

Colorado Amendment 64 Implementation Recommendations – Quick Reference Guide

(full report available at www.Colorado.gov/revenue/amendment64)

Regulatory Structure

- Adopt current Medical Marijuana Code 70/30 “vertical integration” model (the supply chain is under a common owner). Common enterprise under common ownership.
- For one year, limit new applications for adult-use (Amendment 64) marijuana licenses to medical marijuana licensees in good standing.
- Sunset review of vertical integration model by General Assembly in three years.
- State licenses for adult-use marijuana establishments should be conditional upon local government approval and authorization.
- Convert current Medical Marijuana Enforcement Division into new Marijuana Enforcement Division with statutory powers to regulate and license both medical and adult-use.

Regulatory Financing

- Revenue from all sales taxes, application and license fees and other fees generated by adult-use marijuana sales and operations should go into the state’s General Fund for five years.
- Colorado Department of Revenue should consult with local governments when considering whether to raise the \$5,000 cap on application fees to reflect actual costs of reviewing applications for local government approval.
- State agencies charged with Amendment 64 responsibilities should be able to set fees associated with fully funding any programs necessary to implement safeguards, education or legal costs.
- Define “operating fees” as fees to be collected by local governments for administration, inspection, and enforcement purposes.

Taxation

- Another vote of the people of the State of Colorado is required through a TABOR-compliant (Taxpayer Bill of Rights) referendum or citizen initiative to impose specific taxes on adult-use marijuana.
- Ask voters on the November 2013 election ballot to approve a new “Marijuana Products Sales Tax” with the rate to be determined by the General Assembly through consultation with the Department of Revenue, Office of State Planning and Budgeting and Colorado Legislative Council. If approved, the tax is effective 01/01/2014.
- Ask voters on the November 2013 election ballot to approve a 15 percent excise tax at the transaction point that a marijuana cultivation facility transfers product to a marijuana production facility. Include a reasonable escalation clause to take effect after 2017. First \$40 million raised annually goes to school capital construction. If approved, the tax is effective 01/01/2014.

Licensee Requirements

- Same residency requirements for adult-use marijuana licensees as for medical marijuana licensees.
- Licensees must be residents of Colorado for at least two years prior to date of application.
- All other staff must be Colorado residents on the date of license application.
- Review suitability requirements for licensees, including removing medical marijuana related requirements that are unrelated to the operation of an adult-use marijuana establishment.
- Establish a voluntary responsible retailers program for owners of adult-use marijuana retailers and their employees similar to current program for alcohol retailers.
- Establish a statewide advisory group of adult-use marijuana retailer owners and their employees to write bylaws, ethics code, provide ongoing education and support training.

Transition to Amendment 64 Regulatory Environment

- Allow for transition of current medical marijuana licensees who want to surrender their current licenses upon receiving corresponding retail marijuana licenses.

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- Allow for transition of current medical marijuana licensees to have both medical and adult-use licenses for cultivation and manufacturing or cultivation and retail.
- Allow all of the above types of transition as long as the medical marijuana licensee is in good standing and the local jurisdiction has not prohibited licensing retail, cultivation or product manufacturing of adult-use marijuana.
- Allow dual-use medical and retail facilities provided the facility maintain either physical or virtual separation between the two facilities operated at the same location to ensure separate inventories.
- Define “licensed premises” and establish regulations for operating a licensed Medical Marijuana Center and a licensed Retail Marijuana Store within one location.
- Local governments may prohibit multiple licensed premises (medical and retail) within one location (authority to regulate time, place, manner and number).

Operational Requirements

- The Department of Revenue should develop rules to ensure safe transport of marijuana and marijuana products between licensed businesses and labs.
- The Department of Public Health and Environment should develop ways to track, measure and properly destroy marijuana and marijuana products that cannot be legally sold, as well as marijuana waste material. Also, develop ways for private citizens to properly dispose of marijuana, marijuana products and waste material.

Interaction with Consumers

- All persons age 21 years or older, resident or non-resident, should be able to purchase marijuana for personal use. They may possess up to one ounce of marijuana.
- Consider reasonable per-transaction limit of less than one ounce for all purchases.
- Consider more restrictive purchase limits for non-residents.

Consumer Safety

- Secured dispensing systems such as vending machines may be used within a licensed retail marijuana store.
- State and local governments should have a role in establishing rules for signage, marketing and advertising of marijuana and related products.
- All types of marijuana sold from licensed facilities should be regulated in a manner similar to the Poison Prevention Packaging Act of 1970 and by Consumer Product Safety Commission regulations. The Department of Revenue, in consultation with the Department of Public Health and Environment, will develop very specific packaging and labeling standards and regulations, and enforce them.
- THC (tetrahydrocannabinol, the psychoactive component of the cannabis plant) potency labels should show either total THC content as a percentage by weight, or total mg dose for activated THC or total THC.
- The Department of Revenue, in consultation with the Department of Public Health and Environment, should establish rules for edible marijuana infused products to prevent accidental over-consumption. The rule should initially say that a serving should not have more than 10 mg of active THC. Labels should show total number of servings in one package and “serving size.” This would not apply to concentrates, tinctures, topicals or products sold in pill or capsule form.
- Prohibit or regulate additives that make any marijuana product toxic, more addictive, more appealing to children, or misleading to consumers.
- Prohibit sales of any marijuana product that contains nicotine or alcohol.

