



Building & Planning Department

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MEMORANDUM

Date: September 17, 2013
To: City Council
From: Amanda Smeller, Community Development Planner
Re: Discussion/direction for I-502 implementation

The Washington State Liquor Control Board has updated the I-502 implementation timeline. While the rules must be complete by December 1, 2013, the WSLCB currently has a target date of November 16, 2013. On November 18, 2013 the WSLCB will start accepting applications for Producer, Processor and Retail licenses and begin issuing them on December 1, 2013. Staff and the City Council have had discussions on how to implement I-502, but the last determination was to wait until the State issued their final rules.

You can find helpful FAQs and other information on the WSLCB website at www.liq.wa.gov/marijuana/faqs_i-502. The revised rules are available at this website as well. WSLCB will hold public hearings in early October regarding the new rules. Attached (A) is a revised FAQ from the WSLCB for the revised rules.

I will be meeting again with other jurisdictions on September 25, 2013. Many jurisdictions have already established a temporary moratorium to give time to decide how the state rules will play in to their local code.

Attached (B) is an AWC issued FAQ that outlines five options for municipalities. See the document for more explanation:

1. Do nothing: no specific language in the city code.
2. Moratoria: Allows time to see what happens with court rulings and federal preemption.
3. Permanent ban: Using zoning or ordinance to prohibit any business that violates federal law from operating with city limits.
4. Interim regulations: Addresses the immediate response with rule creation.
5. Permanent regulations: Adopt regulations.

Staff requests direction on how to proceed with I-502 implementation.

Attachments:

- A: WSLCB Frequently Asked Questions about the I-502 Proposed Rules (Updated September 4, 2013)
B: AWC I-502 Recreational Marijuana Implementation FAQ
C: Mr. Eling's memo to Council



I-502 - Recreational Marijuana Implementation

The following is a collection of material and frequently asked questions regarding implementation of I-502. AWC encourages cities to revisit policies and procedures with their legal counsel to ensure compliance.

What are the options for municipalities for implementation of marijuana related business?

1. **Do nothing option:** A legally defensible option. Cities should examine the location of schools, parks, arcades, etc. to determine potential locations for marijuana-related business. Some communities may not have a legal location for these businesses. Cities should re-examine home occupation regulations for possible effects on future business operations. There is a difference between allowing and not prohibiting. By having no specific language in city code, the city neither allows nor expressly prohibits operations.
2. **Moratoria:** Pros include balancing public interest, allowing legislature to reconcile with medical marijuana business, and allowing time to see what happens with court rulings and Federal preemption. Cities would not face federal enforcement. Moratoria have liability concerns and could violate constitutional rights of property owners. This could target the city for pro-marijuana litigation, but communities that ban it altogether may be a greater priority.
3. **Permanent ban:** Using zoning or ordinance to prohibit any business that violates federal law from operating within city limits. With this option there is no federal liability but as previously stated, the city may become the primary target for litigation by the marijuana industry. Could be costly dependent on the case.
4. **Interim regulations:** This has the same statutory process as a moratorium but addresses the immediate response with rule creation. Potential cons include federal drug law violations and due process liability if you subsequently ban an authorized business. Obligates city to enter a process to create permanent regulations.

5. **Permanent regulations:** Taking action developing ordinances, zoning codes, nuisance abatements, either establishing where marijuana related business may or may not operate. This option has many of the same pros and cons as interim regulations.

Sources: Phil Olbrechts, Olbrechts & Associates, P.L.L.C., Brennon Staley Senior Planner City of Seattle

What does the Liquor Control Board say?

The LCB released final draft rules September 4, 2013. The rules included the allocation and number of retail outlets on a per county basis. Licenses for growers, processors and retailers will likely not be issued until March or April, 2014. LCB anticipates the first retail sale to take place sometime between April and May.

Can cities adopt hours of operation that are stricter than LCB rule? Current rule restricts sale from 8:00am-12:00am. LCB is working on clarifying this. AWC will update when we receive the information.

Can cities require proof from applicant on the 1,000 feet buffer from specified locations outlined in the initiative? The LCB plans to physically verify compliance with this requirement. It is also possible for cities to require applicants to verify the business location as part of the city's local regulations. It is important to remember that licensing requirements that single out a specific business may be facing litigation.

When do cities get notified when an applicant wants to locate in their city? The LCB wants to mirror the process for liquor licenses. After receiving the application, LCB will notify the local authority as soon as possible which will begin the 20 day window for submitting comments or objections. Cities may request an extension be granted by the LCB.

