GARVEY SCHUBERT BARER

EUCLID SOCIETY

presents

LAND USE PLANNING FOR POT

May 6, 2014

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I . List of Oregon Cities with Moratoriums

CITY AND COUNTY MORATORIUMS
UPDATED 05/02/14

DATED	CITY	COUNTY	ORDINANCE NUMBER	EXPIRATION DATE
04/09/2014	ADAMS		244	05/01/2015
04/02/2014	AMITY		636	05/01/2015
04/09/2014	ARLINGTON		412	05/01/2015
04/16/2014	ASHLAND		3093	05/01/2015
04/10/2014	ATHENA		720	05/01/2015
04/14/2015	AUMSVILLE		627	05/01/2015
04/08/2014	BAKER CITY		3333	05/01/2015
03/24/2014	BANDON		1611	07/22/2014
04/08/2014	BANKS		2014-04-01	05/01/2015
04/23/2014	BEAVERTON		4638	12/31/2014
04/15/2014	BOARDMAN		01-2014	05/01/2015
03/31/2014	BROWNSVILLE		743	05/01/2015
04/30/2014	CANBY		1400	05/01/2015
04/23/2014	CANNON BEACH		14-01	11/01/2014
04/22/2014	CANYONVILLE		624	05/01/2015
04/14/2014	CARLTON		703	05/01/2015
04/28/2014	CASCADE LOCKS		433	05/01/2015
04/10/2014	CENTRAL POINT		1986	05/01/2015
04/29/2014	CHILOQUIN		515	07/28/2014
04/02/2014	CLATSKANIE		671	05/01/2015
04/08/2014	COBURG		A-228	05/01/2015
04/15/2014	COOS BAY		457	05/01/2015
04/17/2014	COQUILLE		1492	05/01/2015
04/07/2014	CORNELIUS		2014-07	05/01/2015
04/21/2015	CRESWELL		478	05/01/2015
04/14/2014	THE DALLES		14-562	05/01/2015
04/21/2014	DAMASCUS		2014-54	05/01/2015
04/07/2014	DAYTON		618	10/03/2014
04/15/2014	DEPOE BAY		300	05/01/2015
04/08/2014	DETROIT		232	05/01/2015
04/08/2014	DONALD		155-2014	05/01/2015
04/14/2014	DRAIN		422	05/01/2015
04/24/2014	DUNDEE		530-2014	05/01/2015
04/29/2014	DUNES CITY		227	05/01/2015
04/22/2014	DURHAM		257-14	05/01/2015
04/07/2014	EAGLE POINT		2014-01	05/01/2015
04/17/2014	ECHO		368-14	05/01/2015
04/28/2014	ELGIN		TITLE 17, CHAPTER 17.40.140	05/01/2015
04/14/2014	ENTERPRISE		574	05/01/2015

