

**12                    DEPARTMENT OF LABOR**

**181                  MAINE APPRENTICESHIP PROGRAM**

**Chapter 3:        RULES RELATING TO LABOR STANDARDS FOR CERTIFICATION OF  
PRE-APPRENTICESHIP TRAINING PROGRAMS**

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**SUMMARY:** These rules are adopted to establish, define, and provide for the certification and decertification of pre-apprenticeship agreements and Training Programs with the Maine Apprenticeship Program. They contain procedures for holding hearings and give the authority and the effective date.

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**Sections**

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**Section 1.1 Purpose and Scope**

- A. Title 26, Chapter 37, § 3202 authorizes and directs the Maine Apprenticeship Program to formulate and promote the labor standards necessary to safeguard the welfare of pre-apprentices by requiring the inclusion of the standards in contracts of pre-apprenticeship.
- B. The purpose of this regulation is to set forth labor standards to safeguard the welfare of pre-apprentices, by prescribing rules and regulations concerning the certification of acceptable pre-apprenticeship programs. These labor standards, rules and regulations cover the certification, termination, and decertification of pre-apprenticeship programs and of pre-apprenticeship agreements, and matters relating thereto. The Maine Apprenticeship Program shall assist the Department of Education, the State's Community Colleges, and other groups in establishing pre-apprenticeship training programs, and in developing training courses, the successful completion of which will enable a participant to meet the qualifying standards for the registered apprenticeship or apprenticeships for which the participant has expressed a serious interest. All certified pre-apprenticeship training programs are subject to approval by the Maine Apprenticeship Program.
- C. The provisions of this regulation shall apply to a person, firm, corporation, or craft only after such person, firm, corporation or craft has voluntarily elected to conform to these provisions.

**Section 1.2 Definitions**

As used in this regulation:

- A. “Bureau” means the Bureau of Employment Services within the Department.
- B. "Certification of a Pre-Apprenticeship Program" means the acceptance and recording of such program by the Maine Apprenticeship Program as meeting the basic standards and requirements of the Maine Apprenticeship Program for approval of such program. Approval is evidenced by a certificate of registration or other written indicia.
- C. "Certified Pre-Apprenticeship Training Program" means a program that has been submitted to and approved by the Maine Apprenticeship Program for certification.
- D. “Council” means the Maine Apprenticeship Council established to assist, advise, and guide the Maine Apprenticeship Program in the operation of the State’s registered apprenticeship program.
- E. “Education Provider” means an organization that provides education, either as a main or ancillary objective. This can be a public educational institution as well as a private enterprise, non-governmental organization, joint apprentice training committee or non-educational public body.
- F. “Job shadowing” is the opportunity to observe an employee performing their daily work routine in their work environment. It allows individuals to explore specific careers and to

get a realistic picture of the tasks performed for that job. This experience is observational only (no work tasks performed), is time limited, and has no expectation of pay.

- G. "On-the-job learning" means tasks learned on-the-job in which the pre-apprentice must become proficient before a completion certificate is awarded. The learning must be through structured, supervised work experience.
- H. "Pre-Apprentice" means an adult, or minor at least 16 years of age who enters into a written pre-apprenticeship agreement to receive detailed on the job instruction and/or classroom training in a pre-apprenticeable occupation in accordance with this Rule.
- I. "Pre-Apprenticeship Memorandum of Understanding" means an agreement between the Maine Apprenticeship Program and a sponsor, which may also include an education provider and/or a sponsoring employer, that defines the scope and purpose of the certified pre-apprenticeship program and communicates the mutually accepted expectations of the sponsor(s), education provider(s), and/or employer.
- J. "Pre-Apprenticeship Sponsor" means any person, association, committee, or organization operating a registered apprenticeship program and is collaborating with an education provider and/or employer in operation a certified pre-apprenticeship program.
- K. "Program" means the Maine Apprenticeship Program established in 26 M.R.S. § 3209
- L. "Registration of a Pre-Apprentice" means the acceptance and recording thereof by the Maine Apprenticeship Program as evidence of the participation of the pre-apprentice in a particular certified pre-apprenticeship program.
- M. "Related Instruction" means a systematic form of instruction in a high school, Career and Technical Education high school, Community College, or other training program designed to provide the pre-apprentice with knowledge of the theoretical and technical subjects related to his/her trade.

