It’s been a year since Colorado and Washington legalized recreational marijuana, and not all that was predicted has come to pass—with some surprises along the way.

BY SUZANNE WEISS

Shortly after 8 a.m. on New Year’s Day 2014, amid a throng of reporters and photographers from across the nation, a 32-year-old former Marine named Sean Azzariti walked into a small shop just north of downtown Denver and purchased 3.5 grams of Bubba Kush cannabis and a bag of pot-infused chocolate truffles.

With that $59 transaction, Colorado’s first-in-the-world commercial marijuana market was up and running.

One year (and roughly $280 million in sales) later, the Centennial State’s experiment with legalized pot remains very much a work in progress, as does the more-limited commercial marijuana market in Washington, which was launched in mid-2014.

Both Colorado and Washington have wrestled with a variety of unanticipated problems, which have been amplified by the close scrutiny the two states are under.

“We aren’t jumping to any conclusions about how we’re doing—the issues are too complex, and there’s not enough data,” says Andrew Freedman, who was appointed by Governor John Hickenlooper to coordinate Colorado’s marijuana policies. “We believe this is a five- to 10-year conversation.”

Time Will Tell

Representative Jonathan Singer (D), one of only two legislators who endorsed the legal-pot initiative approved by Colorado voters in 2012, feels the state has, so far, done a good job of handling a major shift in public health and social policy.

“Only time will tell, but at this point I would give us a B-plus,” Singer says, while conceding that, “there were things we didn’t focus enough on to start out with that I wish we had.”

The biggest misstep, by most accounts, was a lack of attention to regulating the potency and packaging of edible cannabis, a large and fast-growing...
segment of the commercial pot market, says Singer. He notes that establishing a coherent set of regulations for edible products is high on the agenda of both parties in the 2015 legislative session.

Other problems that have emerged range from flawed tax-revenue projections, to the fact that growers and sellers are dealing almost exclusively in cash because of banks’ reluctance to accept money from the sales of a drug still classified as illegal under federal law.

The most recent headache is a lawsuit filed in December by the attorneys general of two neighboring states, Nebraska and Oklahoma. It claims that Colorado “has created a dangerous gap in the federal drug control system,” and the drugs flowing through that gap “undermine plaintiff states’ own marijuana bans and place stress on their criminal justice systems.”

The challenges Colorado faces are to be expected, says House Minority Leader Brian DelGrosso (R). “We can’t point to other states and say this or that hasn’t worked out for them. We’re breaking new ground. I don’t think many of us are happy we’re in this position, but we are. And we’ve got to figure it out.”

Building From Scratch

As for Washington, legalization has been hampered by a host of logistical and policy problems. While Colorado used its highly regulated, 12-year-old medical marijuana system as a guide for its new recreational market, Washington decided to build its market from scratch, which took more than six months. And when a regulatory framework finally was in place, it did not include the network of dispensaries that had been serving medical marijuana patients—with little state oversight—for more than a decade.

“We need to take a whole new look at this in the 2015 session,” says Senator Jeanne Kohl-Welles (D). “Right now, we have a legal system in place for recreational use, but we have really no legal system for medical marijuana growing, processing and selling. So we’re left in a bit of a mess.”

Kohl-Welles has introduced a bill that would incorporate unregulated dispensaries into the system that has been created for recreational customers.

Her bill is also designed to address another emerging challenge: unexpected and widening opposition at the local level. During the past year, nearly half of Washington’s municipalities have enacted bans on retail marijuana outlets. The primary reason: Local communities do not get a cut of the hefty 25 percent state excise tax imposed at each of three levels—growing, processing and retail sales. So, to them, the cost of licensing and

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regulating startup cannabis growers and sellers, while also ensuring public safety, is an added burden with few benefits.

Kohl-Welles’ proposal calls for cutting marijuana taxes, consolidating them into a single levy collected at the retail level, and allowing cities and counties a share of the revenue.

Half the Tax

The financial windfall to be reaped from commercial marijuana sales was a major selling point of the legalization initiatives approved by voters in Colorado and Washington. But annual tax revenues from recreational pot sales—initially projected to top $100 million within a couple of years in both states—are on pace for only about half that figure.

In Washington, that’s primarily because of how long it took to put regulations in place, which caused bottlenecks in licensing and a serious mismatch between supply and demand. At one point last summer, many retail shops in Seattle were open only a couple of days a week because of growers’ inability to fill orders.

