

The Chronicle: American Adult-Use Marijuana Laws - Health and Safety

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Intro: [The Chronicle: American Adult-Use Marijuana Laws](#)

Part 1: [Regulator](#)

Part 2: [Licensing](#)

Part 3: [Cultivation Licenses](#)

Part 4: [Health and Safety](#)

Part 5: [Retail Licenses](#)

Part 6: [Other Licenses](#)

This category includes provisions related to health and safety requirements. Provisions related to the following topics are included:

- Testing requirements
- Consumer protections
- Packaging requirements
- Labeling requirements
- Maximum THC limitations
- Edibles
- Child protection

Common Provisions

Imposition of health and safety standards

All licensing states^[1] require all licensees to meet state health and safety standards.

Contaminants injurious to health

All licensing states regulate the presence of contaminants injurious to health in marijuana products.

Illinois requires the Department of Agriculture to establish standards for microbial, mycotoxin, pesticide residue, solvent residue, or other standards for the presence of possible contaminants, in addition to labeling requirements for contents and potency. Massachusetts requires the regulator to adopt regulations regarding biological and chemical contaminants and microbiological contaminants.

Ingredient quality, pesticide, and sanitation rules

All licensing states require the regulator to adopt regulations regarding the safe and healthy operation of licensed marijuana establishments.

California requires the Department of Pesticide Regulation to develop guidelines for the use of pesticides in the cultivation of marijuana and residue in harvested marijuana. It also requires edibles to be manufactured and sold under sanitation standards established by the Department of Public Health.

Illinois requires the Department of Agriculture to establish standards for "microbial, mycotoxin, pesticide residue, solvent residue, or other standards for the presence of possible contaminants."

Oregon requires the regulator to adopt rules requiring tests for certain pesticides and authorizes the regulator to prohibit the sale of any product that it believes may have injurious or adulterated ingredients.

Nevada generally requires the regulator to "set forth rules pertaining to the safe and healthful operation of cannabis establishments."

Packaging requirements

All licensing states except Alaska either statutorily impose or require the regulator to promulgate rules providing packaging requirements.

Prior to delivery or sale, California, Maine, Massachusetts, Michigan, and Nevada require marijuana to be either prepackaged or placed in an opaque, child-resistant package. California and Maine also

require that package to be "tamper-evident." Michigan exempts marijuana from the packaging requirements if it is transferred for consumption on the premises where sold.

Illinois requires the Department of Public Health to issue warning statements that must be included on the packaging of any marijuana product. Illinois also requires a dispensing organization to include the legal name of the dispensary on the packaging of any marijuana product it sells.

Labeling requirements

All licensing states either statutorily impose or require the regulator to promulgate rules providing labeling requirements.

California requires the label to identify the amount of THC and other cannabinoids by milligrams per serving, number of servings per package, and the total amount of THC and cannabinoids in the package. Michigan similarly requires the regulator to promulgate regulations that require the labeling to provide the amount of marijuana or concentrate contained within a marijuana-infused product. The same is true with regard to Colorado, which also requires the packaging be marked with a "universal symbol" indicating the product contains marijuana.

Nevada requires the label to indicate the number of servings contained in the package and to state "keep out of reach of children," among other things. Washington requires the label to state the cultivator and processor of the marijuana included within the product.

Testing requirements

All licensing states except Alaska either statutorily impose or require the regulator to promulgate rules providing testing requirements. All licensing states except Alaska require marijuana products to be tested prior to sale. Alaska provides for registration of "marijuana testing facilities" and requires the regulator to issue health and safety regulations and standards, but its statutory scheme does not explicitly discuss any testing requirements.

Colorado requires the regulator to establish a marijuana independent testing and certification program that, among other things, ensures correct labeling. Maine requires the testing program to "conform with the best practices generally used within the marijuana industry." Maine also statutorily requires testing for certain substances. A licensee may not sell or distribute marijuana until it has been tested and the test demonstrates it does not exceed contamination requirements.

Regulatory testing protocols, standards, and criteria

Nine states require the regulator to adopt testing protocols, standards, and criteria by rule. Colorado requires the regulator to establish a marijuana independent testing and certification program, including the adoption of standards applicable to that testing program. The regulator must determine the protocols to be used by testing labs and the frequency of testing by licensees.

Massachusetts requires the regulator to establish testing protocols for sampling, testing, and analysis of marijuana. Nevada specifically provides certain tests that a lab must be able to conduct. Nevada also authorizes the regulator to establish a program to ensure the integrity of testing labs. California and Nevada require labs to become accredited pursuant to standard ISO/IEC 17025.