Some cities have language in their business licensing statutes and other regulatory statutes that a business must comply with federal, state and local law. Is this effective? The LCB will still issue a state license in these situations. However, it's possible this is an effective method for prohibiting marijuana business at the local level. There are arguments in support and opposing. It is likely that this issue will be litigated.

Who is responsible for proving a business is located 1,000 feet from the locations listed in the initiative (Daycare, school, arcade, etc.)? Will LCB use local GIS systems? LCB is responsible for determining that the business is outside the 1,000 foot buffer. The LCB will use physical measurements because GIS systems are not all updated at the same time and they want to use uniform measurements.

What if an applicant wants to locate on the back half of a parcel, but the parcel itself is impacted by the 1000ft buffer and splits a parcel? LCB will issue rules to clarify the 1,000 ft. buffer definitions and further address these kinds of questions.

What happens if a location, like a day care center, that would disqualify an applicant from a certain location base on the 1,000 restriction opens after a marijuana business is established and granted a location by both the state and city? The LCB wants to use similar processes as they do for liquor licenses: if the marijuana-related business is already licensed by LCB, it is grandfathered into that location. LCB would not remove a license because another business decided to locate close to a marijuana-related business. On a legal note, there is cause that it may not be "lawfully established" because it is still federally illegal.

How many retail outlets will there be in our cities? The LCB used a population based formula for distribution of the number of retail outlets per county, setting the total at 334 statewide. The per county distribution seeks to evenly disperse potential locations to avoid concentrations of retail stores. There are many cities that were given a number of outlets they cannot exceed, the other number was an at-large number that is intended to be dispersed throughout the county but is not specific to a municipality.

Sources: www.liq.wa.gov

What does the Federal Government say?

After a great deal of waiting and watching, the federal government announced that it will not try to block Washington or Colorado's recreational marijuana laws. A Department of Justice (DOJ) memo released August 29, provided guidance regarding marijuana enforcement. The federal government still sees marijuana as a dangerous drug whose distribution and sale is still illegal and a serious crime. The memo states that the focus for DOJ is to prevent distribution to minors, revenue from ending up in the hands of criminal enterprises or cartels, interstate commerce, and growing on public lands. In other words, these priorities are the guide for US attorneys and DOJ law enforcement to focus their efforts.

With regard to Colorado and Washington passing legalization laws, DOJ says it expects states and local governments to establish a strong and effective regulatory and enforcement system that will limit any threat those laws could pose to public safety or public health. The memo calls for state and local governments to have robust controls and procedures documented and follow through with enforcement. For more information on Federal government actions visit www.mrsc.org.

What about medical marijuana?

A budget proviso passed this last legislative session that calls for the LCB, department of health, and the department of revenue to develop recommendations on how medical marijuana could interact with retail marijuana business. These recommendations are to be submitted by January of 2014.

For more information contact

Candice Bock, candiceb@awcnet.org

Brittany Sill, brittanys@awcnet.org

AWC seeks to provide its members with educational materials that can be shared with elected officials, staff and the community. Cities should revisit their policies and procedures with their legal counsel to ensure that their actions are in compliance with the law.

Attachment B



Washington State Liquor Control Board

Frequently Asked Questions about the I-502 Proposed Rules

Topic: Initiative 502

Updated: September 4, 2013

*Note: New questions and answers are indicated with an asterisk **

Licensing

When can I get my license?

We will begin accepting applications for all three license types (producer, processor and retailer) for 30 days on November 16, 2013 and expect to begin issuing licenses, at the earliest, in December/January 2013. Due to the anticipated turnout and rush to obtain a license it is possible that the process may take longer than the projected 90 days. The best way to stay up to date on the implementation process and when the applications become available is to register for email notifications on the WSLCB website.

Why are you only accepting applications for 30 days?

Opening up the licensing window for 30 days affords anyone who is qualified to apply for a license the opportunity to do so. Whether you are a small grower or larger company you will be given the same opportunity to get a license. Closing the window after 30 days allows the Board the opportunity to assess the market and see what changes, if any, are needed regarding the number of licenses. The Board may also reopen the window at its discretion.

*** When can I get an application?**

Application documents will be available, both online and in hard copy, sometime after the Board accepts the proposed rules, which is scheduled for October 16.

*** What do I have to do to start my application?**

To start the application process, and qualify within the 30 day licensing window, you will need to have a location and have filed your application with Business Licensing Services.

How many producer and processor licenses will be issued?

Presently the WSLCB does not intend to limit the amount of producer or processor licenses it will issue. The LCB will open a 30 day window in November where anyone can apply, and qualified applicants will receive licenses.