Good Cultivation, Handling and Laboratory Practices

- Appropriate state agencies should create a list of banned substances used in the cultivation or processing of marijuana.

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- Product labels should include a list of pesticides, herbicides, fungicides and solvents used in cultivation or processing.
- State agencies should work with a private advisory group, set up by the marijuana industry, to develop good cultivation and handling practices. Labeling requirements may include certification by the private advisory group.
- A good laboratory practices private advisory group should also be set up by the adult-use marijuana industry by January 1, 2014 for marijuana testing labs.

Marijuana Education and Studies

- Appropriate governmental agencies should be authorized by the General Assembly to establish an educational oversight committee composed of representatives familiar with issues related to marijuana use, cultivation and any other pertinent matters.
- An appropriate group should encourage marijuana education on impairment, risks, home cultivation, etc. be available as continuing education credit to professionals in Colorado, such as those in the medical fields, K-12 educators, prevention specialists, child welfare employees, veterinarians, tour companies, transportation providers.
- The General Assembly should authorize funds for educational materials, Web sites, brochures available at time of purchase, billboards or other public service announcements that cover smart use of marijuana and prevention for those under age 21.
- The Department of Public Health and Environment should have statutory responsibility for monitoring emerging science and collect data relevant to health effects of marijuana use. This should be done with a panel of health care professionals.
- The Department of Public Safety should, over a two-year period, monitor law enforcement activity and costs associated with Amendment 64 with the goal of obtaining objective information about criminal activity.

Child Care Facilities

- Establish consequences for any child care facility or individual licensee for using or being under the influence of marijuana or whose employees on the premises are using or under the influence of marijuana during operating hours. Amend state statute to establish child care facility licensing consequences.
- Amend statute to exclude home marijuana cultivation in a “Family Child Care Home.”

Criminal Law

- The General Assembly should enact House Bill 2013-1114, Penalties for Persons Who Drive Under the Influence of Alcohol or Drugs (DUID).
- Colorado Peace Officer Standards and Training (POST) should make Advanced Roadside Impaired Driving Enforcement (ARIDE) mandatory for certification to detect impaired driving. Encourage local law enforcement to do the same.
- Revisions should be made to Title 18 (The Criminal Code) of the Colorado Revised Statutes (C.R.S.) to add the definition of “transfer;” to make the first offense for adults under 21 possessing an ounce or less of marijuana or possessing marijuana accessories a civil charge with treatment and conditions to be established by a judge; to make the transfer of more than one ounce but less than two ounces of marijuana between persons 21 years of age or older a class 2 petty offense; also, persons under 21 may not possess marijuana accessories/paraphernalia with the first offense being a civil charge with treatment and conditions established by a judge.
- Establish consequences for transfer of marijuana by a person 21 years of age or older to any person 18 to 20 years old.

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- Amend statutes to provide for education and treatment for juveniles in possession of less than one ounce of marijuana on their first offense without the consequences of a conviction because of a petty offense, which could result in detention or commitment to youth corrections.
- The General Assembly should consider a bill that would prohibit marijuana in motor vehicles similar to how alcoholic beverage containers that have been opened and resealed by a licensed alcohol beverage retailer are prohibited.
- The General Assembly should enact legislation revising the Colorado Clean Indoor Air Act to incorporate marijuana smoke. Do not allow smoking of marijuana in “cigar bars,” smoking clubs or establishments where tobacco smoking is allowed.

Local Civil Offenses

- The General Assembly should adopt legislation to define “offense” under Amendment 64 as a criminal violation and not a civil violation. This would allow local jurisdictions to enforce marijuana laws through civil actions such as injunctive relief and civil fines.

Home Cultivation and Processing of Marijuana

- The General Assembly should adopt legislation to define the following terms from Amendment 64: “enclosed, locked space,” and “growing is not conducted openly and publicly.” The Task Force provides recommended definitions.
- The Attorney General, the General Assembly and local governments should review current statutes and ordinances related to residential use of compressed, flammable gases (including butane, propane and hexane) as solvents in the extraction of THC or other cannabinoids in residential settings, which is unlawful.

Requests for Federal Assistance/Direction/Decision

- The General Assembly should consider lawful alternatives to assist marijuana businesses to access the banking system, including credit unions and financial institutions. The General Assembly should allow legal marijuana businesses to claim state income tax deductions for expenses they cannot claim on their federal return. The General Assembly should pass a resolution requesting federal reform of federal tax laws.

Employers/Employees, Property Owners, Contracts, Industrial Hemp and Future Work

- Amendment 64 maintains the status quo for employers and employees. Employers may maintain, create new or modify existing policies and should be encouraged to review current drug-free workplace policies in response to the passage of Amendment 64.
- The General Assembly should not adopt new statutes or regulations modifying existing Colorado property law related to adult-use marijuana. Violations of a real property owner’s policies regarding marijuana possession or consumption on the property should be treated the same as violations related to alcohol on the property.
- The General Assembly should clarify in statute that contracts shall not be void or voidable on the basis that the contract or the parties to the contract are associated with individuals or businesses operating legal marijuana establishments.
- The General Assembly should adopt legislation during 2013 authorizing the cultivation, processing and sale of industrial hemp. The Commissioner of Agriculture would have authority to establish registration and inspection requirements for growers.
- The Governor should form a new task force in December 2015, three years after the passage of Amendment 64 and the formation of the present Task Force, to review the status of all 2013 recommendations and implementation and make recommendations for improving the regulation of adult-use marijuana in Colorado.