

Rulemaking Fact Sheet

(5 MRS §8057-A)

AGENCY: 90-699 Maine Retirement Savings Board

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

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CHAPTER NUMBER AND RULE TITLE: 101- Maine Retirement Saving Program

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

STATUTORY AUTHORITY: 5 MRS §174

DATE, TIME AND PLACE OF PUBLIC HEARING:

September 20, 2023, 1:15
Burton Cross State Office Building, Room 300
111 Sewall Street
Augusta, Maine and virtually on Microsoft Teams

COMMENT DEADLINE: October 2, 2023 at 5:00 PM

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

The statute requires the Board to adopt rules establishing the operation of the Maine Retirement Savings Program.

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)]

The rule establishes the procedures that Covered Employers must follow to comply with the underlying legislation, including an Appeal process. It also establishes the information required for Program Account Holders. It is expected to provide operational guidance for the Program.

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]

In developing the rule we considered the operations of similar programs in other states and professional judgement.

ESTIMATED FISCAL IMPACT OF THE RULE: [see §8057-A(1)(C)]

The rule is not expected to have a fiscal impact.

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)]

Note: If necessary, additional pages may be used.

Chapter 101: MAINE RETIREMENT SAVINGS PROGRAM

Summary: The Maine Retirement Savings Program, is established to automatically establish an Individual Retirement Account for Maine employees who do not otherwise have access to a retirement savings plan through their employer. This rule establishes the procedures and requirements for Covered Employers to register with the Program, as well as the establishment of and investment in such accounts for Covered Employees and individual participants in the Program.

1. DEFINITIONS

The following terms, some of which are defined in the 5 MRSA §171 *et seq.* (the “Act” shall have the following meanings in this rule.

A. Acceptable Submission Method. “Acceptable Submission Method” means one or more modes of document submission detailed on the Program website.

B. Account. “Account” means, individually or collectively as the context may require, each Roth IRA and Traditional IRA that has been established under the Program.

C. Account Holder. “Account Holder” means an individual for whom an Account is held under the Program. Account Holders include Onboarded Employees after the Opt-Out Period, Voluntary Participants for whom an Account is established, or a Beneficiary.

D. Act. “Act” means PL 2021, Chapter 356, 5 MRSA §171 to §179, as amended.

E. Automatic Escalation. “Automatic Escalation” means an additional 1% annual increase in an Employed Account Holder’s Contributions at the beginning of each subsequent calendar year following the Employed Account Holder’s Onboarding.

F. Beneficiary. “Beneficiary” means the individual(s), person(s), or entity(ies) entitled to receive the proceeds of an Account upon the death of an Account Holder.

G. Board. “Board” means the Maine Retirement Savings Program Board established by 5 MRSA §172.

H. Capital Preservation Investment. “Capital Preservation Investment” means a Money Market account included as an investment option in the Program selected by the Board.

I. Client Company. “Client Company” means a client company as defined in 32 MRSA §4051(1).

J. “Code” means the Internal Revenue Code of 1986, as amended, and any U.S. Department

of Treasury regulations, rulings, announcements or other guidance issued thereunder.

K. Confirmation Notice. "Confirmation Notice" means a document sent by the Program Administrator to Covered Employees to notify them that they have been enrolled in the Program..

L. Covered Employee. "Covered Employee" means an individual who is 18 years of age or older who is employed by a Covered Employer and who has Wages that are allocable to the State during a calendar year. A Covered Employee may include a person who is employed full-time, part-time or per diem. A Covered Employee does not include employees excepted by 5 MRSA §171.2, A-C. A Covered Employee may alternatively be referred to as an Employee herein.

M. Covered Employer. "Covered Employer" means a person or entity engaged in a business, industry, profession, trade or other enterprise in the State, whether for profit or not for profit, that has not offered to its employees, effective in form or operation at any time within the current calendar year or 2 preceding calendar years, a specified tax-favored retirement plan. A Covered Employer does not include:

- 1) The Federal Government, the State or any other state, any county or municipal corporation or any of the State's or any other state's units or instrumentalities; or
- 2) An employer that has not been in business during both the current calendar year and the preceding calendar year; or
- 3) An employer that has fewer than five Covered Employees as of the date the Covered Employer provides an Exemption Certification or Onboards with the Program.

