

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2020 to December 31, 2020**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5*

**Agency name:** Bureau of Revenue Services  
**Umbrella-Unit:** 18-125  
**Statutory authority:** 36 MRS §576  
**Chapter number/title:** Ch. 202, Tree Growth Tax Law Valuations - 2020  
**Filing number:** 2020-130  
**Effective date:** 6/3/2020  
**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:**

Annual establishment of values produces no additional cost to the State. The anticipated FY 2020-21 amount appropriated to reimburse anticipated municipal claims for "taxes lost" due to the use of Tree Growth Tax Law values on classified forestland is \$7,600,000.

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**Agency name:** Bureau of Revenue Services  
**Umbrella-Unit:** 18-125  
**Statutory authority:** 36 MRS §§ 112, 5012(5)  
**Chapter number/title:** Ch. 807, Residency  
**Filing number:** 2020-254  
**Effective date:** 12/26/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

These changes replace the existing Rule 807 definition of “statutory resident” with a definition that references the statutory residency standard in 36 MRS §5102(5)(B) and update the definition of “permanent place of abode” to provide that the residence must be maintained by the individual as a household for the entire tax year. In addition, these changes break out the current section .07, “Resident and nonresident aliens,” into two subsections and provide that the current provisions, now located in subsection A, no longer apply to tax years beginning on or after January 1, 2020. For tax years beginning on or after January 1, 2020, subsection B provides that an individual’s Maine residency and Maine income tax are determined under Maine law, without regard to federal resident or nonresident alien status unless otherwise provided by Maine law. Lastly, these changes update section .08, “Military personnel,” to more accurately and completely reflect current federal law concerning the residency of a military spouse, including the federal election under 50 USC §4001(a)(2) available for tax years beginning on or after January 1, 2018.

**Basis statement:**

The following changes to Rule 807 are being adopted:

The existing definition of “statutory resident” is being replaced with a definition that references the statutory residency standard in 36 MRS §5102(5)(B). This change is being made to ensure consistency between the rule definition and the standard outlined in the statute.

Section .07, “Resident and nonresident aliens,” is being broken out into two subsections. The current provisions, now located in subsection A, no longer apply to tax years beginning on or after January 1, 2020. The new provisions are located in subsection B and provide that, for tax years beginning on or after January 1, 2020, an individual’s Maine residency and Maine income tax are determined under Maine law, without regard to federal resident or nonresident alien status unless otherwise provided by Maine law. This change is because the current rule provision may be adverse to certain taxpayers who would benefit from filing as Maine residents.

Lastly, section .08, “Military personnel,” is being updated to more accurately reflect current federal law concerning residency of a military spouse. This includes the federal election under 50 USC §4001(a)(2) available for tax years beginning on or after January 1, 2018, which permits a military spouse to use the same residence as the service member for purposes of taxation regardless of the marriage date.

**Fiscal impact of rule:**

None.

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**Agency name:** Bureau of Revenue Services  
**Umbrella-Unit:** 18-125  
**Statutory authority:** 36 MRS §§ 112, 5217-D  
**Chapter number/title:** Ch. 812, Credit for Educational Opportunity  
**Filing number:** 2020-219  
**Effective date:** 10/21/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**

The principal reason for proposing this rule change is to add a new section to Rule 812 to reconcile two provisions in the law governing the Credit for Educational Opportunity (Credit) so that the Credit can be calculated for payments made during periods of forbearance or deferment.

**Basis statement:**

These emergency changes add a new section to Rule 812 to reconcile two provisions in the law governing the Credit for Educational Opportunity (Credit). 36 MRS §5217-D(2)(B) provides that “Forbearance or deferment of loan payments *does not affect eligibility* for the credit under this section” but also provides that “Payment of loan amounts *in excess of the amounts due* during the taxable year does not qualify for the credit.” (emphasis added) The adopted changes reconcile these provisions, permitting Maine Revenue Services to consider the payment amount that would be due but for forbearance or deferment when calculating the Credit. The adopted changes further provide that, if the payment amount due but for forbearance or deferment cannot be established, the benchmark loan payment as determined under 36 MRS §5217-D(1)(A) may be used instead.

