

SOUTH DAKOTA DEPARTMENT OF REVENUE

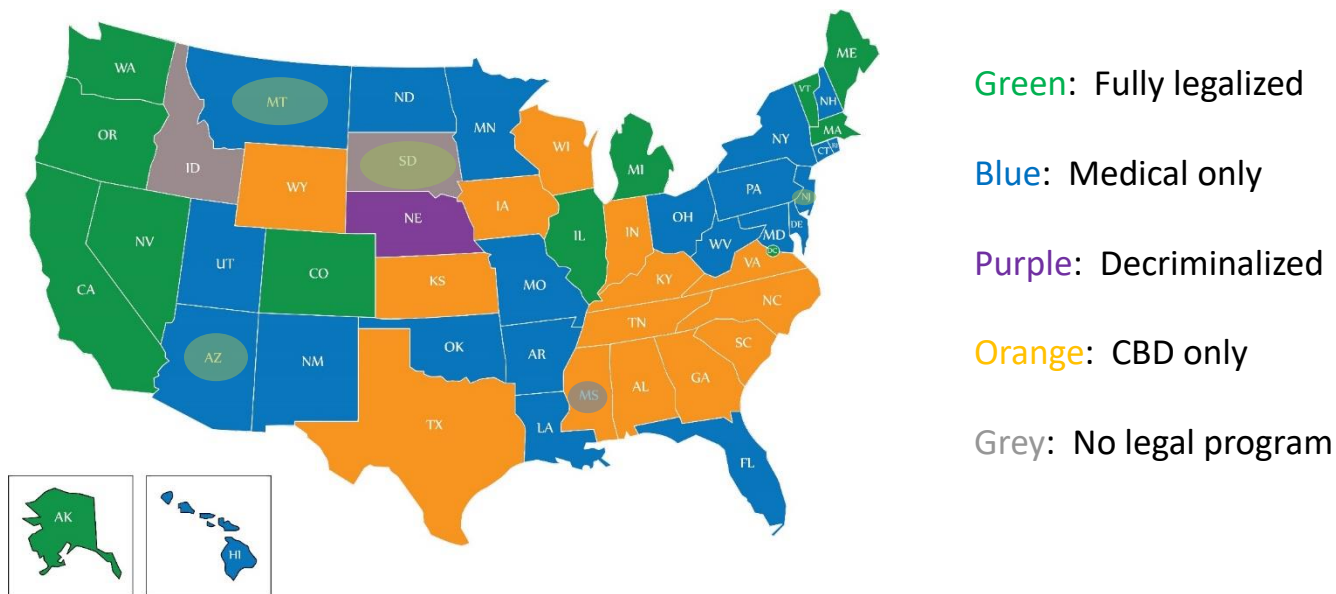
# MARIJUANA REGULATION

February 2021



# MARIJUANA REGULATION

## Marijuana Legalization Map 2021



\*SD, MT, AZ, NJ passed recreational marijuana in Nov. 2020

\*SD, MS passed medical marijuana in Nov. 2020

# MARIJUANA REGULATION

## Federal Enforcement Guidelines

Marijuana remains illegal under federal law. However, state regulatory programs have generally been allowed to be established with minimal interference from the federal government if the programs adhere to certain guidelines that were contained in the so-called “Cole Memo” issued during the Obama administration. While the Cole Memo has since been rescinded, states continue to adhere to the guidelines when constructing regulatory programs.

### Eight Guidelines

1. Preventing distribution to minors.
2. Preventing the revenue from going to criminal enterprises, gangs, and cartels.
3. Preventing the diversion of marijuana from states where it is legal to states where it is illegal.
4. Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity.
5. Preventing violence and the use of firearms in the cultivation and distribution of marijuana.
6. Preventing drugged driving and other adverse public health consequences associated with marijuana use.
7. Preventing the growing of marijuana on public lands and the environmental dangers posed by marijuana production on public lands.
8. Preventing marijuana possession or use on federal property.

# MARIJUANA REGULATION

## Common Elements of State Regulatory Programs

While each state that has legalized marijuana for either medical or recreational use has unique regulatory features, there are some common elements that may serve as a guide for developing a program in South Dakota.

