

STATE OF MAINE
Departments of Administrative and Financial Services &
Department of Agriculture, Conservation, and Forestry

RESPONSE COVER PAGE
RFI# 201707126

Rule-Making for Adult-Use Marijuana Policy Implementation



FREEDMAN & KOSKI

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Andrew Freedman/Freedman & Koski, Inc.
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Section I: Organization-Freedman & Koski, Inc.

1. Provide a brief description of Respondent's main services

Freedman & Koski, Inc. is primarily a government services firm focused on developing and implementing marijuana legalization policy for the medical and adult-use segments of the industry. Andrew Freedman and Lewis Koski both have extensive experience implementing medical and adult-use marijuana policy for Colorado, Ohio, Florida and California.

Andrew worked for Governor Hickenlooper's office as the Director of Marijuana Coordination and Lewis Koski was the former Director of the Marijuana Enforcement Division located in the Department of Revenue. There are very few former executives in this space that have implemented marijuana policy from the early stages of medical through the full implementation of adult-use legalization. These experiences uniquely position the company to help government successfully navigate the challenges faced when developing and implementing cannabis policy.

Additionally, the company is agnostic on legalization so we neither advocate for or against the policy. We also do not accept licensed marijuana businesses as clients because our focus is narrowly tailored towards helping government build and implement comprehensive marijuana policy. We are currently working with government agencies across the country that are in various stages of developing and implementing marijuana policy.

2. Provide a brief description of years in business and relevant team bios

Andrew Freedman

Often called Colorado's "Marijuana Czar," Andrew was appointed the state's first Director of Marijuana Coordination by Governor John Hickenlooper in 2013. He ensured the efficient and effective regulation of Colorado's adult-use and medical marijuana while promoting public health, maintaining public safety, and keeping marijuana out of the hands of children.

Andrew managed hundreds of millions of dollars of marijuana tax revenue and guided the administration through difficult regulatory, legal, and personnel issues as Colorado became the first jurisdiction in the world to legalize and regulate adult-use marijuana. He led the administration through challenges, including navigating unique regulatory structures; addressing the gray and black market; the lack of an industry banking and finance infrastructure; pesticide regulation; tax work; public education campaigns; edibles and hemp regulation; and countless other topics. He has been featured by 60 Minutes, NBC Nightly News, The Today Show, the New York Times, the Wall Street Journal, the Boston Globe, and dozens of other national and international news outlets.

Andrew holds a J.D. from Harvard Law School and a B.A. in philosophy and political science from Tufts University. Prior to being the Director of Marijuana Coordination, he was the Lieutenant Governor's Chief of Staff and the campaign director for Colorado Commits to Kids.

Lewis Koski

Lewis Koski is recognized nationally and internationally as an expert in formative marijuana policy, one of a small group of government executives who has been intimately involved in the development and implementation of marijuana policy from the infancy of medical marijuana through the realization of legalization. His leadership contributions and devotion to the thoughtful implementation of marijuana policy played a crucial role in achieving what has become one of the world's most fully developed marijuana regulatory frameworks.

Lewis was the Director of the Colorado Marijuana Enforcement Division—the world's first government agency dedicated to implementing medical and adult-use marijuana policy—and played a pivotal role in building and monitoring the state's early marijuana policies. This included constructing innovative strategies to develop balanced regulations, launching the first marijuana inventory tracking system, and finding solutions to some of the biggest challenges Colorado faced as it developed and executed the complex and divisive mandates around the new marijuana laws.

Lewis holds a Master of Business Administration with an emphasis on International Business and is a doctoral candidate in Public Administration with a focus on policy analysis and public participation in rulemaking. He also instructs a master's level class at the University of Colorado, School of Public Affairs called "The Marijuana Policy Frontier".

John Hudak

John is the deputy director of the Center for Effective Public Management and a senior fellow in Governance Studies at the Brookings Institution.

John is the author of *Marijuana: A Short History*, which offers an up-to-date profile of how cannabis has become a source of legal revenue for both businesses and governments. John's work has been recognized for its quality and contribution by the Midwest Political Science Association and the American Political Science Association's Presidency Research Group.

John holds a B.A. in political science and economics from the University of Connecticut and an M.A. and Ph.D. in political science from Vanderbilt University.

3. Provide clients you've consulted on this or a similar subject

Freedman and Koski have consulted with dozens of government clients as public officials and private consultants. We are currently working with government clients in Florida, Ohio and California conducting the same type of work contemplated in this RFI.

In our previous government capacities, we conducted monthly phone calls with California, Washington and Oregon. We advised government officials from Jamaica, Canada, New Zealand, Australia, Switzerland, Florida, Ohio, Massachusetts, Alaska, Maine, Texas, Vermont, Nevada, New Mexico, New Jersey, New York, and Los Angeles County. We have provided these cities, states and countries with planning documents, data, lessons learned, and general advice.

4. Describe skills pertinent to the specific work described in the RFI

Freedman and Koski Skills

Policy

- Created first adult-use regulatory system (over 500 pages of regulations)
- Amended medical regulatory system post-audit
- Analyzed, amended, or proposed hundreds of bills
- Gathered and analyzed dozens of data sources

Administration

- Coordinated collaboration and change management across 10 departments
- Oversaw the hiring and management of hundreds of new employees
- Created the first enforcement agency designed to regulate commercial marijuana

Communications

- Coordinated administration through half a million media stories
- Led and participated in thousands of hours of community work group meetings
- Oversaw and coordinated multiple public education campaigns.

Regulatory oversight

- Worked with vendor to create and oversee first seed-to-sale tracking system for the marijuana industry
- Led systems integration with patient registry, point of sales systems, and criminal enforcement databases
- Ensured entire regulatory system was compliant, protected public safety, public health, and kept marijuana away from children

Other Relevant Experience

Andrew Freedman/Freedman & Koski, Inc.

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- **Public Education Campaigns:** We coordinated with the department of public health and the department of transportation to plan, launch, and oversee three education campaigns.
 - *GoodtoKnowColorado.com:* a campaign to ensure responsible and legal marijuana usage. Included education for edibles, pregnancy and breastfeeding, talking to kids about marijuana, out-of-state diversion, public consumption, and dozens of other messages.
 - *Drive High Get a DUI:* a campaign to educate marijuana users that driving high is a felony and often results in tragic accidents.
 - *Protect What's Next:* a youth prevention campaign.

- **Gray/Black Market:** Colorado's largest structural and constitutional challenge with legalized marijuana is the loose manner in which we have allowed for home grown medical and adult-use marijuana. We forged a plan to create guardrails and enforcement that will significantly cripple, if not eliminate, the gray/black market.

