

**EMERGENCY RULE REGARDING THE IMPOSITION OF EXCISE TAXES ON SALES, PURCHASES AND TRANSFERS OF ADULT USE MARIJUANA**

18-691 C.M.R., Chapter 3

**Department of Administrative and Financial Services**

Emergency Major Substantive Rules Effective Date: August 20, 2020

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# General

This Rule establishes the method for calculating the weight of marijuana flower, marijuana trim and mature marijuana plants subject to excise taxes pursuant to Title 28-B, ch. 1 and Title 36, ch. 723. The activities described in this Rule may be considered a violation of federal law. Persons cultivating adult use marijuana may be subject to federal sanctions for what may otherwise be considered authorized conduct in the State of Maine, and compliance with this Rule does not exempt licensees, their employees or customers from possible federal prosecution. The Department is not responsible or liable for the actions of licensed cultivation facilities under this Rule.

# Section 1 – Administration of Adult Use Marijuana Excise Taxes Authorized

## Section 1.1 – Statutory Authority

The Department of Administrative and Financial Services (referred heretofore as the Department) has developed the following Rule in accordance with the statutory authority provided in Title 28-B, §§ 104 and 501(6). This Rule applies to certain excise taxes imposed by weight pursuant 36 MRS §4923 on sales, purchases and transfers of adult use marijuana by or to adult use marijuana cultivation facility licensees. Finally, this Rule is intended to augment, not replace, any relevant provisions of the *Adult Use Marijuana Program Rule* 18-691 CMR, ch. 1 or any applicable statutes.

## Section 1.2 – Department Authority

The Department may enforce this Rule and any relevant provisions of Maine Revised Statutes Titles 4, 5, 28-B and 36, and any other statutes, laws, executive orders or subsequently enacted legislation. As applicable, the Department may delegate authority to appropriate state and local agencies. The Department, or an agent thereof, shall have the authority to inspect, during operating hours, times of apparent activity or other reasonable time, any marijuana establishment, vehicles used to transport marijuana or marijuana products, or business records.

## Section 1.3 – Communication with the Department

All communication between licensees and the Office of Marijuana Policy shall be done in accordance with Section 1.3 of 18-691 Code of Maine Rules (CMR), ch. 1, *Adult Use Marijuana Program Rule.*

## Section 1.4 – Definitions

1. **Cultivation facility licensee**: "Cultivation facility licensee" means a person who holds an active license pursuant to 18-691 CMR, ch. 1 for cultivation facility.
2. **Department**: “Department” means the Department of Administrative and Financial Services, which includes Maine Revenue Services and the Office of Marijuana Policy.
3. **Maine Revenue Services:** “Maine Revenue Services” means the Department of Administrative and Financial Services, Maine Revenue Services.
4. **Marijuana**: “Marijuana” means the leaves, stems, flowers and seeds of a marijuana plant, whether growing or not. “Marijuana” includes marijuana concentrate, except where context indicates otherwise, but it does not include a marijuana product or “hemp” as defined in 7 MRS §2231, or a marijuana product.
5. **Mature marijuana plant**: “Mature marijuana plant" means a “mature marijuana plant” as defined at 28-B MRS §102(36), except that under 36 MRS §4923 and 28-B MRS §§ 102(1) and (27), “mature marijuana plant” does not include the central stalk, roots or growing medium.
6. **Marijuana trim**: “Marijuana trim” means “marijuana trim” as defined in 28-B MRS §102(35), except that under 36 MRS §4923 and 28-B MRS §§ 102(1) and (27), “marijuana trim” does not include the central stalk or roots of the plant.
7. **Office of Marijuana Policy:** “Office of Marijuana Policy” means the Department of Administrative and Financial Services, Office of Marijuana Policy.
8. **Registered caregiver**: "Registered caregiver" means a caregiver who is registered by the Office of Marijuana Policy pursuant to 22 MRS §2425-A.
9. **Registered dispensary**: "Registered dispensary" means an entity registered by the Office of Marijuana Policy pursuant to 22 MRS §2425-A that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana or related supplies and educational materials to qualifying patients and the caregivers of those patients.
10. **Wet marijuana flower:** “Wet marijuana flower” means marijuana flower as defined in 28-B MRS §102(31) that is not dried, cured or otherwise prepared in any manner to reduce or eliminate any water weight (e.g., “fresh frozen” marijuana flower) and that is weighed within two hours of harvesting.
11. **Wet mature marijuana plant:** “Wet mature marijuana plant” means a mature marijuana plant as defined in Section 1.4(5) above that is not dried, cured or otherwise prepared in any manner to reduce or eliminate any water weight and that is weighed within two hours of harvesting.
12. **Wet marijuana trim:** “Wet marijuana trim” means marijuana trim as defined in Section 1.4(6) above that is not dried, cured or otherwise prepared in any manner to reduce or eliminate any water weight (e.g., “fresh frozen” marijuana trim) and that is weighed within two hours of harvesting.

