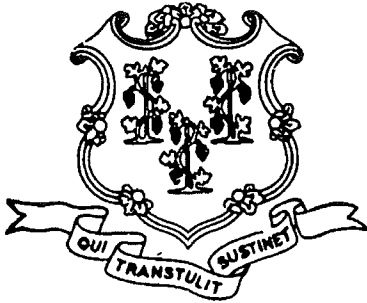


Department of Consumer Protection



**Report to the General Assembly's Environment, General Law and
Commerce Committees pursuant to Public Act 14-191,
"AN ACT CONCERNING A STUDY OF THE FEASIBILITY OF
LEGALIZING INDUSTRIAL HEMP"**

December 31, 2014

**William M. Rubenstein, Commissioner
Department of Consumer Protection
165 Capitol Avenue
Hartford, CT 06106**

REPORT PURSUANT TO SECTION 2 OF PUBLIC ACT 14-191:
“AN ACT CONCERNING A STUDY OF THE FEASIBILITY OF LEGALIZING
INDUSTRIAL HEMP”

Background & Legislative Mandate

On June 12, 2014, Gov. Malloy signed into law Public Act No. 14-191, which provides in Section 2 of the Act that the “Commissioners of Agriculture, Consumer Protection and Economic and Community Development, after consulting with the Attorney General, shall study the feasibility of legalizing industrial hemp for the purpose of encouraging economic development and increasing the number of new businesses in this state.”

With regard to assessing the feasibility of legalizing industrial hemp, the Act set out three areas of inquiry:

- The Commissioner of Agriculture “shall study the feasibility of legalizing the production of industrial hemp;”
- The Commissioner of Consumer Protection “shall study the feasibility of legalizing the possession of industrial hemp;” and
- The Commissioner of Economic and Community Development “shall study the feasibility of legalizing the sale of industrial hemp.”

The Public Act further provides that the study should include the commissioners’ recommendations on: “(1) establishing a statutory definition of industrial hemp”, based on the percentage of proposed tetrahydrocannabinol in such industrial hemp, as distinguished from marijuana, (2) amending the general statutes to exclude industrial hemp from the definition of “controlled substance” in section 21a-240 of the general statutes, and (3) establishing a licensing system for industrial hemp growers and sellers.” Connecticut Public Act No. 14-191, § 2 (2014).

In accordance with the Act, this study consists of four sections corresponding to the areas of inquiry set out for each Commissioner and concluding with the Commissioners’ recommendations, as follows:

Section 1. Commissioner of Agriculture: “The feasibility of production of industrial hemp”

Section 2. Commissioner of Consumer Protection: “The feasibility of legalizing the possession of industrial hemp”

Section 3. Commissioner of Economic and Community Development: “The feasibility of legalizing the sale of industrial hemp”

Section 4. Recommendations

I. Commissioner of Agriculture's study: the feasibility of the production of industrial hemp

PRODUCTION OF INDUSTRIAL HEMP IN CONNECTICUT **Connecticut Department of Agriculture**

INTRODUCTION

Much has been written on industrial hemp in the past 20 years as interest in its production domestically has increased. Reports have been published by the Congressional Research Service, United States Department of Agriculture (USDA), University of Kentucky, Oregon State University, and Iowa State University, among others, all of which were used to develop this brief summary and which should be consulted for additional information on this topic.

BOTANY

Cannabis sativa L. is an herbaceous annual, meaning it completes its life cycle in one year. It is a member of the Cannabaceae family, which contains the genera *Cannabis* (hemp and marijuana) and *Humulus* (hops). It is naturally dioecious, having male and female flowers with differing forms on separate plants with distinct habits, although monoecious cultivars have been developed and produce both male and female flowers on the same plant.

Cannabis sativa L. may grow 15 to 20 feet high and produces rough stems with tough inner bark containing both long, coarse, and short, fine fibers surrounding a woody, usually hollow core. It has alternate leaves palmately divided into 3 to 9 narrowly lanceolate, toothed segments 3 to 6 inches long. Male flowers, which produce pollen, appear in panicles 9 to 15 inches long, while female flowers, which produce seeds between 1/10 and 3/16 inches in diameter, appear in much shorter leafy-bracted spikes of about 3/4 inches long.

