

AGENDA

AMENDMENT 64 IMPLEMENTATION TASK FORCE REGULATORY FRAMEWORK WORKING GROUP

Meeting of February 14, 2013
Beginning at 2:00 p.m.

Medical Marijuana Enforcement Division
455 Sherman Street, Suite 390
Denver, CO 80203

In addition to other matters that may be considered by the Regulatory Framework Working Group, the following items are scheduled for consideration on February 14, 2013.

I. Welcome and Introductions (Co-chairs)

II. Presentation on Marijuana Vending Machines (Adam Eichberg – Headwaters Strategies)

III. Presentations on Regulatory Issues and Recommendations by Working Group Members

IV. Public Comment (limited to 2 minutes per person)

V. Consideration of Organizational Matters

Agenda Items for Future Meetings

Scheduling of Future Meetings

Approval of Minutes

Meeting adjourned.

Regulatory Framework – Issue #6: “Establish rules and regulations for the transportation of marijuana by growers, retail operations and purchasers”.

- The medical marijuana code is non-specific as it relates to requirements associated with commercial transport of medical marijuana, other than to authorize the state licensing authority to make rules that govern “the regulation of the storage of, warehouses for, and transportation of medical marijuana.”
- The current rule regulating the transport of medical marijuana is cumbersome and does not ensure industry-wide compliance.
 - Requiring each transport to have pre-approval of the MMED
 - Doesn’t allow law enforcement to verify transport in real-time
 - Travel manifest form requests unnecessary information
 - Attempts to regulate the route of transport
 - The division cannot manage the large, and unexpected, volume of transportation requests for approval
- The method that individual purchasers would be required to use to transport marijuana is outside the regulatory jurisdiction of the department.

Recommendations:

#1 : Allow all licensees to transport marijuana to other licensed premises, to include labs. The delivery privilege could be part of the license privileges, rather than requiring a separate permit. However, if a separate permit is required for transport, the permit privileges could be suspended for non-compliance. Address the specific requirements by rule:

- Require that transporter carry a copy of the pre-prepared sales invoice, and bill of lading. For internal company transfers, some type of inventory transfer document in lieu of sales invoice.
- Require the transporter to carry a copy of the company’s marijuana license, and copy of transportation permit if that option is selected.
- Require that employees who conduct transport complete “Responsible Vendor”-type training, and that the employee carry evidence of training during transport.

#2: As part of other inventory control and tracking, the licensee must provide reconciliation of all inventory as it moves from cultivation to retailer, manufacturer to retailer, any transport to labs, etc. An audit flag when reviewing records, and what would be a per se violation, is no records related to transport.

#3: Control of how consumers transport marijuana, once purchased from a licensed retailer could be addressed in motor vehicle law, in a manner similar to alcohol:

§ 42-4-1305. Open alcoholic beverage container--motor vehicle--prohibited

(1) Definitions. As used in this section, unless the context otherwise requires:

(a) "Alcoholic beverage" means a beverage as defined in 23 CFR 1270.3(a).

(b) "Motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways but does not include a vehicle operated exclusively on a rail or rails.

(c) "Open alcoholic beverage container" means a bottle, can, or other receptacle that contains any amount of alcoholic beverage and:

(I) That is open or has a broken seal; or

(II) The contents of which are partially removed.

(d) "Passenger area" means the area designed to seat the driver and passengers while a motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in his or her seating position, including but not limited to the glove compartment.

(2)(a) Except as otherwise permitted in paragraph (b) of this subsection (2), a person while in the passenger area of a motor vehicle that is on a public highway of this state or the right-of-way of a public highway of this state may not knowingly:

(I) Drink an alcoholic beverage; or

(II) Have in his or her possession an open alcoholic beverage container.

(b) The provisions of this subsection (2) shall not apply to:

(I) Passengers, other than the driver or a front seat passenger, located in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation;

(II) The possession by a passenger, other than the driver or a front seat passenger, of an open alcoholic beverage container in the living quarters of a house coach, house trailer, motor home, as defined in section 42-1-102(57), or trailer coach, as defined in section 42-1-102(106)(a);

(III) The possession of an open alcoholic beverage container in the area behind the last upright seat of a motor vehicle that is not equipped with a trunk; or

(IV) The possession of an open alcoholic beverage container in an area not normally occupied by the driver or a passenger in a motor vehicle that is not equipped with a trunk.

(c) A person who violates the provisions of this subsection (2) commits a class A traffic infraction and shall be punished by a fine of fifty dollars and a surcharge of seven dollars and eighty cents as provided in section 42-4-1701(4)(a)(I)(N).

(3) Nothing in this section shall be construed to preempt or limit the authority of any statutory or home rule town, city, or city and county to adopt ordinances that are no less restrictive than the provisions of this section.

#4: The department could regulate how retailers package products for consumers to address any concerns associated with transport, in a manner similar to alcohol:

Regulation 47-918. Removal of Alcohol Beverages from Premises.

A. Other than those licensees described in Section 12-47-421(2)(A), who may permit a patron to reseal a partially consumed bottle of vinous liquor (not to exceed 750 ml) which was originally sold for on premises consumption; no licensee, manager or agent of any establishment licensed for on-premises consumption shall permit the removal from the licensed premises of any alcohol beverages in sealed or unsealed containers.

B. Licensees described in paragraph A of this regulation who permit a patron to remove a partially consumed bottle of vinous liquor shall reseal the bottle with a cork or other commercially manufactured stopper

C. Patrons transporting a partially consumed bottle of vinous liquor in a motor vehicle shall comply with the requirements of 42-4-1305, C.R.S.

