



MARIJUANA LEGALIZATION  
**Policy Scan**

## Regulation of Cannabis-Infused Edibles

### Introduction

Cannabis is a Schedule I substance under the federal Controlled Substances Act, which prohibits the growing, processing, and selling of cannabis.<sup>1</sup> However, a number of states have passed laws permitting the cultivation, sale, and use of cannabis. Currently, 34 jurisdictions have legalized the use of medical cannabis for qualifying patients and 12 of these jurisdictions also permit recreational adult use of cannabis.<sup>2</sup> Cannabis can be consumed in different manners, including smoking, vaping, and via food products (referred to as edibles). Many of these jurisdictions allow cannabis-infused edibles to be manufactured, sold, and consumed.<sup>3</sup> While each manner of cannabis consumption presents some risk, cannabis edibles present a unique set of public health challenges. Many edible products are attractive to children because of their appearance and packaging, creating a risk of children accidentally ingesting them. As a result, some jurisdictions have experienced an increase in emergency room visits and calls to poison control associated with child ingestion of cannabis.<sup>4</sup> The delayed onset of the effects of cannabis consumed as an edible also contributes to acute intoxication when consumers eat too much of the product. As food items, spoiling or unsafe handling practices can contribute to adverse experiences. To address the public health challenges of dosing, attractiveness to children, and food safety, this survey examines eight pertinent variables.

### I. State Legal Intervention

The variables researched for the survey are: (1) Does the state allow edibles; (2) Are there dose restrictions; (3) Must the product have a warning label; (4) Are there restrictions on packaging design to protect children; (5) Is child-resistant packaging required; (6) Are there restrictions on product design to protect children; (7) Do producers fall under existing food safety regulations; and (8) Are there prohibitions on what products can be infused with cannabis? A discussion of these variables and their use is below.<sup>5</sup>

#### A. States that Allow Edibles

There are 25 jurisdictions that permit cannabis-infused edibles, however one of these jurisdictions, Maryland, has not finalized regulations. As a result, the survey of policies is based on 24 jurisdictions.<sup>6</sup>



## B. State Implemented Dose Restrictions

Out of the 24 jurisdictions with cannabis-infused edible regulations, 18 states have Tetrahydrocannabinol (THC) dose restrictions.<sup>7</sup> Dose restrictions address the challenge of determining the appropriate serving size and the delayed onset of intoxication that is common with edibles.<sup>8</sup> While states vary in their dose restrictions, the most common restriction is for each serving to contain no more than 10 milligrams of THC and if the edible item has multiple servings, it is limited to 100 milligrams of THC.<sup>9</sup> Colorado follows this standard.<sup>10</sup> Michigan on the other hand, allows up to 50 milligrams per serving and 500 milligrams of THC per container.<sup>11</sup> Some jurisdictions also specify that the product must be homogeneous throughout.<sup>12</sup>

## C. Required Warning Labels

Twenty-one jurisdictions require cannabis-infused edible products to have warning labels.<sup>13</sup> These jurisdictions have different requirements for the contents of the warning label.<sup>14</sup> Delaware's regulations are specific and require a warning label to contain the following information: a warning about how long the product takes to take effect; that the product is not FDA approved; warnings about the harm of cannabis; that the product is infused with cannabis; the product should not be used by pregnant or breast-feeding women; the product should be kept out of the way of children; the product may impair concentration, coordination, and judgment so users should not drive or operate machinery; and finally that the product is for adults 18 and older.<sup>15</sup> Most states that mandate warnings require some combination of warnings utilized by Delaware.<sup>16</sup> Some states also address the issue of allergens and require labeling to be consistent with federal allergen disclosure standards.<sup>17</sup>


## D. Restrictions on Packaging Design to Protect Children

There are 21 jurisdictions that have implemented restrictions on packaging design to protect children.<sup>18</sup> There are many similarities among states on this policy variable. The most common restrictions on packaging design require it to be: opaque or plain; sealed and odor-proof; tamper-evident; plastic packaging 2-4 millimeters thick; have a standardized symbol on the package; not false or misleading; and the package may not be shaped or designed in a way that appeals to minors.<sup>19</sup>

