

## **New State Marijuana Laws and Your Security Clearance**

By Greg T. Rinckey Legalization of Recreational Marijuana Use

In May 2013, Colorado passed laws regulating and taxing the recreational use of marijuana by adults age twenty-one and older. Once retail stores start selling marijuana openly, Colorado residents age 21 and older can: Purchase up to 1 ounce of marijuana, while non-residents age 21 and older will be able to purchase ¼ of an ounce.

Adults twenty-one and older can grow up to six marijuana plants in an enclosed locked space, in addition to possessing up to one ounce of marijuana.

Colorado residents age twenty-one and older may smoke marijuana in their homes, but not in public.

If you are age twenty-one or older, you may give, without compensation, up to one ounce of marijuana to another adult age twenty-one or older.

Similarly, Washington State has passed laws legalizing the possession and recreational use of marijuana by individuals age twenty-one and older. Use of Marijuana in These States and the Effect on Security Clearance Eligibility

Those of you with (or planning to obtain) security clearances who have an interest in adding marijuana use to your recreational pastime may think, "Great! If I'm ever in Colorado or Washington State, I can smoke pot without any ramifications!" Unfortunately, you are wrong! Using and possessing marijuana is still a federal crime, and when it comes to ascertaining whether or not someone has engaged in criminal conduct, the adjudicators will follow federal law. Therefore, if you use marijuana in Colorado, Washington State, or anywhere else for that matter, you will be flagged as having engaged in criminal conduct. So, what does it mean for those of you who have already engaged in this activity without realizing the consequences? When you come across the question on the SF86 questionnaire which asks, "Have you illegally used a controlled substance in the last seven years," your response will be "Yes." The bad news is your background now reflects derogatory information that an adjudicator will have to evaluate to determine if you are qualified for security clearance eligibility. Depending on the recency, frequency, and amount of drug used, this could result in a denial or revocation of your clearance. When making a determination regarding an applicant's security clearance eligibility, adjudicators refer to what is called, Adjudicative Guidelines. The Adjudicative Guidelines provide a list of areas of concern, as well as circumstances that can mitigate those areas of concern. During your subject interview with an investigator, you will be provided the opportunity to explain the circumstances surrounding your drug use. This is your attempt to mitigate the drug use. When making a security clearance determination with respect to drug use, adjudicators will examine the recency, circumstances surrounding the use, amount of drug used, and likelihood of continued conduct. The passage of time, infrequency of use, and change in life circumstances, just to

name a few, are all conditions that can help mitigate drug use. Medicinal Marijuana Use

So, what about the use of medicinal marijuana? Eighteen states including the District of Columbia have legalized the use of medicinal marijuana. Unfortunately, though, medicinal marijuana use has not been legalized under federal law. Additionally, the Adjudicative Guidelines do not currently provide that the use of marijuana for medical purposes is a mitigating condition which would alleviate any concerns that an adjudicator may have with respect to granting a security clearance. Again, if you've already engaged in this conduct, you would want to fully explain the circumstances surrounding your use of marijuana so as to mitigate the use as much as possible. Lesson

The lesson to be learned is that if you currently hold or plan to seek a security clearance, any drug use which is illegal under federal law can detrimentally affect your eligibility to hold a security clearance.