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February 12, 2013

The Honorable Eric Holder  
U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530-0001

Dear Attorney General Holder:

Following our meeting on Washington's voter-approved Initiative 502 (I-502), I want to update you on the strategies under consideration to ensure the development of a highly regulated system designed to prevent diversion of marijuana across state borders.

In addition, I have made it abundantly clear to all who have asked that you have not expressed the federal government's intentions in any way concerning the implementation of I-502.

The Washington State Liquor Control Board (WSLCB) is the agency responsible for crafting the producer, processor and retailer regulations. Enclosed you will find a summary of I-502 prepared by the WSLCB and their current timeline for drafting rules to implement the initiative. I have instructed the WSLCB that our approach must be thorough and disciplined, with public safety being our paramount responsibility. I am personally committed to having a well-regulated, disciplined system with tight inventory controls and close coordination with law enforcement. Our system will closely track the marijuana produced through retail sale to prevent diversion. The system will be designed in a way to prevent marijuana produced in Washington from being not sold in other states.

The WSLCB is in the early stages of rulemaking for I-502 implementation. While it is too early to say definitively what will be included in the rule, our goals include creation of a system that minimizes the illicit market through price, access and convenience while simultaneously controlling the product.

Below are some of the actions under way and ideas under consideration in Washington State to regulate the production, processing and retail purchasing of marijuana as I-502 is implemented.

#### INITIATIVE RESTRICTIONS

**Public Consumption Prohibited.** The initiative makes it unlawful to open a package containing marijuana, usable marijuana or a marijuana-infused product, or to consume marijuana, usable marijuana or a marijuana-infused product in view of the public. Additionally, Washington prohibits smoking in public places (bars, restaurants, etc.). The prohibition on smoking in public places would apply to smoking marijuana. This prohibition extends to places of employment, such as private clubs.



**Production, Processing and Retail Sale only within Washington.** Licensed producers, processors, and retailers must be located within Washington State. Under section 17 of I-502, a licensed producer may only produce or possess quantities of marijuana which do not exceed limits set by the WSLCB and only licensed producers may grow marijuana for recreational purposes. Under Section 16 of I-502, a processor may only purchase or receive marijuana properly packaged and labeled from a licensed producer. Under Section 15 of I-502, a licensed retailer may only purchase or receive marijuana or marijuana products that have been properly packaged and labeled from a licensed processor. Every licensee must be in compliance with the rules established by the WSLCB and may only have amounts on premises as determined by the WSLCB. Any licensee who is not in compliance with the initiative or rules of the WSLCB is subject to potential arrest and prosecution under the Washington Uniform Controlled Substances Act. Initiative 502 only exempts licensees from criminal and civil penalties under Washington law if the licensee or individual is in compliance with the applicable statutes and rules. Similarly, individuals are only exempt from Washington criminal and civil laws if they are in compliance with the laws established by Initiative 502.

**Retail sales only within Washington.** Under Section 4 of I-502, licensees may only operate within Washington. Under Section 15 of I-502, a licensed retailer is only exempt from Washington criminal and civil laws if, among other things, the deliver, distribution, and sale occur on the premises of the retail outlet to persons 21 years of age or older within allowable amounts.

**Age Restrictions.** The initiative specifically prohibits possession or consumption by individuals under the age of 21. No person under the age of 21 may be issued a producer, processor, or retailer license and no employee may be under the age of 21.

**Driving Under the Influence of Marijuana.** Initiative 502 creates a presumptive level of impairment for operation of a motor vehicle under the influence of marijuana. The presumptive level for individuals 21 years of age and over is a THC concentration level of 5.00 nanograms per milliliter of blood. The presumptive level for individuals under the age of 21 is 0.00 nanograms per milliliter of blood.

#### **DEVELOPING EXPERTISE**

**Marijuana Consultant.** The WSLCB recently issued a nationwide request for proposals for a marijuana consultant or consultants. Key among the consultant's responsibilities will be to provide technical expertise on validating consumption levels in Washington. By having the best possible data on consumption in our state, the amount of marijuana to be produced without exceeding market demand can be determined. The consultant will be an active partner as the WSLCB crafts regulations to govern the system.

**Communication with Colorado.** Washington state agencies are engaged with Colorado state officials about Colorado's sophisticated system of regulating medical marijuana. The Colorado medical marijuana system is a tightly controlled "seed to sale system" that uses barcodes to electronically track each step of the plant's progress to market. Officials in that state have indicated their system is substantially effective for tracking purposes.

**Private Sector Experience.** In addition to Colorado, there are other examples of the digital tracking of controlled products. For example, we are looking at traceability models that the food industry uses to track products for recalls. In Washington, apples can be traced from individual orchards, through packing houses and distributors, and ultimately to market. Each bin, box or individual apple can be

tagged with a unique identifier that allows it to be traced back to its origin. We will continue to reach out to our private partners to learn from other systems.

**Open, Transparent Process.** The WSLCB is in the process of conducting a series of public hearings across the state on the proposed regulations.

#### **SAFEGUARDS IN RULEMAKING**

As the WSLCB creates its rules, it will closely examine options in the following areas.

**Criminal Background Checks.** The WSLCB currently performs background checks of potential licensees using the Criminal History Records Information system. In addition, investigators search for hidden ownership. The WSLCB is likely to expand the background checks to include fingerprinting for the applicant in addition to other parties of interest. If fingerprinting is instituted, the process will access both the Washington State Patrol and FBI databases to ensure a nationwide search.