The prohibition on packaging that is attractive to children is the most common restriction and can be defined in different ways. In Arkansas, the prohibition covers packaging modeled after non-cannabis products primarily consumed by and marketed to children; packaging in the shape of or that depicts an animal, vehicle, person, or character; and packaging that closely resembles that of familiar food and drink items, including candy.<sup>20</sup> Delaware also restricts packaging design from being appealing to children by prohibiting bright or neon colors; no cartoons, cartoon-like font, caricatures, fruit, human, or animal shapes, pictures/photographs or images of products; no design or symbol or celebrity brand name that resembles a non-cannabis product; and no images of minors or words that refer to products commonly associated with minors.<sup>21</sup>

## E. Required Child-Resistant Packaging

Twenty-one jurisdictions require the packaging to be child-resistant.<sup>22</sup> This generally means that the packaging is tamper-proof and sealed. Many of these states refer to existing federal packaging regulations. Examples of these states include California,<sup>23</sup> Colorado,<sup>24</sup> and Illinois.<sup>25</sup> There, packaging is required to be consistent with current federal standards, including the Consumer Product Safety Commission standards referenced by the Poison Prevention Act of 1970 Regulations (16 C.F.R. §1700.00).



Additionally, Colorado expands its definition of “child-resistant” by requiring the packaging to be opaque and resealable if there are multiple servings. To develop these regulations, its state licensing authority worked with a public health agency and a Colorado hospital that had conducted a health impact assessment of packaging regulations, with a focus on accidental ingestion of medical cannabis. Colorado relied extensively on this written commentary to refine its child-resistant packaging regulations.<sup>26</sup>

Some states do not reference federal standards when defining child-resistant packaging and instead create their own packaging standard. For example, the Arkansas definition of child-resistant packaging requires that the packaging: cannot be opened by the child; prevents ready access to toxic or harmful amounts of the packaged product; meets testing requirements; and is not shaped/designed in a way to appeal to minors.<sup>27</sup>

## F. Restrictions on Product Design to Protect Children

In addition to restrictions on packaging design, 17 jurisdictions have restrictions on the design of the product itself.<sup>28</sup> Across all of these states, the focus is to prevent consumer confusion with a non-cannabis infused product as well as limit the product’s appeal to children. By doing so, the hope is to decrease the risk of accidental ingestion by children.

Some states, such as Arkansas<sup>29</sup> and Delaware,<sup>30</sup> have general restrictions banning the sale of cannabis infused edibles that resemble foods that are appealing to children such as candy, brownies, or cookies. Other jurisdictions have gone further and prohibited manufacturers from making edibles in shapes or designs appealing to minors. States like Florida,<sup>31</sup> Colorado,<sup>32</sup> and Ohio<sup>33</sup> enacted these types of regulations, focusing on the design of the product itself. For example, Ohio prohibits an edible product from resembling a cartoon product, pop culture icon, or even an animal or fruit.<sup>34</sup>

## G. Producers Fall Under Existing Food Safety Regulations

In order to maintain proper compliance with current food safety standards, 14 states automatically subject cannabis production facilities to the state code for food processing facilities.<sup>35</sup> Some examples include Alaska,<sup>36</sup> Arizona,<sup>37</sup> Florida,<sup>38</sup> and New Hampshire.<sup>39</sup> By doing this, they maintain uniformity and create a well-known standard to which these new food manufacturing facilities are expected to adhere. This also makes it easier for the state to check that the facilities are complying with applicable health and safety requirements set out in the code.

