

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Administrative and Financial, Services, **Bureau of Revenue Services (Maine Revenue Services – MRS)**
Umbrella-Unit: **18-125**
Statutory authority: 36 MRS §576
Chapter number/title: **Ch. 202**, Tree Growth Tax Law Valuations - 2019
Filing number: **2019-070**
Effective date: 5/11/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

There is a statutory requirement that each year the State Tax Assessor determine the 100% valuation for an acre of forestland, according to forest type (softwood, mixed wood, or hardwood) by economic region for parcels classified under the *Tree Growth Law*. The State Tax Assessor must certify his determination and transmit rules to the municipal assessors of each municipality with forestland therein on or before April 1, of each year.

Basis statement:

Amended Rule 202 provides updated valuation rates for each forest type by region. 36 MRS §576 requires the State Tax Assessor to establish annually by rule current use valuations for classified forestlands after considering area timber stumpage sales during previous calendar years. Taxpayers with land classified under *Tree Growth Tax Law* and municipal assessors require guidance in appropriate valuation of forestland based on representative proportions of forest growth and products generated.

Fiscal impact of rule:

This rule establishes an efficient and uniform procedure for the valuation of forestland.

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Agency name: Department of Administrative and Financial, Services, **Bureau of Revenue Services (Maine Revenue Services – MRS)**
Umbrella-Unit: **18-125**
Statutory authority: 36 MRS §112
Chapter number/title: **Ch. 302**, Sales to Government Agencies and Exempt Organizations
Filing number: **2019-148**
Effective date: 8/19/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

Rule 302 establishes administrative rules regarding tax-exempt sales and explains the circumstances under which a retailer or service provider will be relieved of its burden of proving that sales to an entity described in 36 MRS §§ 1760 or 2557, including an agency or instrumentality of the federal government or of the State of Maine, are exempt from Maine sales, use, or service provider tax.

Rule 302 is being amended to include references to the service provider tax, and to update the references to the GSA SmartPay program.

Fiscal impact of rule:
None.

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Agency name: Department of Administrative and Financial, Services, **Bureau of Revenue Services (Maine Revenue Services – MRS)**
Umbrella-Unit: **18-125**
Statutory authority: 36 MRS §112
Chapter number/title: **Ch. 304**, Sales Tax Returns and Payments
Filing number: **2019-149**
Effective date: 8/19/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

Rule 304 is being amended to reflect that the supplemental reports that Maine Revenue Services formerly required retailers of vehicles, watercraft, and manufactured housing to file are no longer required; instead, the completed supplemental report must be maintained in the records of the retailer and made available for inspection by the assessor.

Rule 304 establishes requirements for the filing of sales and use tax returns and the payment of taxes due pursuant to Title 36 ch. 219, of the *Maine Revised Statutes*.

Fiscal impact of rule:
None.

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Agency name: Department of Administrative and Financial, Services, **Bureau of Revenue Services (Maine Revenue Services – MRS)**
Umbrella-Unit: **18-125**
Statutory authority: 36 MRS §112
Chapter number/title: **Ch. 318**, Instrumentalities of Interstate or Foreign Commerce
Filing number: **2019-150**
Effective date: 8/19/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

Maine Revenue Services is repealing and replacing Rule 318 because the controlling statutory provision, 36 MRS §1760(41), which provides an exemption from sales and use tax for certain instrumentalities of interstate or foreign commerce, was repealed (LD 1805, PL 2017 c. 375 part I) and replaced with 36 MRS §1760(41-A). Under 36 MRS §1760(41-A), the sales and use tax exemption is expanded by specifying that, in certain situations, property waiting to be loaded or unloaded is considered to be placed in use in interstate or foreign commerce. Also, 36 MRS §1760(41-A) provides that a trailer, semitrailer, or tow dolly being used by an entity other than the owner is eligible for the exemption if there is a written interchange agreement between the owner and the other entity and the transportation is interstate in nature. The expanded exemption is effective for purchases made on or after January 1, 2012.

Fiscal impact of rule:
None.