A Covered Employer may alternatively be referred to as an Employer herein.

M. Custom Contribution Rate. "Custom Contribution Rate" means any available Contribution Rate chosen by the Account Holder.

O. Custom Investment. "Custom Investment" means any of the asset classes chosen by the Board other than the Default Investment Option.

P. Default Contribution Rate. "Default Contribution Rate" means five percent of Employed Account Holder's Wages.

Q. Default Investment Option. "Default Investment Option" means the Target Date fund chosen by the Board, which correlates to the Account Holder's Retirement Age.

R. Employed Account Holder. "Employed Account Holder" means an Account Holder who is currently employed with a Remitting Employer and who is actively participating in the Program as a Covered Employee.

S. Employee Leasing Company. "Employee Leasing Company" means a business entity that provides workers by contract and for a fee to work for a client and is licensed as an Employee Leasing Company by the Maine Bureau of Consumer Protection.

T. Exempt. "Exempt" means not required to Onboard or Participate in the Program.

U. Exemption Certification. "Exemption Certification" means the certification by a business

entity to the Program online through the Program website affirming that said entity does not meet the definition of Covered Employer and therefore is neither required to Onboard nor be a Remitting Employer in the Program.

V. FEIN. “FEIN” means Federal Employment Identification Number provided by the IRS.

W. Form 5500 Filing. “Form 5500 Filing” means the Annual Return/Report of Employee Benefit Plan that is required to be filed for certain employee benefit plans under sections 104 and 4065 of the Employee Retirement Security Act of 1974, as amended (“ERISA”) and sections 6057(b) and 6058(a) of the Code.

X. Hold and Sweep Period. “Hold and Sweep Period” means the 30-day period after the Opt-Out Period, during which time Contributions are held in a Capital Preservation Investment on behalf of Participating Employees.

Y. In Business. “In Business” means being in operation as a business existing as of the earliest of the following to occur of: (1) the date that the entity submitted the IRS Form SS-4; or (2) the date as of which the Maine Secretary of State recorded the business formation or issued the Authority to do Business document; or (3) the issue date of the Maine Sales Tax Identification Number; or (4) the last date of the month and year in which the business registered with the Maine Department of Labor Unemployment Division.

Z. IRA. “IRA” means, individually or collectively as the context may require, a Roth Individual Retirement Account or a Traditional Individual Retirement Account.

AA. IRS. “IRS” means the Internal Revenue Service.

BB. Non-Compliant Employer. “Non-Compliant Employer” means a Covered Employer that has neither provided an Exemption Certification nor is a Remitting Employer.

CC. Non-Payroll Contribution. “Non-Payroll Contribution” means funds that an Account Holder remits outside of a Payroll Deduction Contribution.

DD. Onboard. “Onboard” means to furnish all required information to the Program Administrator in order to enable payroll contributions within the Program.

EE. Onboarding. “Onboarding” means the process by which Covered Employers, Covered Employees, and Participating Individuals furnish all required information to the Program Administrator in order to participate in the Program.

FF. Onboarding Information. “Onboarding Information” means the information detailed in 2(D)(2) which is required to be provided by a Covered Employer, a Covered Employee, or a Voluntary Participant to the Program Administrator to enable participation in the Program.

GG. Opt-Out Period. “Opt-Out Period” means the 30-day Account revocation period that begins as of the date of the Confirmation Notice provided to the Covered Employee.

HH. Participating Employee or Participating Individual. “Participating Employee or Participating Individual” means respectively a Covered Employee or a Voluntary Participant whose complete Onboarding Information has been received by the Program Administrator.

II. Payroll Deduction Contributions. "Payroll Deduction Contributions" means Contributions made by an Onboarded Employee via a payroll deduction through a Remitting Employer.

JJ. Program. "Program" means the Maine Retirement Savings Program established by the Board and as described in and governed by the Act and this rule and known as the Maine Retirement Investment Trust or MERIT.

KK. Program Administrator. "Program Administrator" means the third-party entity which is contracted with by the Board to assist in carrying out the requirements of the Act.

LL. Program Information. "Program Information" means a document provided by the Program Administrator after onboarding to Covered Employees and to Voluntary Participants, which outlines the program features including, but not limited to the items listed in 5 MRSA §174(2)(G).

