

# MAINE STATE LEGISLATURE

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# Adult Use Marijuana Program

January 1, 2019 – December 31, 2019

*Annual Report to the Maine State Legislature*

Maine Department of Administrative and Financial Services  
Office of Marijuana Policy

February 2020

## Background

Maine voters approved the adult use, retail sale and taxation of marijuana in November 2016. During the 128th Legislature, the Marijuana Legalization Implementation Committee, a 17-member joint select committee, was convened to overhaul the Marijuana Legalization Act (MLA) passed by voters. Following two legislative rewrites of the MLA and two gubernatorial vetoes, LD 1719—An Act to Implement a Regulatory Structure for Adult Use Marijuana—became law on May 2, 2018.

Since the inauguration of Governor Janet Mills in January 2019 and the corresponding establishment of the Office of Marijuana Policy (OMP) within the Department of Administrative and Financial Services in February 2019, the State of Maine has been working to implement the state's adult use marijuana program and honor the will of Maine voters.

In March 2019, OMP contracted with Freedman & Koski to provide consulting services related to marijuana rulemaking. Four weeks later, the first draft of Maine's adult use rules was released for public review and comment. In May 2019, the Office formally proposed rules to govern Maine's adult use program and submitted provisionally adopted rules to the 129th Legislature on June 5, 2019.

Governor Mills signed LD 719—An Act to Amend the Adult Use Marijuana Law—on June 27, 2019. LD 719 made several changes to the MLA and, most importantly, authorized OMP to proceed with final adoption of adult use rules. This legislation went into effect on September 19, 2019.

While rulemaking activity was at the forefront of OMP's work throughout 2019, we spent much of the summer and fall months scaling up the staffing levels of the office; developing forms and applications; developing an online platform for the application process; preparing to deploy our track and trace system; and engaging with industry stakeholders, other state agencies, and members of the public on our work. For example, we have worked with partners across state government to ensure new marijuana establishment licensees are appropriately licensed not only by our office, but with agencies addressing everything from hazardous waste, fire prevention and life safety, food and product safety, pesticides, tobacco retail sales, and beverage bottling.

All of these steps were necessary to prepare OMP to complete our rulemaking activity and launch the adult use program. The Office quickly identified that making certain applications and forms available in advance would allow OMP to better respond to questions raised by applicants of the new program. On November 4, 2019, OMP completed final adoption of the Adult Use Marijuana Program rule and formally introduced its staggered rollout of the licensing process.

The process began, first, with accepting applications for individual identification cards (IICs) on the same date as final adoption. The IIC process includes fingerprinting, state and federal criminal history records checks, and a review to ensure an applicant is current on all court-ordered payments.

Two weeks later, applications for marijuana testing facilities were made available on November 18, 2019. On December 5, OMP made all remaining marijuana facility applications available, allowing prospective licensees to commence the application process for adult use marijuana cultivation facilities, products manufacturing facilities, and marijuana stores.

To date, our staff have fielded hundreds of phone calls from municipal government officials, attorneys, and the public regarding our new regulatory framework. We have traveled across the state to provide education and resources to communities affected by this burgeoning industry. All of this is to say that, as more and more communities choose to affirmatively opt-in, OMP finds itself well-prepared to launch a comprehensive adult use marijuana market in the coming months.

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The rules and statute governing this program may be found at:

- Adult Use Marijuana: [Title 28-B](#)
- Rules: [18-691 C.M.R. ch. 1](#)
- Rules: [18-691 C.M.R. ch. 5](#)

## Executive Summary

In accordance with 28-B M.R.S. § 113(1), the Department shall submit to the joint standing committee of the Legislature having jurisdiction over adult use marijuana matters, an annual report that contains, at a minimum:

