



**Summary of Regulations for
Part 128 Packaging and Labeling and Part 129: Marketing and Advertising
COMMENTS ON THESE REGULATIONS ARE DUE
MONDAY, AUGUST 15, 2022**

The following is a comprehensive summary of the regulations for the packaging, labeling, marketing, and advertising of adult-use cannabis flower and cannabis products. If you are considering entering the industry, building a brand, and pursuing a license that involves packaging, labeling, marketing and advertising, we recommend you also read the full regulations before investing money in packaging, labeling, marketing or advertising as the summary will not contain all the details of the full regulations.

Our principal belief is that the rules and limitations on artwork for brands, packages, and labels within the cannabis industry should not perpetuate the stigma that cannabis is inherently dangerous. We also believe the rules for cannabis should not be stricter than the regulations for the alcohol and tobacco industries. Similarly, we do not believe advertising and marketing restrictions should unfairly curtail cannabis commerce beyond the need to ensure consumers understand proper dosage, package contents, and the steps needed to ensure individuals under the age of 21 are not targeted in advertising and marketing.

To assist you in drafting comments, we have provided a list of suggested responses that you can submit to the NYS Office of Cannabis Management (OCM). You are free to use some or all of our suggested comments or draft your own. We urge all consumers, especially those looking to enter the industry, to engage in this process and submit comments. To ensure that comments carry the full weight of their suggestions with the regulators, be sure to include your full name and address. Thank you in advance for supporting the development of New York's growing cannabis industry.

Part 128: Packaging and Labeling

The proposed regulations for Parts 128 and 129 start with a list of definitions used to clarify the meaning of words used in the regulations. Below, our analysis discusses a few definitions which we believe require clarification by the OCM and the attention of the public.

Retail packaging must include an expiration date, be child resistant, be tamper-evident, fully enclose the product minimizing oxygen exposure and prevent contamination and degradation of product and cannot impart any toxic substance onto the product. Licensees are required to maintain certificates verifying that its retail packaging meets the state's standard for child resistance, poison prevention, and Testing Procedure for Special Packaging. Exit packages used to carry products home can have the name of the retail store on the package.

Packaging can't include more than one logo per package. Therefore, if you have a parent company, it cannot be on the package with the logo for the particular brand under the parent company. Packaging is barred from including pictures, images, or graphics, other than those required by the Office, and features that emit scent or sound. No packaging can be attractive to children under 21 years old. Neon colors, characters or symbols on packages used to market to children, bubble-type font, the term candy or candies or any spelling variations of the word, any imitation of food, such as candy, cookies, soda, or drinks are all prohibited in cannabis packaging. Additionally, packaging can't be made out of single-use plastic unless it contains at least 25% post consumer recyclable material.

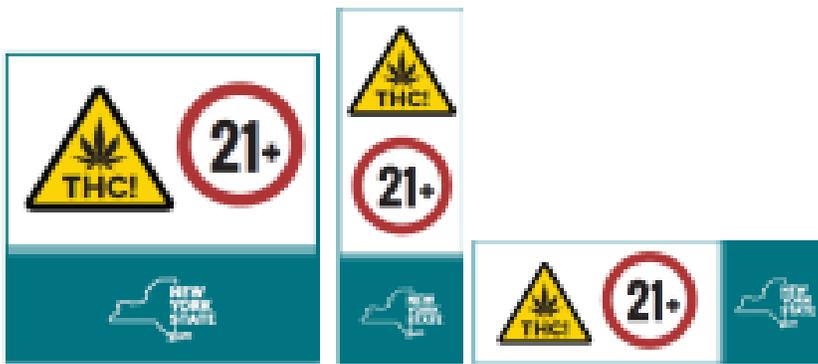
Retail packaging sustainability program:

Licensees are required to submit an environmental sustainability program for cannabis product packaging as part of the application process, if applicable for license type. Programs can include but are not limited to strategies for collecting and sanitizing reusable cannabis packaging, and strategies for using compostable and degradable packaging. Within two years of receiving a license, licensees are required to submit a revised environmental sustainability product packaging plan. Reuse of sanitized packages requires that the child resistant components are unbroken, and that the material of the package is not compromised in any way, such as chips, cracks or brittle. Either the licensee or third parties shall sanitize packages and ensure no harmful residues or contaminants from sanitation remain on the package. Recyclable packaging claims must follow NYS Guides for the Use of Environmental Marketing Claims. All metrics of packaging, including material and weight and total cost of packaging material must be reported to OCM annually.

