

**STATE OF MAINE**  
**Department of Administrative and Financial Services &**  
**Department of Agriculture, Conservation, and Forestry**  
**RESPONSE COVER PAGE**  
**RFI# 201707126**  
**Rule-Making for Adult-Use Marijuana Policy Implementation**

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## **Section 1. Organization**

David Boyer has been the Maine Political Director for the Marijuana Policy Project since 2013. He has worked with MPP to build support for taxing and regulating marijuana in Maine. He spearheaded the local marijuana initiatives in Portland, South Portland, Lewiston, and York. David managed the statewide petition drive to get legalization on the ballot. He was the campaign manager for Question 1, which legalized marijuana for adult use in November of 2016.

The Marijuana Policy Project was founded in 1995, dedicated to ending marijuana prohibition in the United States. Since then, MPP has been responsible for many of the medical marijuana and adult use marijuana victories in the country, including Colorado, Alaska, Maine, Nevada, and Massachusetts.

The Marijuana Policy Project has been working in the marijuana policy arena for over twenty years and has invaluable knowledge and experience on how to best regulate marijuana. MPP can share lessons learned from other legal states and act as a resource for regulators in Maine.

## **Section 2. Response to Information Sought**

### **1. What public health and public safety challenges should the State anticipate (e.g. intoxicated driving, youth access, organized crime) and how should the State manage or mitigate these negative externalities?**

Maine should closely monitor health and crime statistics to gauge the impact of legalized marijuana. The former regulator for Colorado's adult use marijuana program, Andrew Freedman, presented to the Legislature's Joint Select Committee on Marijuana Legalization Implementation and reported that youth access to marijuana, as well as intoxicated driving, has not increased due to marijuana being legalized. In fact, alcohol seemed to be the bigger issue for their state. Colorado had success with public education campaigns on driving and safe marijuana consumption, and Maine should mirror these efforts.

### **2. How should the enforcement body be designed and balanced among the state, county and local law enforcement jurisdictions? Should unique divisions be created to oversee the five license types: cultivators, testing labs, manufacturers, retailers and social clubs? Should the current alcohol enforcement division absorb marijuana enforcement? How can the State recruit and/or train enforcement officers to possess the necessary subject matter expertise to begin enforcement on February 1, 2018?**

The state should review the enforcement divisions in other legal marijuana states and see what makes the most sense for Maine. Regulators, not law enforcement, should inspect and regulate legal marijuana businesses. It is important that the state educates officers on what is now legal for adults to do, including home cultivation rules. Given that taxing and regulating marijuana frees up law enforcement for serious crimes, recruiting new officers is probably unnecessary.

**3. How much will retail marijuana sales cost the State in terms of regulation and enforcement (e.g., law enforcement, additional employees, etc.)?**

Ideally, application and license fees from those entering the marijuana industry will cover the cost of regulating marijuana. Tax revenue would pay for school construction, substance abuse treatment, or whatever the Legislature ultimately decides. By not criminalizing otherwise law-abiding Mainers, the state will save and reprioritize law enforcement resources.

**4. How large is the current illicit market for marijuana in Maine and how large is the projected market for legal retail sales in the State?**

The illicit and gray market is alive and well in Maine. Maine has around 50,000 legal marijuana patients, which is higher per capita than most states. It is very hard to estimate the size of the underground market in Maine. There have been estimates on marijuana use, but it's nearly impossible to estimate how much of Maine's underground market is being diverted out of state.

Projecting the legal retail sales market is slightly easier, but there are still a lot of variables — like the timeline of our neighboring states' (and countries') legal marijuana programs. A Tax Foundation study found that marijuana tax collections in Colorado and Washington have exceeded initial estimates. The same study found that Maine's marijuana market could generate almost \$150 million in legal marijuana sales.

**5. How should taxes be assessed (e.g., THC content, weight, sales price) to eliminate the black market and sustain the costs of the legal program? At what stages – from seed to sale – should taxes be assessed? How much tax revenue can be expected from retail marijuana sales?**

Question 1 set a tax rate of 10 percent at the retail level. We acknowledge there is significant appetite to increase the tax rate; however, we strongly recommend not increasing it to a level that would place Maine at competitive disadvantage relative to other New England states.

It's important to remember that if Maine taxes marijuana at too high of a rate, it will encourage the underground market. Ideally, the tax rate should cover the costs of regulation. A Tax Foundation study evaluated tax policy in states that have made marijuana legal and concluded that an aggregate tax rate of or above 30 percent does not reduce the underground market sufficiently.