### **Section 1.3 Procedure for Maine Pre-Apprenticeship Program Certification**

- A. The pre-apprenticeship sponsor in collaboration with an education provider or a signatory employer shall submit the following to the Maine Apprenticeship Program:
  1. A partnership agreement that includes arrangements for facilitated entry of graduates of pre-apprenticeship training program with at least one registered apprenticeship program.
  2. A proposed Memorandum of Understanding, on a form provided by the Bureau; that outlines how each partner agrees to support the pre-apprenticeship program and details how the certified pre-apprentices will be prepared to meet/exceed the minimum qualifications and prepares applicants for success in the registered apprenticeship program.

- B. Pre-Apprentices must be individually registered under a certified program. Such registration is considered complete by filing copies of each pre-apprentice registration agreement with the Maine Apprenticeship Program and registering the pre-apprentices in electronic registration systems as required by the Maine Apprenticeship Program. If the pre-apprenticeship sponsor is involved in any abnormal labor condition such as a strike, lockout, or other similar condition, the application for a certified pre-apprenticeship program may be withheld until such issue is resolved.
- C. If it should be determined by the Maine Apprenticeship Program that a pre-apprenticeship sponsor is in violation of any Federal or State Labor laws or rules and regulations affecting registration of programs, including the Fair Labor Standards Act and Title 26, Chapter 7, the application for certification of a pre-apprenticeship program may be withheld until such issues are resolved.
- D. Certified pre-apprenticeship programs shall be accorded certification through a memorandum of understanding signed by the pre-Apprenticeship Sponsor, education provider, employer (if any) and the Maine Apprenticeship Program.
- E. Any modification(s) or change(s) to the pre-apprenticeship program shall be promptly submitted to the Maine Apprenticeship Program, and if approved, shall be recorded, and acknowledged as a revision of such program.
- F. During the period of the program, the Maine Apprenticeship Program shall terminate a pre-apprenticeship agreement at the request in writing of any party thereto.
- G. The services of the Maine Apprenticeship Program may be utilized for consultation regarding the settlement of differences arising out of pre-apprenticeship agreement and where the differences cannot be adjusted locally, or in accordance with the established trade procedure, and any such differences which cannot be amicably settled by the parties may be submitted to the Maine Apprenticeship Program for final decision.
- H. The Memorandum of Understanding will be reviewed periodically by the Maine Apprenticeship Program to evaluate whether the program is following the rules of certified pre-apprenticeship and to measure the effectiveness of the pre-apprenticeship program in preparing individuals for successful entry into registered apprenticeship programs, of the pre-apprentice's progress in job performance and the maintenance of appropriate progress records.
- I. The Maine Apprenticeship Program shall be notified within 45-days of the registration, termination, or suspension of any pre-apprenticeship agreement, with cause for same, and of pre-apprenticeship completions.

#### **Section 1.4 Eligibility and Standards for Maine Pre-Apprenticeship Program Certification**

To be eligible for certification as a pre-apprenticeship program, the pre-apprenticeship sponsor must:

- A. Meet the requirements of Sec. 12. 26 M.R.S. § 3213.

- B. Conform to the U.S. Department of Labor’s Training and Employment Notice Number 13-12 and to other standards identified by the United States Department of Labor for a quality framework for pre-apprenticeship.
- C. Comply with state and federal law regarding equal employment opportunity in apprenticeship and training. The certified pre-apprenticeship memorandums of understanding must include the following statement: [Name of pre-apprenticeship sponsor and education provider] will not discriminate against pre-apprenticeship applicants or pre-apprentices based on race, color, religion, national origin, sex (including pregnancy and gender identity), sexual orientation, genetic information, or because they are an individual with a disability or a person 40 years old or older. [Name of pre-apprenticeship sponsor and education provider] will take affirmative action to provide equal opportunity in pre-apprenticeship.
- D. Include an outreach plan to increase registered apprenticeship opportunities for underrepresented, disadvantaged, or low-skilled individuals and members of historically marginalized communities.
- E. Have a training program and curriculum based on industry standards and approved by the documented Registered Apprenticeship Program(s) and the Maine Apprenticeship Program, upon recommendation by the Maine Apprenticeship Council, that will prepare individuals with the skills and competencies needed to enter one or more registered apprenticeship program(s).
- F. Typically feature a classroom and/or lab setting, but may also involve work-site visits, job-shadowing, on-the job learning or other activities outside the classroom facility, to provide exposure to the work environment for the targeted occupation(s). The model for pre-apprenticeship training varies depending on the targeted group recruited for training.
- G. Include workplace safety training.
- H. Pre-apprentices shall be not less than sixteen years of age, with the exception of a higher age requirement which the Maine Bureau of Labor Standards has determined applicable in accordance with the federal child labor provisions of the Fair Labor Standards Act and 26 M.R.S. §§ 771-786.
- I. Limit the duration of the pre-apprenticeship program to not more than 2 calendar years.