- The number of applications for each type of license submitted to the department including, if applicable, the number of applications for license renewals, and the number of each type of license conditionally approved by the department;
- The total number of each type of active license issued by the department following local authorization of a conditionally approved licensee;
- The total square footage of plant canopy approved by the department for active cultivation facilities, the percentage of active cultivation facility licenses by cultivation tier and, if applicable, the number of approved increases in the maximum plant canopy allowed under a tier 4 cultivation facility;
- The total amount of application fees and license fees collected, and the total amount of the excise and sales tax revenue collected on the sale of adult use marijuana and adult use marijuana products;
- An overview of current adult use marijuana-related staffing at the department and the cost to the department to regulate the adult use marijuana industry in the State during the prior fiscal year and cost projections for the upcoming fiscal year;
- The total reported volume and value of adult use marijuana cultivated and sold by all cultivation facilities, when available;
- The total reported volume and value of adult use marijuana and adult use marijuana products sold by all marijuana stores, when available;
- The number of inspections of the licensed premises of licensees performed by the department and the results of those inspections, including, but not limited to, the number of inspections resulting in license violations and the percentage of all licensees inspected;
- The number of license violations committed by licensees and a breakdown of those violations into specific categories based on the type of violation and the outcome of the violation, including, but not limited to, the total amount of monetary penalties imposed and collected by the department and the percentage of total license violations resulting in the imposition of a monetary penalty, license suspension or license revocation;
- Public health and safety data collected, received or analyzed by the department; and
- Recommendations, including any suggested legislation, to address any issues with the regulation of the adult use marijuana industry in the State encountered by the department.

The data in this report reflects calendar year periods.

## Licensing Applications

Individual Identification Card applications were made available on November 4, 2019 through the InforME online application portal and printable applications available on the OMP website. Approximately 92.2 percent of applicants applied via the online portal, with 4.3 percent of applicants residing out-of-state.

Marijuana Testing Facility applications were made available on November 18, 2019 via printable applications on the OMP website. As of December 31, 2019, no testing facilities have applied. OMP has engaged in discussions and meetings with prospective testing facility operators to better understand their plans, potential challenges they face, and how OMP could assist them in navigating the application process. We expect that by the conclusion of 2020, Maine will have at least three—and possibly four—marijuana testing facilities in operation.

Marijuana cultivation, manufacturing and store applications were made available on December 5, 2019 through the InforME online application portal and printable applications available on the OMP website. As of December 31, 2019, 131 applications have been received for all license types. As of December 31, 2019, zero applicants have satisfied all documentation requirements.

	<b>Submitted</b>	<b>Approved</b>
Individual Identification Card (IIC)	600	327
Testing Facility	0	N/A
Cultivation – Nursery	2	N/A
Cultivation – Tier 1 (Canopy)	2	N/A
Cultivation – Tier 1 (Plant Count)	0	N/A
Cultivation – Tier 2	16	N/A
Cultivation – Tier 3	18	N/A
Cultivation – Tier 4	10	N/A
Products Manufacturing	18	N/A
Store	65	N/A

At its highest level, the process of becoming licensed in the State of Maine’s adult use marijuana program takes three steps: 1.) Conditional Licensure, 2.) Local Authorization, and 3.) Active Licensure.

This approach was designed by the legislature to ensure that prospective adult use licensees would be vetted by OMP prior to receiving approval from a host community. This ensures that our state’s municipalities have the benefit of reviewing the material that led to OMP’s conditional licensure before taking action at the local level. Once local authorization is obtained, a prospective licensee returns to OMP to obtain an active license.

