

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Secretary of State, **Bureau of Motor Vehicles**
Umbrella-Unit: **29-250**
Statutory authority: 29-A MRS §512
Chapter number/title: **Ch. 159**, Rules Governing the Administration of the Permanent, Semipermanent Semitrailer Registration Programs
Filing number: **2018-005**
Effective date: 1/17/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The amendment corrects at title fee reference, clarifies when the reregistration process may begin, and clarifies the issuance of extended registrations.

Basis statement:

Ch. 159, *Rules Governing the Administration of the Permanent, Semipermanent Semitrailer Registration Programs*, is being amended to correct title fee references, clarify when the reregistration process may begin, and clarify the issuance of extended registrations.

Fiscal impact of rule:

None.

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Agency name: Secretary of State, **Bureau of Motor Vehicles**
Umbrella-Unit: **29-250**
Statutory authority: 29-A MRS §2382
Chapter number/title: **Ch. 157**, The Administration of Over Dimension and Overweight Permits
Filing number: **2018-029**
Effective date: 2/27/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is being amended to add additional safety requirements for 5-axle cranes crossing certain restricted bridges.

Basis statement:

The purpose of this amendment is to help prolong bridge life, and to protect the public from slow-moving cranes crossing these bridges.

Fiscal impact of rule:

Unknown. There may be some fiscal impact on the operators of five-axle cranes. Implementation is necessary to protect the integrity of certain Maine bridges.

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Umbrella-Unit: **29-250**
Statutory authority: 29-A MRS §512
Chapter number/title: **Ch. 159**, Rules Governing the Administration of the Permanent, Semipermanent Semitrailer Registration Programs
Filing number: **2018-091**
Effective date: 6/4/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule is being amended to provide more flexibility in the renewal of expiring long term trailer registrations; specifically, to allow registrants to retain the same plate when renewing.

Basis statement:

Chapter 159, *Rules Governing the Administration of the Permanent, Semipermanent Semitrailer Registration Programs*, is being amended to provide more flexibility in the renewal process in order to preserve registration revenue.

Fiscal impact of rule:

Failure to amend the rule may result in a revenue loss. Enactment may result in additional long term trailer revenues.

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Agency name: Secretary of State, **Bureau of Motor Vehicles**
Umbrella-Unit: **29-250**
Statutory authority: 29-A MRS §531
Chapter number/title: **Ch. 162**, The Administration of the International Registration Plan
Filing number: **2018-239**
Effective date: 11/13/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is being amended to update the rule relative to new IRP recordkeeping, auditing, and electronic credentialing requirements. The rule also is being updated to reflect changes to the sales tax requirements for vehicles used in interstate commerce.

Basis statement:

This rule provides for the efficient administration of the International Registration Plan. The IRP is a mandatory base-state commercial vehicle registration reciprocity agreement providing for the proper collection and distribution of interstate truck registration fees.

This rule outlines the procedures and standards governing Maine's participation in the International Registration Plan pursuant to Title 29-A §531. The rule is being amended to update the rule relative to new IRP recordkeeping, auditing, and electronic credentialing requirements. The rule also is being updated to reflect changes to the sales tax requirements for vehicles used in interstate commerce.

Fiscal impact of rule:

None.

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Agency name: Secretary of State, **Bureau of Motor Vehicles**
Umbrella-Unit: **29-250**
Statutory authority: 29-A MRS §525
Chapter number/title: **Ch. 165**, The Administration of the International Fuel Tax Agreement and the Intrastate Fuel Tax Program
Filing number: **2018-240**
Effective date: 11/13/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is being updated to provide for electronic credentialing and electronic recordkeeping. Specifically, the rule is being updated to define the use of electronic mileage recording devices such as GPS, and to conform to IFTA audit requirements. The rule is being revised to provide for the electronic display of the IFTA license. The rule also is being revised to clarify the best information available assessment process.

Basis statement:

This rule establishes and defines the State of Maine's participation in the International Fuel Tax Agreement (IFTA). IFTA is a base state fuel tax agreement requiring that a licensee license with its home (base) jurisdiction for fuel tax licensing and reporting for all member jurisdictions. The licensee makes one annual application; is issued one set of fuel decals per truck; and makes one quarterly fuel tax return covering travel in all IFTA jurisdictions. The base jurisdiction collects the licensee's taxes and transmits them to the appropriate member jurisdictions. The base state is responsible for all accounting and auditing. Licensee tax reporting is done on a fleet basis.

Fiscal impact of rule:

None.

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Agency name: Secretary of State, **Bureau of Corporations, Elections and Commissions – Division of Elections**
Umbrella-Unit: **29-250**
Statutory authority: 21-A MRS §723-A sub-§5
Chapter number/title: **Ch. 535**, Rules Governing the Administration of Elections Determined by Ranked-Choice Voting
Filing number: **2018-079**
Effective date: 5/11/2018
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This emergency rule is being adopted to implement ranked-choice voting for the June 12, 2018 Primary Elections, pursuant to PL 2017 c. 316 and IB 2015 c. 3.