### **Section 1.5 Criteria for Pre-Apprenticeable Occupations**

A pre-apprenticeable occupation is one which is specified by the industry and possesses all the following characteristics:

- A. Is customarily learned in a practical way through a structured systematic program of on-the-job supervised training.
- B. It is clearly identified and commonly recognized throughout an industry.

- C. It involves manual, mechanical, or technical skills and knowledge which require a minimum number of on-the-job learning hours to attain; and
- D. It requires related classroom instruction to enhance and supplement the on-the-job training.

## **Section 1.6 Pre-Apprenticeship Agreement**

A pre-apprentice must enter into a written pre-apprenticeship agreement with the certified pre-apprenticeship sponsor. The pre-apprenticeship agreement shall contain explicitly or by reference:

- A. Name and signature of the following: the pre-apprentice, certified pre-apprenticeship sponsor, the signature of a parent or guardian if the pre-apprentice is a minor, and as appropriate, the education provider
- B. The date of birth of pre-apprentice.
- C. Name and address of the pre-apprenticeship sponsor and certification agency (Maine Apprenticeship Program).
- D. A statement of the occupation(s), trade(s) or craft(s) in which the pre-apprentice is to be trained and the beginning date and term of the certified pre-apprenticeship.
- F. A statement setting forth a schedule of the work processes including on the job training and/or classroom training in the occupation(s), trade(s) or craft(s) which the pre-apprentice is to be taught and the approximate time to be spent in on the job and classroom training.
- G. As applicable, a statement of the wages to be paid the pre-apprentice.
- H. Statements providing:
  - 1. That the agreement may be terminated at the request of the pre-apprentice, or may be suspended, or terminated by the certified pre-apprenticeship sponsor, for good cause, with due notice to the pre-apprentice and a reasonable opportunity for corrective action, and with written notice to the pre-apprentice and to the Maine Apprenticeship Program of the final action taken;
  - 2. That the pre-apprentice will be accorded equal opportunity in all phases of pre-apprenticeship employment and training, without discrimination against pre-apprenticeship applicants or pre-apprentices based on race, color, religion, national origin, sex (including pregnancy and gender identity), sexual orientation, genetic information, or because they are an individual with a disability or a person 40 years old or older.
  - 3. The name and address of the appropriate authority, if any, designated under the program, to receive, process and make disposition of controversies or differences arising out of the pre-apprenticeship agreement; any such controversies and differences which cannot be amicably settled by the parties may be submitted to the Maine Apprenticeship Program for a final decision.

### **Section 1.7 Decertification of a Certified Pre-Apprenticeship Program**

The Maine Apprenticeship Program may decertify a pre-apprenticeship training program upon a finding of reasonable cause or by request of the program. Formal decertification proceedings will be conducted in accordance with the provisions of this regulation.