- **Banking:** We navigated the Anti-Money Laundering Act and the Bank Secrecy Act to find possible banking solutions. We proposed and passed a brand new financial structure called a cannabis co-op. We ensured the chartering of a cannabis credit union. We were successful in providing banking services by working with community bank boards, directors, and third-party compliance companies.

- **Pesticides:** We brainstormed and negotiated between the department of revenue and the department of agriculture to figure out how to properly regulate pesticide use without the aid of the federal government. Industry, media, and legislative firestorms around the pesticides issue commenced when we put millions of dollars of marijuana on hold, we calmed tensions through meticulous communications planning, legal analysis, and diplomacy. We also helped request and receive guidance from the EPA for how to register pesticides for use on marijuana.

- **Advertising Restrictions:** We worked with national and local experts so that we could best apply lessons from alcohol and tobacco advertising restrictions in a manner that will best limit advertising to youth. Throughout, we remained careful to balance public safety concerns with First Amendment protections.

- **Budget Allocation:** We led our departments and governor's staff to internal consensus on the allocation of the hundreds of millions of dollars of marijuana tax revenue. We worked with budget analysts to ensure this money was efficiently and effectively utilized.

- **Hemp:** We guided the department of agriculture in creating a scaled-down regulatory structure for hemp cultivation that remained distinct from the rigorous marijuana system but still met federal guidelines for non-enforcement.

- **Data Collection:** The collection and analysis of agenda-free data is critical to good governance. We convened a group of public health, public safety, industry, and municipal experts to identify gaps in data and demonstrate how best to retrieve and analyze existing data. Helped pass legislation to fill in existing gaps in information collection. Finally, we worked with our full-time data analyst to ensure that the analysis and release of a full data report would not become mired in politics.
- **Private Lab Testing:** We worked with new and potential private testing labs, industry, and our public health experts to establish criteria and certification for the testing of potency, homogeneity, contaminants, and residuals.
- **Workgroup Meetings:** We have facilitated and participated in dozens of public workgroup sessions designed to tackle some the most complex and controversial policy challenges associated with the commercialization of marijuana. These have included involvement with local processes where municipalities have grappled with the entitlement processes related to density, zoning, fire inspections along with time, place and manner issues. We also have experience implementing innovative ways to advance policy through rulemaking. During traditional rulemaking, the regulator writes the rules, passes the rules, and then goes to court to litigate the rules. As the Director of the MED, Koski administered Colorado's rules for adult-use marijuana. The *legal requirements* for soliciting public feedback during rulemaking was minimal, and traditional approaches did not encourage rulemaking agencies to solicit public feedback beyond what was mandated in law. We recognized early on that the traditional process for rulemaking would likely alienate stakeholders and make them feel left out of the policy making process. Those sentiments, often among key stakeholders, could induce future litigation of regulations. To avoid post-regulatory litigation, we worked tirelessly to expand public input beyond both tradition and the minimal requirements under Colorado regulatory law. The result was far less litigation than one would expect and a more inclusive stakeholder environment.

Section II. 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?

Anticipated Public Health and Public Safety Challenges

Maine has the benefit of a few years of data from other legalized states to anticipate some specific challenges.

Youth access and youth use

Data collection about the effect of legalization on youth use is still early.¹ The good news is public health surveys from legalized states have not shown a statistically significant change in youth consumption rates. However, it would be premature to draw conclusions from these data as trends can take many years to develop. Additionally, questions remain about how the long-term dynamics of legalization will affect youth use rates. How will commercialization, normalization, and availability of marijuana affect youth use patterns in the long run? Studies show that teenagers now see marijuana as less harmful than previous generations. But does that mean they will use marijuana more, or will the forbidden fruit mystique fade away? Will industry find ways to market to youth and will government address such efforts effectively? While youth use increase should not be an anticipated negative externality, Maine should nevertheless guard against youth use increase and establish goals to see a decline in youth use.

Action plan: We will create short-term and long-term strategies to guard against an increase in youth consumption.

Short-term strategy: We will focus on data and data collection; public education campaigns; regulatory compliance; and evidence-based, in-school and after-school programs.

Data and data collection: We will ensure that proper data sources exist for constant evaluation of youth use, including but not limited to: public health surveys with region specific results, marijuana specific suspensions and expulsions, arrest data, and probation data. We will also ensure that data are collected in a consistent way across agencies and over time.

Public education campaigns: We will advocate for youth prevention campaigns that have messages for youth and for trusted adults (parents, teachers, coaches, etc.). We will help create a process for budget, stakeholder engagement, requests for proposals, and content delivery such that these campaigns are effective and launched prior to marijuana

¹<http://www.greenstate.com/health/a9874166/debunker-legalizations-effect-on-teen-use-hazy-at-best>

commercialization, while remaining sensitive to cultural and historical experiences in Maine.

Regulatory Compliance: We will share regulatory best practices to ensure Maine's system has the most effective and cutting-edge rules, enforcement, and data to prevent underage sales from the regulated market.

Evidenced-based youth prevention and treatment programming: We will help Maine create a comprehensive plan for youth prevention and treatment program funding. The funding would focus on evidence-based drug treatment programs that have the ability to reach all at-risk populations.

Long-term strategy: We will focus on lessons learned from tobacco regulation. This would include cross-walking best practices from advertising, product availability, product attractiveness, and research/data. We will also advise on internal program evaluation to ensure that existing programming is meeting expectations. Program evaluation over the medium- and long-term will allow the State to make necessary changes in situations in which programming is underperforming or can be updated based on new data, research, and information

Heavy-use adult consumption

Concerns exist about whether legalization leads to increases in marijuana substance abuse (whether defined as functional impairment, cannabis use disorder, or daily usage). Right now, answers to such questions are scant. However, at least one survey from Colorado shows that approximately 50% of past-30 day users self-report as heavy users. This is a concerning statistic, though it does not yet show a trend line. Like with alcohol, tobacco, prescription drugs, and illicit drug use, the State should treat individuals and protect the community against the harm of substance abuse and the effect it can have on health, family, productivity, and community safety.

Action Plan: We will work with the CDC and the Department of Health to create adequate measures of impairment within public health surveys and other relevant coding. We will also make recommendations on how best to use limited budget revenue to best educate, prevent, and provide treatment for heavy-use adults.