Basis statement:

Ranked-choice voting was adopted by a citizen's initiative, which was approved by the voters at the November 8, 2016 General and Referendum Election. In November, 2017, the 128th Legislature enacted Public Law 2017, Chapter 316, which would have delayed implementation of ranked-choice voting until after December 1, 2021. This law also gave the Secretary of State routine technical rulemaking authority to implement the ranked-choice voting process. A group of citizens then circulated a People's Veto petition to veto the delay provisions. On March 5, 2018, the Secretary of State confirmed that the citizens had submitted a sufficient number of valid signatures to stay the effect of those delay provisions in Public Law 2017, Chapter 316, and to send the People's Veto question to the voters at the June 12, 2018 Primary and Special Referendum Election. Consequently, as confirmed in recent rulings by the Maine Superior Court and the Maine Law Court, the Secretary of State must implement ranked-choice voting for federal and state offices at the June 12, 2018 Primary Elections. Because the statute enacted by the citizen's initiative provides only a broad outline of the requirements but does not contain sufficient detail to implement the voting process, the Secretary of State must adopt a rule that defines these implementation details. This rule is being adopted as an emergency so that it will be in effect for the June 12, 2018 Primary Election. If the voters approve the People's Veto question on June 12th, then the Secretary of State will need to follow the APA process to propose and adopt a permanent rule.

Fiscal impact of rule:

The cost to implement this rule is estimated at less than \$150,000 for the June 12, 2018 primary election.

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Agency name: Secretary of State, **Bureau of Corporations, Elections and Commissions – Division of Elections**
Umbrella-Unit: **29-250**
Statutory authority: 21-A MRS §723-A sub-§5-A
Chapter number/title: **Ch. 536**, Rules Establishing Procedures for Requesting and Conducting Recounts of Elections Determined by Ranked-Choice Voting
Filing number: **2018-109**
Effective date: 6/20/2018
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

Ranked-choice voting ("RCV") was enacted into law by a citizen's initiative in November 2016, and applied to elections held on or after January 1, 2018. IB 2015, c. 3. The original law did not grant any rulemaking authority to the Secretary of State. In November, 2017, the 128th Legislature enacted Chapter 316 of the Public Laws of 2017, "An Act to Implement Ranked-choice Voting in 2021" which delayed the implementation of ranked-choice voting until after December 1, 2021, and further provided that the RCV law would be repealed unless, prior to that date, the voters of the State ratified constitutional amendments authorizing the use of RCV in general elections for Governor, State Senate and State Representative. Chapter 316 also directed the Secretary of State to adopt routine technical rules for the proper and efficient administration of elections by RCV, including rules for requesting and conducting recounts in RCV contests. A group of citizens circulated a People's Veto Referendum petition to veto the provisions of Chapter 316 that would delay or repeal RCV. On March 5, 2018, the Secretary of State determined that the citizens had submitted a sufficient number of valid signatures to stay the effect of the delay and repeal provisions of Chapter 316, meaning that RCV would apply to election contests involving more than three candidates in the June 12, 2018 Primary Election. Between the end of March and the end of May, 2018, numerous lawsuits were filed challenging the ranked-choice voting law (including a challenge to the Secretary's rulemaking authority) and seeking to block its implementation. On May 11, 2018, the Secretary of State adopted rules governing the ranked-choice counting process. Chapter 502 of the Department's rules was written to apply solely to recounts of elections determined by plurality, and it is not adequate to address the unique aspects of RCV. Adoption of this rule is necessary to specify procedures applicable to an election contest determined by RCV.

Fiscal impact of rule:

The cost to implement this rule is estimated at less than \$100,000 for the June 12, 2018 primary election, and there will be no fiscal impact if the candidate requesting the recount is required to pay the actual costs pursuant to 21-A MRS §737-A(1-A)(b).

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Agency name: Secretary of State, **Bureau of Corporations, Elections and Commissions – Division of Elections**
Umbrella-Unit: **29-250**
Statutory authority: 21-A MRS §723-A sub-§5-A
Chapter number/title: **Ch. 535** (*New*), Rules Governing the Administration of Elections Determined by Ranked-Choice Voting
Filing number: **2018-230**
Effective date: 11/7/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Ranked-choice voting is a new method of conducting elections that did not exist in Maine law until this year. The governing statute, 21-A MRS §723-A, does not provide sufficient detail to address how to administer elections by this method.

Basis statement:

Ranked-choice voting ("RCV") is a method of counting ballots and determining the outcome of election contests that applies when three or more candidates have qualified for the ballot and no candidate receives a majority of the first choice votes counted at the municipal level. It requires the collection of ballots or memory devices from all of the voting jurisdictions within an electoral district and processing at a central counting facility by staff of the Secretary of State's Office. The purpose of the rule is to detail procedures that are not adequately described in statute.