- A. Request by Memorandum of Agreement Signatory. The Maine Apprenticeship Program may cancel the certification of a pre-apprenticeship program by a written acknowledgment of such request stating, but not limited to, the following:
  - 1. The certification of a pre-apprenticeship training program is canceled at the request of a signatory pre-apprenticeship sponsor and/or education provider who has signed the Memorandum of Agreement, and giving the effective date of such cancellation; and
  - 2. That, within 15 workdays of the date of the acknowledgment, the certified pre-apprenticeship sponsor must notify all pre-apprentices of such cancellation and the effective date; that such cancellation automatically deprives the pre-apprentice of his/her individual registration.
- B. Decertification by the Maine Apprenticeship Program
  - 1. Decertification proceedings may be undertaken when the certified pre-apprenticeship program is not conducted, operated, or administered in accordance with the certified pre-apprenticeship Memorandum of Agreement or the requirements of Title 26 Chapter 37 or this regulation.
  - 2. Where it appears the program is not being operated in accordance with the registered standards or with requirements of Title 26 Chapter 37 or this regulation, the Maine Apprenticeship Program shall so notify the council and the parties outlined in the Memorandum of Agreement in writing.
  - 3. The notice shall be sent by registered or certified mail to the parties outlined in the Memorandum of Agreement, return receipt requested, shall state the deficiency(s) and remedy(s) required and shall state that the program will be decertified for cause unless the corrective action is taken within 30 days.
  - 4. Upon request by the certified pre-apprenticeship sponsor or education provider, the 30-day period may be extended for up to an additional 30-day period. During the period for correction the certified pre-apprenticeship sponsor and/or education provider may be assisted in every reasonable way by the Maine Apprenticeship Program.
  - 5. If the required action is not taken within the allotted time, the Maine Apprenticeship Program shall send a notice to the certified pre-apprenticeship sponsor and education provider by registered or certified mail, return receipt requested, stating the following:

- a. This notice is sent pursuant to this subsection.
  - b. That certain deficiencies were called to the pre-apprenticeship sponsor's attention and remedial actions requested.
  - c. Based upon the stated cause, the program will be decertified unless within 15 workdays of receipt of this notice, the pre-apprenticeship sponsor requests a hearing.
  - d. If a hearing is not requested by the pre-apprenticeship sponsor, the program will be automatically decertified.
6. If the certified pre-apprenticeship sponsor requests a hearing, the Maine Apprenticeship Program shall convene a hearing in accordance with Section 8 of these regulations.
7. In its discretion, the Maine Apprenticeship Program may allow the certified pre-apprenticeship sponsor a reasonable time to achieve voluntary corrective action. If the Maine Apprenticeship Programs decision is that the certified pre-apprenticeship program is not operating in accordance with the pre-apprenticeship certification requirements and the requirements of Title 26 Chapter 37 and this regulation, the certified pre-apprenticeship program shall be decertified. In each case in which decertification is ordered the Maine Apprenticeship Program shall notify the certified pre-apprenticeship sponsor.
8. Every order of decertification shall contain a provision that the pre-apprenticeship sponsor shall, within 15 workdays of the effective date of the order, notify all registered pre-apprentices of the decertification of the program, the effective date, and that such action automatically deprives the pre-apprentice of his/her individual registration.

## **Section 1.8     Hearings**

- A. The Director of the Bureau of Employment Services shall be the Presiding Officer for any hearing in accordance with this Rule.
- B. Notice of hearings to be held by the Bureau Director shall be given as follows:
  1. Within 10 working days of receipt of a request for a hearing, notice will be given by registered mail, return receipt requested, to the person or persons whose legal rights, duties or privileges are at issue, sufficiently in advance of the hearing date to afford an adequate opportunity to prepare and submit evidence and argument.
- C. All notices of Hearings shall contain the following:
  1. A statement of the legal authority and jurisdiction under which the proceeding is being conducted;



2. A reference to the particular substantive statutory and rule provisions involved;
3. A short and plain statement of the nature and purpose of the proceeding and of the matters asserted;
4. A statement of time and place of hearing;
5. A statement of manner and time within which evidence and argument may be submitted to the Bureau Director for consideration.

D. Disposition without full hearing

1. The Bureau Director may make informal disposition of any adjudicatory proceeding by default when any party fails to appear at the scheduled hearing, provided the notice of the consequences of such failure to appear has been given to said party. Any such default may be set aside by the Bureau Director for good cause shown.
2. The Bureau Director may limit the issues to be heard or vary any procedure prescribed by this rule or the Administrative Procedure Act if the parties agree to such limitation or variation, or if no prejudice to any party will result.