MM. Registration Date. "Registration Date" means a date established by the Board on which Employers are required to complete the Employer Onboarding into the Program.

NN. Remitting Employer. "Remitting employer" means an employer that has provided all required Employer and Covered Employee onboarding Information and which remits Covered Employee Payroll Deduction Contributions to the Program Administrator.

OO. Retirement Age. "Retirement Age" means 65 years of age for the purpose of determining the Default Investment Option for each Participating Employee.

PP. Roth IRA. "Roth IRA" means an individual retirement account within the meaning of section 408A of the Code.

QQ. Self Employed Individual. "Self-Employed Individual" means an individual who either 1) carries on a trade or business as a sole proprietor or an independent contractor, or 2) is a member of a partnership that carries on a trade or business, or 3) is otherwise in business for himself or herself (including a part-time business or a "gig worker") and who meets the qualifications to open an IRA.

RR. Specified Tax-Favored Retirement Plan. "Specified Tax-favored Retirement Plan" means a plan, program or arrangement that is tax-qualified under or described in, and satisfies the requirements of, Section 401(a), Section 401(k), Section 403(a), Section 403(b), Section 408(k), Section 408(p) or Section 457(b) of the Code without regard to whether it constitutes an employee benefit plan under ERISA.

SS. Traditional IRA. "Traditional IRA" means an individual retirement account within the meaning of section 408 of the Code.

TT. Voluntary Participant. "Voluntary Participant" means an individual who meets the qualifications to open an IRA but who does not meet the definition of Covered Employee and who provides Onboarding Information to the Program Administrator.

UU. Wages. "Wages" means W-2 wages, as defined in 26 CFR 1.415(c) through 2(d)(4) that are received by Covered Employee during the calendar year.

VV. Work-Site Employee. “Work-Site Employee” means an employee who is leased to a Client Company by an Employee Leasing Company pursuant to a contract described in 32 MRSA § 14051(3).

2. EMPLOYER REQUIREMENTS

A. Registration Dates

1) The Registration Date for all Covered Employers with 15 or more Covered Employees is April 30, 2024.

2) The Registration Date for all Covered Employers with five to 15 Covered Employees is June 30, 2024.

B. Employer Exemption

1) The Program may send written notice(s) to business entities identified initially as Covered Employers that do not have a current Form 5500 on file with the U.S. Department of Labor. The written notice(s) shall direct the business entity to either Onboard with the Program or provide an Exemption Certification using the process described in this Rule. Such notices may be sent by email or regular first class mail.

2) Process for certain business entities to provide an Exemption Certification

a) An authorized representative of a business entity shall certify, through the Program website that the entity either presently offers a Specified Tax Favored Retirement Plan, or has fewer than five Covered Employees, or has been In Business for less than two years.

b) The business entity may reference the following state forms and compliance structures when determining its eligibility for Exemption:

(i) business formation or Authority to do business document(s) from the Maine Secretary of State

(ii) Sales Tax Identification Number from the Maine Department of Revenue, if applicable;

(iii) Any Maine Revenue form that determines when the business became liable for wage withholding; and

(iv) Any Notice or Letter from the Maine Department of Labor determining that the business is liable for payment of unemployment insurance.

3) The employer's online Exemption Certification will remain in effect so long as the business entity continues to offer a Specified Tax Favored Retirement Plan to some or all Covered Employees or maintains fewer than five Covered Employees. If such Exemption Certification is provided only because an entity has been in business for fewer than two years, the Exemption shall expire when the entity has been in business for two calendar years.

C. Employer Onboarding

- 1) By or before its Registration Date, Employers shall either Onboard with the Program or adopt a Specified Tax-Favored Retirement Plan.
- 2) Covered Employers shall submit the following Onboarding Information to the Program Administrator via the Program website or an Acceptable Submission Method:
 - a) Covered Employer name and assumed business name, if any;
 - b) Federal Employer Identification Number;
 - c) Covered Employer mailing address
 - d) Name, telephone number and email address of an individual designated by the employer to serve as the point of contact; and
 - e) Any additional information identified by the Program as necessary to complete Onboarding.
- 3) In the event that the Program Administrator finds that any of the information listed in this subsection C is not available on the online portal or is inaccurate, employers shall provide the missing or correct information, as applicable within two weeks of notification from the Program Administrator of the missing or incorrect information.

