

The State of Cannabis in Oregon



Status of legalization of cannabis in US

- **Recreational Marijuana States (8 + D.C.):**
Colorado, Washington, Oregon, Alaska, D.C.,
California, Nevada, Massachusetts, Maine.
- **Medical Marijuana States: 28 + D.C.**

The Federal CSA

The Controlled Substances Act (“CSA”) makes it illegal under federal law to manufacture, distribute, or dispense a schedule I drug: i.e. marijuana.

Three criteria to be placed on Schedule 1:

- The drug or other substance has a high potential for abuse.
- The drug or other substance has no currently accepted medical use in treatment in the United States.
- There is a lack of accepted safety for use of the drug or other substance under medical supervision.

21 USC § 812, et. seq.

Cole Memo I

James M. Cole, US DOJ, Deputy AG, August 29, 2013
“Guidance Regarding Marijuana Enforcement”

Where states or local law jurisdictions have enacted and implemented a “strong and effective” regulatory and enforcement scheme and none of the federal government’s priorities are implicated, enforcement will be left to the States.

Cole Memo I Priorities

1. Prevention of sales to minors
2. Prevent revenue from the sale of marijuana from going to criminal enterprises, gangs and cartels
3. Prevent diversion of marijuana from state to state
4. Prevent legal marijuana activities being used to cover drug trafficking or other illegal activity
5. Prevent violence and the use of firearms in the cultivation and distribution of marijuana
6. Prevent public. drugged driving and other public health consequences associated with marijuana use
7. Prevent marijuana production on public lands
8. Prevent marijuana possession or use on federal property

What will President Trump's AG do?

- Has nominated Senator Jeff Sessions.
- When he was U.S. Attorney in Alabama in the 1980s, said he thought the KKK "were OK until I found out they smoked pot."
- In April, 2016, he said, "Good people don't smoke marijuana," and that it was a "very real danger" that is "not the kind of thing that ought to be legalized."

Quotes from Politico:

<http://www.politico.com/magazine/story/2016/12/jeff-sessions-coming-war-on-legal-marijuana-214501>

The Banks

James M. Cole, US DOJ, (Cole Memo II)

“Guidance regarding marijuana related financial crimes” Feb 14, 2014

- Enforcement priorities also apply to Banks with commercial marijuana business accounts
- Prosecutors must act if there is evidence of money laundering, unlicensed money transmitter, and Bank Secrecy Act offenses
- Banks warned that they may be face criminal charges under the BSA if do business with marijuana related money and do not identify it and report it!

The Banks

Department of the Treasury Financial Crimes Enforcement Network, Feb 14, 2014
“BSA Expectations Regarding Marijuana-Related Businesses”

Banks and credit unions can handle state-legal cannabis cash if:

- It conducts customer due diligence to determine whether the business account implicates one of the Cole Memo priorities or violates state law.
- Files a Suspicious Activity Report **in all cases**
- Example of “red flag” that indicate that a marijuana-related business may be engaged in activity that implicates one of the Cole Memo priorities or violates state law.
 - A customer seeks to conceal or disguise involvement in marijuana-related business activity. For example, the customer may be using a business with a non-descript name (e.g., a “consulting,” “holding,” or “management” company) that purports to engage in commercial activity unrelated to marijuana, but is depositing cash that smells like marijuana.

From the 9th Circuit

- ***USA v. McIntosh***, 833 F3d 1163 (9th Cir 2016)
Feds cant use federal resources to prosecute medical marijuana if operation was lawful under state law.

Guidance from the DEA

- DEA rejected requests to reschedule Marijuana in July of 2016 but said resources will be loosened up for research.

Marijuana Law in Oregon

- Oregon has both an adult use (recreational) and medical marijuana system.
 - OLCC regulates adult use
 - OHA regulates medical marijuana
- OLCC and OHA each have some authority that affects both the adult use and medical markets.
- Plenty of jurisdictional overlap with ODA.
- And then there is industrial hemp – not marijuana, not regulated by OLCC or OHA, but it looks like, walks and talks like marijuana.
- Department of Revenue is the tax man.

