The Department of Health and Human Services (Department) held a public hearing on May 22, 2018, to accept comments on proposed changes to 10-144 CMR Chapter 201, Administration and Enforcement of Establishments Regulated by the Health Inspection Program, at the Maine CDC, 286 Water Street in Augusta, Maine. This hearing was advertised in five major newspapers, the Secretary of State’s Webpage and the Maine CDC’s Rule Webpage on May 2, 2018. Written comments were accepted from May 2, 2018 through June 1, 2018, (the comment deadline). Comments were received from the following people:

**TABLE OF COMMENTERS**

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<th>ID #</th>
<th>First Name</th>
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<td>Maine Youth Camp Association</td>
<td>Oral &amp; Written</td>
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<td>2</td>
<td>Ron</td>
<td>Hall</td>
<td>5-22-2018</td>
<td>Maine Summer Camps</td>
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<td>Chad</td>
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<td>5-22-2018</td>
<td>Maine Association for Safe Tattooing</td>
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<td>4</td>
<td>Mark</td>
<td>Richards III</td>
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<td>6</td>
<td>Shawn</td>
<td>Horton II</td>
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<td>Three Graces Tattoo</td>
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<td>8</td>
<td>Chris</td>
<td>Dingwell</td>
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<td>Squirrel Cage Studio</td>
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<td>9</td>
<td>Kelly</td>
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<td>6-1-2018</td>
<td>Maine Association for Safe Tattooing</td>
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Commenters 1 - 8 presented oral comments, which was captured in written comments, listed below. The Department’s response follows each comment and explains whether the suggestions (if any) were followed by the Department. If the Department made no change in response to the comment, then an explanation of the reasons why no changes were made also is provided below. The summary list of changes following these comments identify new changes resulting from either public comment or Assistant Attorney General review of the rule for form and legality.

**GENERAL COMMENTS**

1. **Comment:** Commenters 3, 4, 5, 6, 7, 8 and 9 stated that many of the current laws and rules that pertain to tattoo artists are obsolete and outdated. The commenters would like an opportunity to work collaboratively with the State to inform the State and to explain the work of tattoo artists and how the rules would benefit from being updated.

   **Response:** The definitions for body artist and guest body artist, and the licensing fees relating to body artists, remain. The Department plans to update all of the body artist rules in the near future and will welcome input from body artists during this process. Most provisions regarding the body artists were removed due to inconsistencies with the Code of Maine Rules’ chapters currently in effect for these professions, and with the statutes controlling these professions.

**SECTION 1. DEFINITIONS**

2. **Comment:** Commenters 3, 4, 5, 6, 7, 8 and 9 requested more clarification for “Guest Body Artist.” The commenters asked how the Guest Body Artist license would be issued. Would the license issued be based on an
inspection of the studio, or would it be automatic? The commenters asked if the Department would accept another state’s body artist license. The commenters recommended streamlining the process, due to the fact that obtaining a guest artist license could be tricky, given the limited number of State inspectors and the limited amount of time the guest artist would have to work in the State of Maine.

Response: Please see the Department’s response to Comment #1.

3. Comment: Commenter 1 stated that the definition of “lodging place” should be revised to be consistent with the definition in current statute, 22 MRS § 2491(7-F). The commenter stated that youth camps are separately licensed, regulated and inspected from other facilities such as lodging places. Included in the statute’s definition is a provision that excludes youth camps from being classified as a lodging place. The proposed rule makes no such provision in its definition, and the commenter recommended a change to reflect the statutory definition.

Response: The Department agrees with the commenter that the definition in both the rule and statute should be consistent. Therefore, the Department updated the lodging place definition in Section 1(A), to add the provision that youth camps are excluded from being classified as a lodging place.

SECTION 3. DELEGATION OF INSPECTION DUTIES TO MUNICIPALITIES

4. Comment: Commenters 3, 4, 5, 6, 7, 8 and 9 stated that municipal inspections need further clarification, as it relates to the inspection of tattoo artists. The commenters asked if the inspections would be delegated to the town where the studios exist, if municipal inspectors’ level of experience would be appropriate to inspect tattoo studios, and if the municipal inspectors would be in charge of administering fines. Commenter 3 stated that he would like to work with the State to help develop a training which would assist newly assigned municipal inspectors.

Response: Please see the Department’s response to Comment #1.