DUID (Driving under the influence of drugs)

Data for marijuana DUIDs are very noisy, making it difficult to draw conclusions about the effects of legalization. Newly legalized states implemented new DUID laws and added resources for enforcement simultaneously with implementing legalized marijuana. Because there are new laws and increased enforcement, it is not advisable to compare post-legalization data with pre-legalization data. In fact, in some states, data about DUIDs post-legalization are collected differently than pre-legalization, further complicating the legitimacy of data analysis. However, there is some useful information from the Fatality Analysis Reporting System, which reports out

drivers involved in fatal accidents that report positive for THC.

In Colorado, from 2013 to 2015, the percentage of drivers involved in fatal accidents who tested positive for THC increased from 11% to 18%.² These data appear to show a trend of more drivers involved in fatal accidents testing positive for THC over time. However, a positive test for cannabinoids may be the result of active THC or one of its inactive metabolites and does not necessarily indicate impairment. Furthermore, more years of data are needed. Still, it is a statistic that should be monitored closely over time.

Recent studies are conflicted over whether legalization has caused an increase in traffic accidents and fatalities. The *American Journal of Public Health* found a decrease in marijuana-related traffic accidents in states with legal medical marijuana, while a study from the Insurance Institute for Highway Safety found the states with legalized (adult-use) marijuana saw a slight increase. A third study, also in the *American Journal of Public Health* found no increase in Colorado and Washington when compared to similar states that had not legalized.

Regardless of the effects of legalization, it is indisputable that driving while high is dangerous. The State should do what it can to deter this behavior.

Unfortunately, standards, enforcement, and data concerning DUID are more complicated than those for drunk driving (DUI).

For Maine, the blood alcohol content limit for a DUI is .08% by volume. This serves as a “per se” limit, meaning that if the driver is found to be over that limit, they are automatically guilty of driving while intoxicated. This is widely considered to be sound public policy. Blood alcohol content is a good proxy for intoxication. While there are some physiological differences for how people react to alcohol, a person’s blood alcohol content is highly correlative with his or her level of intoxication and thus, his or her fitness to drive.

Moreover, the tests for determining blood alcohol content are relatively simple to administer and are widely accepted in court. DUI convictions based on a failed breathalyzer test are commonplace. Blood tests are also valid in court, should a breathalyzer test not be available. In some states, subjects can choose between a breathalyzer and a blood test. Both are considered valid tests for intoxication by the court.

For DUIDs, however, the situation is more complicated. First, there is no established test similar to a breathalyzer that is currently valid for approximating THC levels in the blood. There are several in development, but the research is still being established. The driver must be taken to a lab or police department where blood is drawn and tested. Additionally, THC does not leave the bloodstream in a uniform manner. Active THC dissipates within 5 hours, but for chronic users it may continue to be present for weeks or even months, even if the individual is not impaired. Finally, we do not have the science to date to know if the presence of THC in the blood is as

² Source: Data provided by Colorado Department of Transportation, 8/4/2016.

clear of a sign of impairment as alcohol. Thus, states are all forming different standards for intoxication.

There are three tools used to determine whether a person is driving while high:

- A. Bad driving: Traffic violations and automobile accidents are the first indication of impairment.
- B. Blood test: Lab tests can determine how many nanograms of THC are in a person's blood by volume. The widely accepted level for DUIDs is 5 nanograms of THC per milliliter of blood (5ng/mL THC).
- C. Field sobriety test administered by a Drug Recognition Expert (DRE): There are special trainings available to train officers to accurately determine if a person is intoxicated because of THC and/or other drugs.

State-by-state standards for DUID:.

Maine: Currently, any amount of THC found in blood or urine samples serves as proof of driving while high. This will be problematic in the future as marijuana stays in the system for long after the intoxicating effects. This may lead to jury nullification and poor enforcement. Additionally, it may not be sound public policy.

Colorado: The standard is 5ng/mL THC and a failed roadside sobriety test. There is a 5ng/mL THC threshold that triggers a rebuttable presumption of driving while high. This means that the jury should assume that the driver is guilty of a DUID unless they can provide an argument or evidence that they were not.

Alaska: Any THC detected in blood or urine and a failed roadside sobriety test serves as proof of intoxication.

Washington: The *per se* threshold of 5ng/ml THC is used to indicate intoxication.

Oregon: Any THC detected in blood or urine and a failed roadside sobriety test is proof of intoxication.

Enforcement for DUIDs:

Law enforcement officials list a few challenges with enforcing DUID laws.

- A. The tests are costlier and time consuming to perform than a breathalyzer: An officer will either need to be DRE trained or find a fellow officer who is. Then, the driver will need to be brought to a lab testing facility or police department for the blood draw.
- B. Prosecutions are more difficult: DUID law remains relatively untested. Cases are often dismissed as technology, training, and science comes into question.
- C. DUI convictions are often easier to secure: If a driver is both drunk and high, it is significantly easier for the officer to pursue the DUI conviction alone.

Action Plan: Freedman & Koski, Inc. will create an action document that will incorporate policy, data, budget, and a public education campaign.

Policy: We will conduct a state-by-state comparison of driving laws concerning marijuana and poly-drug use (the consumption of multiple types of drugs). We will then make a recommendation of what driving laws will best protect public safety.

Data: We will conduct data analysis to ensure Maine is gathering and analyzing the most accurate data to determine public safety concerns. We will also make recommendations about both changes to data collection and best practices in analysis, given previous data sources.

Budget: We will conduct a budget review to make recommendations on where resources are needed for training, enforcement, and technology.

Public education campaigns: States with legal adult-use marijuana have engaged in public education campaigns to educate drivers about the dangers of driving while high. Alaska, Washington, and Colorado used the same campaign, “Drive High, Get a DUI”, while Oregon included messaging in a broader education campaign “Educate Before You Recreate.” Initially, these campaigns focused on teaching marijuana consumers that it is a felony to drive while high. Subsequently, “Drive High, Get a DUI” focused on the safety dangers of driving while stoned. This is probably a good strategy because surveys indicate that many stoned drivers believe they are just as safe if not safer while driving stoned.³ We will advocate for the State to design campaigns specifically around the issue driving while high. We can help create a process for budget, stakeholder engagement, requests for proposals, and content delivery such that these campaigns are effective and launched prior to marijuana commercialization.