Massachusetts' legalization initiative taxes marijuana at an aggregated 20 percent. If Maine increases the tax rate significantly, southern Mainers may choose to drive to Massachusetts to purchase legal marijuana. This could diminish Maine's overall tax revenue.

State	Total Tax	Tax Breakdown
ME	10%	State sales tax
MA	20%	6.25% state sales tax 10.75% marijuana excise tax 3% local option tax
OR	20%	Includes: up to 3% local option tax
CO	27.9%	2.9% state sales tax 10% special sales tax 15% excise tax Does not include: local option taxes, which vary
WA	37%	
AK	\$50 per ounce wholesale tax	

The state should revisit the tax rate yearly to ensure that it is not significantly increasing the price of legal marijuana so much that it would be cheaper to purchase marijuana through unregulated and untaxed sources — truly a balancing act.

A Tax Foundation study found that Maine could generate between \$22 million and \$37 million depending if the tax rate was set at 15 percent or 25 percent.

**6. How have other states established enforcement and oversight capabilities, and which have been most successful? Please comment with special attention to security requirements for licensee facilities, banking challenges and diversion of products to other states.**

States that have legalized marijuana generally regulate marijuana in the same way. They either use an existing regulatory agency or create a new one for marijuana. It is hard to pick one state as a “success” over another state, though Colorado seems to have reduced the illicit market to a greater degree than other legal states. Maine’s regulator should work with the Legislature’s MLI committee to ensure regulations for marijuana licensees prioritize public and consumer safety while also not being unreasonable and over burdensome for license holders.

**7. What types of contaminants should be tested under the marijuana testing program?  
What levels of contaminants are safe for public consumption?**

Marijuana product testing is becoming a standard requirement for legalized marijuana markets, meaning consumers are better informed about the marijuana they use.

First and foremost, laboratories must be independent. Regulators should not allow a laboratory to hold other marijuana licenses. Testing for labeling must be done through independent, third party labs. Without this, serious conflicts of interest could occur. This should not prevent cultivators, retailers, and product manufacturers from conducting internal testing.

In other states, the combination of mandatory testing and a lack of licensed labs have caused bottlenecks and encouraged the underground market. This committee should prioritize laboratories to avoid this bottleneck. This can be done by licensing labs early and allowing existing non-marijuana labs to also test marijuana.

Regarding the testing itself, no common standard exists for pesticides in plant material to be smoked. Standards set in various legal states are established with very little data on pesticide levels in marijuana. In Oregon, the state temporarily rolled back some of their testing standards until the regulator could re-review the rules.

Testing should result in listing information on any pesticides, fungicides, fertilizers, or any other residual solvents that could remain on flowers after the cultivation process, and could aid in determining the potency and dosage of an edible product. Mandatory testing for mold, fungus, bacteria, and other microbial organisms ensures safety and quality.

All the while, testing must be cost effective for businesses so that legal products can be reasonably priced and so businesses will be able to effectively compete with an unsafe, underground market.

**8. How should marijuana products be packaged, labeled, advertised and sold in terms of serving size, potency and consumer safety?**

Under Question 1, marijuana and marijuana products must be labeled with important information including, but not limited to: THC potency, warning labels, serving sizes, nutritional fact panels, and ingredients.

Marijuana and marijuana products should be in child resistant packaging. Question 1 defines child resistant packaging as opaque and closable packaging designed to be difficult for children under 5 years of age to open. We recommend the committee take further action by prohibiting edibles resembling familiar candy products, such as gummy bears. These protections will help minimize the potential for overuse or inadvertent ingestion.

Critical information should be included on marijuana packaging like ingredients, cautionary statements, and visual warning symbols. Flowers and other marijuana products should include cannabinoid profiles on labels, including the content of THC, CBD, and other major cannabinoids, as well as the number and concentration of doses — particularly for edible products.

As recently as October 2016, Colorado implemented additional rules for packaging marijuana. These additions, from learned experiences, could be beneficial to Maine regulators when constructing rules. Colorado banned the word “candy” on packages and mandated all edibles sold at dispensaries be marked with a new "universal symbol," notifying buyers that the edibles contain THC.

Delaying access to or banning the retail sale of marijuana edibles will encourage illicit market production because edible products will be legal to possess. The edible products that exist in the medical market will be sold in the illicit market. Additionally, further unregulated activity would destroy efforts to better educate the public and school-aged children on recognition and product safety.

