



February 3, 2020

The Honorable Mike Crapo
Chairman
Committee on Banking, Housing and Urban Affairs
538 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Crapo:

The National Cannabis Roundtable (NCR) appreciates the opportunity to address the issues raised in your December request for comments on proposed cannabis banking legislation. We respect your opposition to federal legalization of cannabis and Idaho's implementation of any type of regulated cannabis market. Nothing in the SAFE Banking Act or any other legislation we support would authorize the federal government to decide for the citizens of Idaho or any other state whether to legalize the use of cannabis for adult or medicinal use.

NCR members represent all aspects of the cannabis supply chain and include growers, processors, retailers, wellness centers, technology companies, investors, entrepreneurs and publicly traded, multi-state operators. NCR member businesses are present in nearly two dozen states with legal cannabis programs, as well as the District of Columbia.

We believe an effective federal legislative approach to cannabis banking reform would provide clarity for financial institutions and financial regulators, as well as opportunities for established businesses and budding entrepreneurs, by creating a system of accessible capital. It would promote the safety and soundness of the US banking system through increased financial transparency, which would make it more difficult for illicit actors to participate in the cannabis market. Moreover, this legislation would allow for increased financial oversight, improving overall compliance with Know Your Customer and Anti-Money Laundering laws, while also allowing law enforcement to distinguish between licensed and illicit actors. In short, the legislation we support would address fundamental issues adversely affecting a lawful industry, enhance law enforcement to weed out bad actors, and empower the citizens of all states to choose whether access to cannabis products is allowable under their state law. In the attached memorandum, we address the points raised in your December call for comments.

As the Committee continues to develop cannabis legislation, NCR and its members stand ready to serve as subject matter experts. We are prepared to provide additional input and legislative language as needed and look forward to expeditiously developing a workable solution that would support the lawful cannabis industry.

Thank you in advance for your consideration.

Saphira Galoob, Executive Director of the National Cannabis Roundtable
cc: Ranking Member Sherrod Brown, submissions@banking.senate.gov

MEMORANDUM

TO: Chairman Mike Crapo
Senate Committee on Banking, Housing & Urban Affairs
FROM: National Cannabis Roundtable
RE: Cannabis Banking Legislation
DATE: February 3, 2020

Introduction and Background

Over the last 25 years, 33 states and several US territories¹ have developed legal cannabis programs, which permit access to cannabis for either medical or medical and adult consumption. Because cannabis is listed as a Schedule I substance under the Controlled Substances Act, these state-legal, licensed and regulated businesses are restricted in accessing traditional financial services, resulting in significant threats to public safety and operational business challenges.

Chairman Crapo's memo highlights the strain placed on cannabis businesses when access to banking is restricted. NCR applauds his commitment to address this urgent problem.² The Chairman's concerns are shared by a multitude of financial services industry leaders – as well as elected officials – who believe that appropriate federal legislation is needed to resolve this important issue: Treasury Secretary Steve Mnuchin,³ 20 governors,⁴ 38 attorneys general,⁵ the National Association of State Treasurers,⁶ including 17 treasurers who have independently voiced

¹ Nat'l. Conf. State Legislatures, *State Medical Marijuana Laws* (last updated Oct. 16, 2019), <https://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx> (listing the following states and territories as having medical cannabis programs: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GU, HI, IL, LA, ME, MD, MA, MI, MN, MO, MT, NV, NH, NM, NY, ND, MP, OH, OK, OR, PA, PR, RI, VI, UT, VT, WA, WV)

² Mike Crapo, *Opening Statement – Challenges for Cannabis Banking: Outside Perspectives*, (July 23, 2019), <https://www.banking.senate.gov/newsroom/majority/crapo-statement-at-hearing-on-cannabis-banking> (“Being categorized as a Schedule I drug means that the possession, distribution, or sale of marijuana and other marijuana-derived products is illegal under federal law, and any proceeds from cannabis-related activities remain subject to U.S. anti-money laundering laws, such as the Money Laundering Control Act”)

³ Eric Sandy, *‘I, Too Share Your Concern’: Treasury Sec. Urges Bipartisan Fix for the Cannabis Industry*, Cannabis Bus. Times, (Apr. 15, 2019), <https://www.cannabisbusinesstimes.com/article/steve-mnuchin-treasury-secretary-cannabis-banking/>

⁴ Ed Perlmutter, *20 Bipartisan Governors Urge Congress to Pass Marijuana Banking Bill* (June 14, 2019) <https://perlmutter.house.gov/news/documentsingle.aspx?DocumentID=4554>

⁵ Nat'l. Assoc. of Attys General, *Letter to Congressional Leadership on Cannabis Banking* (May 8, 2019), <https://coag.gov/app/uploads/2019/05/NAAG-Letter-SAFE-Banking-Act-of-2019.pdf>

⁶ Nat'l. Assoc. of State Treasurers, *Resolution on Allowing States with Legalized Cannabis to Access National Banking System* (May 17, 2019), https://cdn.ymaws.com/member.nast.org/resource/collection/297F5F58-F244-47A2-8C1F-4EDEF9BBD397/NAST_Cannabis_Banking_Resolution.pdf

support,⁷ 25 state banking regulators,⁸ and bank trade associations from all 50 states have all called for a resolution to this problem.⁹

Reform is also supported by the American Bankers Association, the American Land & Title Association, Americans for Prosperity, Council of Insurance Agents and Brokers, the Credit Union National Association, the Electronic Transactions Association, the International Council of Shopping Centers, the National Association of Mutual Insurance Companies, the National Association of Professional Employer Associations, the National Association of Realtors, R Street and the Wholesale & Specialty Insurance Association.¹⁰

The Chairman has not only recognized that restricted access to banking affects small and large cannabis businesses, but also non-cannabis businesses - from janitors to landlords -¹¹ and the impact is significant in jurisdictions where legal cannabis has become an ingrained economic component.

An effective federal legislative approach to cannabis banking reform would provide clarity for financial institutions and financial regulators, as well as opportunities for established businesses and budding entrepreneurs, by creating a system of accessible capital. It would promote the safety and soundness of the US financial system through increased financial transparency, which would make it more difficult for illicit actors to participate in the cannabis market. Moreover, this legislation would allow for increased financial oversight, improving overall compliance with Know Your Customer (KYC) and Anti-Money Laundering (AML) laws while also allowing law enforcement to distinguish between licensed and illicit actors.

Lack of banking access for legal cannabis industry stakeholders creates unnecessary, all-cash transactions that increase anonymity in the marketplace, threaten workplace safety, and enable cartels to masquerade as legitimate businesses. Global consumer spending on legal cannabis

⁷ Oregon Treasurer Tobias Read, *State Treasurer Letter to Congress* (May 3, 2019), <https://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=3269>

⁸ Sec. Robin Wiessmann, *State Banking Regulator Letter to Congress* (Apr. 15, 2019), <https://www.dobs.pa.gov/Documents/Secretary%20Letters/Banks/MM%20Coalition%202019%20Letter.pdf>

⁹ Am. Bankers' Assoc, *State Bankers Assoc. Letter to Chairman Crapo on Cannabis Banking* (May 20, 2019), <https://www.aba.com/-/media/documents/letters-to-congress-and-regulators/stex-joint-letter-re-support-for-cannabis-hearing.pdf?rev=0795cea67a6648dabbd035e6d445920a>

¹⁰ Am. Bankers Assoc., *Letter to Chairman Crapo* (Dec. 12, 2019), available at <https://www.aba.com/-/media/documents/letters-to-congress-and-regulators/industry-safe-senate-banking-committee-121219.pdf?rev=997703e6014e44a19d9b5ee42e8cdf26>

¹¹ Zachary Warmbrodt, *Crapo Plans Landmark Cannabis Banking Vote*, POLITICO (Sept. 13, 2019), <https://www.politico.com/story/2019/09/13/crapo-cannabis-banking-vote-1729925> (quoting Chairman Crapo “The impact on the ability of small and large businesses to operate justifies our attention.” and recognizing that the problem extends to ancillary businesses.)

exceeded \$15 billion dollars in 2019¹² and is expected to grow to \$26 billion by 2025.¹³ Legal cannabis businesses need access to banking services.

While NCR appreciates Senator Crapo's concerns related to cannabis generally, we urge the Senate Banking Committee to address issues that are *directly related to financial services*. Other committees are well suited to address federally mandated issues pertaining to health, safety and research.