But forecasting revenue for a new market—particularly for something that was previously illegal—is a tricky undertaking. In Colorado, one reason that recreational marijuana sales have been lower than predicted is that fewer people than expected have shifted from medical marijuana, which isn’t subject to the 15 percent excise tax and 10 percent retail sales tax imposed on non-medical pot. (Medical marijuana, however, is still subject to state and local general sales taxes.)

Another problem, says Representative Dan Pabon (D), who chaired a special legislative committee on marijuana revenue, is a provision in Colorado law that allows “caregivers” to grow medical marijuana for other people. "What we’ve seen is caregivers may be diverting product from their patients and putting it onto the black market,” he says, adding that the committee is considering legislation aimed at tightening regulation of caregivers.

Mason Tvert, who led the pro-legalization campaign in Colorado and currently serves as communications director for the Washington, D.C.-based Marijuana Policy Project, shrugs off criticism about the flawed revenue projections.

“We didn’t make those estimates,” says Tvert. “They were just complete guesses that were put out there by some people in state government and a group called the Colorado Center on Law and Policy.”

Moreover, the structure and scope of Colorado’s recreational marijuana industry is still evolving. Tvert and others point out.

Tight Market

Until recently, only owners of existing medical marijuana businesses could apply to open recreational stores, and all businesses had to be generalists, growing the pot that they sold.

But now the Colorado Department of Revenue is accepting applications from newcomers to the recreational marijuana industry, and they will be allowed to specialize—as wholesale growers without a storefront, for instance, or as stand-alone stores that don’t grow their supply. The only
Edibles: For Experts Only?

Ingesting marijuana, as opposed to smoking it, has come a long way since the days of homemade pot brownies. Today, cannabis shops across Colorado offer a wide variety of products infused with THC, the psychoactive component of marijuana—from cookies, pies, fruit tarts and candy bars, to sodas and liqueurs, to honey, salsa, ice cream, butter and salad dressing.

In 2014, edibles, as they are called, accounted for about 40 percent of the estimated $700 million in medical and recreational marijuana sales in Colorado. Some three dozen companies in the state are churning out such products, the largest of which by far is Dixie Elixirs and Edibles, operating out of a 30,000-square-foot space in northeast Denver.

"Demand has been huge," says Joe Hadas, Dixie's chief marketing officer. "Our employees have been just killing it working around the clock."

But the booming edible marijuana market has emerged as a major source of concern and controversy over the past year, generating a series of troubling headlines.

In March, a college student visiting Denver ate marijuana-infused cookies, began acting wildly and leapt from a hotel balcony to his death. A month later, a Denver man shot and killed his wife while allegedly hallucinating after eating marijuana-laced Karma Kandy.

In both cases other substances were also found in their bodies, but those two deaths, combined with reports of groggy, nauseated children visiting emergency rooms after accidentally consuming pot-infused snacks, forced the state last spring to tighten its labeling and packaging rules for edible marijuana. Regulators are also considering whether to set lower limits on the amount of THC that can be packed into an edible product.

Well before the launch of recreational pot sales in Colorado, the edibles industry had been developing as part of the medical marijuana market—where the clients were anything but casual or first-time users. In drafting the rules and regulations for the state’s new commercial cannabis industry, Colorado policymakers made allowances for serious marijuana users by permitting recreational edibles to contain up to 100 milligrams of THC.

But while state law requires that marijuana-infused products prominently list their total THC content, customers have to read the fine print to figure out that they’re only supposed to eat a tiny portion of the candy bar or other edible they’ve purchased.

State law also says that companies that make marijuana food items must have their products tested for potency and consistency at independent labs. When a batch is determined to be too strong, it must be sent back to the maker to be fixed or thrown away. But so far, only two labs have been cleared to conduct such tests, and the state is scrambling to expand testing capacity.

In the face of growing concerns, Colorado lawmakers argue such lower potencies should be mandatory, capping all recreational edibles at just 10 milligrams THC—one-tenth of the current levels.

Late in the 2014 session, legislators approved a bill requiring the Colorado Department of Revenue’s Marijuana Enforcement Division to draft a report laying out options for better regulation of edibles sold in recreational marijuana shops.

Among the changes under consideration: putting dividing lines on products that make it easier to snap off a 10-milligram serving size or stamping products with colored symbols (like the ones on ski slopes), so that a green circle means the product is for beginners and a black diamond means you probably shouldn’t eat it unless you’re an “expert.”