E. Ex Parte Communications: Separation of Functions

1. In any adjudicatory proceeding, the Bureau Director shall not communicate directly or indirectly, in connection with any issue of fact, law or procedure, with any person, except upon notice and opportunity for all parties to participate.
2. This section shall not prohibit the Bureau Director from having the aid or advice of those members of their own staff, the Council, legal counsel or consultants who have not participated and will not participate in the proceeding in an advocate capacity.

F. Opportunity to be Heard

1. The opportunity for hearing shall be afforded without undue delay.

G. Evidence

1. The Bureau Director need not observe the rules of evidence observed by the courts but shall observe the rules of privilege recognized by law.
2. Evidence shall be submitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The Bureau Director may exclude irrelevant or unduly repetitious evidence.
3. All witnesses shall be sworn.

4. Subject to these requirements, the Bureau Director may, for the purposes of expediting adjudicatory proceedings, require the prefilings of all or part of the testimony of any witness in written form. Every such witness shall be subject to oral cross examination.
5. No sworn written evidence shall be admitted unless the author is available for cross examination or subject to subpoena, except for good cause shown.

#### H. Official Notice

1. The Bureau Director may take official notice of any facts of which judicial notice could be taken, and in addition may take official notice of general, technical or scientific matters within their specialized knowledge and of statutes, regulations and nonconfidential agency records. Parties shall be notified of the material so noticed, and they shall be afforded an opportunity to contest the substance or materiality of the facts noticed.
2. Facts officially noticed shall be included and indicated as such in the record.
3. Notwithstanding the foregoing, the Bureau Director may utilize their experience, technical competency, and specialized knowledge in the evaluation of the evidence presented to them.

#### I. Record

1. In all adjudicatory proceedings the Bureau Director shall make a record consisting of the following:
  - a. All applications, pleadings, motions, preliminary and interlocutory rules and orders;
  - b. Evidence received or considered;
  - c. A statement of facts officially noticed;
  - d. Offers of proof, objections and rulings thereon;
  - e. Proposed findings and exceptions, if any;
  - f. The recommended decision, opinion or report, if any, by the presiding officer; and
  - g. The decision of the Bureau Director
2. The Bureau Director shall record all hearings in a form susceptible to transcription. Portions of the record as required and specified in subsection 1 of this rule may be included in the recording. The Bureau Director shall transcribe the recording when necessary for the prosecution of an appeal.

3. The Bureau Director shall make a copy of the record, including recordings made pursuant to subsection 2 of this rule, available at the office of the Maine Department of Labor, for inspection by any person during normal business hours; and make copies of the recordings or transcriptions or recordings available to any person at actual cost. Notwithstanding the provisions of this subsection, the Bureau Director shall withhold, obliterate, or otherwise prevent the dissemination of any portions of the record which are made confidential by State or Federal statute, but shall do so in the least restrictive manner feasible.
4. All material, including record, reports, and documents in possession of the Bureau Director, of which it desires to avail itself as evidence in decision making, shall be offered, and made part of the record and no other factual information, or evidence, shall be considered in rendering a decision.
5. Documentary evidence may be incorporated in the record by reference when materials so incorporated are made available for examination by the parties before being received in evidence.

#### J. Subpoenas

1. Pursuant to 5 M.R.S. §9060, the Bureau Director may issue a subpoena if the approval of the Attorney General or of any deputy attorney general is obtained prior to issuance. Any party to the proceeding may request that a subpoena be issued.
2. Authorized subpoenas shall be issued in accordance with the following:
  - a. The form of the subpoena shall adhere, insofar as practicable to the form used in civil cases before the courts. Witnesses shall be subpoenaed only within the territorial limits and in the same manner as witnesses in civil cases before the courts, unless another territory or manner is provided by law.
  - b. The subpoena shall show on its face the name and address of the party at whose request it was issued.
  - c. Any witness subpoenaed may petition the Bureau Director to vacate or modify a subpoena in its name. The Bureau Director shall give prompt notice to the party who requested issuance of the subpoena.

After such investigation as the agency considers appropriate, it may grant the petition in whole or in part upon a finding that the testimony or the evidence whose production is required does not relate with reasonable directness to any matter in question, or that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive or has not been issued a reasonable period in advance of the time when the evidence is requested.