NCR respectfully offers that the legislative solution for cannabis banking should be germane to the safety and soundness of the financial system and addressing any priorities outside financial services should:

- i) where appropriate at the federal level, be assigned to those agencies which have the requisite subject matter expertise; and
- ii) where appropriate at the state level, be left to the states which have the responsibility of regulation.

Addressing Chairman Crapo's Specific Concerns

I. Potency

While NCR understands Chairman Crapo's concern that expanding licensed cannabis industry access to financial services may negatively affect public health and safety, placing the burden of measuring product potency on financial institutions *inadvertently would place banks in the enforcement role, which states have already assigned to state agencies*. Although financial institutions have the expertise to evaluate their customers' financial activity against KYC laws and AML restrictions, these institutions are ill-equipped to monitor cannabis potency as this requires sophisticated scientific and technical analysis. Adding plant content prerequisites into a financial services bill would put financial regulators wholly outside their responsibilities of evaluating financial integrity and would usurp the authority of state oversight bodies which enforce state cannabis programs.

A. Potency caps reduce the authority of state regulatory agencies, which have been created to address plant content.

Designating financial institutions to police cannabis potency levels would undermine the role that state governments play in overseeing their jurisdictions. All states that have legalized medicinal or adult use cannabis have state regulatory bodies to carry out the enforcement measures sought by Chairman Crapo. The regulatory bodies described are listed in **Appendix I**.

¹² Arcview Mark't Research, *Global Cannabis Sales Grow 48% to \$15 Billion in 2019*, BUSINESSWIRE (Jan. 16, 2020), <https://www.businesswire.com/news/home/20200116005248/en/>

¹³ North Bay Biz. J., *U.S. Cannabis Market to Reach \$26B by 2025* (Jan. 29, 2019), <https://www.northbaybusinessjournal.com/industrynews/manufacturing/9224450-181/marijuana-cannabis-business-consumer-forecast>

B. Federal potency limits would lead to increased regulatory confusion at the state level.

Federal limits on potency would exacerbate confusion in states that have already created a potency limit, as well as those states that have decided not to regulate potency. In his memo, Chairman Crapo proposes a cap of 2% THC until a state affirmatively passes a differing potency level that “appropriately addresses the health and safety risk to its citizens.” There are significant issues with implementing a potency cap as it relates to banking services. Directing banks to provide financial services only to cannabis businesses that are producing products with a 2% THC concentration or less would exacerbate confusion in a marketplace that is already a patchwork of state laws and result in more potential safety concerns. Looking at other industries, banks do not make judgment calls regarding the products being sold by businesses to which they provide services (*i.e.*, medicine), but rather provide services to businesses that are compliant with local and state regulations.

Because many states that passed cannabis laws (including several that have amended their state constitutions) did not affirmatively place caps on THC when promulgating their programs, each state's respective lawmakers will not receive the benefit of federal legislation unless they adopt an affirmative potency. This creates significant issues with the Tenth Amendment. Further, it should be the states prerogative to pass or not pass a potency bill. While some states have proactively set potency limits, this has typically been with edible products via serving size limitations. No state currently has a potency cap on cannabis flower and only a handful of states have delineated potency limitations for cannabis oils and concentrates. A full review of potency limitations and restrictions is presented in **Appendix II**.

C. Inclusion of potency limitations ensures jurisdictional quagmire.

If a potency limit were to be set on cannabis products by the federal government, the Senate Judiciary Committee could act under its authority as provided by the Controlled Substances Act. Placing potency limits of any kind would move the SAFE Banking Act (H.R. 1595 or S. 1200) outside the complete jurisdiction of the banking committee, complicating the pathway forward to reform. Further, setting limits of any kind via a banking bill would not take into consideration the level or type of plant content medically required for medical cannabis used by patients to treat severe diseases and health conditions, including cancer, post-traumatic stress disorder, and debilitating pain.

D. Caps on potency may increase illicit market demand.

THC caps at any level could embolden the illicit market. Provided that the definition of ‘stronger’ refers to a higher concentration of active ingredients in cannabis products, it is the case that cannabis is generally stronger today than it was 30 or 40 years ago. In 1972, the average cannabis plant seized by the Drug Enforcement Administration (DEA) contained 2% or less THC. By 1997, the average THC content in cannabis plant material was 4.2% and for cannabis flower it was 11.5%. In 2017, these numbers were 9.4% and 17.8% respectively.¹⁴

¹⁴ SA Stoner, *Potency of Cannabis*, Alcohol & Drug Abuse Institute (June 2019), <https://adai.uw.edu/marijuana/factsheets/potency.htm>

Demand for higher potency products both for medical and adult use has not diminished in recent years and will not go away solely because banks would be banking products under 2% THC content. A cap on legal products well below what is currently commercially available could fuel the illicit market. Bad actors, including Mexican cartels and unlicensed operators who use dangerous additives and pesticides, could flood the market with high potency THC knowing there is a consumer demand. While consumers may not necessarily use maximum THC content as the sole factor in determining which product to purchase, the products currently available (even in strict medical markets) significantly exceed this 2% limit.¹⁵

Additionally, a rigid THC cap may pressure producers to include additives or to dilute THC products so that the concentration levels fall below the 2% cap. Chemical additives can be used to cause a product's THC content to register lower than the amount the product actually contains. The Centers for Disease Control and Prevention (CDC), as part of its ongoing investigation into vaping, has identified Vitamin E Acetate as a chemical of concern and - as of January 27, 2020 - identified this substance as the culprit in many of the EVALI cases. Vitamin E Acetate has been shown to be used as a thickening agent in illegal THC products to mimic the presence of THC oil but has been largely absent from regulated products.^{16,17}

E. Institutions will not serve licensed cannabis if potency oversight is a condition to the safe harbor.

Finally, imposing potency limitations as a pre-requisite to banking access would very likely have a chilling effect on financial institutions, which would otherwise be willing to offer services to licensed and regulated cannabis industry stakeholders. Banks considering expanding their offerings to serve licensed and regulated cannabis industry stakeholders are already required to establish burdensome protocols and procedures to comply with current guidelines. Layering the additional responsibility of evaluating plant content and holding directors criminally liable for any determination would result in financial institutions unwilling or unable to comply with this proposed potency framework to maintain their safe harbor. In short, adding a potency prerequisite into a federal regulatory paradigm for financial institutions would likely discourage financial institutions from extending their services to this rapidly growing industry. This would exacerbate one of the major problems a federal bill could address, namely, allowing an illicit market to flourish when banks conclude the risks of entering the legitimate market are not worth the benefits.

F. Potency limitations could cause billions of dollars of cash to be unbanked.

A potency cap could inadvertently result in the unbanking of billions of dollars currently tracked, traced and taxed within the financial system. FinCEN estimates that nearly 600 financial

¹⁵ See e.g., 710 Montana Dispensary Menu (last visited Dec. 26, 2019), <https://mmjmenu.com/dispensaries/24247-710-montana> (listing several products with THC content \geq 20%)

¹⁶ Craig Maguer, *Michigan Recalls Vaping Products for Additive Linked to Lung Injuries*, THE DETROIT NEWS (Dec. 17, 2019), <https://www.detroitnews.com/story/news/local/michigan/2019/12/17/michigan-recalls-marijuana-vaping-products-vitamin-e-acetate/2679157001/>

¹⁷ EJ Dickson, *Three Companies Subpoenaed in Weed Vape Illness Investigation*, ROLLING STONE (Sept. 19, 2019), <https://www.rollingstone.com/culture/culture-features/vaping-honey-cut-mystery-thickener-vitamin-e-acetate-vapes-881896/>

institutions are filing suspicious activity reports (SARs) reflecting client relationships with the cannabis industry. Despite this reported number, it is estimated that only 35-40 financial institutions have comprehensive programs to serve cannabis clients. Layering the responsibility of a potency prerequisite as a condition to maintaining a safe harbor would result in many of the financial institutions currently extending services to regulated cannabis to return the deposits to their customers. It is estimated that up to \$7 billion would be unbanked and circulated outside of the US banking system.

Current laws do not extend liability to financial institutions for customers who are in violation of state regulations. As noted above, an overarching problem with addressing health and safety concerns through a financial services bill is that it will place banks in a *de facto* role of policing the cannabis industry -- a responsibility that should not fall on private-sector bankers. When looking to any other industry, banks are not responsible for adverse, downstream events that result from services or products sold, but rather are only responsible for providing financial services. For example, if a financial institution serves a CVS pharmacy that inadvertently sells a drug that contains dangerous ingredients, the bank is not held accountable for the harm to the patient who ingests them.