Medical Marijuana – 1 CCR 212-1.

Rule 11.200 - Transportation—Authorization and Licenses Required.

A. Any person who transports medical marijuana or medical marijuana infused products pursuant to section 12-43.3-310(5), C.R.S., and these rules must be licensed by the State Licensing Authority.

Comment [LKH1]: No specific language in this section that deals with transportation or any related requirements.

B. All non-infused medical marijuana shall be packaged in a sealed package or container approved by the MMED for transportation. Each container shall be packaged and weighed prior to leaving the origination location. Each container shall be sealed by MMED-approved tamperproof tape and each tagged and labeled pursuant to these rules.

C. All medical marijuana-infused products shall be packaged in a sealed package or container approved by the MMED for transportation. Each container shall be packaged and all items shall be inventoried and accounted for on video prior to leaving the origination location. Each container shall be sealed and each item tagged and labeled as required in these rules.

D. Transportation of medical marijuana or medical marijuana-infused products shall in all instances be accompanied by a manifest that is approved by the MMED. The manifest shall be created online on the MMED website and a printed copy shall be carried at all times with the products being transported. The licensee shall complete and submit a form provided by the MMED, in cases where an electronic record cannot be recorded or evidence printed. That form shall be submitted via fax to the MMED prior to any transportation of medical marijuana or medical marijuana-infused products. The manifest shall include the following:

1. Name of the licensed entity;
2. Date completed;
3. Name, location and license number of the origination location;
4. Name, location and license number of the destination(s) location(s);
5. Products and quantities being delivered to each location if more than one;
6. Date and approximate time of departure;
7. Date and estimated time of arrival;
8. Route to be traveled;
9. Vehicle make and model, together with license plate number;
10. Name and signature of the licensed person transporting product; and
11. Date.

E. When determining and reporting the route to take, licensees should select the best direct route that provides efficiency and safety. When medical marijuana or medical marijuana-infused products are transported in the manner described by the MMED through these regulations, it may be transported on any public road through any city, town, city and county or county, whether or not that city, town, city and county or county has allowed for medical marijuana licensees to operate there.

**Amendment 64 Implementation Task Force
Working Group Recommendation Template**

Recommendation # RF-4

1. Working Group Name: Regulatory Framework

2. Individual Sponsor(s): Sam Kamin

3. Describe the Recommendation:

The Amendment 64 Task Force recommends that the General Assembly not enact a Colorado residency requirement for purchasing marijuana for personal use for individuals 21 years of age or older.

4. To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.

(2)(b) “CONSUMER” MEANS A PERSON TWENTY-ONE YEARS OF AGE OR OLDER WHO PURCHASES MARIJUANA OR MARIJUANA PRODUCTS FOR PERSONAL USE BY PERSONS TWENTY-ONE YEARS OF AGE OR OLDER, BUT NOT FOR RESALE TO OTHERS.

(5)(c) IN ORDER TO ENSURE THAT INDIVIDUAL PRIVACY IS PROTECTED, NOTWITHSTANDING PARAGRAPH (a), THE DEPARTMENT SHALL NOT REQUIRE A CONSUMER TO PROVIDE A RETAIL MARIJUANA STORE WITH PERSONAL INFORMATION OTHER THAN GOVERNMENT-ISSUED IDENTIFICATION TO DETERMINE THE CONSUMER’S AGE, AND A RETAIL MARIJUANA STORE SHALL NOT BE REQUIRED TO ACQUIRE AND RECORD PERSONAL INFORMATION ABOUT CONSUMERS OTHER THAN INFORMATION TYPICALLY ACQUIRED IN A FINANCIAL TRANSACTION CONDUCTED AT A RETAIL LIQUOR STORE.

5. Which guiding principle does this recommendation support (underline all those that apply)?

- a. Promote the health, safety, and well-being of Colorado’s youth.
- b. Be responsive to consumer needs and issues.
- c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.
- d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
- e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.

- f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
- g. Ensure that our streets, schools, and communities remain safe.
- h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.

6. Please summarize the rationale for the recommendation – why is it important?

The question whether a Colorado residency requirement ought to be imposed upon consumers of recreational marijuana fostered considerable discussion on the Regulatory Framework Working Group. In the end, the Working Group recommends that there should be no such requirement for two principal reasons.

First, the plain text of the Amendment suggests, though it does not require, such a reading. The text speaks of consumers solely as those over the age of 21 and envisions such customers presenting a “government-issued” identification. While not dispositive, these references appear to envision that *any* person over the age of 21 who can produce government-issued (not solely Colorado-issued) identification should be entitled to purchase marijuana for recreational use. The Blue Book explanation of Amendment 64 also repeatedly describes consumers simply as those over the age of 21. Thus, neither the text of the Amendment nor its official explanation envisions a residency requirement for consumers.

Second, imposing a residency requirement would necessarily create a black market for recreational marijuana within the state. It is clear that under current state law out-of-state residents may possess less than an ounce of marijuana without penalty. Forbidding those from out-of-state from purchasing the marijuana that they may lawfully possess in Colorado would thus encourage straw purchases and unauthorized resale to out-of-state residents.

The working group believes that these considerations were sufficient to outweigh the principal concern – namely that opening recreational sales to out-of-state residents could attract greater federal scrutiny and the displeasure of our neighboring states. The working group believed that these considerations could be addressed through labeling and education rather than residency requirements. Among the suggestions made for minimizing the risk of out-of-state purchasers taking marijuana home with them were: providing point-of-sale information to out-of-state consumers reminding them that marijuana cannot leave the state, signage at airports and near borders reminding visitors that marijuana purchased in Colorado must stay in Colorado, and coordination with neighboring states regarding drug interdiction. There was also discussion of imposing a restriction on retail licenses located near the state’s borders.