**Fiscal impact of rule:**

None. (Impact already accounted for in August 1<sup>st</sup> Revenue Forecast.)

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*Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5*

**Agency name:** Office of Marijuana Policy  
**Umbrella-Unit:** 18-691  
**Statutory authority:** Title 28-B  
**Chapter number/title:** Ch. 1, Adult Use Marijuana Program Rule  
**Filing number:** 2020-026  
**Effective date:** 2/20/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The *Marijuana Legalization Act* requires the Department of Administrative and Financial Services (OAFS) to conduct both major substantive and routine technical rulemaking. The Office of Marijuana Policy (OMP), within OAFS, is completing routine technical rulemaking, following emergency adoption, of a 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 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.

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. 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 products to be destroyed due to failure of such mandatory testing.

This amended rule is promulgated after routine technical rulemaking, including notice, public hearing, and public comment in accordance Title 5 ch. 375 and following consultation with the Department of Health and Human Services, Maine Center for Disease Control and Prevention, and the Department of Agriculture, Conservation and Forestry.

**Fiscal impact of rule:**

This rule allows for the creation of a new kind of business entity, a marijuana Testing Facility. No fiscal impact on newly created entity can be done at this time.

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**Agency name:** Office of Marijuana Policy  
**Umbrella-Unit:** 18-691  
**Statutory authority:** Title 28-B  
**Chapter number/title:** Ch. 1, Adult Use Marijuana Program Rule  
**Filing number:** 2020-143  
**Effective date:** 6/26/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**

The *Marijuana Legalization Act* (Title 28-B ch. 1) requires the Department of Administrative and Financial Services (DAFS) to conduct both major substantive and routine technical rulemaking. In response to PL 2019 ch. 676 (emergency, effective March 23, 2020) the Office of Marijuana Policy (OMP), within DAFS, is proposing to complete routine technical rulemaking, following emergency adoption, of a rule to establish a regulatory framework governing the licensing of sample collector and licensee self-sampling in the adult use marijuana industry to protect the health and safety of the public in Maine.

**Basis statement:**

These additions are promulgated to amend and add to the *Adult Use Marijuana Program Rule*, 18-691 CMR ch. 1, promulgated by the Maine Department of Administrative and Financial Services (the Department) specific licensing criteria and additional requirements for the operation of sample collector licensees and to rescind the prohibition on cultivation facility, products manufacturing facility and marijuana store licensees collecting samples of marijuana and marijuana products for mandatory testing following enactment of PL 2019 ch. 676, *An Act Regarding the Collection of Samples for Testing of Adult Use Marijuana and Adult Use Marijuana Products* (emergency, effective March 23, 2020).

This rule is promulgated to ensure the independence and professional responsibility of sample collector licensees, to establish minimum safety and operating standards for sample collector licensees, and to establish minimum requirements, including the use of a Department-developed sample collection form, sample collection standard operating procedure, and sample collection techniques described in the Best Practices Guide for Sample Collection. The minimum requirements apply to all licensees, including those licenses engaged in "self-sampling". The additions are intended to reduce licensee costs regarding mandatory testing by providing alternatives to marijuana testing facility sample collection services, and are further intended to protect public health and safety by improving the capacity of the marijuana testing infrastructure by reducing sample collection burdens on marijuana testing facilities to allow for additional staff time and resources to conduct mandatory testing, and to provide broader access to mandatory testing by improving the geographic availability of sample collection for mandatory testing.

**Fiscal impact of rule:**

*De minimis.*

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**Agency name:** Office of Marijuana Policy  
**Umbrella-Unit:** 18-691  
**Statutory authority:** Title 28-B  
**Chapter number/title:** Ch. 1, Adult Use Marijuana Program Rule  
**Filing number:** 2020-204  
**Effective date:** 9/18/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**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 completing routine technical rulemaking, following emergency adoption, of a rule to establish a regulatory framework governing the licensing of sample collectors and licensee self-sampling in the adult use marijuana industry to protect the health and safety of the public in Maine.