G. Potency Recommendations

1. States to determine what is appropriate for their citizens.

NCR acknowledges Chairman Crapo's opposition to the federal legalization of cannabis and Idaho's implementation of any type of regulated cannabis market. Nothing in the SAFE Banking Act or any other legislation we support would authorize the federal government to decide for the citizens of Idaho or any other state whether to legalize the use of cannabis for adult or medicinal use. However, some of the ideas set forth in the Chairman's memo would require significant federal regulatory oversight to implement and enforce, and in essence federally advance, the policy he seeks to avoid. The most direct way to support the continued federal illegality of cannabis - and to address the identified concerns with regard to the integrity and stability of the financial systems - is to limit the statutory language in the bill and to create a narrowly tailored safe harbor for certain financial institutions and associated businesses regulated and licensed by states.

Congress, for example, could mandate those states that have independently enacted cannabis programs to conduct a potency study on how their regulatory paradigms affect the health and safety of their constituencies. Each state's findings (based on its program) could then serve as the basis for a state licensing structure (and therefore any licensees and lawfully operating ancillary businesses) for purposes of permitting access to banking.

2. Include THC product composition as a consideration for assessing risk, but not outright denial.

Financial institutions must go through a process for certifying which businesses are producing compliant products and which are not. Nothing in the current version of the SAFE Banking Act requires financial institutions to serve cannabis businesses. If during the risk assessment process, the financial institution determines that the sale of cannabis products with high THC creates too

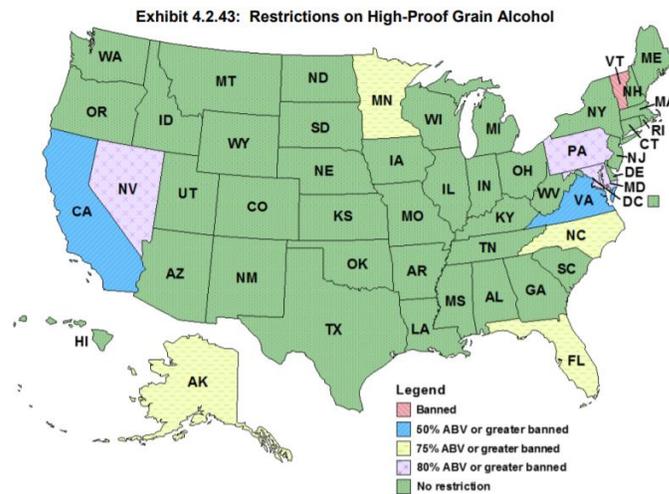
high a risk, then the bank could refrain from extending financial services to that business. If a bank moves forward and decides to bank companies offering high THC cannabis, then the bank can set higher service fees similar to those associated with foreign transactions, which carry a higher regulatory burden.

3. Use high proof alcohol as a policy model.

The current framework provided by the alcohol industry may serve as an instructive model as to how financial institutions interface with regulated industries that operate with non-uniform state standards that also limit potency levels. For example, any beverage that contains .5% alcohol or more is considered an alcoholic beverage by the federal government, but there is no cap on alcohol by volume (ABV) or proof set by the federal government as a maximum allowable amount.¹⁸ States, rather than the federal government, set the maximum alcohol content for their jurisdictions, and the federal government’s role is to review labels of these products via the Alcohol and Tobacco Tax and Trade Bureau.

States set their own limits on high grain alcoholic beverages like 151 Rum, Everclear™ (which can have a proof of up to 190 or 95% ABV). The map below shows how states regulate high-proof grain alcohol. Vermont, for example, has banned high-proof grain alcohol while North Carolina has banned alcohol with 75% ABV or greater, and any vendor who sells alcohol in excess of these limits is be doing so illegally and is subject to license suspension or revocation¹⁹ Similarly, states have set ABV limits on beer.²⁰

[Figure 1]



¹⁸ Federal Alcohol Administration Act, 27 U.S.C § 214 (1) (2019).

¹⁹ HHS, Report to Congress on the Prevention and Reduction of Underage Drinking (2017), available at https://mediasvr.saa.icfcloud.com/ReportToCongress/2017/profile_summaries/24_high_proof_grain_alcoholic_beverages.pdf

²⁰ Amie Alexander & Harrison Pittman, *Definition of ‘Beer’ in Terms of ABV or ABW, by State*, Nat’l Arg. Law Center (last visited Dec. 26, 2019), https://nationalaglawcenter.org/wp-content/uploads/assets/articles/alexanderpittman_beer.pdf (finding Kansas, Utah and several other states place an ABV cap of 3.2%, while South Dakota allows beer to contain up to 14% Alcohol.)

Banks do not distinguish between state limits. They are just as likely to provide access to financial services to a grocery store in Kansas that sells beer with an ABV of 3.2% as they are to a Massachusetts liquor store that sells high proof grain alcohol. In fact, some banks proudly display their wide range of beverage industry clients.²¹ Rather than making a decision to provide services based on ABV, banks rely on local controls to know which products are lawful.

Allowing states rather than the federal government to set potency caps on THC could follow the same model, with cannabis containing greater than 0.3% THC being regulated within state marketplaces in the same manner ABV content and high grain alcohol are currently regulated under federal law. As with the federal definition of alcohol set at 0.5%, any product exceeding 0.3% THC would be considered marijuana and states could set limits they deem appropriate, without the establishment of a ‘maximum’ potency at the federal level.

4. Proposed potency amendment.

To address the definition of “cannabis-related legitimate business” (as written in §14(4) of H.R. 1595), the definition could be clarified to read:

(4) CANNABIS-RELATED LEGITIMATE BUSINESS – The term ‘cannabis-related legitimate business’ means a manufacturer, producer, or any person or company that –

- (A) engages in any activity described in subparagraph (B) pursuant to a law established by a State or a political subdivision of a State, **including laws that limit potency of cannabis and cannabis products**, as determined by such State or political subdivision; and
- (B) participates in any business or organized activity that involves handling cannabis or cannabis products, including cultivating, producing, manufacturing, selling, transporting, displaying, dispensing, distributing, or purchasing of cannabis products.

5. Mandate clear and conspicuous labeling thresholds which states may exceed through their own regulation.

NCR supports clear and conspicuous labeling of cannabis and cannabis products. If the Committee decides to address packaging and labeling, it could direct the Consumer Product Safety Commission, the Alcohol Tax And Trade Bureau, the Food and Drug Administration (FDA), and other relevant agencies to develop minimally acceptable labels for cannabis products. As with environmental regulations, states would be free to set standards more stringent than the federal government’s model.

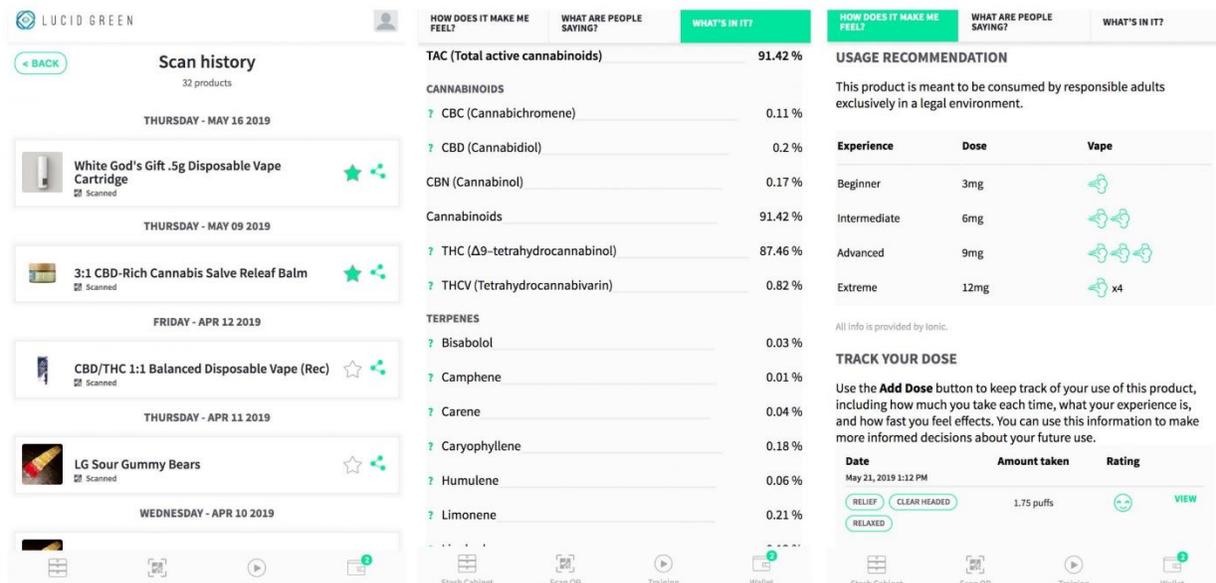
At present, every state that has legalized medical or adult use cannabis requires clear and accurate labeling to include (at a minimum) THC content--though the specific requirements vary by jurisdiction. Consumers should know exactly what they are purchasing. While labeling decisions should be subject to individual states, the language below could serve as a baseline for packaging and labeling requirements with inspections and audits from state regulators (not financial institutions) determining compliance. Labeling requirements could include:

²¹ See e.g., *JP Morgan Chase- Beverage Banking* (last visited Dec. 26, 2019) <https://www.jpmorgan.com/commercial-banking/industries/beverage>

- (a) Producer’s name and license number as issued by the state
- (b) Name of Cultivation facility or dispensary if different than the producer
- (c) Name of strain
- (d) Net weight in U.S. Customary and Metric Units
- (e) Name of laboratory that tested product and any batch number associated with analysis date
- (f) Concentration levels of THC, CBD and other cannabinoids
- (g) Synthetic and natural additives added to product including, but not limited to, thickening agents and flavoring agents
- (h) Terpene profile
- (i) A warning that states “Marijuana Use During Pregnancy or Breastfeeding Poses Potential Harm”; and
- (j) A warning that states “This product is not approved by the US FDA to treat, cure or prevent any disease”

States would be free to implement standards that exceed this list. This information could be on the label itself or accessible from a smartphone activated serialized QR code that directly displays unique product information, as referenced below.

[Figure 2]



The lawful cannabis industry has successfully used QR codes as an effective way to display test results, product concentrations, and any potential allergens and contaminants that may be present in a product.

6. *Incentivize states to set mandatory age limits via grants - or withholding - of federal funds*

NCR supports any effort that reduces diversion to minor users through age restrictions, childproof packaging, and limits on product appeal to children. However, outright restrictions on edible products would be problematic. Edible products nearly always have a lower THC concentration than flower or concentrates and are used by many people who wish to get the medical benefits of cannabis without the potential detrimental effects of smoking or vaping. Edible products are an important delivery mechanism as they can provide consistently measured dosing. Edibles can also be more discreet, so medical patients do not have to interrupt the activities of those around them to take their medicine.

If the Committee decides to address age limits in a bill, it should be done in a substantially similar manner as the National Minimum Drinking Age Act of 1984,²² which reduces federal highway funding by 8% if a state fails to enact a drinking age of 21. Exceptions should be made for states that allow pediatric medical cannabis patients, but these patients typically obtain cannabis from guardians or caregivers who are over 21 years of age.

II. Research

The Schedule I status of cannabis makes it nearly impossible to conduct effective research. Several federal health officials have acknowledged that the Schedule I status of cannabis makes conducting research completely unworkable. In fact, National Institutes of Health (NIH) director Francis Collins recently lamented the differences between the cannabis grown at the National Institute on Drug Abuse (NIDA) facility at the University of Mississippi as compared to commercially available cannabis.²³ There are several research proposals pending before the House and Senate that can more appropriately address the Chairman's research agenda without jeopardizing a safe harbor for cannabis banking.

A. *Facilitate cooperation among federal agencies.*

In his memo, Chairman Crapo highlighted several potential areas of study, including a review of delivery mechanisms and potency. NCR fully supports additional research on the benefits and potential consequences of cannabis use. However, the studies proposed by Chairman Crapo would require several federal agencies to alter how they establish study protocols for Schedule I substances. Health and Human Services, FDA, NIDA, DEA, Department of Justice and CDC would have to make substantial changes to allow for the studies that the Chairman is seeking. Currently, the quality of cannabis grown at NIDA does not reflect the quality available in the commercial marketplace, so any studies that concern potencies of products and differing delivery mechanisms would necessarily need to permit cannabis to be supplied by private sources.

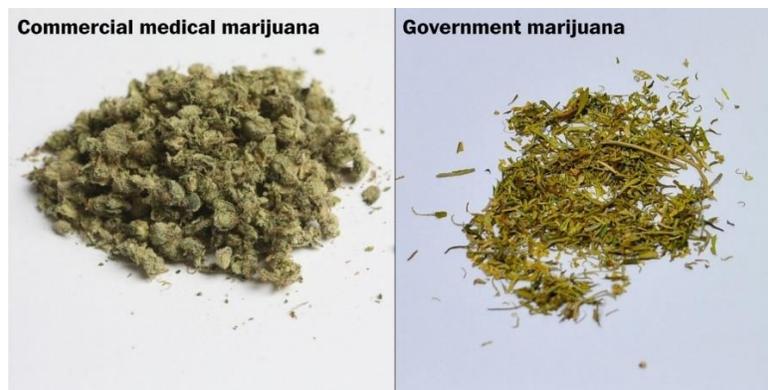
²² 23 U.S.C. § 158 *et. seq*

²³ Kyle Jaeger, *Federal Law a 'Big Deterrent' to Marijuana Research*, Marijuana Moment (Jan. 6, 2020) <https://www.marijuanamoment.net/federal-law-a-big-deterrent-to-marijuana-research-top-u-s-health-science-official-says/>

B. Allow private entities to provide cannabis for research purposes.

A recent study revealed that research grade cannabis is far closer to industrial hemp than it is to commercially available cannabis in most jurisdictions.²⁴ Dr. Sue Sisley, one of the few researchers certified to do cannabis research, shared the picture below with the *Washington Post* in 2017 of what NIDA's Drug Research Institute provided for her clinical trial looking at cannabis as a potential treatment for PTSD in veterans.²⁵ Compared with typically available commercial cannabis, the difference in visual presentation alone is alarming. When a researcher receives cannabis from the NIDA facility, they receive a freeze-dried, standardized product that does not reflect the varieties and strains of cannabis available around the country.

[Figure 3]



Further, due to a lack of federal testing standards, cannabis from NIDA has been reported as contaminated with mold and other contaminants that could adversely affect patient safety.²⁶ Currently, neither NIDA nor the University of Mississippi has established testing protocols before sending cannabis to researchers, though the National Institute of Standards and Technology is reportedly developing cannabis laboratory assurance standards.²⁷

Recognizing this challenging barrier to research, Senators Brian Schatz, Cory Gardner, Kamala Harris, Representative Harley Rouda and a number of Members of the House of Representatives sent a letter to U.S. Attorney General William Barr and acting DEA Administrator Utham Dhillon noting that, as recently as 2016, the DEA has acknowledged the need for increased biodiversity

²⁴ Anna L. Schwabe et. al., *Research Grade Marijuana Supplied by NIDA is Genetically Divergent from*

Commercially Available Cannabis, *BIORXIV* 592725, <https://www.biorxiv.org/content/10.1101/592725v1.full>

²⁵ Christopher Ingraham & Tauhid Chappell, *Government Marijuana Looks Nothing Like the Real Stuff, See for Your Self*, *Wash Post* (Mar. 13, 2017), <https://www.washingtonpost.com/news/wonk/wp/2017/03/13/government-marijuana-looks-nothing-like-the-real-stuff-see-for-yourself/>

²⁶ Caleb Hellerman, *Scientists Say the Government's Only Pot Farm Has Moldy Samples*, *PBS News Hour* (Mar. 8, 2018), <https://www.pbs.org/newshour/nation/scientists-say-governments-pot-farm-moldy-samples-no-guidelines>

²⁷ *See generally*, NIST Tools for Cannabis Laboratory Quality Assurance, NIST (last visited Dec. 26, 2019), <https://www.nist.gov/programs-projects/nist-tools-cannabis-laboratory-quality-assurance>

and quality of research grade cannabis.²⁸ Any piece of legislation that directs relevant federal agencies to conduct research should, at minimum, allow cannabis to be sourced from a variety of public and private partners, as NIDA itself has admitted that having one source producing research grade cannabis “limits the diversity of products and formulations available to researchers.”²⁹

Other challenges to research cannabis currently include administrative burdens, supply barriers, and funding limitations to NIH, as detailed in a study conducted by the National Academies of Sciences.³⁰

Additionally, the Chairman has called for studies that review the effects of cannabis on pregnant women and children. However, any study that is intended to be clinical (*i.e.*, not just observational) raises significant bioethical concerns that cannot be sufficiently addressed so long as cannabis is classified as a Schedule I substance.³¹

C. Health considerations.

The Chairman also asks whether additional health considerations should be considered other than those in the outline. NCR contends that, in addition to the potential harms of cannabis, the wide swath of literature and research supporting the medical uses of the plant should also be considered. That research should include the growing number of studies that find cannabis is a viable replacement for opioids³² and the 2017 National Academy of Sciences report, which found that cannabis is effective for treating pain and muscular spasticity while also serving as an appetite stimulant for individuals undergoing chemotherapy.³³

NCR looks forward to working with Chairman Crapo, Members of the Committee, and staff to develop a bill that addresses the Chairman’s research questions separate from any bill that addresses access to financial services, as the issue of cannabis research is complex and deserves its own hearings in the appropriate committees. Current proposals (such as S. 2032) provide an excellent framework to begin addressing these questions.

