

STATEMENT OF BASIS AND PURPOSE – COLORADO RULES GOVERNING MEDICAL MARIJUANA

In November of 2000, Colorado voters established an affirmative defense for the use of small amounts of medical marijuana for patients and their primary caregivers through an amendment to the Colorado Constitution, Article XVIII, Section 14, popularly known as “Amendment 20.” In 2010, the Colorado General Assembly established the Colorado Medical Marijuana Code (the “Medical Code”). The Medical Code directs the State Licensing Authority, the Executive Director of the Colorado Department of Revenue, to regulate Medical Marijuana Businesses. In the three years since the adoption of the Medical Code, the State Licensing Authority has promulgated several rules implementing the Medical Code.

On November 6, 2012, Colorado voters approved an amendment to the Colorado Constitution, Article XVIII, Section 16, popularly known as “Amendment 64,” which directed the Colorado Department of Revenue to promulgate rules governing businesses that cultivate and sell Retail Marijuana. The amendment was proclaimed into the Colorado Constitution on December 10, 2012.

Because Amendment 64 presented issues of first impression in Colorado and the United States, along with very short timeframes for implementation, Governor John Hickenlooper established the Amendment 64 Implementation Task Force, co-chaired by Executive Director of the Department of Revenue Barbara Brohl and the Governor’s Chief Legal Counsel Jack Finlaw, on December 10, 2012. The Governor directed the Task Force “to identify the legal, policy, and procedural issues that must be resolved, and to offer suggestions and proposals for legislative, regulatory, and executive actions that need to be taken, for the effective and efficient implementation of Amendment 64.” The Task Force, assisted by several Working Groups, provided extensive policy recommendations to the Colorado General Assembly.

The Colorado General Assembly adopted three bills during the 2013 legislative session to implement Amendment 64, and Colorado Governor John Hickenlooper signed those bills into law on May 28, 2013. Amendment 64 and the implementing legislation (particularly, House Bill 13-1317) required that the State Licensing Authority, the Executive Director of the Colorado Department of Revenue, promulgate certain rules on or before July 1, 2013. To comply with those requirements within the short period between adoption of the legislation and required promulgation of rules, the State Licensing Authority adopted emergency rules governing Retail Marijuana in the state of Colorado.

Although the emergency rules governed only Retail Marijuana, the State Licensing Authority determined that it would be in the public interest to adopt similar regulations for Medical Marijuana Businesses. First, current Medical Marijuana Businesses will comprise the potential applicant pool for Retail Marijuana Establishment licenses between October 1, 2013 and July 1, 2014. Second, under certain circumstances, a Medical Marijuana Business licensee may also have a Retail Marijuana Establishment license. Having a consistent set of rules where possible will allow for a more effective regulatory scheme for the regulated community, the public and the Marijuana Enforcement Division. Due to differences between the Retail Code and the Medical Code, and the impact of Amendment 64, in some places the rules differ but where possible they are consistent.

Immediately after adopting the July 1, 2013 emergency regulations governing Retail Marijuana, the Department of Revenue convened five representative groups, known as working groups, which provided input and substantive suggestions regarding proposed rules governing Retail Marijuana Establishments and Medical Marijuana Businesses in Colorado. Each working group discussed a different set of issues, broken down as follows: Licensing, Licensed Premises, Transportation, and Storage; Licensed Entities and Inventory Tracking; Record Keeping, Enforcement and Discipline; Labeling, Packaging, Product Safety & Marketing; and Medical Differentiation. Representatives from law enforcement, the Governor's Office, the Attorney General's Office, the Department of Public Health and Environment, local authorities, industry members, trade industries, child protection advocates, and subject matter experts in the fields of substance abuse, toxicology, pharmacology and marketing participated in the working groups.

On July 15, 2013, the State Licensing Authority filed a Notice of Rulemaking with the Colorado Secretary of State regarding both Medical Marijuana and Retail Marijuana. Since that time, many written comments from the public have been submitted. On August 20 and 21, 2013, a rulemaking hearing was held regarding the proposed rules, and many members of the public provided oral testimony. The public was informed that written comments on the proposed rules would be accepted until 5:00 p.m. on August 27, 2013, and many additional written comments were submitted.

The State Licensing Authority has considered the rulemaking record. That record includes all materials considered by or produced by the Governor's Amendment 64 Implementation Task Force and its working groups; the oral and written record of the meetings of the State Licensing Authority's rulemaking working groups; all written comments submitted regarding the proposed rules; and all oral testimony provided during the August 20 and 21, 2013 rulemaking hearing.

The State Licensing Authority has also considered the direction provided by the United States Department of Justice through an August 29, 2013 letter from United States Attorney General Eric Holder to Governors John Hickenlooper of Colorado and Jay Inslee of Washington, and an accompanying memorandum to all United States Attorneys from Deputy Attorney General James M. Cole. Through this correspondence, the United States Department of Justice has clarified that it will continue to enforce the Controlled Substances Act in Colorado, but that it will not challenge Colorado's ability to regulate the marijuana industry in accordance with state law, based upon the expectation that the state and local governments will implement strong and effective regulatory and enforcement systems that address public safety, public health and other law enforcement interests. Some of those federal law enforcement priorities of particular relevance to these rules include preventing the distribution of marijuana to minors, preventing the diversion of marijuana from states where it is legal under state law to other states, and preventing the exacerbation of adverse public health consequences associated with marijuana use. As an illustration, Deputy Attorney General Cole noted that the federal interest in preventing the distribution of marijuana to minors "would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors."

In adopting these rules, the State Licensing Authority is complying with the mandates and objectives of the Medical Code. These rules must implement the extensive regulatory requirements set forth in the Medical Code. Above all though, these rules accomplish the state of Colorado's guiding principle through this process: to create a robust regulatory and enforcement environment that protects public safety and prevents diversion of Medical Marijuana to non-patients or to individuals outside the state of Colorado.