## Active Establishment Licenses

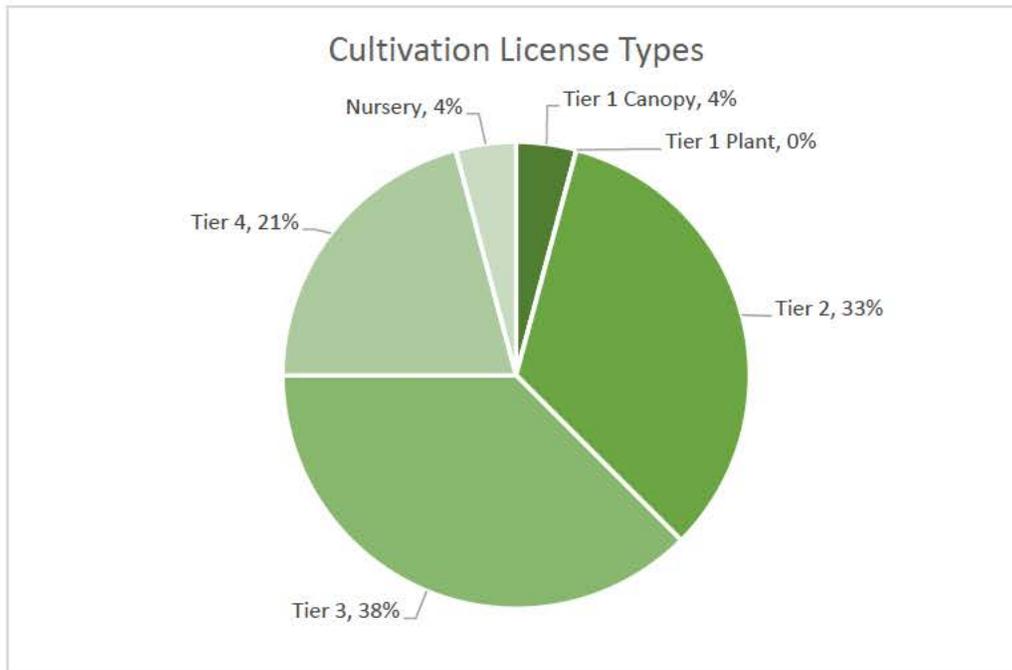
As of December 31, 2019, there were no licensees that have obtained conditionally approved status. OMP estimates that the first conditional licenses will be issued during the first calendar quarter of 2020. This process will commence the local authorization and subsequent active licensure process.

A licensee that has been issued a conditional license by the department may not engage in the cultivation, manufacture, testing or sale of adult use marijuana or adult use marijuana products until the department has issued an active license.

## Industry Capacity

As of December 31, 2019, there were no active licenses issued. Based on licensees with a Pending Conditional license status, there is the potential for up to 361,000 square feet of plant canopy, should all pending applications for all establishment license types be approved during 2020.

The majority of cultivation applications received are for Tier 2, 3 and 4 facilities, accounting for 33.3 percent, 37.5 percent and 20.8 percent, respectively. There have been zero applications for a Tier 1 (plant count) establishment.



<b>Cultivation Type</b>	<b>Maximum Square Feet Allowed</b>	<b>Submitted Applications</b>	<b>Total</b>
Tier 1 (Plant Count)	30 mature plants/ unlimited immature and seedlings	0	n/a
Tier 1 (Canopy)	500	2	1,000
Tier 2	2,000	16	32,000
Tier 3	7,000	18	126,000
Tier 4	20,000	10	200,000
Nursery	1,000	2	2,000

Cultivation Tier 4 licensees are allowed by MRS 28-B § 304 to request an increase in their plant canopy capacity during the renewal process, not more than once every 2 years. There were no renewal applications during 2019.

**Industry Volume by Cultivation Facilities**

As of December 31, 2019, there were zero active adult use cultivation facility licenses.

**Industry Volume by Marijuana Stores**

As of December 31, 2019, there were zero active adult use marijuana store licensees.

**Compliance Inspections**

As of December 31, 2019, there were zero compliance inspections.

**Compliance Violations**

As of December 31, 2019, there were zero compliance violations.

**Public Health and Safety Data**

Health and safety are at the forefront of every decision made by OMP. When the office was established in early 2019, one of the first steps was to identify a mission statement and establish guiding principles. Both speak to the importance of the public’s health and safety in everything OMP does.

While the collection of public health data has not been possible, OMP has taken steps to interact with and involve the public health community in its work. OMP has engaged in several public speaking engagements, most notably presenting to MaineHealth’s Center for Tobacco

Independence/Maine Prevention Services annual kickoff meeting. In addition, the office participates in both the marijuana workgroup and tobacco laws workgroup hosted by the Maine Center for Disease Control and Prevention (MCDC). The groups are comprised of public health officials from both state government and nonprofits throughout Maine.