III. Anti-Money Laundering and Legacy Cash

The primary area of concern regarding legacy cash is ensuring that funds initially deposited at a financial institution are not the product of illegal activity (*i.e.*, making sure that illicit operators or

²⁸ Rep. Harley Rouda, *Letter to AG Barr on Improving Cannabis Research* (Dec. 6, 2019), available at <https://rouda.house.gov/media/press-releases/congressman-rouda-and-senator-schatz-lead-bipartisan-letter-ag-barr-improving>

²⁹ *Id.*

³⁰ NASEM, *The Challenges and Barriers in Conducting Cannabis Research*, Ch. 15 (Jan. 12, 2017), <https://www.ncbi.nlm.nih.gov/books/NBK425757/>

³¹ Bonnie Stienbock, *Ethical Issues Related to the Inclusion of Pregnant Women in Clinical Trials*, NASEM (1999), <https://www.nap.edu/read/2343/chapter/5>

³² See *e.g.*, Benjamin J. McMichael et. al., *The Impact of Cannabis Access Laws on Opioid Prescribing*, J. Health Econ Vol. 69 (*forthcoming* Jan. 2020), https://www.sciencedirect.com/science/article/pii/S0167629618309020?utm_medium=ios_app&utm_name=iossmf&utm_source=share&via%3Dihub

³³ *Supra* n. 9, Ch. 1

cartels are not improperly depositing money). While 2014 FinCEN guidance does not explicitly address legacy funds, it provides detailed direction as to the filing of SARs that apply to deposits of legacy funds whenever made.³⁴

The SAFE Banking Act should direct FinCEN, in coordination with the federal banking agencies, to update and enhance its guidance to provide the necessary clarity for financial institutions to safely provide financial services to legitimate cannabis businesses. While this guidance should continue to address the SARs filing requirements, it also should address customer due diligence and enhanced due diligence, such as direction for banks to ensure that such businesses comply with all applicable federal and state tax laws and licensing laws. In this guidance, FinCEN could specify what records and information financial institutions should require from legitimate cannabis businesses to verify the legitimacy of legacy cash, such as diligence on the source of funds and distribution of funds. Such guidance could also identify red flags to help institutions identify suspect legacy cash.

IV. Interstate Commerce

As currently drafted, the SAFE Banking Act ensures that a bank can only provide financial services to a cannabis business if that business is operating in compliance with applicable state cannabis laws. Additionally, under the bill, proceeds from a transaction conducted by a cannabis-related legitimate business or service provider would not be considered proceeds from an unlawful activity. Financial services can only be provided in a state that has legalized cannabis, in accordance with the laws of that state.

We understand that there may be concerns regarding when a bank that has its headquarters in a state (State A) in which cannabis is illegal, but with a branch in a state (State B) where cannabis is legal, may wish to conduct business with a cannabis company through its branch in State B. While we believe these concerns are already addressed in the bill, in regard to the classification of proceeds from a transaction conducted by a cannabis-related legitimate business or service provider as not proceeds from an unlawful activity, the legislation could address this by dictating what state law would apply to such a scenario (*e.g.*, the bank's home state law would apply).

³⁴ FinCen, *BSA Expectations Regarding Marijuana-Related Businesses* (Feb. 14, 2014), <https://www.fincen.gov/resources/statutes-regulations/guidance/bsa-expectations-regarding-marijuana-related-businesses> (“The obligation to file a SAR is unaffected by any state law that legalizes marijuana-related activity. A financial institution is required to file a SAR if, consistent with FinCEN regulations, the financial institution knows, suspects, or has reason to suspect that a transaction conducted or attempted by, at, or through the financial institution: (i) involves funds derived from illegal activity or is an attempt to disguise funds derived from illegal activity; (ii) is designed to evade regulations promulgated under the BSA, or (iii) lacks a business or apparent lawful purpose. *Because federal law prohibits the distribution and sale of marijuana, financial transactions involving a marijuana-related business would generally involve funds derived from illegal activity. Therefore, a financial institution is required to file a SAR on activity involving a marijuana-related business (including those duly licensed under state law), in accordance with this guidance and FinCEN’s suspicious activity reporting requirements and related thresholds.*” (Emphasis added.))

Appendix I- State Cannabis Regulatory Bodies

Alaska- Alcohol and Marijuana Control Board

<https://www.commerce.alaska.gov/web/amco/Home.aspx>,

Contact: Mark Springer, Board Chair, marijuana@alaska.gov

Arkansas

Arkansas Medical Marijuana Commission

<https://www.healthy.arkansas.gov/programs-services/topics/medical-marijuana>

Contact: Dr. Ronda Henry Tillman, M.D, Director adh.medicalmarijuana@arkansas.gov

Arizona

Arizona Department of Health and Human Services

<https://www.azdhs.gov/licensing/medical-marijuana/index.php#contact>

Contact: Dr. Cara M. Christ, Director cara.christ@azdhs.gov; M2dispensaries@azdhs.gov

California

Bureau of Cannabis Control

<https://bcc.ca.gov/>

Contact: Lori Ajax, Chief, bcc@dca.ca.gov

Colorado

Marijuana Enforcement Division

<https://www.colorado.gov/pacific/enforcement/marijuanaenforcement>

Jim Burack, Director, jim.burack@state.co.us

Connecticut

Department of Consumer Protection- Medical Marijuana Program

<https://portal.ct.gov/DCP/Medical-Marijuana-Program/Medical-Marijuana-Program>

Xavier Soto, Program Manager, xavier.soto@ct.gov

Delaware

Department of Public Health- Medical Marijuana

<https://dhss.delaware.gov/dph/hsp/medmarhome.html>

Paul Hyland, Medical Marijuana Program Administrator, paul.hyland@state.de.us

District of Columbia

Division of Medical Marijuana and Integrative Therapy

<https://dchealth.dc.gov/service/medical-marijuana-and-integrative-therapy>

Contact doh.mmp@dc.gov

Florida

Office of Medical Marijuana Use

<https://knowthefactsmmj.com/>

Courtney Copola, Marijuana Coordinator, courtney.copola@floridahealth.gov

Hawaii

Department of Health- Medical Cannabis Program

<https://health.hawaii.gov/medicalcannabis/>

Contact medicalcannabis@doh.hawaii.gov

Illinois

Department of Financial and Professional Regulation- Adult Use Cannabis

Illinois Department of Public Health -Medical Cannabis

<https://www.idfpr.com/ILCannabis.asp>

Toi Hutchinson, Senior Adviser to the Governor on Cannabis Control,

toi.hutchinson@illinois.gov

Conny Moody, Deputy Director of Illinois Medical Cannabis Program –

conny.moody@illinois.gov

Louisiana

Louisiana Department of Agriculture & Forestry – Medical Marijuana

<http://www.ldaf.state.la.us/medical-marijuana/>

Mike Strain, Commissioner of Agriculture, & Forestry, commissioner@ldaf.state.la.us ;

mmj@ldaf.state.la.us

Maine

Office of Marijuana Policy

<https://www.maine.gov/dafs/omp/home>

Erik Gundersen, Director, erik.gundersen@maine.gov

Craig Patterson, Medical Program Manager, craig.patterson@maine.gov

Maryland

Medical Cannabis Commission

<https://mmcc.maryland.gov/Pages/home.aspx>

William Tilburg, Executive Director, William.tilburg@maryland.gov

Massachusetts

Cannabis Control Commission

<https://mass-cannabis-control.com/>

Steven Hoffman, Chairman, steven.j.hoffman@mass.gov

Michigan

Marijuana Regulatory Agency

https://www.michigan.gov/lara/0,4601,7-154-89334_79571---,00.html

Andrew Brisbo, Executive Director, brisboa@michigan.gov; MRA-Enforcement@michigan.gov; MRA-MedicalMarijuana@michigan.gov