In addition to requiring the regulator to establish testing standards, Oregon requires the regulator to establish different minimum standards that must be met for different varieties of usable marijuana and different types of cannabinoid products.

Destruction of batches that fail testing

Six states require batches that fail testing to be completely destroyed. California requires the regulator to establish procedures for the destruction of noncompliant batches unless remedial measures can bring the batch into compliance.

In Colorado, if testing reveals contaminants injurious to health, the licensee must immediately quarantine the products and notify the state licensing authority. The products may then be retested, and the licensee may be allowed to attempt to remediate the product. If remediation is unsuccessful, the product must be destroyed. Maine similarly requires the licensee to quarantine the product and allows the licensee 30 days within which to attempt to remediate the product. If remediation fails, the product must be destroyed.

In Illinois, if a sample fails the pesticide chemical residue test, the entire batch from which the sample was taken must be recalled as provided by rule. If the sample failed any other test, the batch may be used to make a CO₂-based or solvent-based extract. After processing, the CO₂-based or solvent-based extract must still pass all required tests.

Edibles

All licensing states except Alaska either statutorily regulate or require the regulator to issue regulations governing the production of edibles.

Ban on products that are appealing to children

All licensing states except Alaska and Maine prohibit products from being packaged or produced in a manner that is appealing to children. Maine is, however, one of three states that specifically prohibit edible products from being manufactured in the shape of a human, animal, or fruit.

Illinois prohibits the packaging from containing any image designed or likely to appeal to minors, including cartoons, toys, animals, or children, or any other likeness to images, characters, or phrases that are popularly used to advertise to children, or any packaging or labeling that bears a reasonable resemblance to any product available for consumption as a commercially available candy, or that promotes consumption of marijuana. Nevada bans packaging with a "cartoon character, mascot, action figure, balloon or toy, except that such an item may appear in the logo of the cannabis production facility which produced the product." Nevada further prohibits marijuana products from being packaged and labeled in a manner that is modeled after a brand of products primarily consumed by or marketed to children.

California, Colorado, Massachusetts, Michigan, Nevada, and Oregon also prohibit marijuana products from being packaged in such a way that they may be confused with candy or any trademarked food or drink product.

Use of commercially available foods or drinks

Colorado and Maine prohibit the addition of marijuana to a "trademarked food or drink product."

California provides that only "generic food names" may be used to describe the ingredients in edible marijuana products. It specifically prohibits edibles from being designed to be confused with commercially sold candy or foods that do not contain marijuana.

In Massachusetts, so long as the commercially manufactured food product is rendered unrecognizable and there is no statement that it was used, then the food product may be used in the creation of an edible marijuana product.

Nevada prohibits marijuana products from being made by applying concentrated marijuana to a commercially available candy or snack food item other than dried fruit, nuts, or granola.

Requirements related to multiple serving packages

California, Colorado, Illinois, Massachusetts, Maine, Nevada, and Oregon specifically regulate multiple serving packages. California, Colorado, Maine, and Nevada require the packaging to indicate the number of servings within the package. California and Colorado require the packaging to indicate the amount of THC per serving. California requires edibles to be "delineated or scored into

standardized serving sizes" if the product provides more than one serving. The edible must also be homogenized to ensure an even distribution of THC throughout the product.

Illinois permits products to contain multiple servings of 10 milligrams of THC within a single package, so long as individual servings are indicated by scoring, wrapping, or by other indicators. A single package may not contain more than 100 milligrams of THC. Nevada also limits individual servings to a maximum of 10 milligrams of THC.

For "multiserving liquid" products, Maine requires the packaging to include an integral measurement component and a child-resistant cap.

Maximum THC

All licensing states except Alaska either statutorily limit or require the regulator to impose a maximum amount of THC that may be in a cannabinoid product.

Washington statutorily limits marijuana-infused products to a THC concentration no greater than 10%.

Nevada provides separate statutory limits on the amount of THC that may be in marijuana capsules, tinctures, edibles, topical products, suppositories, transdermal patches, and "all other cannabis products."

Potency

Illinois provides that the "acceptable tolerances" for the minimum percentage printed on the label of a marijuana product for the amount of THC, THCA, CBD, and CBDA may not be below 85% or above 115% of the labeled amount.

Colorado requires the regulator to establish an acceptable variance for potency representations and procedures for addressing potency misrepresentations. The regulator must adopt an acceptable variance of at least plus or minus 15%.