Out-of-state diversion/Organized Crime:

One of the most difficult dynamics for a new marijuana regulatory structure to manage is that, over time, the price of wholesale marijuana is often significantly higher in surrounding prohibition states than in the legalized state. Thus, bad actors will attempt to divert marijuana out of state wherever possible.⁴ These abuses can range from small-scale operations (e.g., a purchaser buying the legal limit at a retail store and driving across the border to sell) to large-scale operations (e.g., a growing and distribution operation that is shipping hundreds of pounds

³ See:

<http://click.icptrack.com/icp/relay.php?r=&msgid=0&act=11111&c=1045989&destination=http%3A%2F%2Fher.oxfordjournals.org%2Fcontent%2Fearly%2F2016%2F05%2F03%2Fher.cyw023.abstract>

⁴ <http://www.greenstate.com/explainers/a9551472/foolish-fallacies-eliminating-the-black-market-overnight>

of marijuana).⁵ While all out-of-state diversion is problematic, large-scale illegal operations are often accompanied by violence,⁶ property destruction,⁷ and environmental destruction.⁸

Action Plan:

Regulatory review: We will perform a review of the closed-loop regulatory system to ensure there are no loopholes that will invite abuse.

Policy review: We will perform a comprehensive policy review of Maine’s entire medical and adult-use laws and determine if there are loopholes that will invite abuse. We will then provide recommendations on how best to close these loopholes.

Budget review: We will review the budget to ensure there are proper resources for the regulators and local law enforcement to prevent out-of-state diversion.

ER Visits, Hospitalizations, and Emergency Room Visits

In states with legalized adult-use marijuana, there has been a significant increase in poison control center calls and hospitalizations that code for marijuana use. Evidence suggests that these increases are from naïve marijuana users trying new types of products such as edibles or hash oil.⁹

Below we provide passages from two reports touching on three topics involving medical intervention around marijuana. First, we include portions of a report from Colorado Department of Public Health and Environment (CDPHE) using data from the Rocky Mountain Poison Control Center about calls involving marijuana in the state of Colorado. Second, we offer portions of that same CDPHE report using data from the Colorado Hospital Association about

⁵ More than 40 people were arrested and approximately 30 Denver-area homes and warehouses were raided as part of an extensive law enforcement action conducted in one day in April 2016. All the raids are tied to one illegal operation. The suspects allegedly came from Texas to grow marijuana in Colorado. At one home in Centennial, agents found more than 300 plants. There was so much grow equipment at the home that a National Guard truck was called in to haul it away. In another location, a person barricaded himself inside a building that was raided. Police were forced to use tear gas to extract him—*Denver CBS 4, May 6, 2016*

⁶ Keith Hammock of Denver shot two teenage boys who were attempting to steal marijuana plants from a large grow at Hammock’s home. Fifteen-year-old Keylin Mosley was killed and the other 14-year-old boy was paralyzed—*Denver Post, October 10, 2016*

⁷ Jon Didleaux’s tenant was caught with close to 56 pounds of marijuana in Didleaux’s home. The worst part: Didleaux spent months fixing up his 1,800-square-foot home, only to see it almost destroyed. His insurance company paid \$20,000 to cover the damage to the property—*KKTV 11 News, May 5, 2016*.

⁸ A grass fire in Pueblo West has been linked to an illegal marijuana grow. The 2-acre grass fire started when a transformer had blown because a home was pulling too much electricity. Deputies noticed a strong marijuana odor coming from the home and found a partial medical marijuana license. The home was set up with a commercial heating and ventilation system along with extensive lighting and irrigation systems. Authorities found 49 budding plants and another 117 freshly harvested plants in the home—*Colorado Springs Gazette, April 21, 2016*

⁹ <https://www.ncbi.nlm.nih.gov/pubmed/28514695>

Emergency Department visits involving marijuana use or consumption. Third, we provide portions of an article in the *New England Journal of Medicine* by Howard Kim, Katelyn Hall, Emma Genco, Mike Van Dyke, and Andrew Monte. This article discusses the challenges tourists in Colorado face in consuming marijuana, using data from the Colorado Hospital Association. In each case, the passages below are drawn directly from each published item.

Colorado Department of Public Health and Environment Report using Rocky Mountain Poison Control Center Data¹⁰

From 2000 to 2009, RMPCC marijuana exposure call volume remained fairly constant. In 2010, total annual marijuana exposure calls doubled, from 44 to 93. From 2010 to 2013, there was a slight additional increase in counts of marijuana exposure calls. Another large increase was seen in 2014, from 127 to 222. There were 229 marijuana exposure calls in 2015 and 201 in 2016. Most of these changes were due to calls involving marijuana only, with only a small increase in calls involving marijuana and other substances together.¹¹

For children ages 0-8 years, marijuana exposure calls averaged 5 per year from 2000 to 2009. They peaked in 2015 at 48 calls and dropped to 40 in 2016. Ages 9-17 years averaged 17 calls per year from 2000-2009, peaked at 63 in 2015 and dropped to 42 in 2016. Ages 18-24 years averaged 17 calls per year from 2000-2009, and increased to 35 in 2016. Adults age 25 years and older had the largest increase in the number of marijuana exposure calls, averaging 15 calls per year from 2000 to 2009 and peaking at 90 calls in 2014. Calls in this age group decreased to 78 in 2015 and 73 in 2016.¹²

Nearly all calls for children ages 0-8 years were unintentional exposure in all time periods. From 2014 to 2016, unintentional exposures comprised 17 percent of calls for ages 9-17 years, 9 percent of calls for ages 18-24 years, and 23 percent of calls for ages 25 years and older. Data on type of marijuana product was only available for July 2014 to December 2016. **For children ages 0-8 years, twice as many exposure calls were about edible marijuana products compared to smokeable products.** In all other age groups, smokeable products were most common.¹³ (Bolding not in original)

Colorado Department of Public Health and Environment Report using Colorado Hospital Association data¹⁴

The rates of hospitalizations and ED visits with poisonings possibly due to marijuana in children under 9 years old have increased over time since medical marijuana legalization in 2000, with the largest increase following medical marijuana commercialization in 2010. For 2014 and 2015,

¹⁰ <https://drive.google.com/file/d/0B0tmPQ67k3NVQIFnY3VzZGVmdFk/view>

¹¹ Ibid at 237.

¹² Ibid at 231.

¹³ Ibid at 231.

¹⁴ <https://drive.google.com/file/d/0B0tmPQ67k3NVQIFnY3VzZGVmdFk/view>

this rate was 14 per 100,000 hospitalizations and 9 per 100,000 ED visits. The number of hospitalizations and ED visits with poisonings possibly due to marijuana among children under 9 years old was higher in urban areas compared to rural areas.¹⁵

When examining the rates of hospitalizations and ED visits with marijuana-related billing codes for all ages, there was an increasing trend in hospitalizations from 2001 to 2015, reaching 3,025 per 100,000. There was an increasing trend in ED visits from 2012 to 2014, reaching 1,039 per 100,000. ED visits declined in 2015 to 754 per 100,000.¹⁶

Unfortunately, this data does not track how the marijuana was ingested.

