

The Chronicle: American Adult-Use Marijuana Laws - Regulator

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This category includes provisions related to the creation or designation of a regulatory body to oversee the adult-use marijuana industry and the regulator's powers. Statutory provisions related to the following topics are included:

- Tracking requirements
- Record-keeping requirements
- Identification card requirements
- The regulator's power to impose fines on licensees and suspend or revoke licenses
- The regulator's power to seize or order the destruction of marijuana
- Reports that the regulator or a related administrative body are required to issue

Common Provisions

Regulatory body

Alaska, California, Massachusetts, Nevada, and Washington created new regulatory agencies to oversee regulation of adult-use marijuana. The remaining states delegated regulatory authority over adult-use marijuana to one or more preexisting state agencies. Washington, D.C., has not designated a regulatory authority with regard to marijuana.

Every state that has created a regulator has given it rulemaking authority.

All states that permit the retail sale of marijuana (Vermont and Washington, D.C., do not) authorize the regulator to examine the books of a licensee as well as the licensed premises.

Caps on the number of licenses

The states have taken widely divergent approaches to this issue. California, Colorado, and Washington require the regulator to establish limits on the number of licenses. Nevada empowers the regulator to adopt "policies and procedures to ensure that the cannabis industry in this State is economically competitive," which could conceivably include limitations on the number of certain types of licenses.

Illinois establishes initial statutory limits on the number of each type of license that may be issued, and thereafter permits the regulator to issue additional licenses, up to a statutorily prescribed limit, after consideration of a number of statutorily provided factors.

Maine and Michigan expressly prohibit the regulator from imposing a limitation on the number of any type of license that may be issued.

Qualifications for licensure

All licensing states,^[1] except Maine, permit the regulator to adopt qualifications or requirements that licensees must meet in order to be licensed. Maine statutorily provides all the criteria that an applicant must meet and permits the regulator to consider certain additional statutorily provided information in determining whether to issue an applicant a license. Alaska and Michigan expressly require such regulatory qualifications to be "directly and demonstrably related to the operation of a marijuana establishment."

Discipline, suspension, and revocation of licenses

All licensing states empower the regulator to discipline a licensee for failure to comply with state laws or regulations, including the power to suspend or revoke a license.

California, Colorado, Illinois, Oregon, and Washington provide statutory grounds for suspension or revocation of a license. The other states either require or permit the regulator to establish grounds for suspension or revocation by rule.

Marijuana tracking requirements

All licensing states, except Alaska, either require the regulator to adopt marijuana seed-to-sale tracking requirements or statutorily impose such requirements. Some states require the regulator to establish a tracking program that licensees must participate in, while others require the regulator to establish certain requirements with which a licensee's tracking program must comply and rely on the licensee to implement a compliant tracking system.

Record-keeping requirements

All licensing states, except Alaska and Washington, either statutorily require licensees to keep certain records or require the regulator to promulgate regulations requiring licensees to keep certain records. Alaska does not address the issue, although it does empower the regulator to examine any records that licensees do keep. Washington empowers the regulator to issue regulations regarding record-keeping requirements, but it does not require it to do so.

Licensee identification cards

Colorado, Illinois, Maine, and Nevada require the regulator to issue identification cards to licensees and their employees. Massachusetts requires the regulator to issue a registration card for each "laboratory agent." Oregon requires any individual who performs work for a marijuana licensee to have a "marijuana handler" permit.

Illinois provides specific identification cards for dispensing organization agents, cultivation center agents, craft grower agents, processing organization agents, transporting organization agents, infuser organization agents, and "community college cannabis vocational training pilot program faculty participant agents."

Safe disposal of excess or contaminated marijuana

Six states statutorily regulate the disposal of excess or contaminated marijuana. California empowers the state's Department of Public Health to "embargo" marijuana if it finds it has been adulterated or misbranded.

California, Colorado, and Maine authorize the regulator to destroy a marijuana product after either a hearing or the issuance of a final order by the regulator.

Illinois provides the most detailed requirements related to destruction and disposal of marijuana. The state requires dispensary licensees to submit detailed written policies and procedures for destruction of any recalled marijuana product as well as the segregation and destruction of "outdated, damaged, deteriorated, misbranded, or adulterated cannabis." Illinois requires marijuana and marijuana-infused products to be destroyed "by rendering them unusable using methods approved by [the regulator]." It also requires testing labs to "immediately return or dispose of any cannabis upon the completion of any testing, use, or research." Finally, "all cannabis byproduct, scrap, and harvested cannabis not intended for distribution to a dispensing organization must be destroyed and disposed of under rules adopted by the Department of Agriculture."

Seizure of noncompliant marijuana by the regulator

California, Colorado, Illinois, Maine, Massachusetts, Oregon, and Washington authorize the regulator to seize marijuana that is not in compliance with the requirements of the law. The seized marijuana typically may not be destroyed until after a hearing has been held or other procedural requirements have been met.

Michigan and Vermont provide for the forfeiture of marijuana involved in the commission of a crime, but do not specifically address seizure by the regulator.