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Agency name: Department of Administrative and Financial, Services, **Bureau of Alcoholic Beverages and Lottery Operations (BABLO)/ Maine State Liquor and Lottery Commission**

Umbrella-Unit: **18-553**

Statutory authority: 28-A MRS §453-D

Chapter number/title: **Ch. 4 (New)**, Agency Liquor Store Relocation: Rules Governing the Process to Provide Input by Agency Liquor Stores in the Same Municipality of a Relocation Request

Filing number: **2019-029**

Effective date: 2/9/2019

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

This new rule establishes a process to provide input by agency liquor stores in the same municipality of a relocation requested by an agency liquor store in that municipality.

Fiscal impact of rule:

There is no known fiscal impact.

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Agency name: Department of Administrative and Financial, Services, **Bureau of Alcoholic Beverages and Lottery Operations (BABLO)/ Maine State Liquor and Lottery Commission**

Umbrella-Unit: **18-553**

Statutory authority: 8 MRS §§ 372 sub-§2 ¶1, 374

Chapter number/title: **Ch. 20**, Powerball Rules

Filing number: **2019-071**

Effective date: 5/8/2019

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To conform to the procedures for the operation of the multi-jurisdictional lottery game Powerball in Maine as required by the Multi State Lottery Association. These rules will allow Maine to continue to sell the Powerball game.

Basis statement:

This amendment updates the existing rules governing the jackpot draw game Powerball. This amendment makes necessary changes to update current ticket cancellation rules, technical changes to clarify language, and fix typographical errors.

Fiscal impact of rule:

There is no known fiscal impact.

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Agency name: Department of Administrative and Financial, Services, **Bureau of Alcoholic Beverages and Lottery Operations (BABLO)/ Maine State Liquor and Lottery Commission**

Umbrella-Unit: **18-553**

Statutory authority: 8 MRS §§ 372 sub-§2 ¶1, 374

Chapter number/title: **Ch. 40**, Mega Millions Rules

Filing number: **2019-072**

Effective date: 5/8/2019

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To conform to the procedures for the operation of the multi-jurisdictional lottery game Mega Millions in Maine as required by the Multi State Lottery Association. These rules will allow Maine to continue to sell the Mega Millions game.

Basis statement:

This amendment updates the existing rules governing the jackpot draw game Mega Millions. This amendment makes necessary changes to update current ticket cancellation rules, technical changes to clarify language, and fix typographical errors.

Fiscal impact of rule:

There is no known fiscal impact.

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Agency name: Department of Administrative and Financial, Services, **Office of Marijuana Policy**
Umbrella-Unit: **18-691**
Statutory authority: Title 22 ch. 558-C
Chapter number/title: **Ch. 4 (New)**, Marijuana Manufacturing Facilities
Filing number: **2019-140**
Effective date: 8/1/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

In 2018, the 128th Legislature passed LD 238 and LD 1539. Both pieces of legislation made changes to Maine's medical use of marijuana program statutes regarding the manufacturing of marijuana, marijuana concentrates, and marijuana products.

Basis statement:

The Office of Marijuana Policy (hereinafter "OMP"), within the Department of Administrative and Financial Services (hereinafter the "Department"), has completed final adoption of a rule to establish standards and procedures related to manufacturing marijuana, marijuana concentrate, and marijuana products.

In 2018, the 128th Legislature passed LD 238 and LD 1539. Both pieces of legislation made changes to Maine's medical use of marijuana program statutes regarding manufacturing. Until the effective date of this rule, facilities conducting these activities will have been doing so in the absence of departmental rule.

This rule implements requirements of Title 22 ch. 558-C, including a marijuana track and trace system, and establishes minimum standards for manufacturing marijuana and marijuana products for medical use, including requirements for facility registration, requirements for engaging in marijuana extraction using inherently hazardous substances, staff qualifications, and security and testing. This rule protects public health and assures safe practices related to marijuana manufacturing, requiring a level of competency of facility personnel and appropriate equipment to process and extract marijuana.