“Overconsumption Appears to be a Bigger Problem for Tourists” by Kim, Hall, Genco, Van Dyke, & Monte¹⁷

At our institution, the rate of ED visits possibly related to cannabis use among out-of-state residents doubled from 85 per 10,000 visits in 2013 to 168 per 10,000 visits in 2014, which was the first year of retail marijuana sales...Among Colorado residents, the rate of ED visits possibly related to cannabis use did not change significantly between 2013 and 2014 (106 per 10,000 visits in 2013 and 112 per 10,000 visits in 2014...). The rates did not change significantly between 2012 and 2013 among out-of-state residents or Colorado residents.

The data from the Colorado Hospital Association did not show a significant change from 2011 to 2012 in the rate of ED visits with ICD-9 codes of cannabis use among out-of-state residents; however, from 2012 to 2014, the statewide rate among out-of-state residents rose from 78 per 10,000 visits in 2012 to 112 per 10,000 visits in 2013 to 163 per 10,000 visits in 2014...Among Colorado residents, from 2011 to 2014, the rate of ED visits possibly related to cannabis use increased from 61 to 70 to 86 to 101, respectively, per 10,000 visits...

The flattening of the rates of ED visits possibly related to cannabis use among Colorado residents in an urban hospital...may represent a learning curve during the period when marijuana was potentially available to Colorado residents for medical use (medical marijuana period) but was largely inaccessible to out-of-state residents. It is possible that reporting bias in the era after legalization has confounded these findings; however, we previously found that the reporting on marijuana use among Colorado residents during the medical marijuana period was reliable.

ED visits related to cannabis use appear to be increasing more rapidly among out-of-state residents than among Colorado residents... The initial educational efforts through mass media have focused primarily on Colorado residents. These data underscore the importance of point-of-sale education for visitors regarding the safe and appropriate use of marijuana products. (pp.797-8)

¹⁵ Ibid at 231.

¹⁶ Ibid at 231.

¹⁷ <http://www.nejm.org/doi/full/10.1056/NEJMc1515009>

Action Plan: We will create a plan for best practices around public education campaigns, regulatory requirements, and point of sale information.

Public Education Campaign: We will advocate for a responsible use campaign. We can also help create a process for budget, stakeholder engagement, requests for proposals, and content delivery such that these campaigns are effective and launched prior to marijuana commercialization.

Regulatory requirements: We will create a plan for best practices about scoring and demarcation of edibles, use of universal symbols, banning of certain edible shapes, and packaging and labeling requirements.

Mandatory point of sale information: We will create a plan for best practices concerning mandatory point of sale information distributed by retail stores to consumers.

Unanticipated Public Health and Public Safety Challenges

Because marijuana legalization is an untested policy change, the State should be more concerned about what it cannot anticipate. We will create a plan to ensure proper data collection, stakeholder engagement, and governance to be able to respond to unanticipated public health and public safety challenges.

Data gap analysis: The State will need to be vigilant about data collection and analysis to identify unforeseen public health and public safety challenges. We can engage in a data gap analysis to determine which data sources currently exist that can help identify these challenges early. That analysis will focus on data sources that have solid pre-legalization baselines, are not prone to post-legalization observation biases, are indicative of a public harm, and are updated frequently. We will also suggest administrative, regulatory, and policy changes to increase valuable data collection.

Stakeholder and community engagement: Unfortunately, data have a significant lag that will delay identifying public health and public safety threats. Thus, to be made aware of developing challenges the state will also need to ensure a continual stakeholder and community engagement process. We will create a stakeholder and community engagement plan to ensure the State is hearing from the community throughout implementation.

Governance: We will recommend a governing structure for the evaluation, analysis, and response of these data sources and engagement processes. Data and community input are only valuable if they are used to shape public policy. We will suggest a governance structure to ensure the correct internal stakeholders are analyzing the data and community input and creating appropriate action plans.

2. How should the enforcement body be designed and balanced among the state, county and local law enforcement jurisdictions?

Maine will need to coordinate the efforts of multiple agencies to tap into the professional expertise and aptitudes required to implement its legalization policy. Monitoring and enforcement of those laws will require similar levels of coordination on a statewide basis.

Maine's legalization statutes already delegate authority to the appropriate state agencies to monitor and enforce these highly-specialized areas of the policy. For example, it makes sense that the Department of Agriculture, Conservation, and Forestry (DACF) is involved providing expertise on the agricultural aspects of cultivating marijuana, but there will still be challenges to bringing an enforcement action if the roles and responsibilities are not clearly defined among the departments. If roles and responsibilities are not clearly defined, there may be confusion about who is monitoring for compliance, how enforcement actions are coordinated among agencies and which agency takes the lead in disciplinary administrative processes.

Enforcement needs a lead department to take on these efforts across the state to act as the central point for monitoring and enforcement of laws/regulations. Typically, this is the state licensing authority (SLA) as evidenced in Colorado where the Department of Revenue takes on this role, in Washington where the Liquor and Cannabis Control Board is the lead agency and in Oregon the Liquor Control Commission is tasked as the lead agency.

In each instance above, the SLA was responsible for licensing, monitoring and enforcing laws, but success hinged on the departments' abilities to leverage the expertise of other departments to monitor and enforce marijuana laws effectively. For example, SLAs had to coordinate with health departments to ensure sanitation regulations were being complied with by licensees. Lead departments had to partner with agriculture departments to monitor and enforce pesticide laws. These coordinated efforts frequently led to enforcement actions that the SLA brought forward for disciplinary action against a licensee, and the subject matter expertise of other departments was critical to reaching reasonable resolutions. As state agencies focus on implementing the regulatory framework that licenses, monitors and takes enforcement action in the regulatory arena, it will be important for local law enforcement agencies to be informed and engaged in those processes.

Local law enforcement will have an important role assisting local licensing authorities and continuing to enforce criminal law as it relates to marijuana, but this can be challenging during the transition into the regulated framework. Law enforcement in local jurisdictions will be seeking clarification on what is lawful and what is not. The transition to a legalized marketplace is a challenging endeavor for any jurisdiction filled with complex social, political and legal issues. Local law enforcement will need guidance to identify its role, establish enforcement priorities, and ensure public safety is prioritized.

Should unique divisions be created to oversee the five license types: cultivators, testing labs, manufacturers, retailers and social clubs?

As mentioned earlier, it may be more efficient and effective to have one agency as the central authority on licensing, monitoring and enforcement. This approach also provides much needed clarity and efficiencies to the regulated community. Other divisions or state agencies will still play necessary and supportive roles in the administration of the law and in engagement of specific issues.

Should the current alcohol enforcement division absorb marijuana enforcement?