*** Can I have more than one license?**

Any entity and/or principles within an entity are limited to no more than three marijuana licenses. Retail marijuana license holders are limited to no more than three retail licenses with no more than 33% of the allowed licenses in any county or city.

*** Why did you limit the number of licenses per licensee?**

Limiting the number of licenses any one entity can hold reduces the possibility that any one entity can singlehandedly control the market.

*** How many retail licenses will be issued?**

334 retail licenses will be issued. The number of retail locations was determined using a formula that distributes the number of locations proportionate to the most populous cities within each county.

Locations not assigned to a specific city are at large. The specific locations will be selected by lottery in the event the number of applications exceeds the allotted amount for the cities and county.

How will the lottery work?

WSLCB staff are developing the guidelines for the retail license lottery. As more information becomes available we will notify stakeholders via the [I-502 Listserv](#).

If the local authority objects to my proposed location after filing my application can I move my location without refiling?

Applicants will be able to change the location of a potential license if the local authority objects, as long as the application is still in the processing stage, without filing a new application.

Will a criminal record impact my ability to get a license?

The WSLCB will employ a disqualifying criminal history point system similar to liquor. An exception would be allowed for two misdemeanor convictions of possession within three years. A felony conviction will prohibit you from obtaining a marijuana license if the conviction was in the last 10 years.

How do I prove three months residency?

There are many ways to prove residency. Some examples include:

- Get a Washington State driver's license or ID card, which has an issue date on it
- Present three months worth of utility bills, pay stubs, etc.
- Register to vote

You can find out more about state residency requirements at [Access Washington](#).

How do I show I'm current on my taxes?

Prospective licensees will be required to sign an attestation that they are current on their taxes. Failure to do so or misrepresentation of the status of your taxes is grounds to deny the application.

Can I get my \$250 application fee back?

Marijuana application fees are non-refundable.

Is it true that the WSLCB is just going to license current medical marijuana outlets to retail marijuana?

No. Retail licenses will be issued to qualified applicants who meet the licensing criteria. A medical marijuana outlet that wants to convert to a recreational outlet will have to go through the same application process as any other potential applicant. If they were to obtain a retail license they would only be allowed to sell marijuana purchased from the recreational system, they would not be allowed to comingle medical and recreational marijuana.

Can local jurisdictions prevent me from opening a location?

The LCB has no authority to dictate zoning requirements to local governments. Municipalities could conceivably zone marijuana/related businesses out of their geographical area, check with your local authority to understand their requirements.

Since there are a limited number of retail licenses available can I apply for a retail license and a processor and/or producer license at the same time to ensure that I'm not left out and then withdraw the processor and/or producer license application in the event that I get the retail license?

No. Applicants must decide ahead of time which license type they are pursuing. If an applicant applies for a retail license in addition to one of the other two license types all of the applications will be rejected.

Can I be a processor and a producer?

Yes. Licensees may hold a both a producer and processor license together.

Is there a producer/processor license?

No. Applicants must apply for, and obtain, both licenses separately and must pay the application and renewal fees on both licenses.

Do I have to pay the 25% tax on sales between producer and processor if I hold both licenses?

No. If you hold a producer/processor license you avoid the 25% tax that would be applied to a producer to processor sale.

Do I have to provide proof from my landlord that they are aware of how their property is being used?

No. The provision requiring an applicant to provide a signed affidavit showing their landlord is aware of the marijuana related business using their property has been removed.

There is a bus stop in front of my location; will that disqualify me from getting a license?

The rules define "public transit center" as a facility located outside of the public right-of-way that is owned and managed by a transit agency or city, county, state, or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge.

*** Does a walking trail qualify as a park?**

No. The Board has specifically addressed that a walking trail, such as a converted former rail line, does not qualify as a park.

Can I have multiple locations?

Yes. However each location must be licensed separately and the licensee must meet the previously mentioned requirements on license types.

*** How will the WSLCB measure distance from a restricted area to a potential marijuana location?**

The WLCB will measure, via the most common legal pathway, from the property line of a restricted area to the perimeter of a potential location.

*** Why did the Board change the exclusion zone measuring method from "straight line" to "most common legal pathway?"**

The Board, after receiving substantial public comment, feels that "straight line" measuring is unnecessarily restrictive and does not take into account both natural and manmade barriers such as freeways, bodies of water, etc that would limit access to a licensed marijuana location.

If I'm providing financial backing do I have to be a resident?

Yes. Financiers will be required have three months Washington state residency and to pass the same criminal background checks as a licensee.

Testing

How can I get my laboratory certified to test marijuana?