D. Employer Restrictions

- 1) Business entities that offer a Specified Tax-Favored Retirement Plan may not Register with the Program or Onboard employees in the Program.
- 2) Business entities without a Specified Tax Favored Retirement Plan, that have been In Business for fewer than two years and have five or more Employees, are not required to Onboard with the Program until the Employer is In Business for two consecutive years.
- 3) Participating Employers shall not:
 - a) Prohibit, restrict, or discourage an Employee to Participate in the Program.
 - b) Provide Account Holders advice or direction regarding investment choices, Contribution Rates, Automatic Escalation, or any other decision about the Program.
 - c) Remit any Payroll Deduction Contributions for any Onboarded Employee who opted out of the Program.
 - d) Exercise any authority, control, or responsibility regarding the Program, other than those duties specifically described in this Rule.
 - e) Contribute to an Account Holder's Account

E. Onboarding of Employees by Remitting Employer.

- 1) On Initial Registration, all Covered Employees employed for at least 120 days must be registered with the Program.
- 2) After initial registration, new Covered Employees must be registered as soon as practicable, but no later than an individual's 120th day of employment at a Participating Employer.
- 3) The Remitting Employer shall provide the following information to the Program Administrator for each Covered Employee through the secure portal, or if the Remitting

Employer does not have access to the secure portal through submission of paper:

- a) Full legal name;
- b) Social security number or taxpayer ID number;
- c) Date of birth;
- d) Mailing address;
- e) Covered Employee's designated email address, if available;
- f) Covered Employee's phone number, if available; and
- g) Any additional information needed to complete the Onboarding as directed by the Program Administrator. Circumstances where additional information may be required include when the information submitted for Onboarding is unclear or insufficient, or when further information is required for purposes of administering the Program

F. Withholding and Remitting Payroll Deduction Contributions by Remitting Employer

- 1) Remitting Employers shall not remit Payroll Deduction Contributions until after the Opt-Out Period.
- 2) Remitting Employers shall remit all Payroll Deduction Contributions from an Employed Account Holder's Wages to the Program Administrator as soon as administratively practicable, and in no event later than fourteen days from the close of the payroll period in which such Wages were earned.
- 3) Amounts withheld by the Remitting Employer shall not exceed the amount of the Employed Account Holder's Wages remaining after any payroll deductions required by law or other deductions that have higher precedence, including a court or administrative order.

G. Responsibilities of Program Administrator to Remitting Employers

- 1) Onboarded and Remitting Employers may contact the Program Administrator for technical assistance in completing Program requirements.
- 2) Upon receiving the Covered Employee's Onboarding Information from the Remitting Employer, the Program Administrator shall send a confirming email to the Remitting Employer and send a Confirmation Notice and the Program Information to each Covered Employee. In the event that the Program Administrator does not have a functioning email address for the Covered Employee, the Program Administrator shall send confirmation to the Covered Employee by first class mail.

H. Multi-Party Employment Relationships.

- 1) The Employer or business entity whose EIN appears in the Maine Department of Labor's records of payment unemployment insurance premiums determines which employing unit is responsible for either certifying Exemption, or both Onboarding with the Program and Onboarding Employees.
- 2) Any Wages paid to the Work-Site Employee by the Employee Leasing Company shall be treated as Wages received from the Client Company.

3) Nothing in these rules prohibits an Employee Leasing Company and its Client Company from entering into an agreement under which the Employee Leasing Company agrees to assist the Client Company with the performance of some or all of the Client Company's responsibilities under this section.

3. COVERED EMPLOYEES AND VOLUNTARY PARTICIPANTS

A. Covered Employee Right To Opt-Out

- 1) A Covered Employee Onboarded into the Program by a Remitting Employer may opt out of the Program at any time.
- 2) No Account will be established if a Covered Employee opts out during the Opt-Out Period.
- 3) The Program Administrator shall send Program Information to Covered Employees as soon as administratively possible after all required Onboarding Information has been received and shall send other important information including the confirmation notice, mandatory disclosures and other material information that a reasonable investor would want to know before contributing to an IRA by payroll deduction or directly.
- 4) Covered Employees Onboarded by Remitting Employers are deemed to have read and understood the Program Information content, which includes instructions about how to opt out of the Program.
- 5) Those who opt out of the Program may re-elect to participate at any time by requesting that the Remitting Employer provide the required Onboarding Information through the Program Website or an Acceptable Submission Method. If the Covered Employee does not receive confirmation of enrollment, then the Covered Employee may provide the onboarding information directly to the Program Administrator.