## H. Prohibitions on What Products can be Infused with Cannabis

While there are states with restrictions on the design of an edible product, there are also states with restrictions as to what kind of food product can be infused with cannabis. There is an important distinction between the two. The first establishes limits on what the product can look like; the second establishes prohibitions on the exact product itself. There are 12 jurisdictions with this intervention.<sup>40</sup>

Examples of this may seem intuitive, such as Arizona’s prohibition on cannabis infused meat or poultry products.<sup>41</sup> There are also states that have prohibitions on infusing alcoholic beverages with cannabis, such as New Hampshire.<sup>42</sup> Delaware permits edible products for medicinal use and while baked goods such as cookies, muffins, and brownies are allowed, they may not have a fruit or cream filling.<sup>43</sup> Arkansas explicitly states that cannabis edibles producers “cannot add cannabinoid concentrates/extracts to commercially available candy, food, or beverage items...[or] adulterate a cannabinoid product with a non-cannabinoid additive that would...create an unsafe combination with caffeine or another chemical.”<sup>44</sup>

## SUPPORTERS



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<sup>1</sup> *Drug Scheduling*, DEA, <https://www.dea.gov/drug-scheduling>, (last visited April 15, 2020).

<sup>2</sup> *State Marijuana Laws in 2019 Map*, GOVERNING, <https://www.governing.com/gov-data/safety-justice/state-marijuana-laws-map-medical-recreational.html>, (last visited April 15, 2020).

<sup>3</sup> Katherine Lekh, Devon Horine, Stephen Weyler, and Mathew Swinburne, *Summary of Select State Laws: Regulation of Cannabis-Infused Edibles*, Network for Public Health Law (as of June 16, 2020), <https://www.networkforphl.org/wp-content/uploads/2020/07/State-Survey-Regulation-of-Cannabis-Infused-Edibles.pdf>

<sup>4</sup> John Ingold, *Kids' emergency room visits for marijuana increased in Colorado after legalization, study finds*, THE DENVER POST (July 26, 2016), <https://www.denverpost.com/2016/07/25/colorado-kids-emergency-room-visits-marijuana-increased/>.

<sup>5</sup> Katherine Lekh, Devon Horine, Stephen Weyler, and Mathew Swinburne, *Summary of Select State Laws: Regulation of Cannabis-Infused Edibles*, Network for Public Health Law (as of June 16, 2020), <https://www.networkforphl.org/wp-content/uploads/2020/07/State-Survey-Regulation-of-Cannabis-Infused-Edibles.pdf>

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Daniel G. Barrus, et al., *Tasty THC: Promises and Challenges of Cannabis Edibles*, NCBI (Nov. 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5260817/>.

<sup>9</sup> Katherine Lekh, Devon Horine, Stephen Weyler, and Mathew Swinburne, *Summary of Select State Laws: Regulation of Cannabis-Infused Edibles*, Network for Public Health Law (as of June 16, 2020), <https://www.networkforphl.org/wp-content/uploads/2020/07/State-Survey-Regulation-of-Cannabis-Infused-Edibles.pdf>

<sup>10</sup> See, COLO. CODE REGS. § 212-3-335(D)(4)(a) (2020).

<sup>11</sup> Mich. Dept. of Licensing and Regulatory Affairs, *Rule 34. Maximum THC levels for marijuana-infused products*, [https://www.michigan.gov/lara/0,4601,7-154-89334\\_79571\\_83994-454562--,00.html](https://www.michigan.gov/lara/0,4601,7-154-89334_79571_83994-454562--,00.html) (last visited April 29, 2020).

<sup>12</sup> See, e.g. N.H. CODE ADMIN. R. ANN. He-C 402.16(i).

<sup>13</sup> Katherine Lekh, Devon Horine, Stephen Weyler, and Mathew Swinburne, *Summary of Select State Laws: Regulation of Cannabis-Infused Edibles*, Network for Public Health Law (as of June 16, 2020), <https://www.networkforphl.org/wp-content/uploads/2020/07/State-Survey-Regulation-of-Cannabis-Infused-Edibles.pdf>

<sup>14</sup> *Id.*

<sup>15</sup> DEL. CODE. ANN. Health and Safety. 16 § 4914A (2020).