The LCB will contract (via the request for proposals process) with a firm who will be responsible for accrediting labs.

How will I get my products tested?

The LCB will furnish a list, via our website, of accredited labs for producers to contract with for testing services.

Traceability/Product**What is the traceability system?**

A robust and comprehensive traceability software system will that will trace product from start to sale. Licensees will have to use tracking software that is compatible with LCB's traceability system and allows the LCB to monitor and track any plant at any time.

When do my plants need to be entered into the traceability system?

Prior to reaching eight inches in height or width each plant must be tagged and tracked individually

How do I obtain startup inventory?

Within fifteen days of starting production operations a producer must have all non-flowering marijuana plants physically on the licensed premises and recorded into the traceability system. No flowering marijuana plants may be brought into the facility during this fifteen day timeframe. After the 15 days pass, a producer may only start plants from seed or create clones from a marijuana plant located physically on their licensed premises, or purchase marijuana seeds, clones, or plants from another licensed producer.

Growing**Where can I grow?**

- **Indoors/Greenhouse**
Fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors.
- **Outdoor**
Outdoor production may take place in non-rigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure wall or fence at least eight feet high. Outdoor producers must meet security requirements described in WAC 314-55-083.

Can a current farm just convert its crop to marijuana?

Converting a crop to marijuana would require a producer license and the farm would have to meet all of the guidelines set forth in the rules pertaining to outdoor growing.

Can I grow in my personal residence?

No. The rules state that "the Board will not approve a license for any location where law enforcement access, without notice or cause, is limited. This includes personal residences." Private residences are afforded a degree of privacy under the 4th amendment of the U.S. Constitution that is incompatible with the regulatory requirements of I-502.

*** How much marijuana can I keep on my licensed premise?**

- Producer: Outdoor/Greenhouse – One and ¼ of a year’s harvest, Indoor – six months harvest
- Processor: six months useable marijuana and total production
- Retailer: four months of average inventory

*** As a producer how long do I have to hold my product before transporting it to a processor?**

There is a mandatory 24 hour quarantine period. Previously this period was 72 hours.

How can I get my marijuana certified as organic?

Marijuana may not be labeled as organic unless permitted by the United States Department of Agriculture in accordance with the Organic Foods Production Act.

Processing

Why can't I advertize marijuana's medical benefits?

The WSLCB is regulating the recreational marijuana market and does not evaluate the medical claims of a recreational product. Prospective licensees who want to produce/market marijuana for medical purposes should research Washington’s medical marijuana laws.

How will you prevent children from accidentally ingesting marijuana products?

Marijuana infused products must be packaged in child resistant packaging in accordance with Title 16 CFR 1700 of the Poison Prevention Packaging Act.

*** Can I sell marijuana blends?**

Yes, provided the marijuana lots that are being blended have been tested and that the labeling requirements for each lot used in the blend are met.

What happened to the “Produced in Washington” icon?

During the public comment period the WSLCB heard a variety of comments on the icon and ultimately decided to remove it from the rules. The intent of the icon was to provide parents, teachers, etc with a visual aid that helped them readily identify a product as marijuana. Many of the comments were positive and appreciated the WSLCB’s work on this issue, while others were concerned that the icon may be seen as promotional. The Board does reserve the ability to require an icon be included on packaging in the future for public safety purposes if they deem it necessary.

*** If my marijuana fails quality testing can I turn it into an extract?**

Yes. With the Board’s approval, marijuana that fails testing can be converted into an extract and sold provided that the resulting extract passes quality/safety testing.

Why does the Board want to ban concentrates?

The Board’s analysis believes that the definition of usable marijuana or infused product in I-502 does not cover concentrates. While the Board was willing to allow concentrates they are not inclined to break the law to do so.

Does hash qualify as usable marijuana?

No. Under the definitions of I-502 hash does not qualify as usable marijuana.

Can I infuse concentrates with an inert oil, or similar substance, and sell it?

Yes. This would qualify as a marijuana infused product.

What is the minimum level of added marijuana for a product to be considered a marijuana infused product?

The Board has not set minimum thresholds for what constitutes an "infused" product.

*** What is the serving size for infused extracts for inhalation? What is the transaction limit?**

The serving size for infused extracts for inhalation is a unit, which may not exceed one gram. Customers may purchase up to seven grams of marijuana infused extract for inhalation.

Retail

*** Why can't I sell over the internet? Or have a delivery service?**

The initiative states that all retail sales must take place in a licensed retail establishment. Neither internet nor delivery sales qualify as retail establishments.

Can a medical marijuana outlet and a retail outlet share the same space?