CITY AND COUNTY MORATORIUMS
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04/14/2014	ESTACADA		3	05/01/2015
04/16/2014	FAIRVIEW		10 2014	05/01/2015
03/19/2014	FLORENCE		ORDINANCE 2, SERIES 2014	03/17/2015
04/28/2014	FOREST GROVE		2014-04	05/01/2015
04/17/2014	GATES		200	05/01/2015
04/30/2014	GEARHART		878	05/01/2015
04/03/2014	GERVAIS		14-002	05/01/2015
04/08/2014	GLADSTONE		1447	05/01/2015
04/22/2014	GOLD BEACH		652	05/01/2015
04/07/2014	GRASS VALLEY		2014-4	05/01/2015
04/15/2014	GRESHAM		1738	05/01/2015
04/08/2014	HALSEY		2014-401	05/01/2015
04/21/2014	HAPPY VALLEY		447	05/01/2015
03/26/2014	HARRISBURG		918	05/01/2015
04/14/2014	HEPPNER		574-14	05/01/2015
04/15/2014	HILLSBORO		6078	05/01/2015
04/08/2014	IONE		1 2014	05/01/2015
04/18/2014	IRRIGON		226-14	05/01/2015
04/29/2014	JEFFERSON		680	05/01/2015
04/22/2014	JOHN DAY		14-161-02	05/01/2015
04/08/2014	JORDAN VALLEY		184	05/01/2015
04/03/2014	JOSEPH		2014-01	05/01/2015
03/25/2014	JUNCTION CITY		1220	05/01/2015
04/07/2014	KEIZER		2014-686	05/01/2015
03/05/2014	KING CITY		O-2014-01	12/31/2014
03/05/2014	KING CITY		O-2014-02	05/01/2015
04/23/2014	LA PINE		2014-04	05/01/2015
04/10/2014	LAFAYETTE		621	05/01/2015
04/15/2014	LAKE OSWEGO		2641	05/01/2015
03/25/2014	LAKESIDE		14-278	05/01/2015
04/29/2014	LAKEVIEW		848	05/01/2015
04/09/2014	LEBANON		2014-2-2850	05/01/2015
04/08/2014	LEXINGTON		40804	05/01/2015
04/28/2014	LINCOLN CITY		2014-11	01/01/2015
04/10/2014	LONG CREEK		100	05/01/2015
04/22/2014	LOWELL		285	05/01/2015
04/28/2014	LYONS		G 1-2014	05/01/2015
04/22/2014	MADRAS		858	05/01/2015
04/15/2014	MANZANITA		14-03	05/01/2015
04/23/2014	MAUPIN		296	05/01/2015

CITY AND COUNTY MORATORIUMS
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03/25/2014	MEDFORD		2014-30	05/01/2015
04/08/2014	MERRILL		2014-0408	05/01/2015
04/14/2014	MILL CITY		374	05/01/2015
02/25/2014	MILWAUKIE		2076	12/31/2014
04/15/2014	MILWAUKIE		2077	05/01/2015
03/26/2014	MOLALLA		2014-05	05/01/2015
03/18/2014	MONMOUTH		1342	05/01/2015
04/01/2014	MORO		259	05/01/2015
04/07/2014	MT ANGEL		740	05/01/2015
04/29/2014	MT VERNON		04-29-14-01	05/01/2015
04/09/2014	MYRTLE CREEK		794	05/01/2015
04/14/2014	NEHALEM		2014-02	05/01/2015
04/10/2014	NEWBERG		2014-2772	05/01/2015
03/21/2014	NORTH BEND		3150	08/11/2014
04/30/2014	NORTH POWDER		2014-1	05/01/2015
03/24/2014	NYSSA		637-14	05/01/2015
04/22/2014	OAKRIDGE		905	05/01/2015
04/07/2014	ONTARIO		2689-2014	05/01/2015
04/02/2014	OREGON CITY		14-1005	05/01/2015
04/03/2014	PENDLETON		3846	05/01/2015
04/14/2014	PHILOMATH		788	05/01/2015
03/03/2014	PHOENIX		945	06/23/2014
04/21/2014	PORT ORFORD		2014 01	05/01/2015
04/23/2014	POWERS		2014-03	05/01/2014
04/22/2014	PRINEVILLE		1202	05/01/2015
04/22/2014	RAINIER		1063	05/01/2015
04/15/2014	REDMOND		2014-10	05/01/2015
04/07/2014	REEDSPORT		2014-1032	05/01/2015
04/14/2014	RIVERGROVE		86-2014	05/01/2015
03/25/2014	ROSEBURG		3427	05/01/2015
04/09/2014	RUFUS		2014.4.9	05/01/2015
04/28/2014	SALEM		4 14	10/27/2014
04/07/2014	SANDY		2014-06	05/01/2015
04/21/2014	SCAPPOOSE		831	05/01/2015
04/14/2014	SCIO		596	05/01/2015
04/14/2014	SEASIDE		2014 03	05/01/2015
04/03/2014	SHADY COVE		267	05/01/2015
04/09/2014	SHERIDAN		2014-03	05/01/2015
04/04/2014	SHERWOOD		2014-008	05/01/2015
04/14/2014	SILETZ		196	05/01/2015