Industrial hemp is generally differentiated from marijuana by its level of the psychoactive chemical THC (delta-9 tetrahydrocannabinol), with 1% THC considered the threshold for inducing intoxication or psychotropic effect. Some U.S. states, including Colorado, Maine, Montana, and Vermont, define industrial hemp as those varieties of *Cannabis sativa* containing 0.3 percent or less THC. Plants with lower THC levels cannot be distinguished by appearance from those with higher levels.

Cannabis sativa L. is sometimes called true hemp to distinguish it from other species with common names or fibers known as hemp, including *Agave sisalina* (sisal hemp), *Crotalaria juncea* (sunn hemp), *Hibiscus cannabinus* (ambari hemp), and *Musa textilis* (Manila hemp).

CULTURE

Although it can survive in a variety of environments, *Cannabis sativa* L. requires fertile, well-drained soils, such as silty or sandy loams high in organic matter, for optimum growth. It also needs adequate moisture, especially in the first several weeks after germination, but does not tolerate flooding. Its growing season ranges 4 to 5-1/2 months (120 to 165 days), depending on the end product sought, which determines when it is harvested.

Plants grown for fiber are planted densely to grow tall and straight with few branches, crowding out most weeds, and are harvested shortly after male flowers produce pollen. Plants grown for seed are spaced farther apart to encourage branching, and are harvested later in the season after the female flowers have matured and formed seeds.

Industrial hemp currently is commercially grown for its fiber and/or seed by approximately 30 countries in Asia, Europe, and North and South America, including China and Canada. Cultivars have been developed specifically for improved fiber, for improved seed production, and as dual-purpose plants grown for both fiber and seed.

Generally, plants better suited to northern climates are those with better seed production, while those that produce the best fiber grow better in warmer climates. With its soil and fertility needs similar to that of corn, *Cannabis sativa* L. has been most productive domestically in the Midwest and Kentucky.

HISTORY IN CONNECTICUT

The species is native to Asia but is widely naturalized in other regions of the world, including parts of North America. It is believed to have been introduced to the U.S. by Puritans who brought it to New England for its strong and useful fiber, and from there its cultivation spread to other parts of the country, with Kentucky becoming the greatest producer.

USDA's Natural Resources Conservation Service shows it has been grown in at least in six of Connecticut's eight counties (Fairfield, Hartford, Litchfield, New Haven, New London, and Tolland), and its production in East Windsor was documented in 1819 by John C. Pease and John M. Niles in their *A Gazetteer of the States of Connecticut and Rhode Island*. Anecdotal oral reports exist of its cultivation in Simsbury during WWII to support production of wicks for Ensign Bickford's explosives.

POTENTIAL IN CONNECTICUT

Cultivation of industrial hemp in Connecticut is limited by legal restrictions. Additional challenges include the plant's long growing season and high fertility and moisture needs, and the significant processing infrastructure needed to harvest and process its fiber and seed. It has virtually no potential as a direct-market crop, upon which many Connecticut farmers depend for a sustainable profit margin.

A wholesale market and processing infrastructure sufficient to produce a significant return on investment would be needed to justify its replacement of high-value crops on Connecticut's prime and important farmland soils, such as direct-market vegetables and/or the feed corn that directly supports the state's dairy cattle and other livestock.

To make the crop economically viable, a market for the plant's byproducts also would need to be developed. Because the inner core is highly absorbent, the hurds remaining after the fiber is harvested can be used as animal bedding, including that for horses. Connecticut's high equine population may provide opportunity in this area.

The plant may have potential as a rotational crop due to its ability to crowd out annual and biennial weeds, loosen/stabilize soils with its substantial root system, and return nutrients to the soil if left in the field.

Research and breeding programs, which exist in other countries, could be pursued domestically if legislation allows. This work might identify and/or develop cultivars well suited to Connecticut's environmental conditions. Potential exists for genetic engineering to increase quality and yields in Connecticut's relatively short growing season.