States have taken different approaches to this question. Alaska, Oregon and Washington absorbed marijuana regulation into their respective alcohol enforcement entities. Colorado and California created new divisions to focus exclusively on marijuana enforcement.

A state can benefit by leveraging the expertise of alcohol staff, making it easier to take advantage of synergies between the two regulated industries. Conversely, implementing marijuana policy is a resource-intensive process that could absorb all the resources in the Bureau of Alcoholic Beverages & Lottery Operations (BABLO) during implementation, which could create issues around licensing, monitoring and enforcement of the liquor and lottery industries. Creating a new division is not without its challenges. Chances are a new agency will require the expertise of liquor enforcement, which in turn will still create a strain on the limited resources BABLO has devoted to liquor and lottery.

How can the State recruit and/or train enforcement officers to possess the necessary subject matter expertise to begin enforcement on February 1, 2018?

It is unlikely that Maine will be able to implement and regulate the new commercial marijuana program by utilizing current resources alone. It will be able to utilize some of its existing expertise in public health, public safety, agriculture, and liquor enforcement to establish the initial needs for the various departments, but it will likely have to recruit additional resources. If the goal is to begin enforcement in February 2018, the state should identify the steps necessary to achieve that goal, the staff expertise it need for each step, and the number of employees it will need.

For example, the state should expect to receive a large number of applications for initial licensing during a concentrated period of time. The state is going to have a limited amount of time to process those initial applications to meet the February 2018 goal of having licensees to monitor. In order to meet these rigorous demands, the state may want to focus first on identifying and recruiting the staff needed to process and conduct due diligence on the prospective licensees. This may mean hiring temporary employees to meet to the temporary influx of applications while the state continues to recruit, train, and hire permanent staff. Temporary employees often

times end up being full time employees, which can reduce the training burden of hiring someone completely unfamiliar to the program.

The finalized regulations will ultimately serve as the backbone of any field enforcement training program. The state should seek to hire in key leadership positions to participate in the process of creating the regulations. This leadership team's intimacy with the regulatory process and the finalization of the rules will serve as a launch pad for training new enforcement employees.

Section 2, Question 2, Action Plan

Freedman and Koski, Inc. would work with Maine's SLA to structure processes that encourage cooperation and coordination among all the state and local agencies with a role in enforcement of marijuana laws. This can be partially achieved by facilitating the participation of relevant state and local agencies, professional associations and subject matter experts in rulemaking, so their needs and concerns can be incorporated into the final regulations. We would also recommend forming an enforcement workgroup designed to address all the education and training needs of state and local law enforcement with the intent of developing a curriculum to be administered by the appropriate law enforcement agency.

Freedman and Koski, Inc. would leverage its experience creating commercial marijuana programs to help Maine identify exactly how licensing and enforcement authority should be delegated, how the enforcement agency should be structured or integrated, what staff resources will be needed for various areas of implementation (licensing, enforcement, public health, agriculture, etc.), estimate the personnel and budgetary needs and develop strategies to recruit and train staff.

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

For the purpose of planning, it would be helpful to see the regulatory and enforcement costs of other states in multiple years following legalization. For instance, here are the costs from Colorado for fiscal year 2016-2017:

Regulation and Enforcement Costs (FY 2016-2017)	19,415,132
Marijuana Enforcement Division Drawdown Fund	7,600,000
Develop In-House Legal Expertise and Training	436,766
Local Law Enforcement Training for DUID	996,977
Marijuana Responsible Use and Youth Awareness Campaign	4,650,000
Marijuana-Impaired Driving Campaign	950,000
Marijuana Lab Certification	176,292
Pesticide Laboratory Augmentation	1,320,000
Marijuana Data Architecture	1,295,000
Pesticide Enforcement	1,800,000
Governor's Office of Marijuana Coordination	190,097

Note: Colorado's population is more than four times that of Maine, and these costs would not reflect Maine's costs in any direct way. We would include both public education campaigns and data architecture needs as part of the mandatory costs for enforcement. Also of note, these costs do not include costs covered by fees. The \$7.6 million allotted to the Marijuana Enforcement Division is a fund they can draw down from should they not have enough revenue from fees.

Action Plan: Freedman & Koski, Inc. would review several years of data from functioning marijuana regulatory systems. We would then scale the regulatory model to fit the projected size of Maine's system. We would consider capital investment costs and currently available resources as we formed a three-year budget plan. We would then determine what costs could reasonably be funded by fee structures, allowing for draw down funds from tax revenue to augment any fee shortfall.

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?

Determining the demand for marijuana in Maine requires a carefully crafted study. The study's methodology should include a few key elements.

Literature review: A few national and state surveys already attempt to determine the prevalence and frequency of use of marijuana on a state level (National Survey on Drug Use and Health, Monitoring the Future, Etc.). These surveys should be reviewed and adjusted for potential underreporting.

Independent Survey: The study should include an independent, anonymous, web-based survey to confirm or reject findings from the literature review both on prevalence and frequency of use.

Tourists and visitors: Given Maine's proximity to other states and summertime tourist destinations, the survey would be incomplete without attempting to estimate demand from this segment of the population. For visitors who are crossing state lines expressly to purchase marijuana, the study should look at seed to sale tracking information from various states for sales data from border towns. Additionally, Maine can estimate tourist demand by extrapolating from tourist demand in previously legalized states.

Follow-up: As Maine's seed-to-sale tracking system gathers relevant data points, the study should be re-examined to make clearer projections about market demand.

As to how much of this market the legal retail sales can capture, the answer is almost entirely dependent on how the system is created and the details of regulation and taxation. In Colorado, over 70% of the market was captured in the first few years.¹⁸ Many consumers remained in the commercialized medical market, however, as the tax rate was much lower. In Washington, however, only 30% of the market was captured in the same time frame.¹⁹ This was because Washington did not put regulatory controls around its medical marketplace, providing little incentive for consumers or producers to use the regulated market, and tax rates were prohibitively high. Should Maine set reasonable tax policy and restrict ways in which suppliers can grow in the unregulated market, the expectation should be that Maine captures over 90% of the legal market in the first five years.²⁰

Action Plan: Freedman & Koski, Inc. would help Maine determine next steps for a demand study. Depending on the size of the study, we would look to either partner with a research group or perform with the aid of relevant state departments. Colorado commissioned such a study from

¹⁸<https://www.economist.com/news/briefing/21692873-growing-number-countries-are-deciding-ditch-prohibition-what-comes>

¹⁹ Ibid.