Personal Use

- Aside from the regulated marijuana markets, individuals over 21 can now produce and possess certain amounts of marijuana, and make certain marijuana products at home. (ORS 475B.245)
- Individuals can provide, for no financial consideration, certain amounts of marijuana to other adults (no trading, barter, etc)
- Individuals cannot:
 - produce, possess, or store marijuana in public view (ORS 475B.250)
 - use MJ in a public place* (ORS 475B.280)
 - make extracts (ORS 475B.255)

Oregon Cannabis Personal Possession Limits*

Marijuana Item Type	Per Household Over 21
Immature plants	N/A
Mature plants	4 (homegrown)
Usable marijuana (dried leaves and flower)	8 oz.
Cannabinoid Products – solid (edibles, e.g. brownies)	16 oz.
Cannabinoid Products – liquid	72 oz.
Cannabinoid Concentrates	16 oz.
Cannabinoid Extracts	Up to 1 oz. purchased from a medical marijuana dispensary or retailer

OLCC

- Licenses marijuana producers, processors, wholesalers, retailers, laboratories
- Issues certificates to researchers
- Issues worker permits to anyone who works for a licensee who has anything to do with handling MJ.
- Has broad regulatory authority over the adult use cannabis industry.
- Establishes standards for the packaging of marijuana for both the adult use and medical markets (child resistant safety packaging) (ORS 475B.615)

OLCC authority in ORS 475B.005 to 475B.395, Rules in OAR 845, Division 25.

OHA

- Registers patients, designated primary caregivers, growers, medical processors and medical dispensaries. (ORS 475B.400 to 475B.525)
- Establishes the standards, on both the adult use and medical side for:
 - Testing (ORS 475B.550, 475B.555, 475B.565; OAR 333-007-0300 to 0490 & Division 64)
 - Labeling (ORS 475B.605; OAR 333-007-0010 to 0100)
 - Concentration Limits (ORS 475B.625; OAR 333-007-0200 to 0200)
- OHA dispensaries currently selling limited retail cannabis products to adult users, until 1.1.2017

Do You Know What This Means?



Sale of Medical Grade Products

- In 2016, the legislature amended the marijuana statutes (SB 1511) to allow:
 - OLCC producers to producer marijuana for medical marijuana patients through agreements
 - OLCC producers, processors, wholesalers and retailers to make and sell medical grade products.
 - Medical marijuana patients or their designated primary caregivers to receive/buy medical grade products tax free at OLCC retail stores.
- Medical grade products have higher levels of THC (For example, medical grade edibles can have up to 100 mg of THC in a package vs. 50 for adult use).

ODA

- Licenses retail food establishments on both the OLCC and OHA side. The following licensees/registrants need a license from ODA:
 - anyone processing concentrates or extracts that will be used in food.
 - Anyone making food with cannabis
 - Anyone selling food with cannabis (OHA dispensaries and OLCC retailers)
- Investigates pesticide use on cannabis.

Department of Revenue

- Collects the taxes! (ORS 475B.700 to 475B.760)
- Cannabis taxed at the retail point of sale by cannabis product type.
 - 25% OHA registered dispensaries (Until 1.1.17)
 - 17% at OLCC retailers
- Local governments can tax up to 3% (over 100 cities and counties (collectively) voted on this tax yesterday)
- DOR is working on a template IGA to be the collector/administrator for local marijuana taxes too
- Medical marijuana is exempt from tax.
- Oregon MJ businesses may deduct their expenses for Oregon income tax purposes (but not on their federal tax return).

Distribution of Taxes

- After DOR withholds funds necessary to carry out its obligations, must distribute moneys as follows:
 - 40% to the Common School Fund;
 - 20% to the Mental Health Alcoholism and Drug Services Account (ORS 430.380);
 - 15% to the State Police Account;
 - 10% to assist local law enforcement in performing duties under Measure 91, distributed to cities in shares;
 - 10% to assist local law enforcement in performing its duties under Measure 91, distributed to counties in shares;
 - 5% to OHA for drug and alcohol abuse prevention, early intervention and treatment.

Controlled Substances Act

- Still some crimes related to cannabis (ORS 475)
- Cannabis is not a schedule I drug in Oregon
- Generally speaking, if acting lawfully under OLCC's or OHA's statutes and rules, are immune from criminal liability; if within the scope of and in compliance with the personal possession limits and restrictions in ORS 475B.245, are immune.

2017 Legislative Session

- Joint Committee on Marijuana Legalization still intact.
- At least 18 cannabis related committee bills.
- 4-5 of the bills would transfer almost all regulatory authority to OLCC, in effect merging the medical and recreational systems.
- Extent of regulation of hemp may also change.

Questions?

Shannon O'Fallon

Senior Assistant Attorney General

Oregon DOJ

971.673.1950

Shannon.ofallon@doj.state.or.us