7. What issue or issues does your recommendation resolve? (Please identify the issues)

Whether visitors from other states (or those without Colorado-issued identification) would be permitted to purchase marijuana for recreational use.

8. Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.

The General Assembly should enact a ban on sales of recreational marijuana to persons other than Colorado residents. In the alternative, a limit on the amount of marijuana and marijuana infused products should be placed on non-Colorado residents.

There is nothing in the plain language of Amendment 64 that indicates “a person” as it is defined in the definition of consumer was meant to mean “all” persons whether they are from a foreign country or from another state. The Blue Book is equally silent. This creates an ambiguity that can be clarified by statute. Indeed, nothing in Amendment 64 restricts the General Assembly from enacting legislation defining “a person” within the definition of “consumer” to be limited to only a Colorado resident.

A residency restriction will have multiple benefits to the State and the recreational industry as a whole. First, Attorney General Holder has clearly indicated a primary concern of the Federal government is how the states that have legalized marijuana are going to keep it from being diverted to other states. In addition to the deterrent effect on out-of-state purchasers to attempt to buy marijuana or find it on the black market, the simple difficulty a ban creates for non-Coloradans will decrease the likelihood out of staters will leave the state with Colorado marijuana. If the federal government determines we are not doing enough to contain recreational marijuana within the state, it increases the likelihood the federal government will take action and potentially shut down the entire industry. Moreover, the medical marijuana industry has prospered on an entirely Colorado consumer base (a clear mandate in Amendment 20) and it is widely expected the recreational market will be many times larger. Restricting sales to Coloradans only would not unduly restrict the market but it would be an important step to signal the State’s intent about how serious trafficking out of state will be viewed.

Since the retail sale value of an ounce of marijuana in Colorado has dropped, and prices in other states have remained high, there is an incentive to take advantage of the (safe) legal market in Colorado. South Dakota for example has marijuana prices almost double Colorado’s according to certain websites. Most of the East coast prices are \$50-100 dollars more per ounce. Even assuming a \$50 market-up, one pound of trafficked Colorado marijuana would yield \$800 in profit – more than enough to make just one pound worth the price of gas, transit, etc. This easily creates the incentive to traffic Colorado legal marijuana to other states, sell it there for the higher local price and market it as safe, tested and with known high content levels of active THC. Further, since there are no controls on how many stores a person can visit in a day to purchase multiple ounces, pounds of marijuana can be gathered rather easily. There are more than 200

medical marijuana dispensaries in Denver alone (more than liquor stores); it is logical to assume that number would increase if recreational stores are allowed.

Surrounding states have expressed their dismay at Colorado's action to approve Amendment 64. Such a residency requirement could go a long way to signal Colorado's intent to keep our legal marijuana in-state. Further, it may help bridge inter-state trafficking interdiction efforts at the borders.

A statute enacted that restricts "consumer" to Colorado residents would be difficult – if not impossible – to challenge pursuant to the Commerce Clause because the recreational marijuana market involves a substance that is illegal under Federal law. That is, no person from another state is entitled from a Federal perspective to enjoy the benefits of Amendment 64.

Imposing a Colorado residency requirement helps prevent Colorado from the adverse effects of becoming a "pot tourism" destination.

In the alternative, even a limit on sale amounts to out-of-state persons would create disincentives to trafficking legal marijuana out of Colorado. For example, without a limit restriction, an out-of-state trafficker would have to visit only 18 shops in a day to get a thousand dollars profit if the marijuana was sold in any of Colorado's surrounding states for the minimum mark-up. But if a limit of, for example, an 1/8 of an ounce was placed on sales to non-Coloradans the same trafficker would have to visit more than 100 stores to compile a pound of marijuana. An 1/8 of marijuana can produce between 5 and 10 "joints." This dramatically shifts the incentive away from visiting Colorado to purchase marijuana and attempt to profit by selling in another state.

9. Which of the following does the recommendation impact (underline those that apply):

- a. Statute (legislation)
- b. Policy
- c. Rules and Regulations
- d. Other: *(please describe)*

10. Who owns implementation of the recommendation (underline those that apply):

- a. Governor
- b. State Legislature
- c. Attorney General
- d. Department of Revenue
- e. Department of Public Safety
- f. Department of Public Health and Environment
- g. Local Government
- h. Other: *(please describe)*

11. Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?

No.

12. Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost.

The recommendations regarding education and diversion mitigation would likely entail some cost, which would likely vary with the robustness of those measures.

13. Give an estimate of how long it would take to implement the recommendation.

It should be a part of the legislation enacted by the General Assembly this term.

**Amendment 64 Implementation Task Force
Working Group Recommendation Template**

Recommendation # RF-7

1. Working Group Name: Regulatory Framework

2. Individual Sponsor(s): Sam Kamin

3. Describe the Recommendation:

The Amendment 64 Task Force recommends that the General Assembly not enact legislation to allow or require a state-run distribution model. Such legislation is not consistent with either the text or spirit of Amendment 64.