In addition to this work, OMP has partnered with the MCDC related to their existing “Good to Know” Maine public service advertising campaign. The campaign and content—which is focused on educating the public on compliance with state law, preventing youth use and diversion, and responsible use among interested consumers—is borrowed from the State of Colorado and is managed, on behalf of MCDC, by Rinck Advertising.

Public health and safety data will continue to play an important role in OMP’s decision-making process in 2020. The office has begun surveying its partner state agencies for marijuana-specific data and exploring the development of an internal data warehouse. It is hoped that these efforts—along with the launch of Maine’s adult use program and the corresponding data generated in our licensing system and track and trace system—will be used to make informed policy decisions.

## Revenue

Below is a summary of revenue received for Calendar Year 2019. The Office of Marijuana Policy began accepting applications for Individual Identification Cards on November 4, 2019 and began accepting applications for establishment licenses on December 5, 2019. There were no establishments operating in 2019 to generate licensing, excise tax, or sales tax revenue.

	<b>CY 2019</b>
Revenue	
IIC Application Fees	\$ 20,556.00
Establishment Application Fees	\$ 28,556.00
License Fees	\$ -
Excise Tax	\$ -
Sales Tax	\$ -
Legislative Transfers into Account	\$ 81,601.02

## Staffing and Expenses

The Office of Marijuana Policy was created in February 2019 and assumed personnel from the existing Maine Medical Marijuana Use Program. In February, the office consisted of six total full-time employees (FTE). Throughout 2019, staff recruitment has been strategically important to implementing the Adult Use Marijuana Program. At the end of December, the total staff is now 23 employees.

OMP leadership has paid particular attention to ensuring the measured growth of the office during implementation, with special focus on ensuring that additional staff can be brought on board to augment staff capacity in our licensing and compliance processes.

OMP staff share responsibilities for both the Maine Medical Marijuana Use Program and the Adult Use Marijuana Program. While the majority of OMP’s authorized positions are tied to the adult use program, we have focused on cross-training staff to minimize the likelihood of similar tasks and responsibilities being siloed by program type. This approach has proven effective, allowing office staff to serve the needs and answer the questions of licensees participating in both the adult use and medical marijuana programs.

	<b>FTE Headcount</b>	<b>Vacant Positions</b>
Administration	10	3
Compliance Division	11	2
Data Analytics Division	3	1
Licensing Division	8	1

*Please note: The positions listed in the above table are inclusive of both programs.*

The State of Maine operates on a fiscal year that runs from July 1 through June 30. Accordingly, revenue and expense information from state fiscal year 2019 covers the period from July 1, 2018 through the conclusion of the fiscal year on June 30, 2019.

	<b>FY 2019</b>
Expense	
Personnel	\$ 194,463.46
All Other	\$ 190,898.03

*Please note: These figures do not include costs incurred by the medical program during this same time period.*

Cost projections for fiscal year 2020 are estimated below:

	<b>FY 2020</b>
Cost Projections	
Personnel	\$ 1,840,651.16
All Other	\$ 992,776.12

The estimated growth in program costs reflect the natural growth of OMP as an agency bringing staff on board, incurring costs for information technology systems required to support the adult use program, and to support the normal business operations of the office.

## **Legislative Recommendations**

The work of the Office of Marijuana Policy has benefitted significantly from the positive working relationship established early on between OMP and the legislative branch. When OMP was first established in February 2019, we faced the near impossible task of writing more than 70 pages

of regulations, completing the rulemaking process outlined in the Maine Administrative Procedures Act, and submitting our major substantive rules to the legislature prior to the statutory adjournment in June 2019.

The support we received from the legislature as we engaged in our rulemaking work for the adult use program was critical to the success of OMP's efforts and commitment to accepting the first adult use applications before the conclusion of 2019. In addition to legislative leadership, individual members of the legislature, and staff in the partisan offices, the office has appreciated the opportunity to work with the nonpartisan staff in the Office of the Executive Director, Office of Policy and Legal Analysis, Office of the Revisor of Statutes, and the Legislative Information Office.