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II. Commissioner of Consumer Protection's study: the feasibility of legalizing the possession of industrial hemp

With regard to the feasibility of legalizing industrial hemp, the State may decriminalize the possession and sale of industrial hemp under State law. *See New York v. United States*, 505 U.S. 144, 161-62 (1992). This will not, however, create an immunity or defense for growers under federal law. *Monson v. DEA*, 589 F.3d 952, 962 (8th Cir. 2009). The federal Controlled Substances Act defines marijuana to include all parts of the *Cannabis sativa* L plant regardless of the tetrahydrocannabinol ("THC") level. 21 U.S.C. § 802(16). Under federal law, therefore, industrial hemp would be considered a Schedule I controlled substance regardless of how it is defined by the State. 21 U.S.C. § 812. As a result, the cultivation, distribution or possession of marijuana, regardless of the THC level, intended use or lawfulness under State law, is a federal crime.

If the State goes beyond decriminalizing industrial hemp by, for example, licensing and promoting the possession and sale of hemp, there is a possibility that a court will conclude that the State's law is preempted by federal law. Preemption occurs where there is a "positive conflict between [the federal] and . . . State law so that the two cannot consistently stand together." 21 U.S.C. § 903.

Of relevance in considering the likelihood of federal preemption, is an Act passed by Congress last year that permits certain industrial hemp research programs. Specifically, Congress passed the Agricultural Act of 2014, which includes a provision permitting an institution of higher education or a state department of agriculture to grow or cultivate industrial hemp for purposes of "research conducted under an agricultural pilot program or other agricultural or academic research" program if allowed under State law. P.L. No. 113-79, § 7606(a). The Agricultural Act of 2014 defines industrial hemp as "the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis." *Id.* at 7606(b)(2).

To qualify as an agricultural pilot program under the Agricultural Act, the State program must be intended to "study the growth, cultivation, or marketing of industrial hemp." *Id.* at 7606(b)(1). In addition, only an institution of higher education or Department of Agriculture can grow the industrial hemp and the grow sites must be certified, registered and regulated by the Department of Agriculture. *Id.*

The Agricultural Act of 2014 is attached as appendix A.

III. Commissioner of Economic and Community Development's study: the feasibility of legalizing the sale of industrial hemp

PA 14-191 Report Section: Department of Economic and Community Development

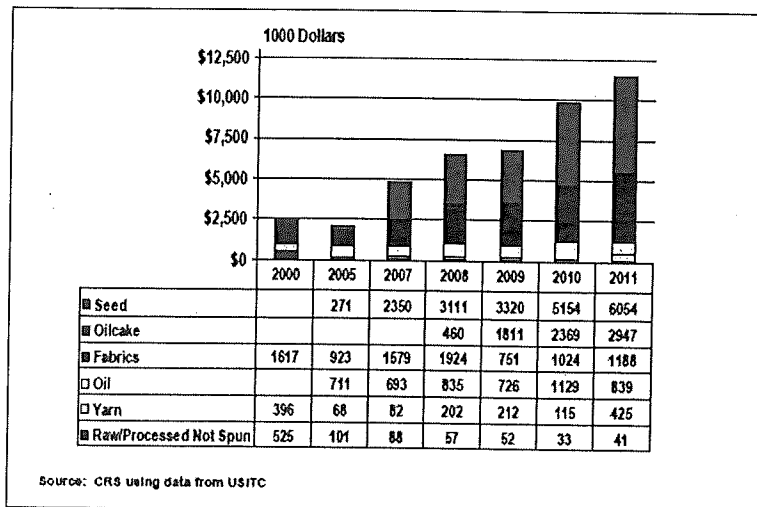
I. Review of Public Act 14-191

Public Act 14-191 charges the Connecticut Commissioner of the Department of Economic and Community Development, along with the Commissioners of the Departments of Agriculture and Consumer Protection to “study the feasibility of legalizing industrial hemp for the purpose of encouraging economic development and increasing the number of new businesses in this state.”ⁱ The Commissioner of the Department of Economic and Community Development, specifically, is also charged with studying the “feasibility of legalizing the sale” of industrial hemp.ⁱⁱ Finally, all Commissioners listed above are tasked by the legislation with crafting recommendations on:

- “(1) establishing a statutory definition of ‘industrial hemp’, based on the percentage of proposed tetrahydrocannabinol in such industrial hemp, as distinguished from marijuana,
- (2) amending the general statutes to exclude industrial hemp from the definition of ‘controlled substance’ in section 21a-240 of the general statutes, and
- (3) establishing a licensing system for industrial hemp growers and sellers.”ⁱⁱⁱ

II. Feasibility of the Sale of Industrial Hemp

Industrial hemp is currently grown and sold in many countries around the world. There are myriad uses for hemp, ranging from manufacturing applications to clothing to food stuffs.^{iv}



Value of U.S. Imports of Selected Hemp Products

Source: Economic Considerations for Growing Industrial Hemp: Implications for Kentucky's Farmers and Agricultural Economy
Department of Agricultural Economics, University of Kentucky, July 2013

manufacturing components and are all available for purchase in Connecticut, currently.

Although it is not currently cultivated commercially in the United States due to federal prohibition, many states have legalized the growing of industrial hemp.^{1,v} Despite the federal prohibition against commercial hemp cultivation, the United States imports millions of dollars of hemp products each year to be used in a wide variety of applications.^{vi} At present, hemp products are sold as food in many grocery stores in Connecticut.

Similarly, products containing hemp or derived from hemp are sold as personal care items, clothing, household items, and

¹ As of July 2013, states that had legalized the general cultivation of hemp included: Colorado, Hawaii, Kentucky, Maine, Maryland, Montana, North Dakota, Oregon, Vermont, Washington, and West Virginia. Other states have since passed legislation regarding hemp cultivation in a variety of capacities.

While the market for industrial hemp varies widely among different parts of the world, some countries that produce hemp and hemp products have millions of dollars in economic activity added to their economies. Recently, Canada has been strategic in their hemp production, supplying about 90% of their international product to the United States.^{vii} Hemp seed production, much of which is consumed or purchased by the United States, has contributed an estimated \$30-35 million in direct contribution to Canada's economy.^{viii}

Commercial hemp production requires careful planning to be profitable and sustainable. Each acre of industrial hemp is estimated to provide only approximately \$412 in maximum net profit.^{ix} Given Connecticut's small size, it is unlikely that hemp would become a major industry in the state.

Net Hemp Returns/Acre (does not include land cost) \$75/ton Fiber and \$.70/lb Seed				
Production System	Low Productivity	Medium-Low Productivity	Medium-High Productivity	High Productivity
Fiber Only	-\$167	-\$149	-\$130	-\$112
Dual System (fiber plus seed)	\$42	\$125	\$208	\$290
Seed Only	\$119	\$217	\$315	\$412
<i>Notes: Costs include labor and depreciation/overhead but not land costs. \$3.50/gal fuel; N, P, and K at \$.50/unit; 50 miles one-way trucking to market.</i>				

Source: Economic Considerations for Growing Industrial Hemp: Implications for Kentucky's Farmers and Agricultural Economy Department of Agricultural Economics, University of Kentucky, July 2013

As mentioned, the United States government currently prohibits cultivation of hemp on a commercial scale. Thusly, it would appear infeasible at this time to sell Connecticut grown hemp seed or fibers. Tennessee recently decriminalized hemp and will allow cultivation starting in 2015. However, the Tennessee state government openly acknowledges that the interplay of state and federal law could pose a threat to Tennessee residents attempting to commercially cultivate and sell industrial hemp.^x Should the federal government allow the commercial cultivation of hemp in the United States, the sale of industrial hemp and value-added hemp products in Connecticut would allow for modest new economic opportunities for Connecticut farmers and producers of value-added products.

ⁱ Public Act No. 14-191 "AN ACT CONCERNING A STUDY OF THE FEASIBILITY OF LEGALIZING INDUSTRIAL HEMP." Sec. 2.

ⁱⁱ Ibid.

ⁱⁱⁱ Ibid.

^{iv} Johnson, Renee. "Hemp as an Agricultural Commodity." Congressional Research Service. July 24, 2013. Page 4.

^v Ibid, Summary.