4. To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.

5 (a) NOT LATER THAN JULY 1, 2013, THE DEPARTMENT SHALL ADOPT REGULATIONS NECESSARY FOR IMPLEMENTATION OF THIS SECTION. SUCH REGULATIONS SHALL NOT PROHIBIT THE OPERATION OF MARIJUANA ESTABLISHMENTS, EITHER EXPRESSLY OR THROUGH REGULATIONS THAT MAKE THEIR OPERATION UNREASONABLY IMPRACTICABLE. SUCH REGULATIONS SHALL INCLUDE:

(I) PROCEDURES FOR THE ISSUANCE, RENEWAL, SUSPENSION, AND REVOCATION OF A LICENSE TO OPERATE A MARIJUANA ESTABLISHMENT, WITH SUCH PROCEDURES SUBJECT TO ALL REQUIREMENTS OF ARTICLE 4 OF TITLE 24 OF THE COLORADO ADMINISTRATIVE PROCEDURE ACT OR ANY SUCCESSOR PROVISION;

(II) A SCHEDULE OF APPLICATION, LICENSING AND RENEWAL FEES, PROVIDED, APPLICATION FEES SHALL NOT EXCEED FIVE THOUSAND DOLLARS, WITH THIS UPPER LIMIT ADJUSTED ANNUALLY FOR INFLATION, UNLESS THE DEPARTMENT DETERMINES A GREATER FEE IS NECESSARY TO CARRY OUT ITS RESPONSIBILITIES UNDER THIS SECTION, AND PROVIDED FURTHER, AN ENTITY THAT IS LICENSED UNDER THE COLORADO MEDICAL MARIJUANA CODE TO CULTIVATE OR SELL MARIJUANA OR TO MANUFACTURE MARIJUANA PRODUCTS AT THE TIME THIS SECTION TAKES EFFECT AND THAT CHOOSES TO APPLY FOR A SEPARATE MARIJUANA ESTABLISHMENT LICENSE SHALL NOT BE REQUIRED TO PAY AN APPLICATION FEE GREATER THAN FIVE HUNDRED DOLLARS TO APPLY FOR A LICENSE TO OPERATE A MARIJUANA ESTABLISHMENT IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION;

5. Which guiding principle does this recommendation support (underline all those that apply)?

- a. Promote the health, safety, and well-being of Colorado's youth.
- b. Be responsive to consumer needs and issues.
- c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.
- d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
- e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.
- f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
- g. Ensure that our streets, schools, and communities remain safe.
- h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.

6. Please summarize the rationale for the recommendation – why is it important?

Both the Regulatory Framework Working Group and the Amendment 64 Task Force have heard public comment in support of a state-run distribution model similar to the state-run liquor store model adopted in some jurisdictions. This testimony has been supported by academic studies showing that state-run liquor stores are associated with fewer negative externalities of alcohol consumption than are privately-run liquor stores. It has been argued to us that state-run marijuana retailers would be better at reducing the harmful effects of marijuana distribution – use by minors, diversion out of state, etc. – than a model based on privately run retail stores.

Regardless of the merits of this argument, however, the Regulatory Framework Working Group recommends that the state-run retail model not be adopted. Quite simply, a state-run retail model is not consistent with either the text or the spirit of Amendment 64. The Amendment clearly envisions private parties applying to the state for licenses and then being supervised and regulated by the state. In every part, the Amendment contemplates the state as a regulator of private commercial activity rather than as a market participant itself. Adopting a state-run system would thus be inconsistent with the Amendment's clear mandate and should not be adopted by the Task Force.

As an additional matter, we note that adopting a regulatory model which called for state-run retail stores would raise serious federalism concerns. Under such a model the state would be actively violating federal law rather than merely licensing others to do so. Such open defiance of the Controlled Substances Act might be seen by the federal government as an intolerable obstacle to the enforcement of federal law and could lead to a suit to enjoin such conduct. A state-run distribution system is thus far more antagonistic to the federal government than one in which the state merely licenses private conduct and should be rejected for that reason as well.

7. What issue or issues does your recommendation resolve? (Please identify the issues)

Whether the legislature should consider a state-run retail store model.

- 8. Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.**

TBD

- 9. Which of the following does the recommendation impact (underline those that apply):**

- a. Statute (legislation)
- b. Policy
- c. Rules and Regulations
- d. Other: *(please describe)*

- 10. Who owns implementation of the recommendation (underline those that apply):**

- a. Governor
- b. State Legislature
- c. Attorney General
- d. Department of Revenue
- e. Department of Public Safety
- f. Department of Public Health and Environment
- g. Local Government
- h. Other: *(please describe)*

- 11. Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?**

No.

- 12. Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost.**

No. A state-run retail model would likely be more expensive than a state-licensed retail model.

- 13. Give an estimate of how long it would take to implement the recommendation.**

It should take none.

**Amendment 64 Implementation Task Force
Working Group Recommendation Template**

Recommendation #RF-8

1. Working Group Name: Regulatory Framework

2. Individual Sponsor(s): Ron Kammerzell

3. Describe the Recommendation:

The Amendment 64 Task Force recommends that the General Assembly convert the Medical Marijuana Enforcement Division into the Marijuana Enforcement Division and enact legislation to provide this agency with statutory powers to regulate medical marijuana and recreational marijuana as the principal state licensing and regulatory authority.

4. To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.

Article XVIII, Section 16, of the Constitution of the State of Colorado states:

(5) REGULATION OF MARIJUANA.

