

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2022 to December 31, 2022**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5*

**Agency name:** Department of Administrative and Financial Services (DAFS),  
**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 - 2022

**Filing number:** **2022-050**

**Effective date:** 4/6/2022

**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:**

Repeal-and-replace 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 valuations produces no additional cost to the State. The anticipated FY 2022-23 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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**Bureau of Revenue Services (Maine Revenue Services – MRS)**  
**Umbrella-Unit:** **18-125**  
**Statutory authority:** 36 MRS §§ 4641(1-A)(C), 4641-E  
**Chapter number/title:** **Ch. 207**, Controlling Interest Transfers (*Repeal and replace*)  
**Filing number:** **2022-153**  
**Effective date:** 08/24/2022  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

MRS is proposing to repeal and replace Rule 207 (“Controlling Interest Transfers”) to replace the current format that relies heavily on examples, to a narrative explanation of the law. Changes also include a more consistent approach to use of terms, an in-depth explanation of complex issues, and an approach that improves readability.

**Basis statement:**

Rule 207 explains Maine law on the application of the real estate transfer tax under 36 MRS chapter 711-A to the transfer or acquisition of a controlling interest in an entity that owns real property located in Maine. MRS is repealing and replacing Rule 207 (“Controlling Interest Transfers”) to replace the current format that relies heavily on examples, to a narrative explanation of the law. Changes also include a more consistent approach to use of terms, an in-depth explanation of complex issues, and an approach that improves readability.

**Fiscal impact of rule:**

None.

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**Agency name:** Department of Administrative and Financial Services (DAFS),  
**Bureau of Revenue Services (Maine Revenue Services – MRS)**

**Umbrella-Unit:** **18-125**

**Statutory authority:** 36 MRS §§ 112, 328, 330, 331

**Chapter number/title:** **Ch. 208**, Guidelines for Professional Assessing Firms that Provide Revaluation Services to Municipalities (*Repeal and replace*)

**Filing number:** **2022-154**

**Effective date:** 8/24/2022

**Type of rule:** Routine Technical

**Emergency rule:** No

**Principal reason or purpose for rule:**

This rule is being changed to replace obsolete procedures, provide a more consistent approach to explanations, and to improve readability.

**Basis statement:**

Rule 208 explains the requirements for professional assessing firms that provide revaluation services to municipalities in Maine. The rule is being amended to replace obsolete procedures, provide a more consistent approach to explanations, and to improve readability.

**Fiscal impact of rule:**

None.

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**Agency name:** Department of Administrative and Financial Services (DAFS),  
**Bureau of Revenue Services (Maine Revenue Services – MRS)**

**Umbrella-Unit:** **18-125**

**Statutory authority:** 36 MRS §§ 112, 305, 457

**Chapter number/title:** **Ch. 210** (*New*), Telecommunications Excise Tax

**Filing number:** **2022-017**

**Effective date:** 2/13/2022

**Type of rule:** Routine Technical

**Emergency rule:** No

**Principal reason or purpose for rule:**

The rule is new and is needed to explain the telecommunications excise tax law in 36 MRS §457.

**Basis statement:**

Enacted Rule 210 establishes a written process for the assessment, filing, and payment of the telecommunications excise tax.

Maine imposes an excise tax on all qualified telecommunications equipment located in the State. Maine Revenue Services is responsible for assessing the tax on qualified telecommunications equipment owned or leased by a telecommunications business. Qualified telecommunications equipment owned or leased by a person who is not a telecommunications business must be assessed a tax by the assessor of the municipality in which the equipment is located. Any property subject to the telecommunications excise tax is exempt from municipal property tax.

**Fiscal impact of rule:**

N/A

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**Agency name:** Department of Administrative and Financial Services (DAFS),  
**Bureau of Revenue Services (Maine Revenue Services – MRS)**  
**Umbrella-Unit:** **18-125**  
**Statutory authority:** 36 MRS §§ 112, 305, 6250  
**Chapter number/title:** **Ch. 211** (*New*), Deferred Collection of Homestead Property Taxes  
**Filing number:** **2022-075**  
**Effective date:** 5/9/2022  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**

The rule explains the disability qualification portion of the Deferred Collection of Homestead Property Taxes Program (the “Deferral Program”).