The work of OMP benefited significantly from input provided by the public during our public comment period. For example, due to feedback provided by the public, we aligned several definitions more closely with the governing statute, including the addition of carbon dioxide to the definition of inherently hazardous substance. Further, the sections of the proposed rule on criminal history were amended to reflect language in Title 22 ch. 558-C. Finally, in response to practices already employed by the industry, OMP has modified language contained in the finally adopted rule to allow for the use of reusable containers.

Pursuant to Title 5 §8052(5)(B), the Department determines that the finally adopted rules are not substantially different from and are consistent with the terms of the proposed routine technical rules.

Fiscal impact of rule:

Unknown additional licensing fees received by the Office of Marijuana Policy's Maine Medical Use of Marijuana Program.

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Agency name: Department of Administrative and Financial, Services, **Office of Marijuana Policy**
Umbrella-Unit: **18-691**
Statutory authority: 24-B MRS ch. 1; 22 MRS §569
Chapter number/title: **Ch. 5**, Marijuana Manufacturing Facilities
Filing number: **2019-161**
Effective date: 9/4/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

To protect the public health and safety by establishing a process for certifying marijuana testing facilities that will test marijuana and marijuana products and provide information to marijuana establishments and consumers regarding contaminants in marijuana and marijuana products as well as information regarding the potency of cannabinoids found in marijuana and marijuana products.

Basis statement:

The Office of Marijuana Policy (hereinafter "OMP"), within the Department of Administrative and Financial Services (hereinafter the "Department"), has completed emergency adoption of a rule to establish minimum qualifications, education and training for marijuana testing facility personnel and staff; identifies the testing equipment necessary to test samples of marijuana and marijuana products for mandatory testing; identifies detection limits for mandatory testing of various contaminant types; and identifies other requirements for a marijuana testing facility to become certified to operate as a marijuana testing facility by the Maine Center for Disease Control and Prevention (CDC).

On June 18, 2019, PL 2019 ch. 354 was enacted on an emergency basis, establishing within the CDC the Marijuana Testing Facility Certification Program. These rules are promulgated on an emergency basis to protect the public health and safety following that emergency action, and in anticipation of mandatory testing of all marijuana and marijuana products sold to consumers in Maine's adult use marijuana market.

This rule implements requirements of Title 28-B ch. 1 and 22 MRS §569 establishing the role of marijuana testing facility certification within the overall marijuana testing facility accreditation and licensing process, identifying minimum standards for education and qualification of key marijuana testing facility personnel and analysts, requiring standard operating procedures for conducting tests and collecting samples of marijuana and marijuana products, and indicating batch sizes and contaminant detection limits for mandatory testing of marijuana and marijuana products. This rule protects public health and assures that the public is aware of the tests to which adult use marijuana is subject prior to retail sale.

OMP consulted with staff of the Maine Board of Pesticide Control in identifying the list of prohibited pesticides to be tested for by marijuana testing facilities, and benefited greatly from a partnership with Maine CDC in drafting these rules.

Fiscal impact of rule:

Minor increase in revenue to the State due to receipt of certification fees by the Maine CDC.

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Agency name: Department of Administrative and Financial, Services, **Office of Marijuana Policy**
Umbrella-Unit: **18-691**
Statutory authority: Title 28-B
Chapter number/title: **Ch. 1 (New)**, Adult Use Marijuana Program
Filing number: **2019-194**
Effective date: 12/4/2019
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

The Office of Marijuana Policy (OMP) is proposing to introduce a rule to establish a regulatory framework governing adult use, also known as recreational, marijuana in Maine.

On November 8, 2016, Maine voters approved Question 1 and legalized the recreational use, retail sale and taxation of marijuana. On January 27, 2017, the legislature placed a moratorium on certain parts of the law regarding retail sales and taxation until February 2018, while a 17-member legislative committee worked to overhaul the Marijuana Legalization Act (MLA). The moratorium expired on February 1, 2018, after a legislative effort to pass a short-term extension was unsuccessful. However, retail sales are unable to take place until the Department of Administrative and Financial Services (DAFS) completes rulemaking and those rules are approved by the 129th Legislature.