Minnesota

Minnesota Department of Health – Medical Cannabis

<https://www.health.state.mn.us/people/cannabis/>

Chris Tholkes, chris.tholkes@health.state.mn.us; health.cannabis@state.mn.us

Missouri

Department of Health & Human Services

<https://health.mo.gov/safety/medical-marijuana/>

Lyndall Fraker, Director, lyndall@fraker@health.mo.gov; medicalmarijuanainfo@health.mo.gov

Montana

Department of Health and Human Services- Medical Marijuana Program

<https://dphhs.mt.gov/marijuana>

Sheila Hogan, Director, mtmarijuanaprogram@mt.gov

Nevada

Department of Health and Human Services- Medical Marijuana

<http://marijuana.nv.gov/>

Peter Long, Interim Director, plong@admin.nv.gov

New Hampshire

Department of Health and Human Services Therapeutic Cannabis Program

<https://www.dhhs.nh.gov/oos/tcp/index.htm>

TherapeuticCannabisProgram@dhhs.nh.gov, (603) 271-9333

New Jersey

Department of Health- Division Medicinal Marijuana

<https://www.nj.gov/health/medicalmarijuana/>

New Mexico

New Mexico Department of Health – Medical Cannabis Program

<https://nmhealth.org/about/mcp/svcs/>

Andrea Sundberg, Program Coordinator, medical.cannabis@state.nm.us

New York

Department of Health Medical Marijuana Program

https://www.health.ny.gov/regulations/medical_marijuana/

Howard Zucker, MD, JD, Commissioner of Public

Health, howard.zucker@health.ny.gov; mmp@health.ny.gov

North Dakota

Department of Health- Division of Medical Marijuana

<https://www.health.nd.gov/mm>

Jason Wahl, Director, jwahl@nd.gov; medmarijuana@nd.gov

Ohio

Medical Marijuana Control Program

<https://www.medicalmarijuana.ohio.gov/default>

Megan E. Marchal, Pharm. D., Chair of Advisory Committee, megan.marchal@ohio.gov

Oklahoma

Medical Marijuana Authority

<http://omma.ok.gov/>

Travis Kirkpatrick, MPA Interim Director, travis.kirkpatrick@ok.gov

Oregon

Oregon Health Authority- Medical Marijuana Program

<https://www.oregon.gov/oha/PH/DISEASES/CONDITIONS/CHRONICDISEASE/MEDICALMARIJUANAPROGRAM/Pages/Cannabis-Commission.aspx>

Megan Lockwood, Acting Section Manager, megan.lockwood@oregon.gov;
ommp.info@dhsosha.state.or.us

Oregon Liquor Control Commission

<https://www.oregon.gov/olcc/Pages/index.aspx>

Paul Rosenbaum, Commissioner, paul.rosenbaum@oregon.gov ; marijuana@oregon.gov

Pennsylvania

Department of Health – Office of Medical Marijuana

<https://www.health.pa.gov/topics/programs/Medical%20Marijuana/Pages/Medical%20Marijuana.aspx>

John Collins, MBA, Director, johncollins@pa.gov

Utah

Department of Agriculture & Food- Medical Cannabis Program

<https://medicalcannabis.utah.gov/>

Andrew Rigby, Director, aribgy@utah.gov; medicalcannabis@utah.gov

Vermont

Department of Public Safety- Marijuana Registry

<https://medicalmarijuana.vermont.gov/>

Lindsey Wells, B.S., Marijuana Program Administrator, lindsey.wells@vermont.gov

Washington

Liquor and Cannabis Control Board

<https://lcb.wa.gov/>

Jane Rushford, Board Chair, jane.rushford@lcb.wa.gov

Department of Health Medical Marijuana Program

<https://www.doh.wa.gov/YouandYourFamily/Marijuana/MedicalMarijuana>

West Virginia

Department of Health and Human Resources – Office of Medical Cannabis

<https://dhhr.wv.gov/bph/Pages/Medical-Cannabis-Program.aspx>

Jason Frame, Director, Jason.frame@wv.gov

Appendix II- Overview of Current State Potency Caps

Provide list of laws for how potency is labeled. It is worth noting that even in states that do not put an upper limit on THC content, there are many product controls in these states including age restrictions, and limits on possession and purchase.

State	Program Type	Concentrate/Oil Potency	Flower Potency	Edible Potency
Alabama ³⁵	Limited Medical - Low THC	No more than 3.0% THC relative to CBD	N/A	N/A
Alaska ³⁶	Adult Use & Medical	76% THC Cap proposed rule, but failed to be enacted ³⁷	No Cap	Up to 50 Mg of THC total per package (60 mg allowed as variance), 5mg of THC per serving, no more than 10 servings, THC must be homogenous throughout
Arkansas ³⁸	Medical	No Cap	No Cap	Allows for homemade edibles, though no commercially produced edibles and no caps on potency
Arizona ³⁹	Medical (Possible Adult Use on Ballot in 2020)	No Cap as a result of State Supreme Court Decision ⁴⁰	No Cap	No Cap, though proposed adult use initiative caps serving size of

³⁵ Ala. Code. §13A-12-214.3, available at <https://codes.findlaw.com/al/title-13a-criminal-code/al-code-sect-13a-12-214-3.html>

³⁶ Regs. For the Marijuana Control Board, 3 AAC 306.560, (last updated Feb. 21, 2019), <https://www.commerce.alaska.gov/web/Portals/9/pub/MCB/StatutesAndRegulations/MarijuanaRegulations.pdf>

³⁷ See, Alcohol & Marijuana Control Office, *Marijuana Regs. Public Comments Questions and Answers*, (proposed Sept. 2015)(failed to be codified), <https://www.commerce.alaska.gov/web/amco/MarijuanaRegulations/FAQsonPublicCommentsRegulations/QADraftSet3.aspx>

³⁸ Ark. Dept. of Health, *Rules and Regs. Covering Medical Marijuana, Registration, Testing, and Labeling in Ark.*, (May 8, 2017), https://www.healthy.arkansas.gov/images/uploads/rules/Medical_Marijuana_Emergency_Rule_4-27-2017_%28Signed%29.pdf

³⁹ Ariz. Rev. Stat. Ann. §36-2801(2019), <https://www.azleg.gov/viewdocument/?docName=http://www.azleg.gov/ars/36/02801.htm>

⁴⁰ *Arizona v. Jones*, Az. Sup. Ct., CR-18-0370-PR, (May 28, 2019), <https://www.azcourts.gov/Portals/0/OpinionFiles/Supreme/2019/State%20v.%20Jones%20Opinion.Final.pdf>

				edible at 10 mg THC, with 100 mg total for package ⁴¹
California ⁴²	Adult Use & Medical	No Cap	No Cap	Single Serving is 10 Mg of THC, with packages allowing up to 100 mg THC, <i>de minimis</i> variance
Colorado ⁴³	Adult Use & Medical	No Cap	No Cap	One edible dose is 10 mg THC, though Edibles can come in packages with several servings, up to 100 mg of THC
Connecticut ⁴⁴	Medical	No Cap	Permitted only in limited circumstances, no cap	Edibles prohibited by state law
Delaware ⁴⁵	Medical	Pediatric oil (THC-A) limited to ≤15% and not more than 7% THC or ≤15% CBD and no more than ≤7%, no cap for adult patients	No Cap	Edibles not expressly permitted by state law
District of Columbia ⁴⁶	Medical and Adult Use, though No	No Cap	No Cap	10 mg THC per serving

⁴¹ Smart & Safe Arizona, (last visited Jan 2, 2020), <https://smartandsafeaz.com/about/>

⁴²CA Bureau of Cannabis Control, tit. 16 div. 42 §5724 (last visited Jan. 2, 2020), <https://cannabis.ca.gov/wp-content/uploads/sites/13/2019/01/Order-of-Adoption-Clean-Version-of-Text.pdf>

⁴³ Jim Burack, *Statement of Adoption- Permanent Marijuana Rules*, Colo. Marijuana Enforcement Div., (Nov. 5, 2019), available at <https://drive.google.com/file/d/1elp1bpu7Jz7yusFvhA6kbC5icRYwzqkK/view>

⁴⁴ Conn. Gen. Stat. §21a-408 *et. seq.*, available at https://www.cga.ct.gov/current/pub/chap_420f.htm#sec_21a-408d