**Basis statement:**

The Deferral Program, 26 MRS §§ 6250-6266, allows seniors and disabled resident homeowners to defer property tax on their primary residence if they meet certain criteria.

**Fiscal impact of rule:**

N/A

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**Agency name:** Department of Administrative and Financial Services (DAFS),  
**Bureau of Revenue Services (Maine Revenue Services – MRS)**

**Umbrella-Unit:** **18-125**

**Statutory authority:** 36 MRS §§ 112, 305, 6250

**Chapter number/title:** **Ch. 211**, Deferred Collection of Homestead Property Taxes

**Filing number:** **2022-155**

**Effective date:** 8/24/2022

**Type of rule:** Routine Technical

**Emergency rule:** No

**Principal reason or purpose for rule:**

The rule explains the disability qualification portion of the Deferred Collection of Homestead Property Taxes Program (the “Deferral Program”). This filing permanently adopts rule 211 through regular rulemaking.

**Basis statement:**

The Deferral Program, 26 MRS §§ 6250-6266, allows seniors and disabled resident homeowners to defer property tax on their primary residence if they meet certain criteria.

**Fiscal impact of rule:**

None - see §8057-A(1)(C).

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**Agency name:** Department of Administrative and Financial Services (DAFS),  
**Bureau of Revenue Services (Maine Revenue Services – MRS)**

**Umbrella-Unit:** **18-125**

**Statutory authority:** 36 MRS §112

**Chapter number/title:** **Ch. 801**, Apportionment

**Filing number:** **2022-055**

**Effective date:** 4/20/2022

**Type of rule:** Routine Technical

**Emergency rule:** No

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

**Basis statement:**

Amended Rule 801 (“Apportionment”) reflects recent legislative changes related to factor presence nexus thresholds that apply to tax years beginning on or after January , 2022, provides a definition for affiliated group, and makes certain technical changes.

**Fiscal impact of rule:**  
N/A

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**Agency name:** Department of Administrative and Financial Services (DAFS),  
**Bureau of Revenue Services (Maine Revenue Services – MRS)**

**Umbrella-Unit:** **18-125**

**Statutory authority:** 36 MRS §112

**Chapter number/title:** **Ch. 803**, Income Tax Withholding Reports and Payments

**Filing number:** **2022-051**

**Effective date:** 4/6/2022

**Type of rule:** Routine Technical

**Emergency rule:** No

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

**Basis statement:**

Enacted MRS Rule 803 (“Income Tax Withholding Reports and Payments”) reflect recent legislative changes and to make other technical changes by adding language to address partnership audit requirements related to pass-through entity withholding and to reflect recently enacted penalties for failure to furnish, or for furnishing fraudulent or false, information statements (e.g., Forms W-2, 1099) to MRS.

**Fiscal impact of rule:**  
N/A



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**Bureau of Revenue Services (Maine Revenue Services – MRS)**

**Umbrella-Unit:** **18-125**

**Statutory authority:** 36 MRS §112

**Chapter number/title:** **Ch. 805**, Composite Filing

**Filing number:** **2022-052**

**Effective date:** 4/6/2022

**Type of rule:** Routine Technical

**Emergency rule:** No

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

**Basis statement:**

MRS is adopting Rule 805 to add language to address partnership audit requirements related to composite filing and to make other technical changes. Affected partnerships must file amended composite returns within 180 days of the final determination date of a partnership-level audit to report additional Maine income tax due.