(a) NOT LATER THAN JULY 1, 2013, THE DEPARTMENT SHALL ADOPT REGULATIONS NECESSARY FOR IMPLEMENTATION OF THIS SECTION. SUCH REGULATIONS SHALL NOT PROHIBIT THE OPERATION OF MARIJUANA ESTABLISHMENTS, EITHER EXPRESSLY OR THROUGH REGULATIONS THAT MAKE THEIR OPERATION UNREASONABLY IMPRACTICABLE. SUCH REGULATIONS SHALL INCLUDE:

(I) PROCEDURES FOR THE ISSUANCE, RENEWAL, SUSPENSION, AND REVOCATION OF A LICENSE TO OPERATE A MARIJUANA ESTABLISHMENT, WITH SUCH PROCEDURES SUBJECT TO ALL REQUIREMENTS OF ARTICLE 4 OF TITLE 24 OF THE COLORADO ADMINISTRATIVE PROCEDURE ACT OR ANY SUCCESSOR PROVISION;

(II) A SCHEDULE OF APPLICATION, LICENSING AND RENEWAL FEES, PROVIDED, APPLICATION FEES SHALL NOT EXCEED FIVE THOUSAND DOLLARS, WITH THIS UPPER LIMIT ADJUSTED ANNUALLY FOR INFLATION, UNLESS THE DEPARTMENT DETERMINES A GREATER FEE IS NECESSARY TO CARRY OUT ITS RESPONSIBILITIES UNDER THIS SECTION, AND PROVIDED FURTHER, AN ENTITY THAT IS LICENSED UNDER THE COLORADO MEDICAL MARIJUANA CODE TO CULTIVATE OR SELL MARIJUANA OR TO MANUFACTURE MARIJUANA PRODUCTS AT THE TIME THIS SECTION TAKES EFFECT AND THAT CHOOSES TO APPLY FOR A SEPARATE MARIJUANA ESTABLISHMENT LICENSE SHALL NOT BE REQUIRED TO PAY AN APPLICATION FEE GREATER THAN FIVE HUNDRED DOLLARS TO APPLY FOR A LICENSE TO OPERATE A MARIJUANA ESTABLISHMENT IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION;

(III) QUALIFICATIONS FOR LICENSURE THAT ARE DIRECTLY AND DEMONSTRABLY RELATED TO THE OPERATION OF A MARIJUANA ESTABLISHMENT;

(IV) SECURITY REQUIREMENTS FOR MARIJUANA ESTABLISHMENTS;

(V) REQUIREMENTS TO PREVENT THE SALE OR DIVERSION OF MARIJUANA AND MARIJUANA

(VI) LABELING REQUIREMENTS FOR MARIJUANA AND MARIJUANA PRODUCTS SOLD OR DISTRIBUTED BY A MARIJUANA ESTABLISHMENT;

(VII) HEALTH AND SAFETY REGULATIONS AND STANDARDS FOR THE MANUFACTURE OF MARIJUANA PRODUCTS AND THE CULTIVATION OF MARIJUANA;

(VIII) RESTRICTIONS ON THE ADVERTISING AND DISPLAY OF MARIJUANA AND MARIJUANA PRODUCTS; AND

(IX) CIVIL PENALTIES FOR THE FAILURE TO COMPLY WITH REGULATIONS MADE PURSUANT TO THIS SECTION.

(b) IN ORDER TO ENSURE THE MOST SECURE, RELIABLE, AND ACCOUNTABLE SYSTEM FOR THE PRODUCTION AND DISTRIBUTION OF

5. Which guiding principle does this recommendation support (underline all those that apply)?

- a. Promote the health, safety, and well-being of Colorado's youth.
- b. Be responsive to consumer needs and issues.
- c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.
- d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
- e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.
- f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
- g. Ensure that our streets, schools, and communities remain safe.
- h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.

6. Please summarize the rationale for the recommendation – why is it important?

Creating a new and separate agency within the Department of Revenue to regulate recreational marijuana would be duplicitous and inefficient. Expanding the role of the existing medical marijuana division to regulate both medical and recreational marijuana would take advantage of existing infrastructure and staff expertise developed over the past few years in regulating marijuana. The transition to regulating both recreational and medical marijuana would be shorter and smoother by building on the resources already in place, instead of starting from scratch.

The common businesses and business practices that currently exist in medical marijuana will exist in the recreational marijuana. Many of the same or similar regulatory standards that exist today in medical marijuana will also be present in the regulation of recreational marijuana. Further, combining resources into one agency will lead to greater synergies and coordination than operating two separate agencies. Creating one agency to regulate marijuana in Colorado will also lead to funding efficiencies and a greater ability to control and offset the costs of regulation. It is anticipated that the Task Force will consider a recommendation to fund one regulatory agency from general fund proceeds for a period of five years and that all cash funds collected from this agency for application and licensing fees will be deposited in the general fund.

In the interests of simplicity and efficiency, the general assembly should consider harmonizing existing medical marijuana statutes with new enabling legislation for the oversight of recreational marijuana in the State of Colorado into one section of organic statutes.

7. What issue or issues does your recommendation resolve? (Please identify the issues)

Regulatory Framework Issue #22: Can the state harmonize medical marijuana and Amendment 64 policy into a single framework.

8. Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.

TBD

9. Which of the following does the recommendation impact (underline those that apply):

- a. Statute (legislation)
- b. Policy
- c. Rules and Regulations
- d. Other: *(please describe)*

10. Who owns implementation of the recommendation (underline those that apply):

- a. Governor
- b. State Legislature
- c. Attorney General
- d. Department of Revenue
- e. Department of Public Safety
- f. Department of Public Health and Environment
- g. Local Government
- h. Other: *(please describe)*

11. Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?

No.

12. Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost.

Yes, establishing a regulatory framework, regardless of the approach, will require establishing oversight at both the state and the local level. The cost to establish a state regulatory framework is being addressed by the Tax/Funding and Civil Issues working group. Establishing a regulatory framework for local government authority will be diverse and difficult to quantify.