Fiscal impact of rule:

The cost to implement this rule is estimated at \$315,000 for any election with offices on the ballot that must be determined by ranked-choice voting, and where no candidate receives a majority of the first choice votes cast.

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Agency name: Secretary of State, **Bureau of Corporations, Elections and Commissions – Division of Elections**
Umbrella-Unit: **29-250**
Statutory authority: 21-A MRS §723-A sub-§12, 738
Chapter number/title: **Ch. 502**, Rules Governing the Conduct and Procedures for Election Recounts, in Election Contests Determined by Plurality
Filing number: **2018-233**
Effective date: 11/13/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Secretary of State centrally conducts any recount that is requested by a losing candidate in a county, state or federal election. The Secretary of State is authorized to adopt rules governing the conduct and procedures for a recount. Provisions of the rules include collection, security and handling of ballots, hours of the recount, personnel, supervision, disputed ballots and final sign-off at the conclusion of the recount. The rule provides procedures for conducting a recount in stages when a recount is requested for a statewide referendum or statewide or multi-county office.

Basis statement:

The Secretary of State is required by law to conduct recounts in state elections under circumstances described in Title 21-A sections 737-A and 738. This rule outlines the specific procedures to be followed in conducting recounts for elections determined by plurality. (Recount procedures in elections determined by the method of ranked-choice voting are described in Ch. 536 of the Department's rules.) This replacement version of Ch. 502 also establishes procedures for staging a recount in a statewide race, or multi-county election contest.

Fiscal impact of rule:

None. The Secretary of State is currently responsible for conducting these recounts. The rule will not significantly change the manner in which the Division of Elections conducts recounts. Adoption of this rule will not affect the number of recounts that are conducted in each election cycle.

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Agency name: Secretary of State, **Bureau of Corporations, Elections and Commissions – Division of Elections**

Umbrella-Unit: **29-250**

Statutory authority: 21-A MRS §723-A sub-§5-A

Chapter number/title: **Ch. 536** (*New*), Rules Establishing Procedures for Requesting and Conducting Recounts of Elections Determined by Ranked-Choice Voting

Filing number: **2018-234**

Effective date: 11/13/2018

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The ranked-choice voting statute requires the Secretary of State to adopt rules for requesting and conducting recounts of election results that are determined by the method of ranked-choice voting.

Basis statement:

Adoption of this rule is necessary to specify procedures for a recount that are applicable to an election contest determined by ranked-choice voting ("RCV") because that process is quite different from recount methods that apply to an election determined by plurality. The RCV statute, as enacted into law by a citizen's initiative in November 2016, does not address recounts. Accordingly, a subsequent amendment, enacted as Ch. 316 of the *Public Laws of 2017*, "An Act to Implement Ranked-choice Voting in 2021," directed the Secretary of State to adopt rules for requesting and conducting recounts in RCV elections. An emergency rule was adopted for the June 12, 2018 primary elections by RCV but has since expired. This rule is a modified version of the emergency rule and establishes the procedure for such recounts in the general election of November 2018 and beyond.

Fiscal impact of rule:

The cost to implement this rule is estimated to be in the range of \$100,000 to \$150,000 in any election with offices determined by ranked-choice voting where a recount is conducted, and there will be no fiscal impact if the candidate requesting the recount is required to pay the actual costs pursuant to 21-A MRS §737-A(1-A)(B).

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Secretary of State, **Maine State Archives**
Umbrella-Unit: **29-255**
Statutory authority: 5 MRS ch. 6 §95-B; 30-A MRS §1705 (*repealed*)
Chapter number/title: **Ch. 10**, Rules for Disposition of Local Government Records
(Repealed)
Filing number: **2018-277**
Effective date: 1/2/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this filing is to repeal the Ch. 10 Rule. Statutory authority for this rule is listed as: 5 MRS ch. 6 §95-B and 30-A MRS §1705. 30-A MRS §1705 has already been repealed. Title 5 ch. 6 details the duties of the State Archivist. State and Local Government records encompass both of these duties. However, it has become increasingly more and more difficult to meet the needs and demands of our local government constituents and develop proper guidance and procedures required due to the nature of the extensive rulemaking process when there are already specific guidelines written in statute with which both state and local government agencies must comply. State agencies are allowed to submit new schedules and amendments to the Records Management office at any time and have their submissions reviewed in a timely manner. Local government agencies must wait for a very lengthy process for any changes to occur. We have found no basis for why the local schedules are handled differently than the state agency or general state schedules. We have looked at the history of both the Archives Advisory Board minutes, the prior Local Government Board and County Boards and have not found any concrete evidence as to why this was put in place other than to give towns and/or the public the opportunity for input. However, this is also accomplished by having an appointed Board made up of people from various backgrounds and having public meetings where local records are discussed.

Basis statement:

(See Principal reason...)

Fiscal impact of rule:

(No response)