In February 2019, DAFS created OMP to oversee all aspects of legalized marijuana. Since that time, OMP has been conducting the rulemaking activity required by the MLA. The Office formally proposed rules to the 129th Legislature on June 5, 2019. Governor Mills signed LD 719 (PL 2019, ch. 491)—*An Act To Amend the Adult Use Marijuana Law*—on June 27, 2019, with the legislation going into effect on September 19, 2019. LD 719 made several changes to the MLA and, most importantly, authorized OMP to proceed with final adoption of adult use rules.

Basis statement:

The Office of Marijuana Policy (hereinafter "OMP"), within the Department of Administrative and Financial Services (hereinafter the "Department"), has adopted a rule to establish a regulatory framework governing adult use, also known as recreational, marijuana in Maine.

The *Marijuana Legalization Act* (MLA) includes both mandatory and discretionary rulemaking concerning DAFS. Broadly, Title 28-B, Section 104(3), states that the Department shall "adopt all rules necessary to implement, administer and enforce" the MLA. In addition, the statute specifies rulemaking in areas including, but not limited to, tracking marijuana plants and product, health and safety data, labeling and packaging, and licensing and fees. Pursuant to Section 104 of the law, all rules, except where specifically provided, must be adopted as major substantive rules.

Final adoption of this rule will allow OMP to license and regulate adult use marijuana-related businesses in Maine. The general classes of licenses for marijuana establishments are cultivation facility, testing facility, products manufacturing facility, and marijuana store. Examples of regulatory work include, but are not limited to, tracking marijuana plants and product, managing health and safety data, labeling and packaging, and ensuring licensee compliance with statute and rule. The licensing and operation of marijuana-related businesses will generate tax revenue to the General Fund, will support a public health and education campaign, will support a law enforcement training program, and will provide revenue to support the ongoing operation of OMP.

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The work of OMP benefited significantly from input provided by the public during the public comment period. For example, due to feedback provided by the public, the residency requirements contained in the proposed rules has been simplified to reflect legislative direction and clarify the burden of proof regarding majority ownership. Further, testing facilities may now be located adjacent to other marijuana establishments, provided they have separate entrances accessible from public rights of way. Finally, OMP adjusted some of the reporting requirements for other interested parties to exclude banks, credit unions, or state or federally chartered financial institutions.

Pursuant to Title 5 Section 8052(5)(B), the Department determines that the final adopted rules are not substantially different from the proposed major substantive rules and are consistent with the terms of the proposed rules.

The Department will file these final adopted rules with the Legislature for its review and authorization for final adoption.

Fiscal impact of rule:

Tax Revenue:

	Fiscal Year 2020	Fiscal Year 2021
Sales and Excise Tax Revenue	\$4.4 million	\$16.8 million

Once fully operational, it is estimated that OMP will generate more than \$1.2 million in Other Special Revenue licensing fees each year.

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Umbrella-Unit: **18-691**
Statutory authority: Title 28-B
Chapter number/title: **Ch. 1, Adult Use Marijuana Program**
Filing number: **2019-205**
Effective date: 11/22/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The *Marijuana Legalization Act* requires the Department of Administrative and Financial Services (DAFS) to conduct both major substantive and routine technical rulemaking. The Office of Marijuana Policy (OMP), within DAFS, is emergency adopting a routine technical rule to establish a regulatory framework governing the licensing of testing facilities in the adult use marijuana industry to protect the health and safety of the public in Maine.

Basis statement:

These additions are promulgated on an emergency basis to amend and add to the Adult Use Marijuana Program Rule promulgated by the Maine Department of Administrative and Financial Services (the Department) specific licensing criteria and additional requirements for the operation of marijuana testing facilities following action by the Legislature in PL 2019 ch. 491 §3, clarifying the scope of the Department's routine technical rulemaking authority regarding marijuana testing facilities. This law went into effect on September 19, 2019.