### Licensing Requirements

- Criminal and financial background investigations for all applicants
- Residency requirements
- Location restrictions (generally not permitted within a certain distance of schools, daycares, libraries, and other locations where minors congregate)

### Traceability Systems

- Commonly referred to as “track and trace” or “seed-to-sale” systems
- Purpose is to ensure all marijuana grown, processed, and sold by licensees stays within the regulatory system and is not diverted to the illicit market
- Several vendors operate traceability systems and the licensees are generally responsible for a portion of the system costs

# MARIJUANA REGULATION

## Common Elements of State Regulatory Programs (continued)

### Strict packaging and labeling requirements

- Limits on serving size and concentration per package
- Warning labels
- Must contain a universal symbol identifying the product contains THC and is not for persons under 21 years of age
- Net weight

**Warning:** This product has intoxicating effects and may be habit forming. There may be health risks associated with the consumption of this product. Should not be used by women that are pregnant or breast feeding. This product may be unlawful outside of Washington State. Marijuana can impair concentration, coordination and judgment. Do not operate a vehicle or machinery under the influence of this drug. For use only by adults 21 and older. Keep out of children.

**Caution:** When eaten or swallowed, the intoxicating effects of this drug may be delayed by two or more hours.

THIS PRODUCT CONTAINS MARIJUANA

Mfg. by TwoLeaf Group UBI#6344149



Lot#6334414900001234  
10mg Active THC per Serving  
Contains 10 Servings  
Net Weight 5000mg  
Mfg Date: 02/08/2017  
Best By: 02/08/2018  
Retail UBI#603344149

**Ingredients: Organic Fractionated Coconut Oil, CO2 Extracted Cannabis Oil.**

**No pesticides were used in the production of this product.**

# MARIJUANA REGULATION

## Common Elements of State Regulatory Programs (continued)

### Consumer Safety

- Product and Label Approval
  - Prevent products and packaging that especially appeal to children (e.g. no gummy bears or suckers)
- Laboratory Testing and Approval
  - Ensure uniformity of product and accurate labelling
- Retail store signage and product warnings
  - No minors allowed
  - Product usage signage required in retail stores
- Advertising restrictions

# MARIJUANA REGULATION

## Where do we start?

### What have we been doing?

- Numerous discussions with other states and industry experts
- Interagency workgroup including DOR, DOH, and DPS has been meeting weekly since November
- Joined the Cannabis Regulators Association (CANNRA), an organization of 25 states with legal marijuana regulatory programs
- Contracted with Cannabis Public Policy Consulting (CPPC) to provide recommendations and best practices for a regulatory framework for both recreational and medical marijuana

### Where are we at right now?

- CPPC has provided an analysis of the 8 critical policy areas that need to be considered:
  - **Licensing**
  - **Local Authorization**
  - **Vertical Integration**
  - **Production Management**
  - **Testing**
  - **Traceability**
  - **Taxation**
  - **Product Approval**

# MARIJUANA REGULATION

## 8 Critical Policy Areas – Licensing

### What are the options?

#### **Option A: Separate license type for each point on the supply chain**

- Most common system
- Benefits: separating licensed activities ensures better product management and tracking

#### **Option B: One license type with universal privileges on the supply chain**

- Several medical-only states use this structure, including AZ, FL, HI, MN, NJ, and NH
- High barrier to entry, as licensees will need sufficient capital for all activities in the supply chain
- May ease administrative burden

#### **Alternative Consideration: Medical Registry and Caregivers**

- 14 states permit caregivers to cultivate; all other states allow caregivers to assist in accessing marijuana only

**IM 26 creates four license types (cultivators, manufacturers, testing facilities, and dispensaries), but does not set license fees or place caps on the number of licenses of each type**



# MARIJUANA REGULATION

## 8 Critical Policy Areas – Local Authorization

### What are the options?

#### **Option A: Opt-In Model**

- Requires a dual licensing process between state and local government
- Most common and accepted model
- Risk of not enough localities opting-in, which can affect patient access

#### **Option B: Opt-out Model**

- Requires local governments to formally prohibit marijuana businesses
- Can create large pockets in the state with no patient access if too many localities opt-out

**IM 26 provides for an opt-out model, except for dispensaries**

# MARIJUANA REGULATION

## 8 Critical Policy Areas – Vertical Integration

### What are the options?

#### **Option A: Mandatory Vertical Integration**

- Relatively common approach in states with only medical programs, including AZ, DE, FL, HI, NJ, NY, NM, and MN
- Same pros and cons as a one license type model