Cannabis Product Labeling Minimum Standards:

Principal package display panel shall have a white background with black text and contain the following information:

- Mg per single serving of THC (THC + THCA x 0.877), total CBD (CBD + CBDA x 0.877), marketed phytocannabinoids or terpene profile
- Mg per of total THC (THC + THCA x 0.877) per package
- Total THC (THC + THCA x 0.877 and any marketed phytobanabinoids as a percent of volume, unless it is an edible
- Number of servings per package, unless it is flower or forms of vape cartridges
- Weight of cannabis product
- Lot number (unique identifying number that contains full history of product: production, manufacture, testing, holding, distribution, and recall)
- List of ingredients in descending order of predominance by weight
- Bold list of any major allergens set forth in U.S. the U.S. Code § 343 Food Allergen Labeling and Consumer Protection Act
- Any solvent used to produce the product
- Use by date
- Proper storage conditions
- Name, address, license number and contact information for the manufacturer or distributor
- Contain on the upper left 25% of the package, one of the following universal symbols:



- The above square symbol must be 1.25 inches in height and the vertical symbol must be .5 inches in width and .5 inches in vertical heights. The symbol must be highlighted by a contrasting color of the package color.
- Total THC and CBD mg in bold
- Usage instructions
- A scannable code linked to a downloadable certificate of analysis (COA) or website where COA can be viewed and downloaded
- Text must be no smaller than 6-point font, clearly printed and in English and can contain translation

Edibles and beverages must contain all applicable above information plus:

- Nutrition labeling of food as required by the Codes of Federal Regulations §101.9(c)

The optional marketing layer, if used, must contain the following:

- The product contains THC
- In all Caps: “KEEP OUT OF REACH OF CHILDREN AND PETS. For use only by persons 21 years and older”
- Do not use if pregnant or Nursing
- National Poison Control Center 1-800-222-1222

If the Product is for smoking and inhalation, such as, flower vapes, those products must contain the following:

- Warning: Smoking or vaping is hazardous to health

For oral ingested products such as capsules, tinctures, and edible, the must contain the following:

- Warning: Effects of this product may be delayed by 4 or more hours

For all topical products:

- Warning: For topical use only. Do not eat or smoke

All warnings shall be displayed:

- In English
- In Times New Roman, Calibri, Arial, Helvetica
- In text no smaller than 6 pt font
- Bolded
- Be legible, visible, and unobscured
- In a bright yellow text box on the principal packaging display panel or marketing layer – you cannot use the bright color to attract children under 21 years old
- Contain rotating health warning as decided from time to time by OCM

Cannabis Product Labeling Prohibitions (things you cannot do)

NO product, label or package can be:

- Attractive to children under 21 years old –
Attractive to individuals under twenty-one means labeling, packaging, advertising and marketing that is pleasing or appealing to persons under the age of twenty-one by using or including, among other things:
 1. Bubble-type or other cartoon-like font;
 2. Bright colors that are "neon" in appearance;
 3. Similarities to products or words that refer to products that are commonly associated with or marketed in a manner so as to be attractive to individuals under twenty-one, including but not limited to, any imitation of food, candy, soda, drinks, cookies, or cereal, in labeling, packaging, advertising, or marketing;
 4. Terms “candy” or “candies” or variants in spelling such as “kandy” or “kandeez”;
 5. Symbols, images, characters, public figures, phrases, toys, or games that are commonly used to market products to individuals under the age of twenty-one; or
 6. Images of individuals who could reasonably appear to be under the age of twenty-one.

- Cannot include the word organic
- Cannot include false or misleading statements
- Cannot make any wellness or health claims
- Cannot include the term “craft” unless the processor meets the term as defined by OCM
- Cannot cause confusion with regard to trademark or be labeled in a manner that violates federal trademark laws or regulations
- Cannot depict cannabis in anyway except in using the universal symbol above
- Cannot promote overconsumption
- Cannot promote price, price reduction, or any discount or coupon
- Cannot depict children or people under 21 years of age

The regulations also list the penalties and fees for violating any of the above rules. In addition to other penalties and fees, violation of the above rules may result in suspension or loss of license.