It is critical that amendments to this rule are adopted on an emergency basis to protect public health and safety by establishing a mandatory testing system prior to the launch of the full adult use marijuana market by December 31, 2019, to ensure that consumers of adult use marijuana have information regarding the contents of the marijuana and marijuana products they are consuming, and further, to provide adequate notice and information to adult marijuana cultivators and manufacturers regarding the mandatory tests required for all products cultivated or manufactured for adult use.

This rule is promulgated to ensure the independence, professional responsibility and operational capacity of marijuana testing facilities responsible for mandatory testing of all marijuana and marijuana products for retail sale by licensees of the Department's Adult Use Marijuana Program. This rule is promulgated after consultation with the Department of Health and Human Services, Maine Center for Disease Control and Prevention, and the Department of Agriculture, Conservation and Forestry.

These additions are intended to protect public health by establishing licensing criteria for marijuana testing facilities and to provide clarity regarding mandatory testing for contaminants and the process by which the Department may require tested marijuana and marijuana to be destroyed due to failure of such mandatory testing.

Fiscal impact of rule:

(Left blank on Fact Sheet.)

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Agency name: Department of Administrative and Financial, Services, **Office of Marijuana Policy**
Umbrella-Unit: **18-691**
Statutory authority: 24-B MRS ch. 1; 22 MRS §569
Chapter number/title: **Ch. 5**, Certification of Marijuana Testing Facilities
Filing number: **2019-224**
Effective date: 12/16/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To protect the public health and safety by establishing a process for certifying marijuana testing facilities that will test marijuana and marijuana products and provide information to marijuana establishments and consumers regarding contaminants in marijuana and marijuana products as well as information regarding the potency of cannabinoids found in marijuana and marijuana products.

Basis statement:

On September 4, 2019, the Office of Marijuana Policy (OMP) published 18-691 Code of Maine Rules (CMR) ch. 5, *Emergency Rules for the Certification of Marijuana Testing Facilities*. Those rules were drafted in consultation with representatives from the Department of Health and Human Services, Maine Center for Disease Control and Prevention's Marijuana Testing Facility Certification Program (CDC) and the Department of Agriculture, Conservation and Forestry (DACF), Bureau of Pesticide Control.

The Department of Administrative and Financial Services, Office of Marijuana Policy, is adopting this routine technical rule to establish minimum qualifications, education and training for marijuana testing facility personnel and staff; identify recommended technologies and methods for the conduct of mandatory testing of adult marijuana, marijuana concentrate and marijuana products; identify detection limits for mandatory testing of various contaminant types; and identify other requirements for a marijuana testing facility to become certified to operate as a marijuana testing facility by the Maine Center for Disease Control and Prevention's Marijuana Testing Facility Certification Program (Maine CDC).

This rule implements requirements of Title 28-B ch. 1 and 22 MRS §569 establishing the role of marijuana testing facility certification within the overall marijuana testing facility accreditation and licensure process, including establishing minimum education and qualifications of key marijuana testing facility personnel and analysts, requiring standard operating procedures for conducting tests and collecting samples of marijuana, marijuana concentrate and marijuana products, and indicating batch sizes and contaminant detection limits for mandatory testing of marijuana, marijuana concentrate and marijuana products. This rule protects public health and assures that the public is aware of the tests that adult use marijuana is subject to prior to retail sale.

OMP consulted with staff of the Department of Agriculture, Conservation and Forestry's Board of Pesticide Control in identifying the list of prohibited pesticides to be tested for by marijuana testing facilities and benefited greatly from a partnership with the Maine CDC.

OMP uses several different terms in its rule in referring to a "best practices" or "sampling guide" to be published by OMP on its website at the same time it finally adopts this rule. The guide, Best Practice Guide for the Sample Collection of Adult Use Marijuana/or Mandatory Testing, provides basic guidance to marijuana testing facilities regarding techniques to be used by sample collectors for mandatory testing of adult use marijuana. It is posted on OMP's website at www.maine.gov/dafs/omp .

Fiscal impact of rule:

(Left blank on Fact Sheet.)