Alaska and Nevada do not provide any authority for the regulator to seize noncompliant marijuana in the possession of licensees, although law enforcement authorities could presumably do so.

Colorado, Maine, Nevada, and Oregon explicitly provide that localities and state agencies are not required to care for seized marijuana plants.

Annual meeting and annual report requirements imposed on the regulator or an advisory body

Alaska, Michigan, and Oregon require the regulator to hold at least one public meeting annually.

Illinois and Maine require an advisory body to the regulator to hold at least one annual public meeting.

All states except Alaska and Washington, D.C., require the creation of an annual report by either the regulator or an advisory body and with regard to the marijuana market and the implementation of the marijuana laws.

Regulator board members and employees restricted from participation in the marijuana industry

All licensing states except Massachusetts and Oregon impose restrictions or prohibitions on persons having a financial interest in the marijuana industry from either being a member of the board or an employee of the regulator.

Uncommon and Unique Provisions

Death or insolvency of a licensee

Colorado, Illinois, and Oregon provide procedures for the handling of a marijuana license upon the death or bankruptcy of a licensee, although each state takes a different approach to the issue.

Environmental requirements

Five states have enacted some form of environmentally related requirement or restriction on marijuana licensees. California requires state agencies to "address" the environmental impacts of marijuana cultivation and to coordinate with cities and counties in enforcement efforts. It also permits the regulator to adopt energy and environmental standards applicable to marijuana licensees, and permits local governments to adopt additional standards, requirements, or regulations.

Illinois requires license applicants to submit a detailed "environment plan" as part of their license application, including information regarding how the licensee will address energy needs, estimates of energy and water usage, water filtration plans, and whether the licensee has or will adopt a waste reduction policy.

Maine requires cultivation licensees to submit an operating plan that provides for wastewater and waste disposal, as well as how the licensee will comply with applicable federal and state environmental requirements. Oregon permits the regulator to adopt merit-based criteria for licensure that may include "implementation of best environmental practices." Oregon also requires cultivators to submit a report in conjunction with a license renewal application that describes the licensee's electrical and water usage.

Revocation of "inactive" licenses

Colorado and Maine authorize the regulator to revoke an "inactive" license.

Oregon authorizes the regulator to revoke a license for "any other reason that, in the opinion of the [regulator], based on public convenience or necessity, warrants revoking" the license.

Washington requires the regulator to adopt rules establishing a process for forfeiture of a retailer license when the retailer is not fully operational and open to the public within a specified period of time from the date the license was issued. That period of time may not be less than nine months or more than 24 months, provided that the regulator may not revoke the license if it determines that the licensee has not begun operations due to circumstances out of its control, such as the imposition of a moratorium on marijuana establishments by the local government where the licensed facility would be situated.

Promotion of small businesses, "craft growers," or microbusinesses

Nevada requires the regulator to "establish a pilot program for identifying opportunities for an emerging small cannabis business to participate in the cannabis industry."

Massachusetts requires the regulator to adopt regulations "to promote and encourage full participation in the regulated marijuana industry by farmers and businesses of all sizes," which must include the creation of a schedule of cultivator license fees "to create a craft marijuana cultivator cooperative system."

Illinois provides for the issuance of "craft grower" licenses, which are limited to 5,000 square feet of canopy space "for plants in the flowering state."

Storage of marijuana

Colorado and Maine require the regulator to adopt regulations relating to the storage of marijuana. Illinois requires license applications to include information regarding the applicant's plans for storage of marijuana and requires dispensing organizations to comply with the regulator's rules for storage of marijuana. Michigan authorizes the regulator to provide for a license type that only permits the licensee to store marijuana, but does not require the regulator to do so.

Power to fix prices for retail marijuana

Colorado expressly prohibits the regulator from fixing the price of retail marijuana. No other state addresses this issue.

Notification requirement prior to termination of licensed establishment

Colorado and Maine require a licensee to notify the regulator prior to termination of operations under a license and to forfeit all marijuana products to the regulator for destruction. Illinois also requires the licensee to notify the regulator prior to termination, but requires the licensee to "work

with the Department to develop a closure plan that addresses, at a minimum, the transfer of business records, transfer of cannabis products, and anything else the Department finds necessary."

Best practices advisements issued by regulator

Massachusetts requires the regulator to issue advisory guidelines on best practices for cultivation of marijuana within a person's primary residence.

California requires the regulator to convene an advisory committee to advise licensing authorities regarding standards, regulations, and best practices and guidelines to protect public health and safety. The advisory committee is required to publish an annual report regarding its recommendations.

Washington permits licensees to apply to the regulator for advice and consultation on compliance with the law.

Board members of the regulator prohibited from holding other government positions

Alaska, Massachusetts, Nevada, and Washington prohibit board members of the regulator from holding any other state or federal office, regardless of whether that office is elected or appointed.

[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.

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Adult-Use Marijuana Laws : Other Licenses

Other Licenses

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- 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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