⁴⁵Del. Admin. Code §4470(2.0)(2014),

[http://regulations.delaware.gov/AdminCode/title16/Department%20of%20Health%20and%20Social%20Services/Division%20of%20Public%20Health/Health%20Systems%20Protection%20\(HSP\)/4470.shtml](http://regulations.delaware.gov/AdminCode/title16/Department%20of%20Health%20and%20Social%20Services/Division%20of%20Public%20Health/Health%20Systems%20Protection%20(HSP)/4470.shtml)

⁴⁶ D.C. Code §22-C5608, *Ingestible Items*, (Apr. 5, 2019),

<https://www.dcregs.dc.gov/Common/DCMR/SectionList.aspx?SectionNumber=22-C5608>

	Commercial Sales			
Florida	Medical	No Cap	No Cap (proposal for 10% THC cap failed in legislature ⁴⁷)	200 mg THC per edible, and a single serving cannot contain more than 10 mg THC, with a potency variance of no greater than 15% ⁴⁸ (New Edible regulations are currently in the rulemaking process but have not been finalized)
Georgia ⁴⁹	Low-THC Oil - Medical	≤5% THC	N/A	N/A
Guam ⁵⁰	Medical	No Cap	No Cap	Not expressly prohibited or permitted
Hawaii ⁵¹	Medical	No Cap	No Cap	Under Development ⁵²
Idaho ⁵³	N/A (Medical Use may be on ballot in 2020, no potency cap is listed in	N/A	N/A	N/A

⁴⁷ Jacob Ogles, *Florida Could be First State to Limit THC in Smokable Medical Marijuana*, FLORIDA POLITICS, (Apr. 30, 2019), <https://floridapolitics.com/archives/295212-florida-first-state-thc>

⁴⁸ Fla. Stat. §381.986, (2019), http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0300-0399/0381/Sections/0381.986.html

⁴⁹ Ga. Code §16-12-190 (2017), <http://www.legis.ga.gov/Legislation/20192020/187578.pdf>

⁵⁰ Guam Pub. L. 32-337 (2015), *available at* http://www.guamlegislature.com/Public_Laws_32nd/Public%20Law%2032-237%20-%20Bill%20No%20215-32.pdf

⁵¹ *See generally*, Laws & Rules – Medical Cannabis Registry Program, HI Dept. of Health, (last visited Jan. 2, 2020), <https://health.hawaii.gov/medicalcannabisregistry/general-information/marijuana-laws-and-related-documents/>

⁵² HI Dept. of Health, *Report to the 30th Legislature*, (2019), https://health.hawaii.gov/opppd/files/2019/01/Medical-Cannabis-Outstanding-Issues-Working-Group-Final-Report_Nov-2018.pdf (discussing outstanding issues with the HI medical cannabis program).

⁵³ Id. Sec. of State, *Initiative Establishing Medical Marijuana Program*, (2019), https://sos.idaho.gov/elect/inits/2020/MM_Final.pdf (currently circulating for signatures)

	current initiative text)			
Indiana ⁵⁴	CBD Only, but affirmative state law allowing its use	≤0.3% THC	≤0.3% THC	N/A
Illinois ⁵⁵	Adult Use & Medical	No Cap	No Cap	Serving can contain no more than 10 mg THC, no more than 100 mg per package
Iowa ⁵⁶	Low THC / High CBD Medical	≤3.0% THC (greater number may be approved in limited circumstances)	≤3.0% THC (greater number may be approved in limited circumstances)	Edibles not permitted under state law
Kansas ⁵⁷	THC Affirmative Defense	≤5% THC affirmative defense allowed	N/A	N/A
Kentucky ⁵⁸	CBD Only	≤0.3% THC	≤0.3% THC	N/A
Louisiana ⁵⁹	Medical	No Cap	No Cap, but vaporizing only	10 mg THC per Serving
Maine ⁶⁰	Adult Use & Medical	No Cap	No Cap	10 mg THC per serving, no more than 5-gram total THC per package
Maryland	Medical	No Cap	No Cap	Edibles permitted ⁶¹ , proposed regulations 10 mg THC per serving,

⁵⁴Ind. Code §6-2.5-8-7 (2019), <https://www.legis.iowa.gov/docs/publications/LGE/87/attachments/HF524.html>

⁵⁵410 Ill. Comp. Stat. 705 §55-21(k), (2019) <http://iga.in.gov/legislative/2018/bills/senate/52#document-6a10d137> (Sec. 55-21(k))

⁵⁶Iowa Code §124E.2, (2019), <https://www.legis.iowa.gov/docs/code/124e.pdf>

⁵⁷K.S. Legis. Assemb., SB28, (July 1, 2019), *available at* http://www.kslegislature.org/li/b2019_20/measures/sb28/ (creating an affirmative defense to the crime of possession of a controlled substance for possession of certain medical treatments)

⁵⁸Ky. Rev. Stat. §218A.010 K (28(c)) (2019), <https://apps.legislature.ky.gov/lrcsearch#tabs-3>

⁵⁹La. Stat. Ann. tit. 7, XLIX §2303(6(b)) (2019), <http://www.ldaf.state.la.us/wp-content/uploads/2019/12/MM-Rules-original.pdf>

⁶⁰Me. Stat. tit. 28-B §703(F) (2019), <https://legislature.maine.gov/legis/statutes/28-B/title28-Bsec703.html>

⁶¹Md. Legis. Assemb. HB17 (May 13, 2019), *available at* <http://mgaleg.maryland.gov/2019RS/bills/hb/hb0017T.pdf>

				100 mg THC per package ⁶²
Massachusetts ⁶³	Medical and Adult Use	No Cap	No Cap	5 mg of THC per serving, up to 100 mg total per package
Michigan ⁶⁴	Medical & Adult Use	No Cap	No Cap	10 mg THC per serving, up to 100 mg per package ⁶⁵
Minnesota ⁶⁶	Medical	No Cap	Flower not permitted under state law	Edibles not Permitted Under State Law
Mississippi ⁶⁷	CBD only, medical could be on ballot in 2020	≤.5% THC, up to 15% CBD for Harper Grace's Law, otherwise CBD as permitted under 2018 Farm Bill	N/A	Edibles not permitted under state law
Missouri ⁶⁸	Medical	No Cap	No Cap	Edibles permitted, no THC cap clearly identified
Montana ⁶⁹	Medical	No Cap	No Cap	Edibles permitted, caps determined through possession limits
Nebraska ⁷⁰	CBD only	≤0.3%THC, 10% CBD	N/A	N/A

⁶²Md. Dept. Health, *Natalie M. Laprade Medical Cannabis Commission- Draft Rules*, (Nov. 22, 2019), available at [https://mmcc.maryland.gov/Documents/Committee%20Meeting%20202019/COMAR%2010.62.37%20-%20Edible%20Cannabis%20Products%20\(Nov.%202022,%20202019\).pdf](https://mmcc.maryland.gov/Documents/Committee%20Meeting%20202019/COMAR%2010.62.37%20-%20Edible%20Cannabis%20Products%20(Nov.%202022,%20202019).pdf)

⁶³ 935 CMR 500.002, *Mass. Cannabis Control Commission*, (2019), <https://mass-cannabis-control.com/wp-content/uploads/2018/03/Reposted-031218-CCC-Final-Regulations-with-disclaimer.pdf>

⁶⁴ Mich. Marijuana Reg. Agency, *Advisory Bulletin- Medical and Adult Use Marijuana Infused Products Maximum THC Levels/Concentrations*, (Oct. 25, 2019), https://www.michigan.gov/documents/lara/THC.limits.AU.Medical.10-25-2019_670482_7.pdf

⁶⁶ Minn. Stat. §152.22 *et. seq.*, (2019) <https://www.revisor.mn.gov/laws/2014/0/311/>

⁶⁷ Miss. Code Ann. §41-29-136 (2017), <https://law.justia.com/codes/mississippi/2014/title-41/chapter-29/article-3/section-41-29-136/>

⁶⁸ 19 CSR 20-95.010(9) (2019), <https://www.sos.mo.gov/CMSImages/AdRules/csr/current/19csr/19c30-95.pdf> (allowing for total possession of 800 mg THC at one point, but not delineated through serving sizes)

⁶⁹ Mont. Code. Ann. § 50-46-309 (2019), <https://leg.mt.gov/bills/2017/billpdf/SB0333.pdf>

⁷⁰ Neb. Rev. Stat. §28-46-468 (2019, <https://nebraskalegislature.gov/laws/statutes.php?statute=28-463>