#### **Option B: Prohibited Vertical Integration**

- Similar to how most states regulate alcoholic beverages (the so-called “three-tiered system”)
- Very uncommon model for either medical or recreational marijuana programs (WA and LA only states that prohibit VI)

#### **Option C: Permissive Vertical Integration**

- Most common model for both medical and recreational marijuana programs

**IM 26 does not address Vertical Integration**

# MARIJUANA REGULATION

## 8 Critical Policy Areas – Production Management

### What are the options?

#### **Option A: State license and plant caps**

- Many states cap the number of licenses, particularly for dispensaries
- Many states limit the number of plants a licensee can grow, and establish different tiers allowing certain licensees to grow more plants

#### **Option B: Local license and plant caps**

- Some states permit local government to set license and plant caps

#### **Alternative Consideration: Plant caps on patient registry cards**

- Most states that allow patients or caregivers to homegrow set caps on the number of plants that can be grown.

**IM 26 allows local governments to set license caps, but they may not prohibit dispensaries**

**IM26 does not allow DOH to set licensing caps**

# MARIJUANA REGULATION

## 8 Critical Policy Areas – Testing

### What are the options?

#### **Option A: Mandatory testing for all panels**

- The typical panels include: potency, microbials, contaminants/foreign matter, heavy metals/solvents, moisture content, and pesticides
- Most states require testing for all the typical panels

#### **Option B: Mandatory testing with restrictions or a progressive roll out of panels**

- Also known as BETA testing, this model addresses the reality that testing lab capacity is limited and allows labs to “ramp up” at varying rates until they are equipped to test all the typical panels

#### **Option C: Mandatory testing, plus random testing**

- AK and CO use this model, and it is gaining traction with state regulators

#### **Option D: No mandatory testing (FL)**

**IM 26 provides rulemaking authority to DOH on testing requirements**

# MARIJUANA REGULATION

## 8 Critical Policy Areas – Traceability

### What are the options?

#### **State-mandated traceability solution**

- Almost all states with medical or recreational marijuana regulatory programs require traceability, or “seed-to-sale” tracking as a means of production management and protecting against diversion into the illicit market
- Systems take time to implement and the state will be required to issue a Request for Proposal (RFP) before selecting a traceability solution

#### **Limited tracking for caregivers**

- Generally, states that permit patient and caregiver homegrow do not require tracking for this activity
- Some states are contemplating requiring larger caregiver cultivators to engage in limited tracking

**IM 26 does not address traceability**

# MARIJUANA REGULATION

## 8 Critical Policy Areas – Taxation

### What are the options?

#### **Option A: Weight-Based Taxation**

- Not common in medical marijuana programs, but increasingly used by states with recreational marijuana programs

#### **Option B: Percentage of Price-Based Taxation**

- Most common method of taxing medical or recreational marijuana
- Similar to a retail sales tax, but can be levied at the wholesale level or at the retail point of sale

#### **Option C: Potency-Based Taxation**

- Common framework for taxing alcoholic beverages, where more-potent distilled spirits are subject to a higher tax than beer or wine
- Growing body of research suggesting benefits of potency-based taxation for marijuana, but only one state (IL) has adopted this model