**Basis statement:**

These additions are promulgated to amend and add to the *Adult Use Marijuana Program Rule*, 18-691 CMR ch. 1, promulgated by the Maine Department of Administrative and Financial Services (the Department) specific licensing criteria and additional requirements for the operation of sample collector licensees and to rescind the prohibition on cultivation facility, products manufacturing facility and marijuana store licensees collecting samples of marijuana and marijuana products for mandatory testing following enactment of PL 2019 ch. 676, *An Act Regarding the Collection of Samples for Testing of Adult Use Marijuana and Adult Use Marijuana Products* (emergency, effective March 23, 2020).

This rule is promulgated to ensure the independence and professional responsibility of sample collector licensees, to establish minimum safety and operating standards for sample collector licensees, and to establish minimum requirements, including the uniform sample collection, transport and receipt recordkeeping requirements, required use of a Department-developed sample collection standard operating procedure (Appendix A of this rule), and sample collection techniques described in the *Best Practices Guide for Sample Collection*. The minimum requirements apply to all licensees, including those licenses engaged in “self-sampling”. The additions are intended to reduce licensee costs regarding mandatory testing by providing alternatives to marijuana testing facility sample collection services, and are further intended to protect public health and safety by improving the capacity of the marijuana testing infrastructure by reducing sample collection burdens on marijuana testing facilities to allow for additional staff time and resources to conduct mandatory testing, and to provide broader access to mandatory testing by improving the geographic availability of sample collection for mandatory testing. A number of changes to the proposed rules were made in response to public comments received by the Department during the rulemaking public comment period. A spreadsheet of the public comments received and the Department’s response to each comment is included in the rulemaking documents filed by the Department with the Secretary of State and is available from the Department or the Secretary of State upon request.

This rule is effective September 18, 2020 and supersedes the emergency rules amending this chapter which went into effect on June 26, 2020.

**Fiscal impact of rule:**

None.

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**Agency name:** Office of Marijuana Policy  
**Umbrella-Unit:** 18-691  
**Statutory authority:** Title 28-B, *specifically* §§ 104, 501  
**Chapter number/title:** Ch. 3 (*New*), Emergency Rule Regarding the Assessment of Excise Taxes for Adult Use Marijuana Program Cultivation Licensees  
**Filing number:** 2020-183  
**Effective date:** 8/20/2020  
**Type of rule:** Major Substantive  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**

To ensure consistent application of excise taxes regardless of licensee cultivation or manufacturing practices and to uphold the Legislature’s intent to apply a 20% effective tax rate to all adult use marijuana and marijuana products, and mature marijuana plants transferred from the Maine Medical Use of Marijuana Program to the Adult Use Marijuana Program pursuant to 28-B MRS §501(6).

**Basis statement:**

This rule is promulgated by the Maine Department of Administrative and Financial Services (the Department) on an emergency basis to protect the public’s general welfare by ensuring predictability and consistency in the application and receipt of excise taxes in light of novel practices in the Adult Use Marijuana Program that have emerged since the enactment of the excise tax provisions of the *Marijuana Legalization Act*. Enactment of this rule on an emergency basis will ensure that the public’s general welfare is preserved by ensuring that sales, purchases and transfers of adult use marijuana generate excise taxes as anticipated when the *Marijuana Legalization Act* was implemented. This rule provides cultivation facility licensees engaged in the transfer of marijuana flower, marijuana trim or mature marijuana plants that have not been cured, dried, or otherwise prepared in a manner to reduce or eliminate water weight<sup>1</sup> prior to transfer to another licensee a formula for calculating the required excise tax to align that tax with the Legislature’s intended 21.5 percent excise tax rate. This rule ensures that all adult use marijuana and marijuana products are subject to an overall effective tax rate of approximately 20% as was intended by the Legislature pursuant to PL 2017 ch. 409 (emergency, Governor’s veto overridden May 2, 2018).

**Fiscal impact of rule:**

This market has not yet opened so a meaningful fiscal impact cannot be estimated at this time.

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<sup>1</sup> “Water weight” is similar to “moisture content” and these terms are used interchangeably.