²⁰ <http://www.greenstate.com/explainers/a9551472/foolish-fallacies-eliminating-the-black-market-overnight>

an outside group.²¹ We would additionally identify any and all challenges that might prevent market capture and present policy solutions to these challenges.

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?

The following considerations should be made when determining tax policy.

Purpose: The administration and elected officials should be clear on what purpose(s) the tax revenues are intended to accomplish. Some potential purposes include:

Paying for regulation and enforcement: Most citizens at the very least wish for the tax revenue to pay for the marijuana regulatory system. In other states, this has been easily accomplished. The one caveat is that we would recommend that some start-up costs be paid out of the general fund as they need to be set-up prior to collection of tax revenue and even the collection of initial application fees. The state could consider this as a loan out of the general fund to be paid back by marijuana tax revenue in the next fiscal year or spread across a set of fiscal years.

Preventing marijuana abuse: For other “sin” taxes, the tax has been a proven tool for preventing abuse of the substance or by industry.²²

Paying for other government services: Many see marijuana tax revenue as a good way to fund other budget shortfalls. We urge governments not to overestimate what this revenue can accomplish. Sin taxes pale in comparison to income, property, and general sales taxes. That means a state should not expect to fund significant parts of its larger budget items--education, transportation, and health care--nor expect to close significant budget shortfalls with that revenue.²³

Eliminating the black market: Many also fear that too high of a tax may inhibit the ability for the regulated market to capture the black market because base prices in the regulated market may be markedly higher than that of the black market. This is a fair concern, though it should be treated in context. The initial high price of marijuana will be more of a product of high demand and low supply. The state will need to be patient as economies of scale are realized and prices fall. Still, some experts suggest keeping the tax rate relatively low at the beginning in order to shut out the black market. The rate can then be

²¹ <https://www.colorado.gov/pacific/sites/default/files/Market%20Size%20and%20Demand%20Study,%20July%209,%202014%5B1%5D.pdf>

²² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3228562/>

²³ <http://www.greenstate.com/explainers/a9875853/lets-be-real-pot-taxes-wont-save-school-budgets>

raised at a later date, as even the black market has start-up costs and an increase in the tax rate will not necessarily correlate with an increase in the black market.²⁴

Determining the purpose of taxation will be a necessary step before Freedman & Koski, Inc. can determine the best tax rate and the way it should be assessed. Some additional considerations:

Ease of enforcement and collection: Maine should take into consideration the challenges of assessing the tax and auditing for compliance. This is particularly true given the banking challenge and the reliance on the seed-to-sale tracking system.

Fairness of tax burden across the supply chain and consumers: Maine should take into consideration how the tax burden is being dispersed. While a lot of the costs are naturally spread out through natural economic dynamics, there can be exceptions.

Steadiness of revenue stream: Some tax revenues are more stable than others. As price fluctuates, for example, a sales tax may become an unreliable source of revenue. Transitions to taxing by weight or quantity may be more useful in those situations.

Flexibility in policy: Given the dynamic nature of legalization, both as a policy and as an economic phenomenon, Maine should consider the best ways to maintain flexibility as unexpected situations arise.

Action Plan: Freedman & Koski, Inc. will create guiding principles around tax policy based on the purposes articulated by relevant stakeholder groups. We will then create a policy document that articulates the best ways to assess taxes, including tax rates. From there we will be able to estimate total anticipated tax revenue.

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 have taken different approaches to how they monitor and enforce compliance with licensees, but there are consistent aspects that have been incorporated into most programs. It is difficult to assess which programs have had the greatest success; so, the focus here is on strategies SLAs typically adopt to establish enforcement programs.

Licensing- Most, if not all, marijuana regulatory frameworks require licensing. Licensing serves as the “gatekeeper”, which gives government reasonable assurances that licensees meet requirements of licensure and do not have any mandatory disqualifiers. Licensing also gives the SLA a detailed makeup of licensed companies, funding sources, ownership and basic

²⁴<https://www.economist.com/news/briefing/21692873-growing-number-countries-are-deciding-ditch-prohibition-what-comes>

requirements. Licenses are monitored annually or bi-annually at the time of renewal and are subject to certain reporting requirements should the licensed company undergo material changes to ownership, funding or premises.

Alarm systems- Alarm systems are often required in order protect cannabis inventories when stores are both closed and open. This often includes 24/7 monitoring by a 3rd party company, minimum requirements of system (motion detectors, glass break, etc.), duty to report burglaries, duty to document alarm responses, etc.

Surveillance Monitoring- Surveillance systems partially provide documentation of compliant business practices, along with another layer of security for the licensed premises. In many cases, these requirements are modeled after casino gambling standards. These requirements usually address the number of cameras, amount of coverage, quality of the coverage, amount of time that needs to be kept for future review by local agency (i.e. 30, 60, 90 days), access into the system, security of system and penalties for failing to maintain compliance.

Seed to Sale Reporting- In almost every jurisdiction, the state mandates use of a seed-to-sale inventory tracking system for licensees. These systems have become an instrumental data collection tool for states to aggregate important data points, inform new regulations, monitor licensees and ground enforcement actions.

Books and Records- This rule can be largely based on what the local jurisdiction needs, specific to its requirements (taxes, floorplans, surveillance plans, ownership restrictions, required policies, etc.). If needs are minimal, the local jurisdiction can require, through regulation, the ability to inspect all books and records of the company to account fully for all business transactions.

Inspection Requirements- Most states have rules that give the SLA and other relevant agencies access to licensed premises for the purpose of inspecting books and records, conducting inventory audits, and checking for general compliance.

The lack of banking services and concerns over diversion to other states can largely be mitigated by the suite of regulations noted above. It is important for states to continue to try and resolve limitations to marijuana banking, but in the meantime, SLAs can go a long way in addressing the accountability concerns by adopting regulations in the categories above.

Action Plan- As would be the case on any regulation, Freedman and Koski, Inc. would help Maine construct a collaborative process focused on engaging a diverse group of stakeholders with different views on legalization to find the right balance for these categories of rules. The lack of banking services and preventing diversion of marijuana outside the regulated framework are very important concerns to address in a thoughtful way that places public health and safety at the forefront of the conversation. Freedman and Koski, Inc. would also help Maine develop strategies to draft and socialize final rules to ensure that stakeholders are aware of the position

the state is taking on certain issues and to ensure their voices were incorporated into the final products.

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

Mandatory testing programs are an important part of ensuring product safety in a marijuana regulatory framework. There are three main categories of contaminants: residual solvents, microbials, and pesticides. States have adopted many different standards for what constitutes a failing test. Each category noted above has its own unique set of challenges and, in some cases, needs different subject matter experts to inform the conversation. Even then, the right solution can be evasive.