**IM 26 does not address taxation**

# MARIJUANA REGULATION

## 8 Critical Policy Areas – Product Approval

### What are the options?

#### **Restrict product category**

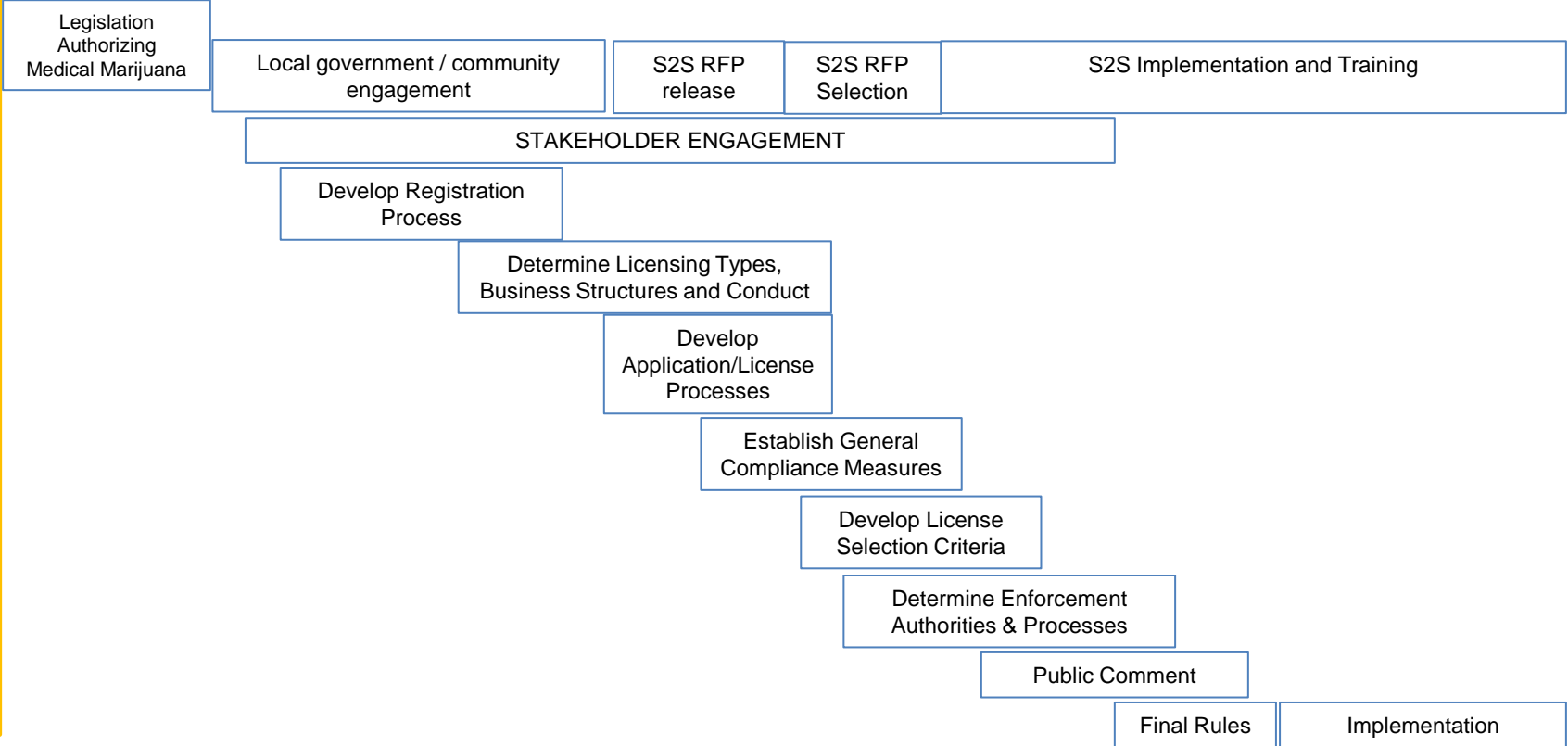
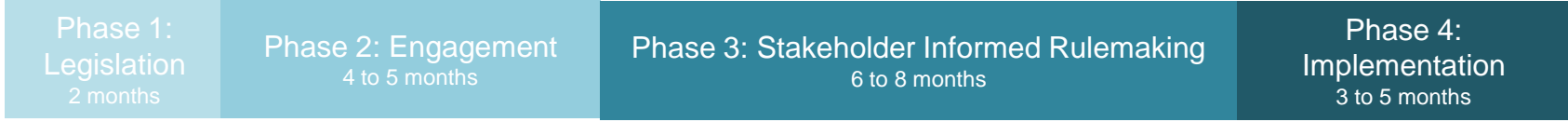
- The three general categories of marijuana products are flower, edibles, and concentrates
- Some states restrict products in one or more categories in their medical marijuana programs
- No states limit any product category in recreational marijuana programs

#### **Restrict Potency of Products**

#### **Restrict Dosage of Products**

**IM 26 provides rulemaking authority to DOH on product approval**

# MARIJUANA REGULATION



Key Milestones



# MARIJUANA REGULATION

## Implementation Timeframe for Other States

On average, it takes 14-20 months to create an effective, sustainable, and functioning medical marijuana system, without any existing licensing system.

State	Arizona	Minnesota	North Dakota	Missouri
Law Enacted	Nov. 2010	May 2014	Nov. 2016	Nov. 2018
Dispensary Sales Began	Dec. 2012	Jul. 2015	Oct. 2018	Oct. 2020
Timeframe	2 years	14 months	2 years	2 years

# Questions?



South Dakota  
Department of Revenue



@SDRevenue



South Dakota DOR



Sign-up for our  
E-Newsletter