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04/07/2014	SILVERTON		14-03	05/01/2015
04/17/2014	SODAVILLE		14-02	05/01/2015
04/02/2014	ST HELENS		3173	05/01/2015
04/15/2014	STANFIELD		409-2014	05/01/2015
04/07/2014	STAYTON		967	05/01/2015
04/14/2014	SUTHERLIN		1036	05/01/2015
04/02/2014	TALENT		14-873-O	12/31/2014
04/22/2014	TIGARD		14-08	05/01/2015
02/11/2015	TIGARD		14-04	12/31/2014
04/18/2014	TILLAMOOK		1287	05/01/2015
04/21/2014	TROUTDALE		821	05/01/2015
04/28/2014	TUALATIN		1373-14	05/01/2015
04/10/2014	TURNER		14-101	05/01/2015
04/08/2014	UKIAH		48	05/01/2015
04/01/2014	UMATILLA		788	05/01/2015
04/08/2014	VALE		867	05/01/2015
04/21/2014	VERNONIA		894	05/01/2015
04/08/2014	WARRENTON		1189-A	05/01/2015
04/14/2014	WEST LINN		1620	05/01/2015
04/09/2014	WESTON		109	05/01/2015
04/21/2014	WILSONVILLE		740	05/01/2015
04/07/2014	WINSTON		662	05/01/2015
04/08/2014	WOOD VILLAGE		03-2014	05/01/2015
04/08/2014	WOODBURN		2514	05/01/2015
04/09/2014	YAMHILL		O-502	05/01/2015
04/08/2014	YONCALLA		419	05/01/2015
04/24/2014		CLACKAMAS	01-2014	05/01/2015
04/09/2014		COLUMBIA	2014-5	05/01/2015
04/17/2014		COOS	14-03-002L	05/01/2015
04/16/2014		CROOK	269	05/01/2015
03/21/2014		DESCHUTES	2014-008	05/01/2015
04/02/2014		DOUGLAS	2014 03 01	05/01/2015
04/17/2014		GILLIAM	2014-02	05/01/2015
04/23/2014		GRANT	2014-02	05/01/2015
04/21/2014		HOOD RIVER	322	10/18/2014
04/04/2014		JACKSON	2014-3	05/01/2015
03/20/2014		JACKSON	2014-2	05/01/2015
04/02/2014		JOSEPHINE	2014-002	05/01/2015
04/22/2014		KLAMATH	36-06	05/01/2015
04/16/2014		LAKE	102	05/01/2015

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04/07/2014		LINCOLN	475	05/01/2015
04/16/2014		LINN	2014-080	05/01/2015
04/02/2014		MALHEUR	206	05/01/2015
04/30/2014		MARION	1337	05/01/2015
04/23/2014		MORROW	2014-2	05/01/2015
04/16/2014		POLK	14-03	05/01/2015
04/16/2014		SHERMAN	01 2014	05/01/2015
04/16/2014		TILLAMOOK	76	05/01/2015
04/02/2014		UMATILLA	2014-02	05/01/2015
04/29/2014		WASCO	14-001	05/01/2015
04/22/2014		WASHINGTON	781	05/01/2015
04/02/2014		WHEELER	2014-01	05/01/2015
05/01/2014		YAMHILL	889	05/01/2015
02/20/2014		YAMHILL	888	05/01/2015

2. List of Washington Cities/Counties and Approaches

Ordinance Comparison Tables

The tables and links below provide data showing how various local governments in Washington are dealing with recreational marijuana issues. We are attempting to provide accurate and complete data from all jurisdictions: please provide MRSC with your relevant ordinances or other documents by sending them toErica Zwick, MRSC Librarian. If your jurisdiction has replaced a moratorium with zoning provisions or a ban on recreational marijuana, please notify us.