SECTION 4. APPLICATION AND LICENSING

5. Comment: Commenters 3, 4, 5, 6, 7, 8 and 9 expressed concerns about the adequacy of the bloodborne pathogen training, specifically as it pertains to tattoo artists. These commenters stated that they would welcome the opportunity to work with the State to develop a bloodborne pathogen training that is more relevant to tattoo artists. The commenters added that the current training is not pertinent to the work settings of tattoo artists and that a more specific training needs to be in place.

Response: Please see the Department’s response to Comment #1.

SECTION 5. FEE SCHEDULE

6. Comment: Commenter 1 discussed the fee schedule for youth camps, stating that the Department raised three of the licensing fees for youth camps, despite the Department’s statement that fees were not raised. Commenter 1 stated that the following license fees were increased: (1) Youth Camp-Resident: less than 100 campers (from $185.00 to $190.00); (2) Youth Camp-Resident: 100-200 Campers (from $215.00 to $225.00); and (3) Youth Camp-Resident: More than 200 (from $275.00 to $285.00). The commenter stated that he understands that costs rise and that the amount of the increases were not a concern. It was his understanding, however, that there no licensing fee increases in this rulemaking.

Response: As a result of this comment, the Department examined Section 5 of the current rule, as well as the proposed changes, and confirmed that no licensing fee increases occurred. Youth camp fees are proposed to remain the same as Section 5’s license fee Table 1(B) for Fiscal Year 2014 (July 1, 2013 - June 30, 2014), and remain $190.00, $225.00 and $285.00, respectively. The commenter may have been referring to the fee schedule from Table 1(A) for Fiscal Year 2013 (July 1, 2012 - June 30, 2013), which is no longer pertinent and is being deleted in this rulemaking. No changes were made to this rule as a result of this comment.
7. **Comment:** Commenters 1 and 2 expressed concern about the new license, Food Service at Youth Camps (Eating and Catering). The commenters stated that the cost of the new license ($275.00), combined with youth camp license fees, would make the overall licensing costs higher than any other fee schedule in the proposed rule, which would be especially unfair for smaller camps that would have to bear the burden of paying this fee, plus the standard youth camp fee. The commenters recommended a graduated fee based on the number of campers. The commenters questioned whether this proposed fee was meant to be charged in addition to other license types for youth camps, or if was meant to be in lieu of other fees. The commenters stated that many camps do not cater.

**Response:** The fees for each youth camp category remain unchanged in the proposed rule, as listed in the fee table. Combination licenses refer to those that are listed specifically under “Combination Licenses” in the fee table. The Food Service at a Youth Camp (Eating & Catering), is added as a license for a contracted food service company that only provides the food service at the youth camp. Therefore, these catering food service companies would be responsible for paying this fee, and not the youth camp. This license category was created for those youth camps that contract out the food service. The standard youth camp license in Maine includes a food inspection, unless food services are contract out. No changes were made to this rule based on this comment.

**SECTION 8. ADMINISTRATIVE PENALTIES**

8. **Comment:** Commenters 3, 4, 5, 6, 7, 8 and 9 requested clarification about fines. The commenters stated that the fines were open to a wide spectrum of amounts, up to $500.00 for “All Other Violations “with regard to tattoo artist fines. The commenters asked if there would be a grace period to make corrections before fines go into effect.

**Response:** Please see the Department’s response to Comment #1.

**SUMMARY OF CHANGES RESULTING FROM PUBLIC COMMENTS & AAG REVIEW FOR FORM AND LEGALITY:**

*Note: Items in italics are changes made in response to public comments. Additional changes were made to keep consistency with current law (statutes and other rules), address limitations in authority, and achieve clarity based on AAG review.*

1. **Title Page:** Updated the title of the rule by removing “and Body Artists” and “Department” so that the rule title is “Administration and Enforcement of Establishments Regulated by the Health Inspection Program”.
2. **Summary Statement:** Added references to public pools, spas, camps and campgrounds. Removed body artists from the summary statement. References to body artists were removed from the rule, except for the definition for body artist, the definition of guest body artist, and the licensing fees associated with body artists.
3. **Section 1(A):** Added “public pools and public spas”.
4. **Section 1(A):** Updated the definition of “bed and breakfast” to include that breakfast is a morning meal being served by the owner or the owner’s designee. Much of the language was restored from the definition already in effect from the previous rule, with an additional sentence that stated, “This definition contains further clarification of the Maine Food Code for the purposes of this rule.”
5. **Section 1(A):** Removed the definition of “bloodborne pathogen certificate”.
6. **Section 1(A):** Removed the definition of “personally served food Colin.”
7. **Section 1(A):** Updated the definition of “campground” to match the definition in statute.
8. **Section 1(A):** Changed the definition of “catering” which included adding to the definition of catering: “Catering does not include persons hired as personal chefs to prepare at-home meals in private households. Personal chefs are not licensed by the Department.”
9. **Section 1(A):** Updated the definition of “certified pool operating certificate” by removing the criteria for meeting the standards and instead directly referenced Rules Relating to Public Pools and Spas (10-144 CMR Ch. 202).
10. **Section 1(A):** Removed the definition of “chain restaurant”.