**Fiscal impact of rule:**  
*(No response)*

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**Agency name:** Department of Administrative and Financial Services (DAFS),  
**Bureau of Revenue Services (Maine Revenue Services – MRS)**

**Umbrella-Unit:** **18-125**

**Statutory authority:** 36 MRS §112

**Chapter number/title:** **Ch. 808**, Corporate Income Tax Nexus

**Filing number:** **2022-078**

**Effective date:** 5/10/2022

**Type of rule:** Routine Technical

**Emergency rule:** No

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

**Basis statement:**

- MRS is proposing to amend Rule 808 ("Corporate Income Tax Nexus") to do the following:
- Clarify the definitions of foreign corporation and partnership
  - Add new section .04 to reflect recently enacted corporate income tax nexus thresholds for tax years beginning on or after January 1, 2022
  - Repeal section .05 (Other Exceptions) in current rule as unnecessary
  - Relocate section .06 (Imputed Activity) in current rule to section .05
  - Make other technical changes.

**Fiscal impact of rule:**  
Not provided.

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**Bureau of Revenue Services (Maine Revenue Services – MRS)**

**Umbrella-Unit:** **18-125**

**Statutory authority:** 36 MRS §112

**Chapter number/title:** **Ch. 810**, Maine Unitary Business Taxable Income, Combined  
Reports and Tax Returns

**Filing number:** **2022-056**

**Effective date:** 4/20/2022

**Type of rule:** Routine Technical

**Emergency rule:** No

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

**Basis statement:**

MRS amends Ch. 810 to reflect recent legislative changes related to factor presence nexus thresholds that apply to tax years beginning on or after January 1, 2022, to clarify the apportionment of income tax credits among taxable corporations that are members of a unitary group, and to make certain technical changes.

**Fiscal impact of rule:**  
None provided.

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**Bureau of Revenue Services (Maine Revenue Services – MRS)**

**Umbrella-Unit:** **18-125**

**Statutory authority:** 36 MRS §112

**Chapter number/title:** **Ch. 813**, Property Tax Fairness Credit

**Filing number:** **2022-082**

**Effective date:** 5/8/2022

**Type of rule:** Routine Technical

**Emergency rule:** No

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

**Basis statement:**

Amended rule Ch. 813 to reflects a recent law change that makes property tax payments made on behalf of a taxpayer by the State through the reinstated Elderly Tax deferral Program to be eligible for the credit and reflects that married taxpayers filing separately are not eligible for the credit.

**Fiscal impact of rule:**  
None provided.

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**Bureau of Revenue Services (Maine Revenue Services – MRS)**  
**Umbrella-Unit:** **18-125**  
**Statutory authority:** 36 MRS §§ 112, 5219-XX(5)  
**Chapter number/title:** **Ch. 818** (*New*), Renewable Chemicals Tax Credit  
**Filing number:** **2022-032**  
**Effective date:** 3/7/2022  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

MRS adopts Rule 818 (“Renewable Chemicals Tax Credit”) as authorized by 36 MRS §5219-XX(5) in order to address required information reporting by taxpayers and third-party testing of renewable chemicals for purposes of the credit.

**Basis statement:**

Enacted MRS Rule 818 establishes certain required information reporting by taxpayers and third-party testing of renewable chemicals for purposes of the Renewable Chemicals Tax Credit (as authorized by 36 MRS §5219-XX(5)).

**Fiscal impact of rule:**

*(No response)*

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

**Umbrella-Unit:** **18-553**

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

**Chapter number/title:** **Ch. 80**, Lotto America Rules

**Filing number:** **2022-126**

**Effective date:** 7/18/2022

**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 Lotto America in Maine as required by the Multi State Lottery Association. These rules will allow Maine to continue to sell the Lotto America game with one additional drawing per week.

**Basis statement:**

This amendment updates the existing rules governing the jackpot draw game Lotto America. This amendment makes necessary changes to add one additional drawing per week, 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 (DAFS),  
**Office of Cannabis Policy**  
**Umbrella-Unit:** **18-691**  
**Statutory authority:** 28-B; PL 2021-ch. 226, 314  
**Chapter number/title:** **Ch. 1**, Adult Use Marijuana Program Rule  
**Filing number:** **2022-107**  
**Effective date:** 7/1/2022  
**Type of rule:** Major Substantive  
**Emergency rule:** No

**Principal reason or purpose for rule:**

To implement newly enacted laws, specifically PL 2021, ch. 226 and 314; streamline the license application process to require less information from a prospective licensee in order to obtain a conditional license to seek local authorization for the siting of a marijuana establishment; to clarify the regulation of "logos" and "brands" as marketing and advertising tools; to permit the use of reusable packaging; and to reduce the information required to be listed on the labels of marijuana and marijuana products sold to consumers.

