



SEVEN PRINCIPLES TO GUIDE A SUCCESSFUL AND WELL-REGULATED MARIJUANA MARKET

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The nationwide prohibition on marijuana is quickly coming to an end. To date, nine states plus Washington, D.C. have legalized marijuana for recreational use and thirty-one have done so for medicinal use. While these developments are moving fast, there is much to learn from both the successes and mistakes made thus far regarding state regulation of marijuana. Below are seven key principles to guide policymakers:

1

RECOGNIZE THERE IS A LIMIT TO THE TAX BURDEN THE INDUSTRY CAN BEAR.

Although some policymakers support legalization as a possible fiscal boon to state and local budgets because of the potential to levy special excise taxes, high tax rates will raise the final price to consumers on the legal market and allow the black market to remain competitive. Policymakers must remain aware that licensed marijuana businesses already must pay all standard business and sales taxes within their jurisdiction and that they are penalized on federal income taxes because they are not permitted to deduct ordinary business expenses. Additional excise taxes may be appropriate in certain circumstances, but complex systems that levy taxes at both the wholesale and retail levels combine to make the legal market uncompetitive. Regardless of any policymaker's desire for additional tax revenue, a legalization effort should not cede market share to black market sources due to high prices on the legal market, as this would negatively affect public revenues and safety.

2

DO NOT PLACE UNNECESSARY LIMITS ON THE NUMBER OF LICENSES.

Several states have capped the number of retail licenses they will award or the size of permissible grow operations. This creates market speculation for the licenses themselves and limits consumers' and medical patients' access to legal marijuana products, particularly in rural areas that may be far from the nearest dispensary or store. There is no reliable economic means of determining the "right" number of suppliers or who the "right" suppliers are—only reasonable market competition combined with consistent regulatory standards is an effective process for answering that question.

3

AWARD LICENSES BASED ON COMPETENCY AND BUSINESS ACUMEN.

If the number of licenses must be limited, policymakers should ensure they are awarded on an open, competitive basis that considers as its primary criteria the ability of the prospective licensee to operate a successful business and comply with relevant regulatory and tax provisions. Special preferences, capital requirements, or carve-outs for particular individuals or groups only increase the likelihood of a license being awarded to an operator that may not succeed in the market and reliably remit tax payments or satisfy business or contractual obligations. At the same time, states should take measures to ensure they do not confer a de facto monopoly franchise upon a single licensee by ensuring licenses are awarded to multiple applicants.

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4 ALLOW BUSINESS OWNERS TO OPERATE WITHIN A SCALE AND STRUCTURE THEY CAN MANAGE.

States should neither require nor prohibit the vertical integration of marijuana cultivation (e.g., growing), production (e.g., extraction of essential oils for vapes or edibles), and dispensary/retail licenses. Policymakers should recognize that business people have different areas of expertise and available capital and they should remain free to operate at a scale they can manage.

5 ESTABLISH PARAMETERS FOR LOCAL GOVERNMENTS.

Although local jurisdictions should have some say in how to govern their communities, states should ensure consumers and patients have safe access to the legal market within a reasonable distance of their homes. Florida, for instance, does not allow local zoning codes to be more restrictive for marijuana dispensaries than for pharmacies. Massachusetts allows local ordinances to govern the time, place and manner of operations but does not permit ordinances that are “unreasonably impracticable.”

6 REGULATIONS BASED ON EVIDENCE AND ALLOWING ALTERNATIVE APPROACHES.

Regulations of the marijuana market should be based on a thorough analysis of the consequences of a proposed rule. They should be based on evidence of real, demonstrable harms not solved by market forces or private decisions, not hypothetical or possible harms or problems. Regulatory requirements should allow for alternative methods for licensees to best achieve the performance outcomes sought by regulators, holding them to a standard of effectiveness in meeting objectively defined regulatory standards, as opposed to adherence to any specifically prescribed method of achieving those outcomes.

7 DO NOT PENALIZE PEOPLE FOR ACTS THAT ARE NO LONGER CRIMES.

Any citizen that has suffered a criminal record for violation of state laws governing marijuana that would not violate new statutory provisions, should be provided expungement of convictions for the prior crime. It costs approximately \$60,000 to incarcerate someone each year in New Jersey, and state government should be spending precious taxpayer dollars on protecting the public from violent offenders, instead of housing non-violent offenders.