11. Section 1(A): Removed from the definition of critical violation, criteria and examples that may be a critical violation and instead added to the definition, references to the Maine Food Code, (10-144 C.M.R. Ch. 200), the Rules Relating to Lodging Establishments (10-144 C.M.R. Ch. 206), the Rules Relating to Youth Camps, Primitive, and Trip Camping (10-144 C.M.R. Ch. 208), and the Rules Relating to Public Pools and Spas (10-144 C.M.R. Ch. 202).

12. Section 1(A): Added to the definition of eating establishment or eating place, “This definition is based on a new statutory definition at 22 M.R.S. §2491(7) effective August 1, 2018. This statutory change supersedes the definition in the Maine Food Code.”

13. Section 1(A): Removed the definition of “electrologist”.

14. Section 1(A): Added to the definition of employee, “This definition contains further clarification of the Maine Food Code for the purposes of this rule.”

15. Section 1(A): Added to the definition of food, “This definition contains further clarification of the Maine Food Code for the purposes of this rule.”

16. Section 1(A): Added to the definition of food contact services, “This definition contains further clarification of the Maine Food Code for the purposes of this rule.”

17. Section 1(A): Removed the definition of “food security”.

18. Section 1(A): Added to the definition of guest body artist, “must comply with relevant health and safety standards contained in Rules Relating to Body Piercing, Rules Relating to Tattooing, Rules Relating to Micropigmentation and/or the Rules for the Practice of Electrology, at 10-144 C.M.R. Ch 209 – 212.”

19. Section 1(A): Added to the definition of hazard analysis critical control point (HACCP), “This definition contains further clarification of the Maine Food Code for the purposes of this rule.”

20. Section 1(A): Added to the definition of HACCP plan, “This definition contains further clarification of the Maine Food Code for the purposes of this rule.”

21. Section 1(A): Added to the definition of health inspector, “This definition contains further clarification of the Maine Food Code for the purposes of this rule.”

22. Section 1(A): Amended the definition of hermetically sealed container to include, “in the case of low acid canned foods”.

23. Section 1(A): Removed the definition of “hold tag”. The Department is removing references to hold orders and hold tags from this rule, due to its existing authority for the use of hold tags under the Maine Food Code (10-144 C.M.R. Ch. 200).

24. Section 1(A): Added “extended” back to the definition of imminent health hazard and added conditions to the list of examples of imminent health hazards. In addition, added, “This definition contains further clarification of the Maine Food Code at 10-144 C.M.R. Ch. 200, §1-201.10 (B)(61) for the purposes of this rule.”

25. Section 1(A): Added to the definition of inspection, “Health Inspection Program”.

26. Section 1(A): Added to the definition of lodging place, “This definition contains further clarification of the Maine Rules Relating to Lodging Places for the purposes of this rule.”

27. Section 1(A): In response to Commenter 1’s comment, the definition of “Lodging Place” was clarified by the Department to exclude “Youth Camps.”

28. Section 1(A): Removed the definition of “micropigmentation”.

29. Section 1(A): Added to the definition of packaged, “Packaged does not include a wrapper, carry-out box, or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer. “This definition contains further clarification of the Maine Food Code for the purposes of this rule.”

30. Section 1(A): Amended the definition of person to include an association, corporation, government or governmental subdivision or agency.

31. Section 1(A): Removed the definition of “personal chef” and added that catering does not include personal chefs in the catering definition.

32. Section 1(A): Added to the definition of person in charge, “This definition contains further clarification of the Maine Food Code for the purposes of this rule.”

33. Section 1(A): Clarified the definition of potentially hazardous foods by adding a more specific reference to the Maine Food Code.