**Basis statement:**

The Department of Administrative and Financial Services, Office of Marijuana Policy', is promulgating revisions to the *Adult Use Marijuana Program Rule*, 18-691 CMR ch. 1, to incorporate legislative changes to the *Marijuana Legalization Act*, Title 28-B ch. I, enacted during the first session of the 130 Maine Legislature, specifically PL 2021, ch. 226, 251 and 314, "An Act to Amend the Marijuana Legalization Act", "An Act to Make Technical Changes to the Maine Medical Use of Marijuana Act", and "An Act Regarding Controlled Entry Areas within Retail Marijuana Stores", respectively.

In addition to changes necessitated by legislative action, revisions to the rule reflect the incorporation of guidance issued by the Office of Marijuana Policy to active and prospective adult use licensees from December 2019 - October 2021 to clarify unclear provisions of the Adult Use Marijuana Program Rule in effect during that period.

Next, these revisions incorporate public comments received by the Office of Marijuana Policy pursuant to the public comment period for this rulemaking.

Finally, this provisionally adopted rule includes two sets of revisions that may not be readily apparent in the draft published for public comment; specifically, the addition of Section 2.4.6 to the rules to address the Department's ability to consider a conditional license application to be "abandoned" after a year of inaction by an applicant, and the failure to appropriately track and identify the reorganization of the rule regarding Section 4, which incorporates provisions of Section 7 "Authorized Transfers" from the original rule subject to revision during the current rulemaking period.

A complete list of the public comments received by the Office of Marijuana Policy during the rulemaking period, as well as the agency's response to those changes, is attached to this Basis Statement. Additionally, the agency has included, as another attachment hereto, a list of all changes made in response to the comments received as well as form and legality review by the Office of the Attorney General (OAG).

**Fiscal impact of rule:**

*De minimis.* The rule is expected to slightly reduce conditional application processing burdens by shifting most disclosure of information regarding operations, cultivation, and facility layout to the active licensure phase as opposed to considering so much information at both the conditional and active licensure phases. The rule imposes no cost on municipalities or counties.

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**Agency name:** Department of Administrative and Financial Services (DAFS),  
**Office of Cannabis Policy**

**Umbrella-Unit:** **18-691**

**Statutory authority:** Title 28-B, ch.1 (Cannabis Legalization Act), including P.L. 2021, ch. 558, 612, 667, and 669, *An Act To Allow for a Variance Rate in the Amount and Potency of Cannabinoids in Adult Use Edible Marijuana Products, An Act To Improve Testing Requirements for Adult Use Marijuana, An Act To Permit Curbside Pickup and Limited Delivery of Adult Use Marijuana, and An Act To Promote Equity and Increase Opportunities in the Cannabis Industry by Removing Restrictions Related to Convictions for Drug Offenses and To Replace the Term "Marijuana" with the Term "Cannabis" in the Maine Revised Statutes*, respectively.

**Chapter number/title:** **Ch. 1, Adult Use Marijuana Program Rule**

**Filing number:** **2022-165**

**Effective date:** 9/8/2022

**Type of rule:** Routine Technical

**Emergency rule:** No

**Principal reason or purpose for rule:**

To implement newly enacted laws, specifically PL 2021, ch. 559, 612, 667, and 669 including changes to the requirements for mandatory testing, the allowable potency variance for edible cannabis products, and laws permitting cannabis stores to conduct curbside pickup and delivery of cannabis.