<sup>16</sup> Katherine Lekh, Devon Horine, Stephen Weyler, and Mathew Swinburne, *Summary of Select State Laws: Regulation of Cannabis-Infused Edibles*, Network for Public Health Law (as of June 16, 2020), <https://www.networkforphl.org/wp-content/uploads/2020/07/State-Survey-Regulation-of-Cannabis-Infused-Edibles.pdf>

<sup>17</sup> OHIO ADMIN. CODE 3796:3-2-02(A)(1) (requiring labels to include major food allergens as identified in 21 U.S.C. 434).

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- 18 Katherine Lekh, Devon Horine, Stephen Weyler, and Mathew Swinburne, *Summary of Select State Laws: Regulation of Cannabis-Infused Edibles*, Network for Public Health Law (as of June 16, 2020), <https://www.networkforphl.org/wp-content/uploads/2020/07/State-Survey-Regulation-of-Cannabis-Infused-Edibles.pdf>
- 19 *Id.*
- 20 ARK. CODE R. 006.02.7- 13.1(B)(II).
- 21 DEL. CODE. ANN. Health and Safety. 16 § 4914A (2020).
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- 23 CAL. CODE REGS. Professional and Vocational Regulations. 42 §5303(A)(i) (2020).
- 24 COLO. CODE REGS. § 212-3:3-1010(D) (2020).
- 25 410 Ill. Comp. Stat. 705 / 55-21(2019).
- 26 COLO. CODE REGS § 212-3:1-115.
- 27 ARK. CODE ANN. §20-56-304 (2020).
- 28 Katherine Lekh, Devon Horine, Stephen Weyler, and Mathew Swinburne, *Summary of Select State Laws: Regulation of Cannabis-Infused Edibles*, Network for Public Health Law (as of June 16, 2020), <https://www.networkforphl.org/wp-content/uploads/2020/07/State-Survey-Regulation-of-Cannabis-Infused-Edibles.pdf>
- 29 ARK. CODE ANN. §20-56-306 (2020).
- 30 DEL. CODE. ANN. Health and Safety. 16 § 4914A (2020).
- 31 FLA. STAT. 381.986(8)(e)(8) (2019).
- 32 COLO. CODE REGS §§ 212-3 to 3-335(2020).
- 33 OHIO ADMIN. CODE 3796:3-2-02(A)(1) (2020).
- 34 *Id.*
- 35 Katherine Lekh, Devon Horine, Stephen Weyler, and Mathew Swinburne, *Summary of Select State Laws: Regulation of Cannabis-Infused Edibles*, Network for Public Health Law (as of June 16, 2020), <https://www.networkforphl.org/wp-content/uploads/2020/07/State-Survey-Regulation-of-Cannabis-Infused-Edibles.pdf>
- 36 ALASKA ADMIN. CODE 3 § 306.530 (2019).
- 37 ARIZ. ADMIN. CODE §§ R9-8-101 to R9-8-109 (2020).
- 38 FLA. STAT. 381.986(8)(e)(8) (2019).
- 39 N.H. Code Admin. R. He-C 402.16(e).
- 40 Katherine Lekh, Devon Horine, Stephen Weyler, and Mathew Swinburne, *Summary of Select State Laws: Regulation of Cannabis-Infused Edibles*, Network for Public Health Law (as of June 16, 2020), <https://www.networkforphl.org/wp-content/uploads/2020/07/State-Survey-Regulation-of-Cannabis-Infused-Edibles.pdf>
- 41 AZ. Dept. of Health and Human Svcs., *Licensing*, <https://www.azdhs.gov/documents/licensing/medical-marijuana/dispensaries/potentially-hazardous-foods-guide.pdf> (last visited April 29, 2020).
- 42 N.H. Code Admin. R. He-C 402.08(i).
- 43 DEL. CODE. ANN. Health and Safety. 16 § 4470.11.2.3 (2020).
- 44 ARK. CODE ANN. § 12.2(a)(3) (2020).