13. Give an estimate of how long it would take to implement the recommendation.

Amendment 64 requires the Department of Revenue to adopt regulations by July 1, 2013. The Department shall begin accepting and processing license applications for recreational marijuana on October 1, 2013. Local governments must adopt ordinances or regulations specifying the entity within the locality that is responsible for processing applications submitted for a license not later than October 1, 2013. The Department shall issue an annual license within 45 to 90 days of receiving the license application.

**Amendment 64 Implementation Task Force
Working Group Recommendation Template**

Recommendation #RF-9

1. Working Group Name: Regulatory Framework

2. Individual Sponsor(s):

3. Describe the Recommendation:

To facilitate the development of an adult-use marijuana industry that (1) contains a market of small to larger-sized cultivation, product manufacturing and retail facilities offering a wide variety of products and pricing for consumers, while (2) maximizing excise tax revenue to the State and (3) preventing systematic diversion of product, the Amendment 64 Task Force recommends that the General Assembly consider a regulatory model in which a person would be allowed to have cross-ownership across license types, but such ownership would be restricted to a limited number of licenses. Licensed premises would be limited in either size or production/sales capacity, and prohibited purchases sales outside the regulatory system would be punishable by licensure and/or criminal sanctions.

4. To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.

Article XVIII, Section 16, (1)(a) of the Colorado Constitution states:

“In the interest of the health and public safety of our citizenry, the people of the State of Colorado further find and declare that marijuana should be regulated in a manner *similar* (emphasis added) to alcohol...”

5. Which guiding principle does this recommendation support (underline all those that apply)?

- a. Promote the health, safety, and well-being of Colorado’s youth.
- b. Be responsive to consumer needs and issues.
- c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.
- d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
- e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.

- f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
- g. Ensure that our streets, schools, and communities remain safe.
- h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.

6. Please summarize the rationale for the recommendation – why is it important?

The Regulatory Framework Working Group looked at four different regulatory models to best achieve three goals: (1) foster the development of an industry consisting of varying sizes of cultivation, product manufacturing and retail facilities that would allow easy entry into the market and would produce the best product and pricing options for consumers (“diversified market”), (2) maximize excise tax revenues to the State (“maximize excise taxes”), and (3) prevent product diversion from the regulated market into the black market (“product diversion”).

Required Strict Vertical Integration

Under this regulatory model, retail facilities would be responsible for cultivating 100% percent of the product sold in their facilities.

(1) Diversified market: Without statutorily-imposed restrictions on the number and size of licenses, potential would exist for a concentrated number of large cultivation facilities that would control the number, size and location of retail facilities, and vice-versa, and provide competitive barriers for smaller players to enter the market. Consumers could only purchase marijuana cultivated by the retailer or products purchased from licensed product manufacturers, limiting product selection at a given retail store. Retail product pricing could be controlled by portions or the entire segment of the industry.

(2) Maximize excise taxes: Cultivation facilities would be wholesaling to retail facilities owned by the cultivation facilities themselves, meaning that wholesale prices could be artificially set at a low rate to avoid excise tax costs. This would possibly require the State to consider fixing wholesale prices to maximize excise tax revenues.

(3) Product Diversion: While a “closed loop” of seed-to-sale tracking would be maintained, cultivation facilities that produce too much product would have no means to dispose of excess inventory, creating the temptation to divert it to the black market. Conversely, retail facilities that do not have enough product would have no means to obtain additional inventory, creating the temptation to purchase it from the black market. Risk of diversion would be addressed by implementing a process by which the licensee would request a waiver from the Division identifying the specific products to be sold or purchased outside of their common ownership structure. It would also identify the licensee from whom or to whom the purchase or sale is made. This would allow the Division to maintain strict inventory control. Stringent licensure and/or criminal sanctions would be imposed for diversion.

Required Vertical Integration with Wholesale Option

Under this regulatory model, retail facilities would be responsible for cultivating a set percentage of the product sold in their facilities and could wholesale purchase the remaining percentage from other licensed cultivation facilities. This would be similar to the model currently used in Medical Marijuana.

(1) Diversified market: Without statutorily-imposed restrictions on the number and size of licenses, potential would exist for a concentrated number of large cultivation facilities that would control the number, size and location of retail facilities, and vice-versa, and provide competitive barriers for smaller players to enter the market. Most of the product selection available to consumers would be marijuana cultivated by the retailer or products purchased from licensed product manufacturers, with a smaller percentage coming from other cultivation facilities, providing more product selection than the required strict vertical integration model. Retail product pricing could be controlled by portions or the entire segment of the industry.

(2) Maximize excise taxes: Cultivation facilities would be wholesaling mostly to retail facilities owned by the cultivation facilities themselves, meaning these wholesale transactions could be artificially set at a low rate to avoid excise tax costs, while wholesale transactions to other licensed retail facilities would be set at either market or cost levels. This would possibly require the State to consider fixing wholesale prices or prohibit wholesale sales at below cost to maximize excise tax revenues.

(3) Product Diversion: A “closed loop” of seed-to-sale tracking would be maintained, and cultivation facilities that produce too much product would have means to dispose of excess inventory, reducing the temptation to divert it to the black market. However, this assumes that competitors would be receptive to purchasing the excess inventory. Conversely, retail facilities that do not have enough product would have means to obtain additional inventory, reducing the temptation to purchase it from the black market. However, this assumes that competitors would be receptive to wholesaling to the retailer. This model, which is currently in practice, does not require notification to the Division when up to 30 percent of the product is sold to or purchased from another licensee, thus preventing the Division from maintaining strict inventory control. Stringent licensure and/or criminal sanctions would be imposed for diversion.