Nevada ⁷¹	Adult Use & Medical	No Cap	No Cap	10 mg of THC per dose and no more than 100 mg THC per package with 15% variance allowed
New Hampshire ⁷²	Medical	No Cap	No Cap	Edible Packages allow up to 250 mg of THC but servings must be homogenous
New Jersey ⁷³	Medical (Adult Use on Ballot in 2020)	No Cap	No Cap	10 mg THC per serving, no more than 100 mg per package
New Mexico ⁷⁴	Medical	THC was capped at 70%, but this has since been repealed	THC was capped at 70%, but this has since been repealed	Maximum 200 mg THC per packaged unit
New York ⁷⁵	Medical	No cap	Limited Circumstances, no cap	Not Permitted by State Law
North Carolina ⁷⁶	CBD Only	≤0.9% THC, and at least 5% CBD	N/A	N/A
North Dakota ⁷⁷	Medical	No Cap for adults, 6% THC cap in pediatric medical marijuana and	No Cap	Not permitted under State law
Ohio ⁷⁸	Medical	Tier I Marijuana up to 23% THC content, Tier II Marijuana in between 23 and 35% THC, no single dose shall	35%, but flower only allowed in vaporization devices	10 mg THC per serving, no more than 5 servings per package

⁷¹ See, Nev. Rev. Stat. §453D.310 (1(f))(effective Jan. 1, 2020)

<https://tax.nv.gov/uploadedFiles/taxnv.gov/Content/Meetings/Packaging%20and%20Labeling%20of%20Marijuana%20and%20Marijuana%20Products%20and%20Advertising%20v.%203.pdf>

⁷² N.H. Medical Cannabis Rules, Ch. He-C 400 §402.13(i)(1), (2019)

http://www.gencourt.state.nh.us/rules/state_agencies/he-c400.html

⁷³ N.J. Legis, P. Law 19-153 (corrected copy)(2019), https://www.njleg.state.nj.us/2018/Bills/PL19/153_.HTM

⁷⁴ NMAC §7.34.3.9(B) (2019), <http://164.64.110.134/parts/title07/07.034.0003.html>

⁷⁵ N.Y. Pub. Health §3369a-1004.11(3)(i)(2019), <https://regs.health.ny.gov/book/export/html/49315>

⁷⁶ N.C. Gen. Stat §90-94.1 (2015), <https://www.ncleg.net/Sessions/2015/Bills/House/PDF/H766v6.pdf>

⁷⁷ See generally, N.D. Cent. Code §19-24.1-01 (2019), <https://www.legis.nd.gov/cencode/t19c24-1.pdf>

⁷⁸ 3796 OAC §8-2-06(A) (2019), <http://codes.ohio.gov/oac/3796:8-2-06>

		exceed 590 mg in oil for vaporization, no more than 110 mg in oil for oral ingestion		
Oklahoma ⁷⁹	Medical	No Cap, though 12% had been originally proposed ⁸⁰	No Cap, though 12% had been originally proposed	Allows edibles, caps based on possession limits rather than THC content
Oregon ⁸¹	Medical & Adult Use		No Cap	5 mg of THC per serving, 50 mg of THC per package (adult use), for medical grade cannabis patients can purchase edibles containing up to 100 mg of THC per package with not maximum serving size
Pennsylvania ⁸²	Medical	No Cap	No Cap	Dispensaries do not currently sell edibles, but patients can make their own
Rhode Island ⁸³	Medical	No Cap	No Cap	10 mg THC per serving, 50 mg THC per package
South Carolina ⁸⁴	Low THC Medical	≤0.9% THC, Lennox Gastaut, Dravet or other	≤0.3%THC*(AG issued an opinion that	N/A

⁷⁹ Okla. Stat. tit. 310 §681-1-1 *et. seq.*, (2019), [http://omma.ok.gov/Websites/ddeer/images/Final%20November%20Emergency%20MM%20Rules-Website%20\(002\).pdf](http://omma.ok.gov/Websites/ddeer/images/Final%20November%20Emergency%20MM%20Rules-Website%20(002).pdf)

⁸⁰ Meg Wingerter, *Oklahoma Medical Marijuana Supporters Cry Foul on THC Limits*, THE OKLAHOMAN, (July 22, 2018), <https://oklahoman.com/article/5602019/oklahoma-medical-marijuana-supporters-cry-foul-on-thc-limits>

⁸¹ Oregon Liquor Control Commission, *FAQ: Consumers*, (last visited Jan. 2, 2020), <https://www.oregon.gov/olcc/marijuana/Pages/FAQs-Consumers.aspx>

⁸² *See generally*, Pa. Pub. Law 16-84 (2016), <https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2016&sessInd=0&act=16>

⁸³ 230 RICR §80-5-1(I)(6), (2019) https://risos-apa-production-public.s3.amazonaws.com/DBR/REG_8717_20180806193715.pdf

⁸⁴ S.C. Code Ann. §44-53-10 (27(a)(vi) (2019), https://www.scstatehouse.gov/sess120_2013-2014/bills/1035.htm

		forms of epilepsy	created confusion on this issue as to whether smokable hemp was processed or unprocessed under state law	
South Dakota ⁸⁵	N/A (Note: Gov. Noem vetoed an industrial hemp bill citing lack of rules from USDA), Medical is on ballot in 2020	N/A	N/A	N/A
Tennessee ⁸⁶	Low THC Medical	≤0.6% for clinical research studies, ≤0.9% THC, Epilepsy only	≤0.3% THC	Not permitted under state law
Texas ⁸⁷	Low THC Medical	≤0.5% THC	≤0.3% THC	Not expressly permitted under state law
Utah ⁸⁸	Medical	No Cap	No potency cap, but must be packaged in individual blister pack	Form of edibles limited to gelatinous cube, but no potency cap
Vermont	Medical & Adult Use*(no commercial sales for adult use)	No Cap	No Cap	Potency handled through possession limits

⁸⁵Gov. Kristi Noem, *Noem Vetoes Industrial Hemp Legislation*, (2019), <https://news.sd.gov/newsitem.aspx?id=24233>

⁸⁶ Tenn. Code Ann. §39-17-402(16)(f) (2019), <https://trackbill.com/bill/tennessee-house-bill-197-controlled-substances-as-enacted-authorizes-use-of-cannabidiol-oil-with-less-than-0-9-percent-of-tetrahydrocannabinol-to-treat-intractable-seizures-or-epilepsy-in-certain-circumstances-amends-tca-title-39-chapter-17-part-4-and-title-43-chapter-26/781937/>

⁸⁷ Tex. Occ. Code §3-169.001(3) (2019), <https://statutes.capitol.texas.gov/Docs/OC/htm/OC.169.htm>

⁸⁸ Utah Legis, SB 1002 – Medical Cannabis Amendments, (2019), <https://le.utah.gov/~2019s1/bills/static/SB1002.html>

Virginia ⁸⁹	Limited Medical Use	Each dose of THC-A not to exceed 10 mg (but no cap on potency), each dispensed package of CBD or THC-A not to exceed 100mg	Not permitted under state law	Not permitted under state law
Washington ⁹⁰	Medical & Adult Use	No Cap	No Cap	10 mg THC per serving, no more than 100 mg total THC in package, must be homogeneous throughout
West Virginia ⁹¹	Medical	No Cap	Not permitted by State law	Not expressly permitted by state law, but patients can make their own at home
Wisconsin ⁹²	CBD Only	≤0.3% THC	≤0.3% THC	N/A
Wyoming ⁹³	CBD Only	≤0.3% THC	≤0.3% THC	N/A

⁸⁹ Va. Code. Ann. §54.1-3408.3 (2019), <https://law.lis.virginia.gov/vacode/title54.1/chapter34/section54.1-3408.3/>

⁹⁰ Wash. Liquor and Cannabis Bd., *Notice of Permanent Rules*, (last visited Jan. 2, 2020), https://lcb.wa.gov/sites/default/files/publications/rules/CES_Packaging%20and%20Labeling_FINAL_VERSION_121819.pdf

⁹¹ *See generally*, W. Va. Code §16A-1-1 *et. seq.*, (2019), <http://www.wvlegislature.gov/wvcode/code.cfm?chap=16A&art=7#01>

⁹² Wis. Stat. § 961.11(4)(g) (2017), <http://docs.legis.wisconsin.gov/2017/related/acts/4>

⁹³ Wyoming Legis., HB-0171 (2019), <https://www.wyoleg.gov/Legislation/2019/HB0171>