34. Section 1(A): Removed the definition of “potentially tainted foods.”
35. Section 1(A): Added to the definition of public pool, “This definition contains further details on the classifications of public pools in the Rules Relating to Public Pools and Spas at 10-144 C.M.R. Ch. 202, §1(B)(13).”
36. Section 1(A): Clarified the definition of recreational vehicle (RV) park, by adding a more specific reference to the Rules Relating to Campgrounds (10-144 CMR Ch. 205).
37. Section 1(A): Amended the definition of reduced oxygen packaging (ROP), by including a reference to the Maine Food Code (10-144 C.M.R. Ch. 200).
38. Section 1(A): Added to the definition of servicing area, “This definition contains further clarification of the Maine Food Code for the purposes of this rule.”
39. Section 1(A): Added to the definition of single-service articles, “This definition contains further clarification of the Maine Food Code for the purposes of this rule.”
40. Section 1(A): Removed the definition of “tattoo artist”.
41. Section 1(A): Added to the definition of vending machine, “This definition contains further clarification of the Maine Food Code for the purposes of this rule.”
42. Section 1(A): Added to the definition of youth camp, “This definition contains further clarification of the definition of youth camp in the Rules Relating to Youth Camps, Primitive and Trip Camping at 10-144 C.M.R. Ch. 208, §1(H).”
43. Section 2(C)(2): Changed “adopted” to “used”.
44. Section 2(C)(4): Added, “This requirement for submission of a valid CFPM certificate at the time of application is in addition to all other CFPM requirements in the Maine Food Code at 10-144 C.M.R. Ch. 200, §2.”
45. Section 3(C)(5): The Department updated the second sentence of this section from “Failure of an establishment to operate without the necessary State of Maine Licensure,” to read, “An establishment operating without the necessary State of Maine Licensure…”
46. Section: 3(C)(11): The Department corrected a typographical error in the statutory reference, and changed it from “22 MRS §43(5)” to as described in 22 MRS §42(5).
47. Section 4(B): Added to the requirements of a complete applications references to the Maine Food Code, Rules Relating to Campgrounds and Rules Relating to Public Pools and spas. Removed from this section all references to body artists.
48. Section 4(B)(3): Reworded this section for clarity. It now reads, “Include a water test report, if the establishment has its own well or source and does not meet the Drinking Water Program requirements to be a regulated Public Water System (PWS). If the establishment pays a water bill and receives its water from a municipality or water district, or has a PWS ID#, then a water test report is not required as part of the application.
49. Section 4(B)(5): Added specific information needs to be included in an application “at least 30 calendar days prior to opening” to match the requirements in the Maine Food Code (10-144 C.M.R. Ch. 200, §8-302).
50. Section 4(E)(2)(a): Updated the grammar in the event camping license section, however, the criteria required for an event camping license remains the same as proposed.
51. Section 4(E)(2)(b): Added that event camping license requirements are the same requirements for the temporary campground license within the Rules Relating to Campgrounds at 10-144 C.M.R. Ch. 205 §10.
52. Section 4(E)(2)(c): Added “This supersedes the requirement within the Rules Relating to Campgrounds at 10-144 C.M.R. Ch. 205, §10(E).”
53. Section 4(E)(3): Removed the reference to body artists and added, “The Department will assure that medically identifiable information is removed from inspection reports, in accordance with 22 M.R.S. §42(5).”
54. Section 4(E)(4): Added a reference to 22 M.R.S Ch. 562.
55. Section 4(E)(6): Removed references to body artists. Changed the reference for 10-144 CMR, Ch. 231 from “Rules Relating to Drinking Water” to “Drinking Water Rule” in anticipation of an upcoming rulemaking in which the title of the rule will be updated.
56. Section 4(F): Changed citation to 5 M.R.S. Ch. 375 instead of Title 22.
57. Section 5: Removed Table 3 as this table can be found in the Rules Relating to the Sale and Delivery of Tobacco Products in Maine (10-144 C.M.R. Ch. 203).
58. Section 6(A) and 6(B): Added a reference to 22 M.R.S. §2667.
59. Section 6(F)(4): Removed the subsection regarding hold orders.
60. Section 6(F)(5) was removed.
61. Section 6(F)(6): Added a reference to the Maine Food Code.
62. Section 7(A): Added public pools and spas.
63. Section 7(B): Added a reference to 22 M.R.S. §2498.
64. Section 8(G): Removed the subsection, “penalty schedule for body artists”.
65. Section 9(B): Removed the subsection, “suspension/revocation/refusal of license for micropigmentation or electrology”.