Permissive Unrestricted Vertical Integration

Under this regulatory model, retail facilities would not necessarily need to cultivate the product they sell, but would be allowed to do so. Conversely, cultivation facilities would not be required to sell to a commonly-owned retail facility, but would be allowed to do so. This would allow independent cultivation facilities and independent retail stores. This model in Recommendation #RF-1 as the “hybrid” model.

(1) Diversified market: Without statutorily-imposed restrictions on the number and size of licenses, potential would still exist for a concentrated number of large cultivation facilities that would control the number, size and location of retail facilities, and vice-versa, and provide competitive barriers for smaller players to enter the market. However, with the ability of cultivation facilities to wholesale to independent retail stores and of retail stores to purchase wholesale from independent cultivation facilities, the ability to control the wholesale market is greatly reduced. Product selection for consumers would be greatly increased with retail stores not being restricted to buying only from commonly-owned cultivating facilities or competitors at both the cultivation and retail level. It would be more difficult for retail product pricing to be controlled by portions or the entire segment of the industry.

(2) Maximize excise taxes: The wholesale market would be more market driven, but wholesale prices would still be driven by the level of wholesale activity between commonly-owned cultivation facilities and retail stores. This would possibly require the State to consider prohibiting wholesale sales at below cost to maximize excise tax revenues.

(3) Product Diversion: Cultivation facilities could sell their product to any licensed retail store, creating an open regulated market. These facilities would be required to track inventory from seed to wholesale transaction. Retail stores could purchased from any licensed cultivation facility or product manufacturer. These stores would be required to track inventory from wholesale purchase to retail sale. Stringent licensure and/or criminal sanctions would be imposed for selling to or purchasing from unauthorized sources.

Permissive Restricted Vertical Integration

This regulatory is similar to the previous one, however, restrictions would be placed on the number of licenses in which a person could have an ownership and on the size or production/sales capacity of licensed facilities.

Restricted ownership interests have produced the desired blend of smaller to large-size operators in other regulated industries in Colorado. The Colorado Limited Gaming Act provides that no person may have an ownership interest in more than three retail licenses. This restriction has resulted in a mix of 41 casinos ranging in size from 64 devices to over 1,500 devices. The Colorado Liquor Code allows a person to have an ownership interest in only one retail liquor store license. This restriction has resulted in a mix of 1,650 liquor stores throughout the state, ranging from small neighbor stores to the largest liquor store in the world located in Thornton.

Size or production capacity restrictions also apply in the gaming and liquor regulatory models. Gaming is restricted to no more than 35% of a casino building or 50% of any floor. Brew pubs are limited to producing 60,000 barrels of beer a year, while limited wineries can produce no more than 100,000 gallons. The public policy question exists as to whether the State wants acreage-sized outside cultivation fields or million square feet grow facilities or warehouse-sized retail stores.

(1) Diversified market: With statutorily-imposed restrictions on the number and size of licenses, persons would be restricted to how much of the market they could own and/or control, opening up market to more players. Product selection for consumers would be greatly increased with retail stores not being restricted to buying only from commonly-owned cultivating facilities or competitors at both the cultivation and retail level. It would be even more difficult for retail product pricing to be controlled by portions or the entire segment of the industry.

(2) Maximize excise taxes: The wholesale market would be even more market driven with the level of wholesale activity between commonly-owned cultivation facilities as a portion of the wholesale market being potentially reduced. The State may still consider prohibiting wholesale sales at below cost to maximize excise tax revenues.

(3) Product Diversion: As with the previous model, cultivation facilities could sell their product to any licensed retail store, creating an open regulated market. These facilities would be required to track inventory from seed to wholesale transaction. Retail stores could purchase from any licensed cultivation facility or product manufacturer. These stores would be required to track inventory from wholesale purchase to retail sale. Stringent licensure and/or criminal sanctions would be imposed for selling to or purchasing from unauthorized sources.

The Regulatory Framework Working Group recommends the General Assembly consider this last model.

7. What issue or issues does your recommendation resolve? (Please identify the issues)

This recommendation addresses in whole or in part, the following issues assigned to the Regulatory Framework working group:

Issue 1: Identify a regulatory framework (broad interpretation).

Issue 10: Identify framework for all types of consumption.

Issue 21: Who will regulate growers?

Issue 22: Can the state harmonize medical marijuana and A64 policies and rules? This would be a single regulatory framework.

8. Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.

9. Which of the following does the recommendation impact (underline those that apply):

- a. Statute (legislation)
- b. Policy
- c. Rules and Regulations
- d. Other: *(please describe)*

10. Who owns implementation of the recommendation (underline those that apply):

- a. Governor
- b. State Legislature
- c. Attorney General
- d. Department of Revenue
- e. Department of Public Safety
- f. Department of Public Health and Environment
- g. Local Government
- h. Other: *(please describe)*

11. Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?

No.

12. Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost.

Yes, establishing a regulatory framework, regardless of the approach, will require establishing oversight at both the state and the local level. The cost to establish a state regulatory framework is being addressed by the Tax/Funding and Civil Issues working group. Establishing a regulatory framework for local government authority will be diverse and difficult to quantify.

This recommendation will have a high cost for implementation.

13. Give an estimate of how long it would take to implement the recommendation.

Amendment 64 requires the Department of Revenue to adopt regulations by July 1, 2013. The Department shall begin accepting and processing license applications for recreational marijuana on October 1, 2013. Local governments must adopt ordinances or regulations specifying the entity within the locality that is responsible for processing applications submitted for a license not later than October 1, 2013. The Department shall issue an annual license within 45 to 90 days of receiving the license application.