Other options expected to be included in the revenue department’s report range from an outright ban on edibles to the creation of a commission to approve any consumables offered for retail sale.

Mason Tvert, communications director for the Marijuana Policy Project, takes issue with the depiction of edible products as “some sort of public health menace.”

“To put this in perspective, the Rocky Mountain Poison and Drug Center reported in 2011 that 2,700 children in Colorado required treatment after accidentally ingesting cosmetics or personal care products, and 739 after eating large amounts of vitamins,” Tvert says. “Compare that with the dozen or so reports of kids accidentally eating marijuana edibles last year.”

He also noted a January 2015 report from the Centers for Disease Control and Prevention, which states that more than 2,200 alcohol poisoning deaths occur among adults in the United States every year, or about six per day. “As far as I know, no one has died from eating or smoking marijuana,” he says.
requirement is that owners be Colorado residents.

It’s uncertain whether the market has room for such new businesses. Many cities and towns still have bans on recreational pot shops. Denver, which is home to the majority of Colorado’s nearly 600 dispensaries and retail shops, currently has a moratorium on applications from new businesses until 2016.

**The Sky Isn’t Falling**

Whatever lessons have been learned to date in Colorado and Washington, it is clearly far too soon to draw conclusions about the long-term impact of legalized marijuana in a variety of areas—crime, public health, traffic fatalities, teenage drug abuse and school expulsions, to name a few.

In Colorado, proponents of legalization argue that critics are cherry-picking anecdotes to tarnish a young industry that has been flourishing under intense scrutiny. The vast majority of the state’s medical and recreational marijuana stores are living up to stringent state rules, they say, and the stores have sold marijuana to more than 400,000 customers without incident.

And despite some of the thorny issues that have cropped up, public support for legalized pot remains strong, proponents say. In a Denver Post/Survey USA poll in December 2014, 92 percent of the respondents who voted for Amendment 64—which passed 55 percent to 45 percent—say they would vote the same way today.

“Every major institution says this would be horrible and lead to violence and blood in the streets,” says Brian Vicente, a Denver attorney who helped draft Amendment 64. “None of that’s happened. The sky did not fall.”

Kevin Sabet, executive director of Smart Approaches to Marijuana, an advocacy group opposed to legalization, begs to differ. “I think, by any measure, the experience of Colorado has not been a good one unless you’re in the marijuana business,” he says.

“We’ve seen lives damaged. We’ve seen deaths directly attributed to marijuana legalization. We’ve seen marijuana slipping through Colorado’s borders. We’ve seen marijuana getting into the hands of kids.”

At the same time, Sabet says, “We are now able to point to what legalization looks like in practice, not just in theory. That’s actually very valuable.”

One point on which both sides agree is that Colorado’s and Washington’s successes and failures with regulating marijuana will shape perceptions of legalization for voters considering similar measures in other states.

Last fall, voters in Alaska, Oregon and the District of Columbia approved legalizing cannabis for adult use. The measures in Alaska and Oregon were similar to Colorado’s and Washington’s, but D.C.’s measure is a bit different. It decriminalizes the possession of a small amount of pot or a few marijuana plants.

Campaigns are also under way to legalize recreational marijuana through ballot initiatives in several states, including Arizona, California, Maine, Massachusetts and Nevada.

**A Better Approach?**

To Mark Kleiman, a professor of public policy at the University of California, Los Angeles, who has studied and written extensively on marijuana legalization, the measure approved by District of Columbia voters, Initiative 71, is particularly noteworthy.

“It embodies a different—and perhaps better—approach to cannabis legalization than systems that involve more or less the same policies that now apply to alcohol: private, for-profit production and sale, regulated and taxed by the state,” Kleiman wrote in a recent article on the Slate website.

By contrast, Initiative 71 won’t allow any commercial activity. District residents will be able to grow a limited number of plants, possess a limited amount of the yield, and give away—but not sell—whatever they don’t want to use themselves. The system is called “grow and give.”

In the commercial models approved by Colorado, Washington, Alaska and Oregon, “the imperative to move the product in volume gives the cannabis industry the same incentive the alcohol industry has to encourage excessive use,” Kleiman says. “Eliminating organized marketing would likely lead to a much smaller increase in cannabis abuse than we would expect if we sell pot the way we now sell beer.”