Nevada requires the product label to state the amount of THC in the product and include a statement that the product's potency tested within an allowable variance of the amount of THC as determined by the regulator.

The Washington regulator must adopt rules establishing classes of marijuana products according to THC concentration and CBD concentration, among other things.

The rest of the licensing states either statutorily impose or require the regulator to issue maximum amounts of THC that may be in a marijuana product.

Potency testing

All licensing states except Alaska and Washington require testing of marijuana products to verify that the THC content is homogeneous throughout the product and that the potency representations on the label are correct.

After issuance of a certificate of analysis by a testing laboratory, California further requires a distributor to conduct a quality assurance review before distribution to ensure the labeling and packaging of marijuana products conforms to the requirements of the regulator.

Ban on packaging that is attractive to children

Eight states ban marijuana products from being placed in packaging that is attractive to children. California, Colorado, Illinois, Massachusetts, Michigan, and Nevada specifically target their bans at edible marijuana products. Oregon's ban sweeps in "other cannabinoid products." Washington's ban provides that a retailer may not be granted a medical marijuana endorsement if the retailer uses labels or otherwise markets marijuana products "in a way that makes them intentionally attractive to minors."

Ban on packaging that may be confused with candy

Seven states prohibit marijuana products from being packaged such that the product might be confused with candy. Massachusetts prohibits any packaging "that imitates or has a semblance to any existing branded consumer products." Oregon requires the regulator to adopt rules that ensure that marijuana products are not packaged in a way that is "untruthful or misleading." California provides that only "generic food names" may be used in describing the ingredients in edible marijuana products.

Uncommon or Unique Provisions

Public health and safety awareness campaign

Maine requires the regulator to implement or facilitate a public health and safety awareness campaign.

Illinois requires the Adult Use Cannabis Health Advisory Committee to produce an annual report regarding the "emerging science and medical information relevant to the health effects associated

with cannabis use." The committee also "may provide recommendations to the Department of Human Services about public health awareness campaigns and messages." The Department of Human Services must develop and disseminate "educational materials for purchasers."

Washington authorizes but does not require the regulator to carry out educational programs "designed to prevent and deter misuse and abuse of controlled substances." The Washington state institute for public policy is required to conduct "cost-benefit evaluations of the implementation" of the adult-use marijuana law and to publish reports on September 1, 2022, and September 1, 2032, in addition to the two such reports it was already required to publish.

Enhanced police training related to marijuana

Maine requires the regulator to develop or facilitate programs providing enhanced training for criminal justice agencies regarding enforcement of marijuana laws.

Illinois permits but does not require the creation of a law enforcement grant program for units of local government to fund crime prevention programs, training, and interdiction efforts, including enforcement and prevention efforts, related to the illegal marijuana market and driving under the influence of marijuana.

Washington authorizes the regulator to carry out an educational program designed to assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

Regulator required to establish classes of marijuana

Washington requires the regulator to establish "classes" of marijuana according to various characteristics (grade, condition, THC, CBD, etc.).

Nevada requires licensed marijuana establishments to cooperate with the regulator to ensure that marijuana products are sold based on the concentration of THC and not weight.

Food quality-related requirements applied to marijuana products

Colorado requires retail marijuana products to be prepared on a licensed premises that is used exclusively for the manufacture and preparation of retail marijuana or retail marijuana products with equipment that is used exclusively for that purpose. In addition, all retail marijuana products that require refrigeration to prevent spoilage must be stored and transported in a refrigerated environment.

Illinois requires cultivation centers or infuser organizations that prepare marijuana-infused products for sale or distribution to be under the operational supervision of a Department of Public Health certified food service sanitation manager.

In Nevada, if the health authority where a marijuana production facility or a marijuana sales facility that sells edible marijuana products is located requires persons who handle food at a food establishment to obtain certification, then the marijuana production facility or marijuana sales facility must ensure that at least one employee maintains such certification.

Oregon authorizes the regulator to require cannabinoid edibles to be tested in accordance with any applicable law of the state, or any applicable rule, related to the production and processing of food products or commodities.

Regulation of "additives"

Washington authorizes producers and processors to use a CBD product to enhance CBD concentration of a product so long as the CBD product has been tested for contaminants and toxins by an accredited testing lab and in accordance with testing standards established by the regulator.

Maine permits additives in edibles so long as they are not toxic or harmful, are not designed to "appeal particularly to persons under 21," and are not designed to make the product more addictive or misleading to consumers. On the other hand, Colorado requires the regulator to adopt rules prohibiting the same types of additives in edibles.