**Basis statement:**

The Department of Administrative and Financial Services, Office of Cannabis<sup>1</sup> Policy, is promulgating revisions to the Adult Use Cannabis Program Rule, 18-691 CMR ch. 1, to incorporate legislative changes to the Cannabis Legalization Act, Title 28-B, ch. 1, enacted during the second session of the 130<sup>th</sup> Maine Legislature, specifically PL 2021 ch. 558, 612, 667, and 669, *An Act To Allow for a Variance Rate in the Amount and Potency of Cannabinoids in Adult Use Edible Marijuana Products, An Act To Improve Testing Requirements for Adult Use Marijuana, An Act To Permit Curbside Pickup and Limited Delivery of Adult Use Marijuana, and An Act To Promote Equity and Increase Opportunities in the Cannabis Industry by Removing Restrictions Related to Convictions for Drug Offenses and To Replace the Term "Marijuana" with the Term "Cannabis" in the Maine Revised Statutes*, respectively.

In addition to changes necessitated by legislative action, the revisions to the rule reflect the incorporation of guidance regarding mandatory testing issued by the Office of Cannabis Policy to current and prospective adult use licensees from January 2021 through May 2021.

Next, these revisions incorporate public comments received by the Office of Cannabis Policy pursuant to the public comment period for this rulemaking. A complete list of the

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<sup>1</sup> Pursuant to PL 2021, ch. 669, *An Act To Promote Equity and Increase Opportunities in the Cannabis Industry by Removing Restrictions Related to Convictions for Drug Offenses and To Replace the Term "Marijuana" with the Term "Cannabis" in the Maine Revised Statutes*, the Office of Marijuana Policy changed its name to the Office of Cannabis Policy beginning in June of 2022. Any reference to “marijuana” or the “Office of Marijuana Policy” in filings or notices associated with this rulemaking use the terms “marijuana” and “cannabis” interchangeably, as the office was in the process of changing its use of the terms during the period that it was engaged in this rulemaking.



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public comments received by the Office of Cannabis Policy during the rulemaking period, as well as the agency's response to those comments, is attached to this Basis Statement.

Additionally, the Office of Cannabis Policy made a change to the analyte category title for "pesticides" in Section 7 of the rule to align the category title with the identical analyte category in the *Rules for the Certification of Cannabis Testing Facilities*, 18-691 CMR ch. 5, to ensure clarity and alignment in the terminology used in both 18-691 CMR ch. 1 and 5.

Finally, the Office of Cannabis Policy received a comment regarding the application of its retail sales video surveillance requirements to sales conducted by delivery and an assertion by the commenting party that these video surveillance requirements run afoul of Maine law limiting the use of automated or semi-automated facial recognition systems by public entities. The Office of Cannabis Policy finds that its rule is not in violation of 25 MRS §6001.

**Statutory Changes**

*An Act To Allow for a Variance Rate in the Amount and Potency of Cannabinoids in Adult Use Edible Marijuana Products* provided a method for calculating an allowable variance for maximum potency edible cannabis products to provide additional flexibility to edibles manufacturers seeking to achieve maximum allowable potency in individual servings and multi-serving packages of edible cannabis products, without failing mandatory testing for edible cannabis product potency, it also allowed testing facilities to account for this variance in addition to the particular "laboratory uncertainty" calculated by each testing facility for its potency analyses. This method for calculating whether a sample of edible cannabis products passes or fails mandatory testing for potency was integrated into the rule regarding edible cannabis products manufacturing requirements.

*An Act To Improve Testing Requirements for Adult Use Marijuana* included changes to the timing and frequency of mandatory testing of cannabis and cannabis products within the Adult Use Cannabis Program, changing the mandatory testing from being required every time cannabis or cannabis products are transferred between licensees, to only requiring such mandatory testing before cannabis or a cannabis product is transferred to a cannabis store for sale to consumers. The new law also accounted for the carrying forward of mandatory test results conducted earlier in the cannabis cultivation and manufacturing process, so long as further processing or manufacturing would not "result in an increase in the concentration of any contaminants or factors identified in [28-B MRS §602(1)] or in any rules adopted by the department pursuant to that section."