**So Many Options**

The “grow and give” model isn’t the only option between full-on prohibition and commercial legalization, Kleiman says. “We could restrict production and sale to consumer-owned cooperatives, or to nonprofit enterprises, or to public-benefit corporations whose chartered purposes include the promotion of moderate consumption.’

He applauded Initiative 71’s focus on “experimenting with something other than the tired commercial formula that serves us so badly when it comes to alcohol.”

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**“Caregivers may be diverting product from their patients and putting it onto the black market.”**

—REPRESENTATIVE DAN PABON COLORADO
Q & A With Grower Tim Cullen

Tim Cullen is CEO and founder of the Colorado Harvest Company and Evergreen Apothecary, an expanding business in Denver that grows and sells marijuana. His most lucrative store averages 200 to 300 sales a day, with roughly 80 percent being for recreational purposes. The former high school biology teacher became interested in marijuana when he saw how it helped his father control the pain and nausea of Crohn’s Disease, which Cullen himself developed later. He began growing marijuana in his basement in Colorado, where growing medical marijuana for personal use has been legal for 12 years. He now grows his plants in 55,000 square feet in four warehouses.

Why do you think Colorado voters were the first to legalize recreational marijuana? People were ready for it. They wanted cannabis to be legal. Seventy years of anti-marijuana propaganda was just lost on people who have more experience with it. Before Amendment 64, we [medical marijuana growers] thought we were just tolerated by the community. But it passed by a larger margin than President Obama won the state. We stuck our head out of the store door and said, “Wow, the community actually is OK with us being here. They want us in business, which was really a good feeling.”

Which state laws have had the biggest impact on your business? House Bill 1284, without a question. It laid the groundwork for all the rules we play by today. It provided funding, through licensing, for the development of the Marijuana Enforcement Division, thereby allowing licensing to happen, vetting owners, disqualifying anyone tied to organized crime, setting up rules about where stores could operate and deciding which jurisdictions have final say over what. It cleaned everything up. Among many things, the law requires us to account for every plant we grow, so now we have a good internal tracking system. Each plant has a radio frequency tag with a unique imprint to our store. When the state inspector comes in, he simply takes his scanner gun, points and shoots, and he’s done. The bill isn’t perfect—it’s gone through all sorts of revisions, but at least it’s a starting point.

What more needs to be done? Some social issues could have used more thought. For example, if you smoke cannabis on your patio, and the smoke drifts into your neighbor’s yard, are you intruding on his freedom? What is private versus public consumption and where do you draw the line? With 20 percent to 25 percent of our sales going to people from out of state, more consideration should have been given to where those people are allowed to consume. With no cannabis clubs, they’re almost forced into some kind of public setting, like a park, which Denver has outlawed. If they go to the mountains, they have to be careful not to be on national forest land, which is subject to federal laws, which say possession is illegal. Can they smoke in a hotel, if it’s a smoking-allowed room? These questions have created real conflict in Colorado.

You complain labeling and packaging requirements are stricter for marijuana than for alcohol and tobacco. How so? Every jar of cannabis has to have a label listing everything that’s been added to the soil or sprayed on that plant, and be in child-resistant containers. Also, you have be 21 to walk into my store. I agree with these laws, they give Colorado citizens a level of comfort that marijuana is going to be marketed as an adult product, sold only to adults, correctly labeled and packaged, to prevent it from getting into the hands of minors. Alcohol and tobacco should be regulated at least at the same level. There is no question alcohol is more dangerous. The social damage caused by alcohol—increased domestic violence and driving accidents—is not even comparable to cannabis. Alcohol should absolutely be sold in child-proof containers. And people shouldn’t be allowed to drag a 6-year-old through a liquor store.

How sophisticated are consumers about marijuana? Many aren’t. Today’s cannabis is a more potent product than the pot people remember from college. Today it’s made into concentrates. A store might have two dozen strains, which have different effects on individuals. That’s why we think an education campaign is so important. No one buys a bottle of Jim Beam and thinks they should consume it all in one sitting. The same is true of concentrated cannabis products.

What advice would you give other states? Legalization entails a huge amount of resources and infrastructure: licensing approval, vetting, law enforcement, regulatory bodies. It required a big investment before sales taxes could be collected, but my stores generated more than $1.4 million in city and sales tax in 2014. It seems like each state is reinventing the wheel when it comes to marijuana legislation. But I think Colorado has a pretty good model—one that could be adopted anywhere in the world.

—Mary Winter