Washington uses a point system to set standards for denial or revocation of liquor licenses based on criminal history. In Colorado, a lifetime ban for convicted drug felons is imposed. Colorado also uses a "moral standard" for denying applicants with several misdemeanors. Washington will be reviewing Colorado's system to determine whether adding elements of its system to Washington's is appropriate.

**Inventory Control.** Through rulemaking, the WSLCB will set standards for building the inventory control structure. The WSLCB is responsible for setting standards to control the amount of marijuana that will be grown, processed and retailed in Washington. It is required to set security standards, limit the number of retail outlets and establish limits for the maximum amount of marijuana and marijuana-infused product that will be allowed at each tier of the system. Consumption research will help determine the amount needed to meet demand without creating substantial overproduction. Tight inventory controls and clear rules for unused product will be critical.

**Packaging and Labeling.** The WSLCB will establish standards for packaging and labeling all marijuana products that are produced by this regulated industry. This will assist the WSLCB and local law enforcement officials to identify legally produced product and assist in the overall control structure.

**Record Keeping and Audits.** Maintaining accurate records and imposing strict penalties for noncompliance are essential for tracking product. The WSLCB will work with the state Department of Revenue to develop audits to identify reporting discrepancies.

**Transportation Controls.** The rules on transporting marijuana between the tiers in the system are also a consideration for rule making. The WSLCB may require strict rules and record keeping that govern how marijuana is transported to verify that the amount shipped from one tier was actually received at its destination.

#### **LAW ENFORCEMENT**

To prevent Washington State from becoming the country's export market for marijuana, law enforcement agencies must vigorously enforce the criminal aspects of I-502. Simply put, non-licensed growing, cultivation and distribution remain illegal under state law.

One of the goals of I-502 was to reduce criminal activity associated with illicit marijuana distribution. Given the revenue implications of I-502, there is reason to believe that local governments will invest in

stopping the unlicensed illegal distribution of marijuana and illegal distribution will remain at least as high a priority as it was prior to passage of the initiative.

Washington has a long history of positive, cooperative relationships among federal, state and local law enforcement and will continue engaging in cooperative efforts to address diversion of marijuana. Below are examples of law enforcement activities that Washington employs today and would continue to use under a legalized system of marijuana.

**Marijuana Eradication.** To prevent the proliferation of illegal marijuana “grows,” law enforcement must build on the eradication success we have had here. In 2009, more than 600,000 marijuana plants were eradicated in Washington. By 2012, that number dropped to 200,000 plants. Washington has been successful by adopting a zero-tolerance approach to marijuana grows that are not covered under the medical marijuana law. Funding and assistance from the DEA’s Domestic Cannabis Eradication and Suppression Program, the Office on National Drug Control Policy’s National Marijuana Initiative and the Northwest High-Intensity Drug Trafficking Area have contributed to this success.

**Criminal Interdiction.** High-volume traffic stops with roadside interviews have proven an extremely effective method in reducing contraband being transported on our nation’s highways. This is evident in the Office on National Drug Control Policy support of the Domestic Highway Enforcement program in Washington State, in which our state is a robust participant. This, among many other statewide interdiction efforts, enables law enforcement to disrupt distribution networks of drug trafficking organizations. These activities also disrupt attempts to distribute legalized marijuana to neighboring states.

**Disruption and Dismantlement of Drug Trafficking Organizations.** Washington State remains an attractive target for drug trafficking organizations (DTOs). In 2011, High-Intensity Drug Trafficking Area task forces disrupted and dismantled 52 DTOs. Most of these are poly-drug organizations that traffic in multiple drugs, including marijuana; they may also engage in money laundering. Federal, state, local and tribal law enforcement need to maintain a strong partnership through the Byrne Grant and the Organized Crime Drug Enforcement Task Force programs to minimize the impact of DTOs.

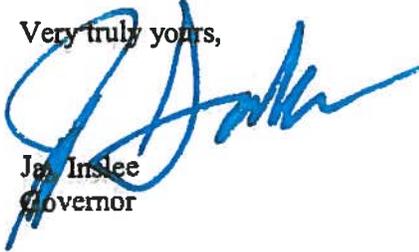
**Experience with Contraband Cigarettes.** The tax on tobacco in Washington State is among the highest in the nation. This creates an incentive for illegal importation and sale. We know on-site and unannounced audit/investigations related to invoicing and business records have been an important tool in tobacco tax enforcement. Learning from the tobacco tax experience, we must consider effective controls for marijuana to identify contraband product and ensure license holders are not allowing their products to be exported.

**Agency Collaboration.** As governor, I am obligated to carry out the will of Washington voters. Clearly, the world is watching the states of Colorado and Washington as their initiatives are implemented. We intend to do it right. My office will be working closely with the WSLCB and the Washington State Patrol to minimize diversion and the illicit market. In addition, as governor, I am calling on the expertise of several state agencies — the Gambling Commission, Department of Revenue, Department of Financial Institutions, Department of Agriculture and others — to lend their expertise and prevent diversion.

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Thank you for your consideration of our plans as they relate to the crucial prioritization of law enforcement resources you must consider in these fiscally challenging times. I look forward to our next discussion.

Very truly yours,



Jay Inslee  
Governor

Enclosures