City

City	Allow Under Existing Laws	Moratorium	Interim Zoning	Permanent Zoning	Prohibition
Aberdeen			X		
Anacortes		X			
Arlington				X	
Auburn		X			
Bainbridge Island		X			
Bellevue			X		
Bellingham			X		
Black Diamond		X			
Blaine				X	
Bonney Lake		X			
Burien				X	
Burlington				X	
Camas		X			
Carbonado		X			
Carnation				X	
Centralia		X			
Chehalis		X			
Cheney			X		
Clarkston		X			
Cle Elum		X			
College Place		X			
Concrete				X	

Covington			X		
Davenport		X			
Dayton		X			
Des Moines				X	
DuPont		X			
East Wenatchee		X			
Eatonville			X		
Edgewood			X		
Edmonds		X			
Ellensburg				X	
Enumclaw		X			
Ephrata			X		
Everett			X		
Everson		X			
Fairfield		X			
Federal Way		X			
Ferndale				X	
Fife		X			
Friday Harbor				X	
Gig Harbor				X	
Grandview					X
Granite Falls		X			
Hoquiam		X			
Issaquah		X			
Kalama				X	
Kelso		X			
Kenmore		X			
Kennewick		X			
Kent		X			
Kirkland			X		
Lacey	X				
Lake Forest		X			

Park					
Lake Stevens		X			
Lakewood					X
Leavenworth		X			
Liberty Lake		X			
Long Beach		X			
Longview		X			
Lynden		X			
Lynnwood			X		
Marysville		X			
Medical Lake		X			
Mesa		X			
Mill Creek		X			
Millwood				X	
Milton		X			
Monroe			X		
Moses Lake				X	
Mossyrock					X
Mount Vernon				X	
Mountlake Terrace				X	
Mukilteo				X	
Napavine		X			
Normandy Park			X		
North Bend		X			
North Bonneville	X				
Oak Harbor		X			
Oaksdale					X
Ocean Shores		X			
Olympia		X			
Othello		X			

Pasco		X			
Port Orchard			X		
Port Townsend		X			
Poulsbo			X		
Prosser		X			
Pullman				X	
Puyallup		X			
Quincy		X			
Raymond				X	
Redmond		X			
Renton		X			
Richland					X
Rockford		X			
Roy		X			
Royal City			X		
Sammamish		X			
SeaTac					X
Seattle				X	
Sedro-Woolley		X			
Sequim		X			
Shelton				X	
Snohomish		X			
Spokane				X	
Stanwood		X			
Sumas		X			
Sunnyside[1]		X			
Tacoma			X		
Toppenish		X			
Tukwila				X	
Tumwater				X	
University Place		X			
Vader			X		

Vancouver		X			
Waitsburg			X		
Walla Walla			X		
Wenatchee[2]					X
West Richland		X			
Woodinville		X			
Woodland		X			
Yakima					X
Zillah		X			

1. On September 30, 2013, the Sunnyside city council voted to extend the city's moratorium on the producing, processing and selling of recreational marijuana within city limits to 12 months from its original six months.

2. On October 24, 2013, the Wenatchee city council voted against an ordinance that would have exempted marijuana businesses from the city requirement that all businesses comply with federal laws, so marijuana businesses are now prohibited from siting in the city.

County

County	Allow Under Existing Laws	Moratorium	Interim Zoning	Permanent Zoning	Prohibition
Chelan County		X			
Clark County		X			
Columbia County		X			
Cowlitz County		X			
Douglas County	X				
Franklin County		X			
Garfield County		X			
Grant County	X				

Grays Harbor County		X			
Island County		X			
King County				X	
Kitsap County				X	
Lewis County		X			
Mason County				X	
Okanagon County	X				
Pacific County				X	
Pierce County					X
San Juan County [1]	X				
Skamania County		X			
Skagit County [2]	X				
Snohomish County				X	
Spokane County			X		
Stevens County		X	X		
Thurston County			X		
Walla Walla County		X			
Whatcom County		X			
Yakima County		X			

1. San Juan County will accommodate state licensed marijuana businesses under its existing zoning regulations.

2. In Skagit County, licensed marijuana businesses are permitted in established county zones, in

accordance with the Guidance Memo. See also the county's Press Release from December 5th, 2013.