# Section 2 – Imposition of Excise Tax on Sales, Purchases and Transfers of Adult Use Marijuana Flower, Trim and Mature Marijuana Plants

## Section 2.1 – Excise Tax Required

Pursuant to 28-B MRS §501, a cultivation facility licensee must register with, and ensure that all excise taxes required by Title 36, ch. 723 are paid to the State Tax Assessor. A cultivation facility licensee must pay all required excise taxes on any sale or transfer of marijuana flower, marijuana trim, marijuana plants, marijuana seedlings and marijuana seeds to another licensee. In addition, a cultivation facility licensee purchasing marijuana plants and/or marijuana seeds from a registered caregiver or registered dispensary in accordance with 28-B MRS §501(6) must pay to the State Tax Assessor the excise taxes that would have been imposed on the sale of marijuana plants and/or marijuana seeds if the marijuana plants and seeds had been sold by a cultivation facility licensee to another licensee.

## Section 2.2 – Calculation of Excise Tax on Marijuana Flower, Marijuana Trim and Mature Marijuana Plants

**2.2.1 Calculation of Excise Tax on Wet Marijuana Flower and Wet Marijuana Trim.**

1. A cultivation facility licensee that transfers wet marijuana flower and/or wet marijuana trim must record the actual weight of the wet marijuana flower and/or wet marijuana trim in the Department’s inventory tracking system.
2. When calculating the excise tax due on the sale or transfer of wet marijuana flower or wet marijuana trim, the cultivation facility licensee shall calculate the weight of wet marijuana flower or wet marijuana trim by reducing the weight of the wet marijuana flower or wet marijuana trim by 75% to account for water weight.
3. A cultivation facility licensee must timely remit to the State Tax Assessor excise taxes on wet marijuana flower and wet marijuana trim in accordance with Title 36, ch. 723. When calculating the excise tax due on the sale or transfer of wet marijuana flower or wet marijuana trim, “per pound or fraction thereof” means the weight of the wet marijuana flower or wet marijuana trim after it has been adjusted to account for water weight in accordance with Paragraph B above.
4. When calculating the excise tax due on the sale or transfer of marijuana flower or marijuana trim that is not wet marijuana flower or wet marijuana trim, “per pound or fraction thereof” means the actual weight of the marijuana flower or marijuana trim at the time of transfer to another licensee.
5. Any marijuana flower and marijuana trim, whether wet or not, that is not separated into marijuana flower and marijuana trim at the time of sale or transfer shall be taxed entirely at the excise tax rate for marijuana flower, with weight of combined wet marijuana flower and wet marijuana trim being adjusted for water weight in accordance with this section.

**2.2.2 Calculation of Excise Tax on Mature Marijuana Plants Purchased from Registered Caregivers and Registered Dispensaries Pursuant to 28-B MRS §501(6).**

1. A cultivation facility licensee that purchases mature marijuana plants from a registered caregiver or registered dispensary in accordance with 28-B MRS §501(6) must timely record every plant so purchased in the Department’s inventory tracking system.
2. When calculating the excise tax due on every mature marijuana plant purchased from a registered caregiver or registered dispensary in accordance with 28-B MRS §501(6), the cultivation facility licensee shall calculate the weight of a wet mature marijuana plant by reducing the weight of the wet mature marijuana plant by 75% to account for water weight.
3. A cultivation facility licensee must timely remit to the State Tax Assessor excise taxes on wet mature marijuana plants in accordance with Title 36, ch. 723. When calculating the excise tax due on wet mature marijuana plants, “per pound or fraction thereof” means the weight of the wet mature marijuana plant after it has been adjusted to account for water weight in accordance with Paragraph B above.
4. A cultivation facility licensee purchasing mature marijuana plants in a transfer pursuant to 28-B MRS §501(6) from a registered caregiver or registered dispensary must remit excise taxes to the State Tax Assessor in accordance with Title 36, ch. 723 based on the per plant weight calculation described in this Section. Marijuana plants or seeds, including mature marijuana plants, purchased by a cultivation facility licensee pursuant to 28-B MRS §501(6) become adult use marijuana upon purchase by the cultivation facility licensee.
5. A cultivation facility licensee must also remit required excise taxes to the State Tax Assessor in accordance with Title 36, ch. 723, on all adult use marijuana sold by or transferred from the cultivation facility licensee to another licensee. This provision applies to all marijuana sold by or transferred from a cultivation facility licensee to another licensee even if the marijuana was subject to excise taxes upon purchase by the cultivation facility licensee in accordance with Paragraph D above. Any sale or transfer of marijuana from a cultivation facility licensee to another licensee is subject to excise tax, including those transfers between licensees owned by the same person.

STATUTORY AUTHORITY:

28-B MRS ch.1 §§ 104, 501

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