For marijuana products produced by concentrating or extracting ingredients, Illinois requires the packaging to disclose any solvents, chemicals, or compounds used to create the concentrate or extract.

Universal symbol

California, Colorado, Maine, and Massachusetts require the regulator to adopt a "universal symbol" for inclusion on packaging and that indicates the product contains marijuana.

Recalls

Colorado authorizes the Department of Public Health to order the immediate cessation of distribution or recall of an edible product. Illinois requires dispensing organizations to adopt written policies and procedures that provide for mandatory and voluntary recalls of marijuana products, including any initiated at the request of the regulator.

Edibles may not be in certain shapes

Colorado and Maine prohibit edibles from being produced in the shape of a human, animal, or fruit, although Colorado explicitly permits edibles to have fruit flavoring. Both states also explicitly permit edibles to be manufactured in the shape of a marijuana leaf or other geometric shape. Colorado also makes it clear that this restriction does not extend to the company's logo.

Test results must be reported to regulator

Maine requires testing facilities to notify the regulator of all test results that exceed the maximum allowable levels of contamination.

Illinois requires the testing lab to file a copy of each laboratory test result with the Department of Agriculture for any batch that does not pass the testing standards at the same time that the lab transmits those results to the cultivation center that provided the batch.

Massachusetts requires any results indicating contamination to be reported to the regulator within 72 hours of the test results.

Oregon requires the regulator to adopt rules establishing procedures for documenting and reporting test results, but does not require those rules to mandate reporting of every test.

Washington requires licensees, rather than the testing lab, to submit the results of required testing to the regulator.

California requires testing labs to issue after each test a certificate of analysis providing certain information regarding the test results, but does not explicitly state the certificate must be provided to the regulator.

Testing labs must perform sampling for required tests

Illinois requires the testing facility to perform the marijuana sampling associated with any mandatory tests. California similarly requires the regulator to establish procedures to ensure that a testing lab employee takes the sample of marijuana from a distributor's premises for testing.

Maine requires testing lab employees to perform the sampling for mandatory tests, but explicitly permits the owner of the marijuana to perform the sampling for non-mandatory tests.

Washington, on the other hand, requires the licensee to collect and submit the representative sample to be used for testing.

Testing must be performed on final form of marijuana product

California requires all testing of samples to be performed on the final form in which the marijuana or marijuana product will be consumed or used.

Maine provides that "additional testing" is not required when certain conditions are met, including that the marijuana was tested previously and has not been subsequently altered or processed.

Oregon prohibits the regulator from requiring a marijuana item to undergo the same test more than once unless the marijuana item is processed into a different type of marijuana item or the condition of the marijuana item has fundamentally changed.

Packaging requirements for multiserving liquid products

Colorado and Maine specifically provide packaging requirements for multiserving liquid retail marijuana products. Maine requires such products to include an integral measurement component and a child-resistant cap. Colorado similarly requires the packaging to use "a single mechanism to achieve both child-resistance and accurate pouring measurement of each liquid serving in increments equal to or less than ten milligrams of active THC per serving, with no more than one hundred milligrams of active THC total per package." Further, the "measurement component" must be within either the child-resistant cap or closure of the bottle and may not be a "separate component."

[1] All the states that have legalized the use of adult-use marijuana, except Vermont and Washington, D.C., provide for the licensing of various entities involved in the adult-use marijuana industry, including retailers, cultivators, testing laboratories, and so on. This article uses the term "licensing states" to refer only to those states that provide for a licensing scheme. The term does not include Vermont and Washington, D.C.

[Click here](#) to open this table in a new tab/window.

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	A	E
1		Alas
2	Health & safety standards	17.38.190(
3	Contaminants injurious to health	17.38.190(
4	Public health and safety awareness campaign	
5	Enhanced police training in cannabis laws	
6	Ingredient quality, pesticide, and sanitation rules	17.38.190(
7	Establish "classes" of	
8		
9		90(

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Regulator Licensing Cu

- Illinois – All citations are to Chapter 410, Act 705 (Cannabis Regulation and Tax Act)
- Maine – All citations are to Title 28-B (Adult Use Marijuana)
- Massachusetts – All citations are to Title XV, Chapter 94G (Regulation of the Use and Distribution of Marijuana Not Medically Prescribed)
- Nevada – All citations are to laws set to take effect on July 1, 2020, per 2019 Nevada Laws Chapter 595 (A.B. 533)
- Vermont – All citations are to Title 18 (Health), except the citation to section 17 of Act 86 (2018)

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