3. Oregon Regulations of Medical Marijuana Facilities

Oregon Medical Marijuana Facilities Rules
(Temporary)

333-008-1000 - Applicability

(1) A person may not establish, conduct, maintain, manage or operate a facility on or after March 1, 2014, unless the facility has been registered by the Authority under these rules.
(2) Nothing in these rules exempts a PRF, an employee of a registered facility, or a registered facility from complying with any other applicable state or local laws.
(3) Registration of a facility does not protect a PRF or employees from possible criminal prosecution under federal law.

333-008-1010- Definitions

For the purposes of OAR 333-008-1000 through 333-008-1290 the following definitions apply:
(1) "Agricultural land" means land that is located within an exclusive farm use zone as that term is described in ORS 215.203.
(2) "Attended primarily by minors" means that a majority of the students are minors.
(3) "Authority" means the Oregon Health Authority.
(4) "Batch" means a quantity of usable marijuana or a number of immature plants transferred at one time to a facility by a person authorized by a patient to transfer usable marijuana to a registered facility.
(5) "Career school" means any private proprietary professional, technical, business or other school instruction, organization or person that offers any instruction or training for the purpose or purported purpose of instructing, training or preparing persons for any profession at a physical location attended primarily by minors.
(6) "Conviction" means an adjudication of guilt upon a verdict or finding entered in a criminal proceeding in a court of competent jurisdiction.
(7)(a) "Designated primary caregiver" means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the Authority.
(b) "Designated primary caregiver" does not include the person's attending physician.
(8) "Domicile" means the place of abode of an individual where the person intends to remain and to which, if absent, the individual intends to return.
(9) "Edible" means a product made with marijuana that is intended for ingestion.
(10)(a) "Employee" means any person, including aliens, employed for remuneration or under any contract of hire, written or oral, express or implied, by an employer.

(b) “Employee” does not include a person who volunteers or donates services performed for no remuneration or without expectation or contemplation of remuneration as the adequate consideration for the services performed for a religious or charitable institution or a governmental entity.
(11) “Facility” means a medical marijuana facility.
(12) “Farm use” has the meaning given that term in ORS 215.203.
(13) “Finished product” means a product infused with usable marijuana that is intended for use, ingestion or consumption other than by smoking, including but not limited to edible products, ointments, and tinctures.
(14) “Grower” has the same meaning as “person responsible for a marijuana grow site.”
(15) “Grow site” means a specific location registered by the Authority and used by the grower to produce marijuana for medical use by a specific patient.
(16)(a) “Immature marijuana plant or immature plant” means a marijuana plant that has no flowers, is less than 12 inches in height, and less than 12 inches in diameter.
(b) A seedling or start that does not meet all three criteria in subsection (16)(a) is a mature plant.
(17) “Macroscopic screening” means visual observation without the aid of magnifying lens(es).
(18) “Microscopic screening” means visual observation with a minimum magnification of 40x.
(19) “Minor” means an individual under the age of 18.
(20) “Oregon Medical Marijuana Program or OMMP” means the program operated and administered by the Authority that registers patients, designated primary caregivers, and growers.
(21) “Patient” has the same meaning as “registry identification cardholder.”
(22) “Person” means an individual.
(23) “Person responsible for a marijuana grow site” means a person who has been selected by a patient to produce medical marijuana for the patient, and who has been registered by the Authority for this purpose and has the same meaning as “grower”.
(24) “Person responsible for a medical marijuana facility or PRF” means an individual who owns, operates, or otherwise has legal responsibility for a facility and who meets the qualifications established in these rules and has been approved by the Authority.
(25) “Pesticide” means any substance or mixture of substances, intended to prevent, destroy, repel, or mitigate any pest.
(26) “Premises” means a location registered by the Authority under these rules and includes all areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms, including all public and private areas where individuals are permitted to be present.