Section 129: Marketing and Advertising Adult-Use Cannabis

A licensee is permitted to develop advertising and marketing materials, provided the primary purpose of the advertising is to displace the illicit market and inform the consumer of the location of licensed retail dispensaries. A licensee may engage in reasonable advertising practices that are not otherwise prohibited in this Part, provided the marketing and advertising does not jeopardize public health or safety, promote youth use, or be attractive to individuals under twenty-one.

All marketing and advertising materials must visibly and clearly include the following:

- “For use only by adults 21 years of age and older. Keep out of reach of children and pets.
- In case of accidental ingestion or overconsumption, contact the National Poison Control Center hotline 1-800-222-1222 or call 9-1-1.
- Please consume responsibly

Must contain one of the following in a rotating manner as determined by OCM:

- "Cannabis may cause impairment and may be habit forming."
- Cannabis can impair concentration, coordination and judgment. Do not operate a vehicle or machinery under the influence of cannabis."
- "There may be health risks associated with consumption of this product."
- "Cannabis is not recommended for use by persons who are pregnant or nursing."

Print and digital advertising must be displayed as follows:

- In English
- In Times New Roman, Calibri, Arial, or Helvetica
- In text no smaller than 6 pt font
- Bolded
- Be legible, unobstructed, and visible
- In a bright yellow text box so as to stand out from the surrounding advertisement. The use of the bright yellow should not be attractive to people under 21 years old
- Include the NYS HopeLine phone and text number

Licenses can only advertise on websites, radio stations, television, print, internet, social media, mobile applications, or other electronic media, print, publication where the licensee has reliable evidence that over 90% of the audience is over 21 years old.

Similarly, a licensee can only sponsor a charitable event, sporting event, festival or music event or any other event where the licensee has reliable evidence that over 90% of the audience is over 21 years old.

Licenses are required to keep records and documentation verifying they meet the above rules.

Any branded apparel such as t-shirts, hats, bags, etc must only be sold in adult sizes and can only be sold on the premises of the licensee. The universal symbol cannot be used in branded apparel.

Licensee must include their name and license number on all their advertised and marketed cannabis products and is required to ensure anyone the licensee has entered into an IP agreement with for advertising and marketing purposes complies with the provisions of these rules.

Digital application and website marketing and advertising must include mechanisms designed to keep individuals under the age of twenty-one from visiting the website or application.

Things you CANNOT do in Marketing and Advertising

- Depict cannabis except as universal symbol
- Be attractive in anyway to people under 21 years old

- Be on a billboard
- Use colloquial references to pot or cannabis (stoner, weed, chronic, pot, sticky buds, ganja) or show cannabis products or paraphanelia or the image of anyone vaping or smoking
- Be false or misleading
- Claim any curative or therapeutic effects
- Promote overconsumption or rapid consumption
- Promote product potency of THC concentrations
- Promote price, price reduction or any other discount or loyalty program or coupon
- Assert products are safe because they are regulated
- Depict anyone under the age of 21 years.
- Use the term organic
- Contain obscene or indecent statements, design, or representation, picture or illustration
- Advertise or promote products within 500 feet of an elementary or secondary school grounds, recreational center or facility, child care center, playground, public park or library.
- Disparage other cannabis products or businesses
- Encourage the transportation of cannabis across state lines
- Encourage any illegal activity
- Advertise on flyers / handbills in public areas, including parking lots and publicly owned property
- Include medical symbols that make consumers believe it is a medical product
- Sponsor events using licensee brand, business or trade name
- Utilize unsolicited pop-up banners on the internet
- Produce any items for sale or promotional gifts such as T-shirts or novelty items bearing a symbol or reference to cannabis (except for paraphernalia sold to consumers)
- Offer gifts, giveaways, discounts, points-based reward systems, customer loyalty programs, coupons, donations (except as provisions of branded exit packages after completing the purchase).

Outdoor Signage

Allowed only to alert purchasers of retail store location and must be limited to the following information and specifications:

- Business or trade name
- Business location
- Nature of business
- Be affixed to a building or permanent structure
- Be limited to 1600 square inches
- Not illuminated by neon lights
- Not on vehicles
- Not total more than 2 in number per license
- Not depict cannabis, cannabis products, or imagery of people getting high
- Not be placed in arenas, stadiums, shopping malls, fairs that receive state allocations, video arcades, or in adult only facilities

There are several penalties for violating the above rules, including fees and loss or suspension of license.