**Amendment 64 Implementation Task Force
Working Group Recommendation Template**

Recommendation RF-10

1. Working Group Name: Regulatory Framework

2. Individual Sponsor(s): Ron Kammerzell

3. Describe the Recommendation:

The Amendment 64 Task Force recommends that the General Assembly enact legislation to define “licensed premises” and to establish restrictions on the operation of a licensed retail marijuana store and a licensed medical marijuana center within one building/structure. Such restrictions shall include separate and distinct ingress/egress, inventory control, point of sale and recordkeeping. This legislation must address the ability of the local government entity to prohibit multiple premises in one building/structure based on their authority to regulate time, place, manner and number pursuant to the constitutional amendment.

4. To which provision of Amendment 64 does the recommendation apply? If there is no applicable provision within Amendment 64, please justify why this recommendation is necessary.

Article XVIII, Section 16, (1)(a) of the Colorado Constitution states:

(7) Medical marijuana provisions unaffected. NOTHING IN THIS SECTION SHALL BE CONSTRUED:

(d) TO PERMIT ANY MEDICAL MARIJUANA CENTER LICENSED PURSUANT TO SECTION 14 OF THIS ARTICLE AND THE COLORADO MEDICAL MARIJUANA CODE TO OPERATE ON THE SAME PREMISES AS A RETAIL MARIJUANA STORE; OR

5. Which guiding principle does this recommendation support (underline all those that apply)?

- a. Promote the health, safety, and well-being of Colorado’s youth.
- b. Be responsive to consumer needs and issues.
- c. Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.
- d. Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
- e. Create a balanced regulatory scheme that is complimentary, not duplicative, and clearly defined between state and local licensing authorities.
- f. Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
- g. Ensure that our streets, schools, and communities remain safe.

- h. Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors that are clear and transparent.

6. Please summarize the rationale for the recommendation – why is it important?

A smooth transition for licensed medical marijuana centers to a retail store model is dependent upon their ability to utilize existing structures that can be altered to operate two separate and distinct licensed premises for both retail and medical marijuana customers. From a business standpoint, this ability is critical to the early success of a retail marijuana model and to the preservation of the medical marijuana system. However, from a regulatory standpoint, accommodating business needs will create undue risks without proper standards and restrictions being enacted.

Some of the issues or risks that permitting multiple licensed premises to operate within one require further consideration include:

Different age restrictions – medical marijuana is permissible for consumption, for properly registered patients, by persons under the age of 21. Retail marijuana cannot be purchased by persons under the age of 21. Without structural separation of licensed premises, this increases the risk for underage consumption in the retail model and potential purchases of medical marijuana by persons who are not properly registered as patients.

Inventory Control – To effectively address potential diversion of marijuana, strict seed to sale tracking must be maintained separately and distinctly by each licensee, regardless of ownership structure and regardless of the configuration of licensed premises. Licensed premises located within a single building/structure inherently increases the risk of co-mingling of on-hand inventory between the licensed premises. Such activity degrades the effectiveness of the inventory control and increases the risk of diversion.

Point of Sale – Medical Marijuana and Retail Marijuana may be subject to different types of state taxes, and potentially local taxes. By maintaining two licensed premises with different taxing requirements within one building/structure, this increases the risk that point of sale transactions could be commingled or fraudulently processed for the purposes of tax avoidance.

The overarching strategy to effectively minimize risks associated with having multiple licensed premises in on building/structure is to ensure that they remain separate and distinct, both physically and functionally.

Because this concept ultimately affects land use at a local community level, it is essential that any legislation recognize the local government authority to regulate time, place, manner and number. Specifically, to provide the authority at the local level to prohibit multiple licensed premises in one building/structure if they so choose.

7. What issue or issues does your recommendation resolve? (Please identify the issues)

Issue 1: Identify a regulatory framework

Issue 9: Licensing model impacts and how it impacts local authority

8. Is there a dissenting voice in your working group about this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.

TBD

9. Which of the following does the recommendation impact (underline those that apply):

- a. Statute (legislation)
- b. Policy
- c. Rules and Regulations
- d. Other: *(please describe)*

10. Who owns implementation of the recommendation (underline those that apply):

- a. Governor
- b. State Legislature
- c. Attorney General
- d. Department of Revenue
- e. Department of Public Safety
- f. Department of Public Health and Environment
- g. Local Government
- h. Other: *(please describe)*

11. Is the recommendation dependent on another decision or action: If yes – specifically what actions or decisions are required before this recommendation can be implemented?

No.

12. Will the recommendation have a cost to implement? If yes, what is the reason for the cost? If yes, give an estimate of the cost.

Yes, establishing a regulatory framework, and the regulatory requirements for this recommendation will require establishing oversight at both the state and the local level. The cost to establish a state regulatory framework is being addressed by the Tax/Funding and Civil Issues working group. Establishing a regulatory framework for local government authority will be diverse and difficult to quantify. Some local governments may restrict use more than others and this will have a direct effect on their costs of regulation.

This recommendation will have a low to moderate cost for both state and local governments.

13. Give an estimate of how long it would take to implement the recommendation.

Amendment 64 requires the Department of Revenue to adopt regulations by July 1, 2013. The Department shall begin accepting and processing license applications for recreational marijuana on October 1, 2013. Local governments must adopt ordinances or regulations specifying the entity within the locality that is responsible for processing applications submitted for a license not later than October 1, 2013. The Department shall issue an annual license within 45 to 90 days of receiving the license application. Regulatory requirements associated with this recommendation would need to be in place upon implementation.