(27) “Primary school” means a learning institution containing any combination of grades Kindergarten through 8 or age level equivalent.
(28) “Random sample” means an amount of usable marijuana taken from a batch in which different fractions of the usable marijuana have an equal probability of being represented.
(29) “Registry identification cardholder” means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Authority.
(30) “Remuneration” means compensation resulting from the employer-employee relationship, including wages, salaries, incentive pay, sick pay, compensatory pay, bonuses, commissions, stand-by pay, and tips.
(31) “Resident” means an individual who has a domicile within this state.
(32) “Safe” means a metal receptacle with a locking mechanism capable of storing all usable marijuana at a registered facility that is rendered immobile by being securely anchored to a permanent structure of the building, or a “vault”.
(33) “Secondary school” means a learning institution containing any combination of grades 9 through 12 or age level equivalent and includes those institutions that provide junior high schools which include 9th grade.
(34) “These rules” means OAR 333-008-1000 through 333-008-1290.
(35) “Usable marijuana” has the meaning given that term is ORS 475.302 and includes “finished product”.
(36) “Valid testing methodology” means a scientifically valid testing methodology described in a published national or international reference and validated by the testing laboratory.
(37) “Vault” means an enclosed area that is constructed of steel-reinforced or block concrete and has a door that contains a multiple-position combination lock or the equivalent, a relocking device or equivalent, and a steel plate with a thickness of at least one-half inch.

333-008-1020 - Application for Medical Marijuana Facility Registration
(1) Beginning on March 3, 2014, at 8:30 a.m. Pacific Standard Time (PST), the Authority shall begin accepting applications for the registration of a facility. An application may be submitted at any time on or after March 3, 2014, at 8:30 a.m., PST.
(2) A PRF wishing to apply to register a facility must provide to the Authority:
(a) An application on a form prescribed by the Authority;
(b) Any additional documentation required by the Authority in accordance with these rules;
(c) The applicable fee as specified in OAR 333-008-1030; and

(d) Information and fingerprints required for a criminal background check in accordance with OAR 333-008-1130.
(3) An application for the registration of a facility must be submitted by a PRF electronically via the Authority's website, http://mmj.oregon.gov. The documentation required in subsection (2)(b) of this rule and the information and fingerprints described in subsection (2)(d) of this rule may be submitted electronically to the Authority or may be mailed but must be postmarked within five calendar days of the date the application was submitted electronically to the Authority or the application will be considered to be incomplete. Applicable fees must be paid online at the time of application.
(4) The Authority must review each application received to ensure the application is complete, that the required documentation has been submitted, and the fee paid. The Authority shall return an incomplete application to the person that submitted the application. A person may re-submit an application that was returned as incomplete at any time.
(5) Applications will be reviewed in the order they are received by the Authority. An application that is returned as incomplete must be treated by the Authority as if it was never received.
(6) A PRF who wishes to register more than one location must submit a separate application and application fee for each location.
(7) At the time of application the PRF will be asked, by the Authority, to sign an authorization permitting the Authority to publish the location of the facility if the facility is registered.

333-008-1030 - Fees
(1) The initial fees for the registration of a facility are:
(a) A non-refundable application fee of $500; and
(b) A $3,500 registration fee.
(2) The annual renewal fees for the registration of a facility are:
(a) A $500 non-refundable renewal fee; and
(b) A $3,500 registration fee.
(3) The Authority must return the registration fee if:
(a) An application is returned to the applicant as incomplete;
(b) The Authority denies an application; or
(c) An applicant withdraws an application.

333-008-1040 - Application Review
(1) Once the Authority has determined that an application is complete it must review the application to determine compliance with ORS 475.314 and these rules.
(2) The Authority may, in its discretion, prior to acting on an application:

(a) Contact the applicant and request additional documentation or information; and
(b) Inspect the premises of the proposed facility.
(3) Prior to making a decision whether to approve or deny an application the Authority must:
(a) Ensure that the criminal background check process has been completed and review the results;
(b) Contact the OMMP and obtain documentation of whether the location of the facility is the same location as a registered grow site under OAR 333-008-0025;
(c) Review available records and information to determine whether the proposed facility is located within 1,000 feet of the real property comprising a public or private elementary, secondary or career school; and
(d) Review the list of registered facilities to determine whether any registered facilities are within 1,000 feet of the proposed facility.
(4) If during the review process the Authority determines that the application or supporting documentation contains intentionally false or misleading information the Authority must return the application to the applicant as incomplete.

