No

   If yes, date of second notice publication in Secretary of State's rule-making ad: _____

9. Is adopted rule consistent with what was proposed? Yes
   (If not, please address the changes in the comments and responses section of your filing.)

10. Is the person signing the Certification Statement (MAPA-1, #9) authorized to do so as stated in your statutes or in 5 MRSA, c.71? Yes

11. Was the rule adopted within 120 days of the comment deadline? Yes

12. Was the rule approved and signed by the Office of the Attorney General within 150 days of the comment deadline? Yes

13. Is a Basis Statement included? Yes Is a copy of the Fact Sheet included? Yes

    Are comments, with names and organizations, and your responses included? Yes

Notice of Agency Rule-making Adoption

AGENCY: Maine Department of Corrections

CHAPTER NUMBER AND TITLE: Chapter 10, Sec. 24.3, Religious Services

ADOPTED RULE NUMBER: **2020-206**

CONCISE SUMMARY: The Department of Corrections adopts this rule to repeal and replace the previous rule, which was adopted in 2009, and has not been updated since. The adopted rule creates a rule governing many aspects of religious services for adult facility prisoners. It explains, while not requiring a prisoner to designate a religious preference, how a prisoner may designate a religious preference or change a religious preference. The adopted rule, among other things, provides procedures for a prisoner to practice his or her religion either individually or in a group setting; outlines the responsibilities of a facility chaplain; addresses the scheduling of religious activities; includes a process for a prisoner to request a religious accommodation; makes provisions for approved volunteers to provide religious services; establishes a Faith Review Committee; addresses religious dietary requirements; describes how a prisoner may acquire approved religious property; allows the Commissioner to establish advisory groups; and lists unauthorized activities.

EFFECTIVE DATE:
(TO BE FILLED IN BY SECRETARY OF STATE)

AGENCY CONTACT PERSON: **Mary Lucia**
AGENCY NAME: Maine Department of Corrections
ADDRESS: **111 SHS**
Augusta, ME 04333

TELEPHONE: **(207) 287-4681**

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

APPROVED FOR PAYMENT_____ DATE:_____
Authorized signature

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☒ *The above summary is for the newspaper notice only. A more detailed summary / basis statement is attached.*

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

APPROVED FOR PAYMENT _____ DATE: 8/31/15
(authorized signature)

FUND 010 AGENCY 03A ORG 3008 APP 01 JOB OBJT 4946 AMOUNT