B. Voluntary Participants

- 1) Self-Employed Individuals and Voluntary Participants may Onboard with the Program if they meet the qualifications to open an IRA and provide the following required Onboarding Information via the secure portal:
 - a) Full legal name;
 - b) Social security number or taxpayer ID number;
 - c) Date of birth;
 - d) Mailing address;
 - e) Email address, if available;
 - f) Phone number, if available; and
 - g) Any additional information needed to complete the Onboarding when the information submitted for Onboarding is unclear or insufficient, or when further information is required for purposes of administering the Program.
- 2) The Program Administrator shall provide Program Information and mandatory disclosures pursuant to 5 MRSA §174(2)(G) to Voluntary Participants and Self-

Employed Individuals as soon as administratively possible after all required Onboarding Information has been received.

3) Covered Employees and Voluntary Participants shall have one Account, regardless of whether the Voluntary Participant also makes Contributions from a single Remitting Employer or multiple Remitting Employers (simultaneously or separately throughout an Account Holder's lifetime).

4. ACCOUNTS

A. Contributions

It shall be the responsibility of the Account Holder to determine whether he/she/they are eligible under the Code to make contributions to an Account and whether the amount of their contributions to an Account complies with the contribution limits established under the Code, and whether or not such Contributions are deductible.

B. Default Investment and Custom Investment options

- 1) The Program Information provided by the Program Administrator shall instruct Account Holders on how to select Custom Investments in place of the Default Investment Option.
- 2) In the Employee portal on the Program website, Account Holders may direct their Contributions to any combination of the available fund options offered by the Program.
- 3) During the Hold and Sweep Period, Contributions will be directed into the Capital Preservation Investment.
- 4) After the Hold and Sweep Period, Program Administrator shall direct Contributions from the Capital Preservation Investment into the Default Investment Option, unless an Account Holder has elected a Custom Investment.
- 5) Employed Account Holders may change their investment choice(s) at any time after the Confirmation Notification is received.

C. Default Contribution Rate and Custom Contribution Rate

- 1) The Program Information provided by the Program Administrator shall instruct Account Holders on how to elect a Custom Contribution Rate other than the Default Contribution Rate.
- 2) In the Employee portal on the Program website, Account Holders may elect any Contribution Rate that is a whole-number percentage and may direct their Contributions to any of the available fund options offered by the Program.
- 3) Remitting Employers will remit the Default Contribution Rate on behalf of the Account Holder unless the Account Holder elected a Custom Contribution Rate.
- 4) Employed Account Holders may change their Contribution Rate to any whole integer

percentage at any time after the Confirmation Notification is received.

D. Non-Payroll Contributions

- 1) Any Account Holder may choose to make Non-Payroll Contributions to the Program.
- 2) Such Contributions must not exceed, in combination with Payroll Deduction Contributions, the annual IRA contribution limit as determined by the Code and related rules promulgated by the IRS.
- 3) The minimum recurring Non-Payroll contribution is five dollars. The minimum one-time contribution for Non-Payroll Contributions to open an Account is \$500. Thereafter, the minimum non-recurring contribution is five dollars.
- 4) Non-Payroll Contributions may be made electronically or by personal check provided to the Program Administrator.

E. Automatic Escalation

- 1) Contributions for Employed Account Holders who have Participated in the Program for at least six months will automatically increase by 1% of an Employed Account Holder's Wages at the beginning of each subsequent calendar year, up to a maximum of 10% of an Employed Account Holder's wages.
- 2) On an annual basis, the Program Administrator shall notify all Employed Account Holders in advance of any Contribution increase to allow for Employed Account Holders to opt out of Automatic Escalation or to change their Contribution Rate.
- 3) Employed Account Holders may opt into Automatic Escalation or opt out of Automatic Escalation at any time.