333-008-1050 - Approval of Application
(1) If the proposed facility appears to be in compliance with ORS 475.314 and these rules, and the PRF has passed the criminal background check and is determined to reside in Oregon, the Authority must notify the applicant in writing that the application has been approved, that the facility is registered, and provide the applicant with proof of registration that includes a unique registration number.
(2) A facility that has been registered must display proof of registration in a prominent place inside the facility so that proof of registration is easily visible to individuals authorized to transfer usable marijuana and immature plants to the facility and individuals who are authorized to receive a transfer of usable marijuana and immature plants from the facility at all times when usable marijuana or immature plants are being transferred.
(3) A registered facility may not post any signs at the facility that use the Authority or the OMMP name or logo except to the extent that information is contained on the proof of registration.
(4) A facility's registration is only valid for the location indicated on the proof of registration and is only issued to the PRF that is listed on the application or subsequently approved by the Authority.
(5) A facility's registration may not be transferred to another location.
(6) If a proposed facility appears to be in compliance with ORS 475.314 and these rules except that the proposed facility does not yet have a security system installed and other security requirements in place, the Authority may issue a provisional registration that is valid for 60 days.

(a) In order to receive provisional registration a PRF must submit to the Authority at the time of application a floor plan of the facility that has marked and labeled all points of entry to the facility, all secure areas required by these rules and the proposed placement of all video cameras.
(b) The provisionally registered facility may not receive transfers of usable marijuana or immature plants or transfer usable marijuana or immature plants until the security system and other security requirements are in place and the Authority has approved the provisionally registered facility to begin operating.
(c) When the security system and other security requirements are in place the PRF must notify the Authority and if the Authority determines that the provisionally registered facility is in full compliance with these rules, the Authority must approve the facility for operation.

333-008-1060 - Denial of Application
(1) The Authority must deny an application if:
(a) An applicant fails to provide sufficient documentation that the proposed facility meets the qualifications for a facility in these rules; or
(b) The PRF has been:
(A) Convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II within five years from the date the application was received by the Authority; or
(B) Convicted more than once for the manufacture or delivery of a controlled substance in Schedule I or Schedule II; or
(C) Prohibited by a court from participating in the OMMP.
(2) If the Authority intends to deny an application for registration it must issue a Notice of Proposed Denial in accordance with ORS 183.411 through 183.470.

333-008-1070 - Expiration and Renewal of Registration
(1) A facility's registration expires one year following the date of application approval.
(2) If a PRF wishes to renew the facility's registration, the person must submit to the Authority within 60 days of the registration's expiration:
(a) An application renewal form prescribed by the Authority;
(b) The required renewal fees;
(c) Forms required for the Authority to do a criminal background check on the PRF.

333-008-1080 - Notification of Changes
(1) A PRF must notify the Authority within 10 calendar days of any of the following:
(a) The person's conviction for the manufacture or delivery of a controlled substance in Schedule I or Schedule II;

(b) The issuance of a court order that prohibits the person from participating in the OMMP;
(c) A decision to change the PRF;
(d) A decision to permanently close the facility at that location;
(e) A decision to move to a new location;
(f) A change in the person's residency; and
(g) The location of an elementary, secondary or career school attended primarily by minors within 1,000 feet of the facility.
(2) The notification required in section (1) of this rule must include a description of what has changed and any documentation necessary for the Authority to determine whether the facility is still in compliance with ORS 474.314 and these rules including but not limited to, as applicable:
(a) A copy of the criminal judgment or order;
(b) A copy of the court order prohibiting the PRF from participating in the OMMP;
(c) The location of the school that has been identified as being within 1,000 feet of the facility; or
(d) The information required in OAR 333-008-1120 and 333-008-1130 to determine the residency of the new PRF and to perform the criminal background check.
(3) Failure of the PRF to notify the Authority in accordance with this rule may result in revocation of a facility's registration.