In response to this new law, the Office of Cannabis Policy revised the rules to permit testing of cannabis and cannabis products in their "final form" immediately before transfer to a cannabis store for sales to consumers, and also provided exceptions to testing for some analytes for which the cannabis or cannabis product had been tested for and passed mandatory testing earlier in the cultivation and manufacturing process. The exceptions are: for pesticides, if cannabis flower and/or trim is tested for and passes mandatory testing for pesticides, any cannabis concentrate and/or cannabis products manufactured from that flower and trim are not required to be tested again for pesticides; and for other harmful chemicals (metals) and/or residual solvents, if cannabis concentrate is tested for and passes mandatory testing for other harmful chemicals (metals) and/or residual solvents, then any resulting cannabis products manufactured from that concentrate does not require additional testing for other harmful chemicals (metals) and/or residual solvents.

*An Act To Permit Curbside Pickup and Limited Delivery of Adult Use Marijuana* added new authorized activities for adult use cannabis stores "curbside pickup" and "delivery" of adult use cannabis and cannabis products. The Office of Cannabis Policy updated the rule to reflect these new authorized activities for cannabis store licensees and provided application, security and purchaser age and identity verification requirements to the rules regarding sales conducted via curbside pickup or delivery.

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*An Act To Promote Equity and Increase Opportunities in the Cannabis Industry by Removing Restrictions Related to Convictions for Drug Offenses and To Replace the Term "Marijuana" with the Term "Cannabis" in the Maine Revised Statutes* directed the Office of Cannabis Policy, in unallocated language, as well as the Revisor of Statutes and the Department of Health and Human Services, to replace the term “marijuana” with “cannabis” throughout the statutes and rules promulgated by those entities. The Office of Cannabis Policy replaced the term “marijuana” with “cannabis” throughout the entirety of this rule pursuant to the current routine technical rulemaking activity. The law also changed the definition of “disqualifying drug offense”, but because that change was not designated for routine technical rulemaking, the Office of Cannabis Policy did not make that change in these routine technical rules. However, effective August 8, 2022, the Office of Cannabis Policy did begin to enforce the new definition of “disqualifying drug offense” contained in that new law, and will update the rules to reflect that definitional change when it next engages in major substantive rulemaking.

**Fiscal impact of rule:**

*De minimis.* The rule imposes no specific costs on municipalities or counties.

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**Agency name:** Department of Administrative and Financial Services (DAFS),  
**Office of Cannabis Policy**

**Umbrella-Unit:** **18-691**

**Statutory authority:** Title 28-B, ch.1 (*Cannabis Legalization Act*), including PL 2021 ch. 558, 612, and 669, *An Act To Allow for a Variance Rate in the Amount and Potency of Cannabinoids in Adult Use Edible Marijuana Products*, *An Act To Improve Testing Requirements for Adult Use Marijuana*, and *An Act To Promote Equity and Increase Opportunities in the Cannabis Industry by Removing Restrictions Related to Convictions for Drug Offenses and To Replace the Term "Marijuana" with the Term "Cannabis" in the Maine Revised Statutes*, respectively.

**Chapter number/title:** **Ch. 5**, Rules for the Certification of Cannabis Testing Facilities

**Filing number:** **2022-166**

**Effective date:** 9/8/2022

**Type of rule:** Routine Technical

**Emergency rule:** No

**Principal reason or purpose for rule:**

To implement newly enacted laws, specifically PL 2021 ch. 558, 612, and 669 regarding the mandatory testing requirements for adult use cannabis and adult use cannabis products, including the introduction of an allowable variance in the potency of adult use edible cannabis products.

**Basis statement:**

The Department of Administrative and Financial Services, Office of Cannabis<sup>2</sup> Policy, is promulgating revisions to the *Rules for the Certification of Cannabis Testing Facilities*, 18-691 CMR ch. 5, to incorporate legislative changes to the *Cannabis Legalization Act*, Title 28-B ch. 1, enacted during the second session of the 130<sup>th</sup> Maine Legislature, specifically PL 2021 ch. 558, 612, and 669, *An Act To Allow for a Variance Rate in the Amount and Potency of Cannabinoids in Adult Use Edible Marijuana Products*, *An Act To Improve Testing Requirements for Adult Use Marijuana*, and *An Act To Promote Equity and Increase Opportunities in the Cannabis Industry by Removing Restrictions Related to Convictions for Drug Offenses and To Replace the Term "Marijuana" with the Term "Cannabis" in the Maine Revised Statutes*, respectively.