F. Termination of Remitting Employer Status through Program Exemption

- 1) Remitting Employers who begin offering a Specified Tax Favored Retirement Plan must notify the Program Administrator at least sixty days prior to the cessation of Payroll Deduction Contributions.
- 2) Upon a Remitting Employer becoming Exempt, remittance of Payroll Deduction Contributions on behalf of Employed Account Holders is prohibited.
- 3) Remitting Employers that have become Exempt must notify Employed Account Holders at least thirty days before Payroll Deduction Contributions cease and provide them with information describing how to contact the Program Administrator.
- 4) Unless Employed Account Holders elect otherwise, Accounts will remain in the Program after the Participating Employer certifies its Exemption.
- 5) If the Remitting Employer became Exempt due to its number of Employees falling below five, the Remitting Employer must notify the Program within 30 days.

G. Portability

- 1) An Account Holder may receive rollovers and transfers from other retirement savings vehicles in accordance with the time limits established under the Code.
- 2) An Account Holder or Beneficiary may roll over or transfer all or a portion of a Program IRA to a different retirement savings vehicle in accordance with the Code. The Account Holder must commence the process by notifying the Program Administrator and providing any information required to effectuate the rollover or transfer.

H. Withdrawals

- 1) An Account Holder may withdraw all or a portion of funds from their Account at any time by submitting a completed request to the Program Administrator, in a form or format established by the Program and permitted by the IRS.
- 2) The Program shall not assess any penalty for withdrawals. Withdrawals shall be subject to any applicable State and federal income tax obligations and may be subject to penalties under the Code.

I. Abandoned Accounts

An Account shall be presumed abandoned according to the unclaimed property law of the state of the last known address of the Participating Employee or Participating Individual. If the last known address of the Participating Employee or Participating Individual is in Maine, the Maine Unclaimed Property Act will apply. If there is no last known address of the Account Holder in the Program records, federal common law shall determine the state with the first priority claim.

5. ENFORCEMENT

A. The fines for each year of failing to meet Registration requirements are:

- 1) From July 1, 2025, to June 30, 2026, \$20 per Covered Employee;
- 2) From July 1, 2026, to June 30, 2027, \$50 per Covered Employee;
- 3) From July 1, 2027, and after, \$100 per Covered Employee.

B. The Program is represented by the Maine Office of the Attorney General which shall represent the Board in connection with enforcement of compliance with the Act.

C. The Program shall at all times comply with the Maine Administrative Procedures Act.

D. Process

- 1) The Program will notify Employers via email or, when email is not available, first-class US Mail of their respective Registration Dates and again in advance of receiving Final Notice of Penalty Application.
- 2) After Registration Dates have passed, the Program will send three Notices of Non-Compliance to Non-Compliant Employers which provide instructions on how either to

provide Onboarding Information to the Program or to certify Exemption.

- 3) In no event shall a fine be assessed earlier than three months after the first Notice of Non-Compliance is sent.
- 4) Within 30 days of the date stated on the Final Notice of Penalty Application, Covered Employers who fail to either register with the Program or certify Exemption shall remit to the Program annual fines as provided in Section 5.A
- 5) A Covered Employer shall have a right to appeal the assessment of a fine within 30 days of the assessment of the fine by filing an appeal with the Program.

E. Appeal

A Covered Employer who neither Onboards with the Program nor certifies exemption shall have a right to appeal the assessment of a fine. To effectuate an appeal the Covered Employer shall file a written Notice of Appeal with the Program, together with a statement of the reasons why the executive director's decision to assess a fine should be reversed or modified along with any supporting documentation, within twenty days after the date on which the executive officer sent the notice of assessment of a fine to the Covered Employer by first class mail or email.

The Executive Director shall establish a briefing schedule whereby the Covered Employer and the Program shall submit their supporting evidence and arguments that shall be presented to the Board.

The appeal shall be heard at a meeting of the members of the Board, and the Covered Employer must be present to support the appeal. The appeal shall be based on the administrative records of the Program and the material submitted by the Covered Employer.

If the members of the Board determine that the decision by the executive director was arbitrary, capricious or an abuse of discretion, the members may overturn or modify the decision of the executive director and may direct the executive director to take further action with respect to the fine being appealed.

6. CONFIDENTIALITY

Program Administration shall comply with all applicable confidentiality requirements including but not limited to 1 MRS § 401 et seq.

7. SEVERABILITY

If any portion of these rules is found to be invalid, the remaining portion of the rules shall remain in force and effect.

History

New rule eff.