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**Agency name:** Office of Marijuana Policy  
**Umbrella-Unit:** 18-691  
**Statutory authority:** 24-B MRS ch. 1; 22 MRS §569; PL 2019 ch. 676  
**Chapter number/title:** **Ch. 5**, Rules for the Certification of Marijuana Testing Facilities (and Emergency Additions Regarding Sample Collection)  
**Filing number:** **2020-144**  
**Effective date:** 6/26/2020  
**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 and guidance of sampling for testing facilities, sample collectors, and licensees choosing to engage in self-sampling.

**Basis statement:**

These additions are promulgated to amend and add to the *Rules for the Certification of Marijuana Testing Facilities*, 18-691 CMR ch. 5, promulgated by the Maine Department of Administrative and Financial Services (the Department) to rescind the prohibition on cultivation facility, products manufacturing facility and marijuana store licensees collecting samples of marijuana and marijuana products for mandatory testing and to provide for acceptance of samples for mandatory testing collected by those licensees or by the newly created sample collector licensees, following enactment of PL 2019 ch. 676, *An Act Regarding the Collection of Samples for Testing of Adult Use Marijuana and Adult Use Marijuana Products* (emergency, effective March 23, 2020).

This rule is promulgated to authorize marijuana testing facilities to accept samples for mandatory testing required by the Adult Use Marijuana Program Rule collected by cultivation facility, products manufacturing facility, marijuana store, and sample collector licensees in addition to those samples collected by marijuana testing facility staff. The additions are intended to reduce licensee costs regarding mandatory testing by providing alternatives to marijuana testing facility sample collection services, and are further intended to protect public health and safety by improving the capacity of the marijuana testing infrastructure by reducing sample collection burdens on marijuana testing facilities to allow for additional staff time and resources to conduct mandatory testing, and to provide broader access to mandatory testing by improving the geographic availability of sample collection for mandatory testing.

**Fiscal impact of rule:**

*De minimis* for the Office of Marijuana Policy, Maine Center for Disease Control, and Program participants (licensees). Potential for reduction in testing costs for licensees.

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**Agency name:** Office of Marijuana Policy  
**Umbrella-Unit:** 18-691  
**Statutory authority:** 24-B MRS ch. 1; 22 MRS §569  
**Chapter number/title:** Ch. 5, Rules for the Certification of Marijuana Testing Facilities  
**Filing number:** 2020-205  
**Effective date:** 9/18/2020  
**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 and guidance of sampling for testing facilities, sample collectors, and licensees choose to self-sampling.

**Basis statement:**

These additions are promulgated to amend and add to the *Rules for the Certification of Marijuana Testing Facilities*, 18-691 CMR ch. 5, promulgated by the Maine Department of Administrative and Financial Services (the Department) to rescind the prohibition on cultivation facility, products manufacturing facility and marijuana store licensees collecting samples of marijuana and marijuana products for mandatory testing and to provide for acceptance of samples for mandatory testing collected by those licensees or by the newly created sample collector licensees, following enactment of PL 2019 ch. 676, *An Act Regarding the Collection of Samples for Testing of Adult Use Marijuana and Adult Use Marijuana Products* (emergency, effective March 23, 2020).

This rule is promulgated to authorize marijuana testing facilities to accept samples for mandatory testing required by the Adult Use Marijuana Program Rule collected by cultivation facility, products manufacturing facility, marijuana store, and sample collector licensees in addition to those samples collected by marijuana testing facility staff. The additions are intended to reduce licensee costs regarding mandatory testing by providing alternatives to marijuana testing facility sample collection services, and are further intended to protect public health and safety by improving the capacity of the marijuana testing infrastructure by reducing sample collection burdens on marijuana testing facilities to allow for additional staff time and resources to conduct mandatory testing, and to provide broader access to mandatory testing by improving the geographic availability of sample collection for mandatory testing. A number of changes to the proposed rules were made in response to public comments received by the Department during the rulemaking public comment period. A spreadsheet of the public comments received and the Department's response to each comment is included in the rulemaking documents filed by the Department with the Secretary of State and is available from the Department or the Secretary of State upon request.

This rule is effective September 18, 2020 and supersedes the emergency rules amending this chapter which went into effect on June 26, 2020.

**Fiscal impact of rule:**

No fiscal impact.