In addition to changes necessitated by legislative action, the revisions to the rule reflect the incorporation of guidance regarding mandatory testing issued by the Office of Cannabis Policy to current and prospective adult use licensees from January 2021 through May 2021.

Next, these revisions incorporate public comments received by the Office of Cannabis Policy pursuant to the public comment period for this rulemaking. A complete list of the public comments received by the Office of Cannabis Policy during the rulemaking period, as well as the agency's response to those comments, is attached to this Basis Statement.

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<sup>2</sup> Pursuant to PL 2021, ch. 669, *An Act To Promote Equity and Increase Opportunities in the Cannabis Industry by Removing Restrictions Related to Convictions for Drug Offenses and To Replace the Term "Marijuana" with the Term "Cannabis" in the Maine Revised Statutes*, the Office of Marijuana Policy changed its name to the Office of Cannabis Policy beginning in June of 2022. Any reference to "marijuana" or the "Office of Marijuana Policy" in filings or notices associated with this rulemaking use the terms "marijuana" and "cannabis" interchangeably, as the office was in the process of changing its use of the terms during the period that it was engaged in this rulemaking.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2022 to December 31, 2022**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5*

**Statutory Changes**

*An Act To Allow for a Variance Rate in the Amount and Potency of Cannabinoids in Adult Use Edible Marijuana Products* provided a method for calculating an allowable variance for maximum potency edible cannabis products to provide additional flexibility to edibles manufacturers seeking to achieve maximum allowable potency in individual servings and multi-serving packages of edible cannabis products, without failing mandatory testing for edible cannabis product potency, it also allowed testing facilities to account for this variance in addition to the particular “laboratory uncertainty” calculated by each testing facility for its potency analyses. This method for calculating whether a sample of edible cannabis products passes or fails mandatory testing for potency was integrated into the rule regarding edible cannabis products manufacturing requirements.

*An Act To Improve Testing Requirements for Adult Use Marijuana* included changes to the timing and frequency of mandatory testing of cannabis and cannabis products within the Adult Use Cannabis Program, changing the mandatory testing from being required every time cannabis or cannabis products are transferred between licensees, to only requiring such mandatory testing before cannabis or a cannabis product is transferred to a cannabis store for sale to consumers. The new law also accounted for the carrying forward of mandatory test results conducted earlier in the cannabis cultivation and manufacturing process, so long as further processing or manufacturing would not “result in an increase in the concentration of any contaminants or factors identified in [28-B MRS §602(1)] or in any rules adopted by the department pursuant to that section.”

In response to this new law, the Office of Cannabis Policy revised the rules to permit testing of cannabis and cannabis products in their “final form” immediately before transfer to a cannabis store for sales to consumers, and also provided exceptions to testing for some analytes for which the cannabis or cannabis product had been tested for and passed mandatory testing earlier in the cultivation and manufacturing process. The exceptions are: for pesticides, if cannabis flower and/or trim is tested for and passes mandatory testing for pesticides, any cannabis concentrate and/or cannabis products manufactured from that flower and trim are not required to be tested again for pesticides; and for other harmful chemicals (metals) and/or residual solvents, if cannabis concentrate is tested for and passes mandatory testing for other harmful chemicals (metals) and/or residual solvents, then any resulting cannabis products manufactured from that concentrate does not require additional testing for other harmful chemicals (metals) and/or residual solvents.

*An Act To Promote Equity and Increase Opportunities in the Cannabis Industry by Removing Restrictions Related to Convictions for Drug Offenses and To Replace the Term "Marijuana" with the Term "Cannabis" in the Maine Revised Statutes* directed the Office of Cannabis Policy, in unallocated language, as well as the Revisor of Statutes and the Department of Health and Human Services, to replace the term “marijuana” with “cannabis” throughout the statutes and rules promulgated by those entities. The Office of Cannabis Policy replaced the term “marijuana” with “cannabis” throughout the entirety of this rule pursuant to the current routine technical rulemaking activity.

**Fiscal impact of rule:**

None.