No. The two operations would have to be separate. Retail outlets are only allowed to sell marijuana that comes from a licensed processor and licensed processors are not allowed to sell to unlicensed entities, such as a medical marijuana outlet.

Are there any restrictions on retail hours of operation?

Retail marijuana operations may take place between the hours of 8:00AM and 12:00AM.

Why can't I hold the marijuana before purchase?

I-502 is very clear that there can be no open containers of marijuana, or consumption of marijuana at licensed locations. The WSLCB cannot write rules that contradict the law.

Why can't I smell the marijuana before purchase?

Retail licensees are allowed to provide a sample jar with a plastic or metal mesh screen to allow customers the ability to smell the product before purchasing. Opened marijuana products are not allowed inside a licensed retail outlet.

*** Can I produce/sell THC infused alcohol (i.e. THC infused vodka)?**

No. The initiative is clear that retail outlets may only sell marijuana, marijuana infused products and marijuana paraphernalia. To sell alcohol in Washington you would need a liquor license which would violate the above provisions.

Miscellaneous

Will the WSLCB be setting prices?

No. The WSLCB will not set prices but licensees are not allowed to sell marijuana products below their acquisition cost.

*** As a licensee can I test my product for quality?**

Licensees are allowed to test for quality under the specific requirements set forth in WAC 314-55-083(6). Those requirements limit the amount of product that can be tested, how often testing can take place, and the reporting requirements by license and product type.

Can I provide samples?

Producers are allowed to provide samples to a processor and processors are allowed to provide samples to a retailer. Retailers are not allowed to supply samples to the public.

Attachment C

Law Office of William J. Eling

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**[360] 260-1189
[360] 213-0770 fax**

TO: City of Woodland
City Council members

FROM: William J. Eling *WJE*

RE: US Department of Justice Memo Regarding Marijuana Enforcement

DATE: September 3, 2013

On August 29, 2013, James M. Cole, Deputy Attorney General of the US Department of Justice issued a memorandum to all US attorneys regarding DOJ's policy regarding marijuana enforcement under the Controlled Substances Act (CSA). A copy of the four page memo is attached. As a general matter, DOJ will not commence civil or criminal enforcement action in jurisdictions that have legalized marijuana. However, the DOJ does not rule out enforcement actions if the state regulatory and enforcement systems do not prevent threats to the federal priorities listed in the Memo.

"If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms."

Note that neither the President nor the Attorney General is authorized under the Constitution to repeal legislation. The CSA continues in force.

"This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violations of the CSA....Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves as important federal interest."

Thus, media characterizations of the Memo as establishing the repeal of federal marijuana regulations are misleading. The Memo sets forth a policy for the exercise of prosecutorial discretion which, in my opinion, significantly diminishes

(but does not eliminate) the theoretical risk of liability for local public officials, which has been a primary legal concern. However, the Memo does not (and legally cannot) resolve the conflict between a federal law which criminalizes marijuana and a state law which legalizes marijuana.

Despite the non-binding nature of this Memo, it works as a repudiation of the overly zealous letter from the US Attorney, Western District of Washington, to Clark County stating the decision of local elected officials and the acts of local government employees would subject each to criminal liability.



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

August 29, 2013

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole 
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. The guidance set forth herein applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

As the Department noted in its previous guidance, Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department of Justice is committed to enforcement of the CSA consistent with those determinations. The Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department's enforcement of the CSA against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law.¹

Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. For example, the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Instead, the Department has left such lower-level or localized activity to state and local authorities and has stepped in to enforce the CSA only when the use, possession, cultivation, or distribution of marijuana has threatened to cause one of the harms identified above.

The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity

¹ These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA. By way of example only, the Department's 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.

must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities.

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.

The Department's previous memoranda specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use. In those contexts, the Department advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the previous guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution. In drawing this distinction, the Department relied on the common-sense judgment that the size of a marijuana operation was a reasonable proxy for assessing whether marijuana trafficking implicates the federal enforcement priorities set forth above.

As explained above, however, both the existence of a strong and effective state regulatory system, and an operation's compliance with such a system, may allay the threat that an operation's size poses to federal enforcement interests. Accordingly, in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities listed above. Rather, prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A marijuana operation's large scale or for-profit nature may be a relevant consideration for assessing the extent to which it undermines a particular federal enforcement priority. The primary question in all cases – and in all jurisdictions – should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.

As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

cc: Mythili Raman
Acting Assistant Attorney General, Criminal Division

Loretta E. Lynch
United States Attorney
Eastern District of New York
Chair, Attorney General's Advisory Committee

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