- d. Pursuant to 5 MRSA Section 9060(1)(D) failure to comply with a subpoena lawfully issued and not revoked or modified shall be punishable by a fine of

not less than \$500 and not more than \$5,000 or by imprisonment not to exceed 30 days, or both.

**K. Decisions**

1. Every decision made at the conclusion of an adjudicatory proceeding shall be in writing or stated in the record and shall include findings of fact sufficient to apprise the parties and any interested member of the public of the basis for the decision. A copy of the decision shall be delivered or promptly mailed to each party to the proceeding or his representative of record. Written notice of the party's rights to review or appeal of the decision within the agency or review of the decision by the courts, as the case may be, and of the action required and the time within which such action must be taken in order to exercise the right of review or appeal, shall be given to each party with the decision.

**Section 1.9 Advisory Rulings**

- A. Advisory rulings may be made with respect to the applicability of any statute or rule administered by the Maine Apprenticeship Program to an interested person or their property or actual state of facts.
- B. An interested person means any pre-apprentice or certified pre-apprenticeship sponsor over whom the Maine Apprenticeship Program has authority to inspect and enforce its safety standards.
- C. All requests for advisory rulings shall be made in writing and submitted to the Director of Apprenticeship, Bureau of Employment Services, State House Station #55, Augusta, ME 04333-0055. Such requests shall state the facts and statutes or rules on which the ruling is requested.
- D. The Director of Apprenticeship may request from any person seeking an advisory ruling any additional information that is necessary. Failure to supply such additional information shall be cause for the Director of Apprenticeship to decline to issue an advisory ruling.
- E. The Director of Apprenticeship may decline to issue an advisory ruling if a citation or penalty has been issued against the person requesting the ruling on the same factual grounds. The Director of Apprenticeship may also decline to issue an advisory ruling if such ruling may harm the Bureau of Employment Services or the Department of Labor's interest in any litigation in which it is or may be a party.
- F. All advisory rulings shall be issued, in writing no later than 30 days from the date all information necessary to make a ruling has been received by the Director of Apprenticeship.
- G. No advisory ruling shall be binding upon the Director of Apprenticeship, Bureau Director or the Maine Department of Labor provided that in any subsequent enforcement action initiated by the Director of Apprenticeship, any person's reliance on such a ruling shall be considered in mitigation of any penalty sought to be assessed.

**Section 1.10 Reinstatement of Program Certification**

Any certified pre-apprenticeship program decertified pursuant to Chapter 37 and this regulation, may be reinstated upon presentation of adequate evidence that the pre-apprenticeship program is operating in accordance with Chapter 37 and this regulation. Such evidence shall be presented to the Maine Apprenticeship Program, if an order of deregistration was entered pursuant to a hearing.

**Section 1.11 Complaints**

- A. This section is not applicable to any complaint concerning discrimination or other equal opportunity matters; all such complaints shall be submitted, processed, and resolved in accordance with State or Federal Equal Opportunity Laws.
- B. Any controversy or differences arising under a pre-apprenticeship agreement which cannot be resolved locally, or which is not covered by a collective bargaining agreement, may be submitted by a pre-apprentice or his/her authorized representative to the Director of Apprenticeship for review. Matters covered by a collective bargaining agreement are not subject to such review.
- C. The complaint, in writing, and signed by the complainant, or authorized representative, shall be submitted within 60 days of the final local decision. It shall set forth the specific matter(s) complained of, together with all relevant facts and circumstances. Copies of all pertinent documents and correspondence shall accompany the complaint.
- D. The Director of Apprenticeship shall render an opinion within 90 days after receipt of the complaint, based upon such investigation of the matters submitted as may be found necessary, and the record before it. During the 90-day period, the Maine Apprenticeship Program shall make reasonable efforts to affect a satisfactory resolution between the parties involved. If so resolved, the parties shall be notified that the case is closed. Where a decision is rendered, copies of the decision shall be sent to all interested parties which shall be final.

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STATUTORY AUTHORITY: 26 MRSA §2006

EFFECTIVE DATE:

October 19, 1992

CONVERTED TO MS WORD:

July 9, 2003

AMENDED:

August 1, 2007 – filing 2007-315