It is highly recommended for Maine to use a workgroup process that includes prospective testing facility licensees, prospective cultivation and manufacturer licensees, members from DACF, BABLO, Department of Health, as well as scientists and other testing experts to work through the challenges before arriving at a complete list of contaminants and thresholds for failure.

Important considerations

- A. Most mandatory testing programs also require potency testing for flower, concentrate and edibles and homogeneity testing for edibles.
- B. It is important to ensure adequate testing facility capacity for each type of mandatory test. If there is not enough testing capacity, marijuana and marijuana products could be held up for extended periods of time, waiting for a passing test result. This could create problems providing enough supply to the retail marijuana stores.
- C. Different test types could require different instrumentation and new lab accreditation before the testing facility will be able to perform tests. Testing facilities are reluctant to make the investment until it knows which tests are going to be required. It takes at least several months for testing facilities to be ready to perform a new mandatory test.
- D. Testing frequency, process validation, sample sizes, and sample collection are other areas of a mandatory testing program that need to be considered.

Action Plan: Freedman and Koski, Inc. has extensive experience navigating that challenges of implementing a mandatory testing program. We could help Maine anticipate many of the biggest challenges, identify the right group to identify solutions, and help strategically implement the program. We did this with residual solvents and microbials early on in the implementation of marijuana in Colorado and were challenged later by pesticides, which continues to be a difficult area of policy to implement for most states.

We headed an effort to introduce pesticide regulations and enforcement to the Colorado marijuana industry. Pesticide regulation and enforcement are usually run by the federal government, but the federal government refused to help Colorado with marijuana pesticide regulation.

We worked with the governor of Colorado, the Department of Agriculture, the Department of Public Health and Environment, and the Department of Revenue to create the first ever state-run pesticide program for marijuana.

The marijuana growers had been using whatever pesticide they wanted for over a decade, some of which were known to cleave off hydrogen cyanide at high temperatures. Since no pesticide manufacturer had ever tested its product as safe for use on marijuana, we required that the pesticide had to be safe on leafy greens, safe to be smoked, safe to be eaten, and could be used in any amount. This left mainly strong soaps and oils.

We gave notice to marijuana growers that a big change was coming. Unfortunately, many marijuana growers lacked the knowledge or the resources to grow without their unsafe pesticides. When we started to seize plants, businesses threatened litigation. We worked through policy issues, procedural issues, communication plans, and mitigation plans. With media and industry scrutinizing us, we became the first state to successfully “in-house” pesticide enforcement.

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

This question is expansive and required numerous workgroups on each question in each state that legalized marijuana. Given the impacts on public health and industry, we would suggest forming separate public workgroups for packaging and labeling, advertising, serving size, and potency. The following are some considerations around these topics.

Packaging and labeling: There are many different purposes for proper packaging and labeling: information for the consumer, information for the regulator, legal disclaimers for the producer, and health and safety warnings. Each should be considered separately and as a whole to ensure neither the package nor the labels have become too burdensome or difficult to read. One of the more compelling reasons to have best practices for packaging and labeling, however, is preventing accidental ingestion among children. Requiring childproof packages and proper statements about keeping marijuana stored and locked away from children should be mandatory starting points.

Advertising: The proper restrictions on advertising are vital to not attracting children into the market. A proper workgroup process should explore ways to crosswalk best practices from tobacco and alcohol to marijuana. Maine should balance best practices while not infringing on any applicable commercial free speech rights.

Serving size: One of the more frequent short-term negative public health effects is over consumption of edibles. All states have created serving sizes between 5mg of THC to 10mg of THC. Additionally, states have found ways to separate or demarcate servings that are intuitive to the consumer. Finally, strong public education campaigns educating

consumers about the dangers of overconsumption and on the delayed effects of edible marijuana have proven effective.

Potency: Potency remains one of the most controversial topics in legalized marijuana states. The lack of rigorous research at the federal level unfortunately hinders the state from making informed decisions in this area. We suggest putting together a group of public health specialists to help research and study this issue.

Action plan: Freedman and Koski, Inc. will help Maine create the correct working groups for these issues. Additionally, we will provide the administration and working group members with draft standards to consider while discussing these topics.

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

As Andrew stated in testimony to Maine’s Marijuana Legalization Implementation Committee, any governance structure the state considers for licensed commercialized adult-use marijuana must be complementary and integrated with both a licensed commercialized medical marijuana system and all legal avenues to grow marijuana in an unlicensed manner.²⁵ The State should integrate medical and adult-use marijuana with a few goals in mind:

Preventing large grows outside of a closed-loop, seed-to-sale system: As mentioned above, the ability for the criminal element to make a profit from selling marijuana across state lines serves as an existential threat to the legalization system. While Maine works vigilantly to create and maintain a regulated closed-loop system, it should also ensure that the legal parameters for growing marijuana outside of that system are limited and enforceable.

Onboarding growers into the licensed system: Many growers have been operating, legally and otherwise, in this market for decades. While it is possible to exclude those growers from the regulated system and hope that the new system captures their consumer base, we would not advise that. That path risks alienating a patient and caregiver community that is fairly strong and might dare law enforcement intervention. Instead, we would suggest creating ways for growers to have the opportunity to onramp into the licensed system.

Regulatory ease: While there are some areas where medical and adult-use regulations may need to differ (e.g., total potency of an edible), Maine should attempt to harmonize these regulations wherever possible, and in ways that still protect the integrity of the medical patient’s rights. This will help industry and regulators maintain compliance.

²⁵ <http://www.wcsh6.com/news/local/colorado-marijuana-expert-gives-maine-lawmakers-advice-based-on-his-states-experience/457379089>

Action Plan: First, we will review the current legal landscape to determine any weaknesses the criminal element may expose in either the medical or adult-use market. Second, we will help create an onboarding process that allows those who want to be licensed to do so. And third, we will review regulations to ensure alignment across the medical and adult-use systems.

10. Free response – use this opportunity to share any other thoughts or insights you’d like the State to know.

Developing and implementing voter-mandated marijuana policy is a high-profile venture for any government. This policy arena remains very divisive and full of uncertainty. State marijuana laws are still disparate with federal law, emerging regulatory markets face dynamic shifts as they seek to onboard dozens of companies into a statewide regulatory framework, the timing of policy development is tight and the interplay between state and local jurisdictions is still coming into focus. In the shadows of these challenges, Maine is at the onset of a major policy undertaking as it seeks to solidify its regulatory goals with respect to the development and implementation of marijuana policy for the state. Despite these challenges, success is possible and the responses to this RFI are designed to help Maine make informed decisions going forward.