### **9. How should the State balance or integrate the existing medical marijuana program with the adult-use market?**

The state should ensure that medical marijuana will continue to be available for patients. If integration with the adult use program happens, it is important to consider underage patients, the tax rate, and potency limits.

Pediatric patients need continued access to life saving medical marijuana. Those under 21 years of age will still need access to medical marijuana, and eliminating the medical program could put their access in jeopardy.

If a patient is truly using marijuana as a treatment for a medical issue, they shouldn't be taxed for it. Medicine is historically not taxed, and medical marijuana should be no different for qualified patients.

Finally, patients should not be subjected to the potency limits that may be imposed on adult use marijuana. It makes sense for a recreational edible to be one dose, but for a cancer patient with a weak appetite, they may need as much THC/CBD as possible in each serving. Patients should be allowed to ingest marijuana in the most effective way for their particular symptoms, including high-potency edibles that might otherwise be restricted from the market.

### **10. Free Response**

#### **Our Recommendation for Overall Regulatory Framework:**

Question 1 allows for permissive vertical integration, and we believe this should remain intact. Allowing, but not mandating, marijuana businesses to be vertically integrated is the best way to ensure a fair market place for businesses of all sizes. Permissive vertical integration will allow for more specialization and innovation within the industry. It will also promote a more cooperative industry than we currently have in Maine's medical marijuana program. This will also allow Maine's existing medical marijuana dispensaries to continue as they are now, since they are vertically integrated by law.

When Colorado initiated regulations for the marijuana industry in 2010, the state adopted the 70/30 rule, which required retailers to grow 70% of the product they sold. The purpose of the rule was to prevent licensed retail stores from obtaining their product from the black market. However, it was a major challenge for smaller stores and resulted in non-optimal mergers between cultivators and retailers. In the fall of 2014, Colorado regulators abandoned the onerous 70/30 rule in favor of a system that made vertical integration an option, but not a requirement. Looking to Colorado's current system could be beneficial in drafting a similar regulatory structure in Maine.

#### **Our Recommendation on Home Cultivation & Possession:**

We recommend no changes to the current law related to home cultivation and possession limits. Instead, the Legislature should focus on providing law enforcement with the training and tools necessary to prevent, identify, and combat illegal grow operations.

Just as an adult can brew beer or make wine at a home, an adult should be able to cultivate marijuana at home for personal use. The current cultivation limits mirror the limits under the medical marijuana program. The possession limits mirror the medical marijuana program and the amount that has been decriminalized. These consistencies will help alleviate confusion for consumers and law enforcement.

Home cultivation will not decrease potential retail sales revenue. Home cultivation is expensive and naturally limited to hobbyists. An individual cannot grow quantities of marijuana without a substantial investment in time and money.

#### **Our Recommendation on Social Clubs:**

Not only is prohibiting social clubs bad public policy, it shows a blatant disregard for Maine's voters. It was widely known that social clubs were included in Question 1, and proponents and opponents of the initiative extensively discussed this issue.

The state should allow municipalities to tightly regulate how social clubs will operate in Maine, including the ability for towns to prohibit them outright. Local control means that these businesses will only exist where they are welcome.

Mainers and tourists will need a safe, legal place to consume marijuana. Mainers could be forbidden from marijuana use at home for many reasons including, but not limited to, public housing, respect for family members, and rental agreements.

In 2016, Denver approved I-300, which would allow social clubs similar to those in Question 1. I-300 was endorsed by the *Denver Post*, which said the system “goes beyond normal city regulations for businesses, and suggests the kind of willingness to compromise and work together that seems reasonable for such a roll-out.” Social use will soon be permitted in other legal states, and it would behoove Maine to start sooner rather than later.

### **Our Recommendation on Limiting Licenses:**

Ideally there will be geographic diversity for marijuana establishments, but ultimately it should be left to municipalities and market forces. Given that Question 1 allows for robust local control, it is unnecessary to set artificial caps on these licenses.

Question 1 limits the cultivation licenses by creating a cap of 800,000 sq. ft. of plant canopy for the state. If supply is not meeting demand, the cultivation cap should be increased or eliminated. If the cap is not changed, the price of marijuana would increase, which would encourage the underground market.

Maine’s marijuana laws should be like our brewing regulations. There is no limit on the number of breweries allowed in our state, and there is no cap on the volume of beer that can be brewed.