As we eye the conclusion of the 129th Legislature, OMP looks forward to working closely with the Joint Standing Committee on Veterans and Legal Affairs (VLA), and other committees as may be appropriate, on marijuana-related legislation.

OMP has proposed two adult use marijuana-related pieces of legislation for consideration; these proposals are targeted to ensure a smooth, timely roll out of AUMP this spring. As other legislative proposals come forward, OMP looks forward to working closely with VLA to ensure that any prospective changes not complicate AUMP's already complicated implementation.

First, as indicated in VLA's January 27, 2020 hearing, OMP supports the change contemplated in LD 1444, *An Act To Make the Distance to Schools for Marijuana Establishments Consistent with the Liquor Laws*, without reservation, in light of the amendment proposed by the bill's sponsor to retain the existing statutory setback of 1,000 feet. The clarity provided by this bill is welcome by both OMP and the industry to ensure consistent application by OMP of the setback requirements contemplated in the MLA.

Second, OMP requests that the VLA Committee endorse the two department bills OMP is presenting to the committee during the Second Regular Session of the 129th Legislature. The first, LD 2002, *An Act to Improve Compliance with Department of Administrative and Financial Services, Office of Marijuana Policy Registration and Licensure Requirements*, will allow OMP to use—for its own purposes—Social Security numbers it is already collecting for distribution to Maine Revenue Services. By using Social Security numbers to verify that Individual Identification Cardholders in the AUMP and registry identification cardholders in the Maine Medical Use of Marijuana Program are unique individuals, OMP will be better able to ensure that it is not issuing multiple credentials to the same natural person and improve its ability to enforce statutory ownership limits on the number of retail stores and square footage of cultivation activities in which an individual may have an interest.

The second bill OMP would request VLA consider supporting is LD 2091, *An Act to Amend the Marijuana Legalization Act and Make Other Implementing Changes*. This legislation would make a number of smaller changes to the MLA to improve alignment between the AUMP and the MMMP and address issues that have arisen during the implementation of the adult program. Specifically, the bill would:

- Align some definitions between Title 28-B and Title 22, ch. 558-C;
- Require indoor cultivation activities be shielded from public viewing by people under 21 years of age;
- Create a new category of license type, "marijuana establishment support entity", and create a new license type within that category, "sample collector", to ensure adequate

personnel are available across the state for the collection of samples of marijuana, marijuana concentrate and marijuana products for mandatory testing;

- Allow for the transfer of marijuana flower and trim, in addition to marijuana plants, seedlings, and seeds, from medical registrants to adult use cultivation licensees; and
- Amend the Freedom of Access Act (FOAA) to exclude some adult use marijuana license application materials from the definition of “public record” under that act.

As OMP has drafted regulations, implemented its licensing and compliance programs, and made policy decisions, OMP staff have been guided by this mission statement: “To ensure the health and safety of all Mainers by effectively and responsibly licensing and regulating marijuana establishments.”

It is important to understand that launching adult use marijuana sales this spring is the first step in honoring the will of voters, providing interested consumers with access to a regulated industry, and diminishing the illicit market in Maine. The current statutory and regulatory framework provides OMP and its industry partners an opportunity to scale cultivation, manufacturing and sales appropriately to meet demand, with an eye toward avoiding problems of oversupply experienced by other states.

As with any new program, there will be an adjustment period during which the industry and OMP will experience challenges in the current licensing and compliance regime. We also realize that as the industry and market mature, further legislative and rulemaking changes will be necessary; the legalization experience of other states mirrors this trend. We look forward to engaging with our prospective marijuana testing facilities, marijuana cultivation facilities, products manufacturing facility, and marijuana stores; public health and safety-related stakeholders; town and cities; and the legislature over the coming months and years to bring forward changes to better Maine’s adult use marijuana program.