^{vi} Ibid, Page 6.

^{vii} "Economic Considerations for Growing Industrial Hemp: Implications for Kentucky's Farmers and Agricultural Economy." University of Kentucky, Department of Agricultural Economics. July 2013. Page 5.

^{viii} Ibid.

^{ix} Ibid, Page 10.

^x State of Tennessee. Department of Agriculture. Industrial Hemp.
<http://www.tn.gov/agriculture/regulatory/industrialhemp.shtml>

IV. Recommendations

Should the legislature, following its review of the above feasibility studies, conclude that industrial hemp should be legalized in the State of Connecticut, it is recommended that the legislature take steps to minimize the risk of federal interference in Connecticut's program. In particular, it is recommended that any industrial hemp program be designed to align with the requirements of the Agricultural Act of 2014.

Specifically, it is recommended that the definition of "industrial hemp" under State law parallel the definition of industrial hemp under the federal Agricultural Act of 2014. As discussed above, the federal Act defines industrial hemp as "the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis." Agricultural Act of 2014, at 7606(b)(2). Likewise, it is recommended that industrial hemp, as defined above, be excluded from the definition of "controlled substance" in section 21a-240 of the general statutes so as to make clear that industrial hemp is not considered a controlled substance in the State. Finally, it is recommended that a licensing and regulatory oversight system be created that conforms to the requirements of the Agricultural Act of 2014.

To the extent the legislature creates an industrial hemp program that deviates from what is permitted under the Agricultural Act of 2014, it is recommended that the program be designed and implemented in a manner that effectively regulates industrial hemp cultivation, possession and sale as to not obstruct federal criminal law enforcement priorities. Such steps will reduce, although not eliminate, the potential for federal interference with Connecticut's program. Current federal priorities with regard to the exercise of prosecutorial discretion in connection with State medical marijuana programs is set forth in an Aug. 29, 2013 Memorandum of Deputy U.S. Attorney General James Cole (attached hereto as appendix B). It is reasonable to expect that similar concerns would be at issue with a State industrial hemp program.

The Commissioners and staff of the Departments of Consumer Protection, Agriculture and Economic and Community Development thank the legislature for the opportunity to research this issue and to submit this report. It is hoped that the members of Environment, General Law and Commerce committees as well as to the public and other interested parties find this information useful. Questions may be directed to the specific agencies, or to Gary Berner, Legislative Program Manager, Department of Consumer Protection.

Appendix A

Agricultural Act of 2014, P.L. No. 113-79, 128 Stat. 912 (Feb. 7, 2014)

§ 7606 Legitimacy of Industrial Hemp Research.

(a) In General- Notwithstanding the Controlled Substances Act (21 U.S.C. 801 et seq.), the Safe and Drug-Free Schools and Communities Act (20 U.S.C. 7101 et seq.), chapter 81 of title 41, United States Code, or any other Federal law, an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) or a State department of agriculture may grow or cultivate industrial hemp if—

- (1) the industrial hemp is grown or cultivated for purposes of research conducted under an agricultural pilot program or other agricultural or academic research; and
- (2) the growing or cultivating of industrial hemp is allowed under the laws of the State in which such institution of higher education or State department of agriculture is located and such research occurs.

(b) Definitions- In this section:

(1) AGRICULTURAL PILOT PROGRAM- The term 'agricultural pilot program' means a pilot program to study the growth, cultivation, or marketing of industrial hemp—

(A) in States that permit the growth or cultivation of industrial hemp under the laws of the State; and

(B) in a manner that—

(i) ensures that only institutions of higher education and State departments of agriculture are used to grow or cultivate industrial hemp;

(ii) requires that sites used for growing or cultivating industrial hemp in a State be certified by, and registered with, the State department of agriculture; and

(iii) authorizes State departments of agriculture to promulgate regulations to carry out the pilot program in the States in accordance with the purposes of this section.

(2) INDUSTRIAL HEMP- The term 'industrial hemp' means the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

(3) STATE DEPARTMENT OF AGRICULTURE- The term 'State department of agriculture' means the agency, commission, or department of a State government responsible for agriculture within the State.

Appendix B



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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