333-008-1090 - Required Closures
A facility may not receive transfers of usable marijuana or immature plants or transfer usable marijuana or immature plants if:
(1) The PRF is convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II;
(2) The PRF changes and the Authority has not:
(a) Performed a criminal background check on the proposed PRF in accordance with OAR 333-008-1130;
(b) Determined whether the individual is a resident of Oregon; and
(c) Provided written approval that the new PRF meets the requirements of ORS 475.314.
(3) The PRF has been ordered by the court not to participate in the OMMP; or
(4) An elementary, secondary or career school attended primarily by minors is found to be within 1,000 of the registered facility.

333-008-1100 - Business Qualifications for Medical Marijuana Facility Registration
(1) A facility must be registered as a business or at the time of applying to register a facility have filed a pending application to register as a business with the Office of the Secretary of State.

(2) The Authority may not approve an application until it has verified that the facility is registered as a business with the Office of the Secretary of State.

333-008-1110 - Locations of Medical Marijuana Facilities

(1) In order to be registered a facility must be located in an area that is zoned by the local governing agency for commercial, industrial or mixed use or as agricultural land.
(2) Registration by the Authority is not a guarantee that a facility is permitted to operate under applicable land use or other local government laws where the facility is located.
(3) A facility may not be located:
(a) At the same address as a registered marijuana grow site;
(b) Within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors; or
(c) Within 1,000 feet of another medical marijuana facility;
(4) In order for the Authority to ensure compliance with this rule a PRF must submit with an initial application documentation that shows the current zoning for the location of the proposed facility.
(5) For purposes of determining the distance between a facility and a school referenced in subsection (3)(b) of this rule, "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in every direction from any point on the boundary line of the real property comprising an existing public or private elementary, secondary or career school primarily attended by minors.
(6) For purposes of determining the distance between a facility and another registered facility "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in every direction from any point on the boundary line of the real property compromising a registered facility.
(7) In order to be registered a facility must operate at a particular location as specified in the application and may not be mobile.

333-008-1120 - Person Responsible for a Medical Marijuana Facility (PRF)

(1) A PRF must:
(a) Be a resident of Oregon. Residency may be proved by submitting to the Authority:
(A) An Oregon driver's license, an Oregon identification card that includes a photograph of the person, or a military identification card that includes a photograph of the person; and
(B) Copies of utility bills, rental receipts, mortgage statements or similar documents that contain the name and address of the domicile of the PRF.
(b) Have legal authority to act on behalf of the facility; and
(c) Be responsible for ensuring the facility complies with applicable laws, if registered.
(2) A PRF may not:

(a) Have been convicted in any state for the manufacture or delivery of a controlled substance in Schedule I or Schedule II within five years from the date of application; or
(b) Have been convicted more than once in any state for the manufacture or delivery of a controlled substance in Schedule I or Schedule II.
(3) At the time of application a PRF must submit to the Authority a copy of the information described in paragraphs (1)(a)(A) and (B) of this rule.
(4) A PRF is accountable for any intentional or unintentional action of its owners, officers, managers, employees or agents, with or without the knowledge of the PRF, who violate ORS 475.314 or these rules.
(5) If a PRF no longer meets the criteria of a PRF the Authority shall inform the PRF and the owner of the facility if different that:
(a) The PRF may no longer serve in that capacity;
(b) In order to remain certified, a change of PRF form must be submitted; and
(c) The facility may not operate until the Authority has approved a new PRF.
(6) If the Authority is notified that a change of PRF is needed, the current PRF is no longer able to serve as the PRF, or the PRF has been or will be removed by the owner of a facility, the owner of the facility must submit a change of PRF form to Authority within 10 business days of the notification or the Authority will begin proceedings to revoke the certification of the facility.
(7) If the PRF of record for the facility is no longer serving in that capacity the facility may not operate until a new PRF has been approved by the Authority.

333-008-1130 - Criminal Background Checks
(1) A PRF must, at the time of application, provide to the Authority:
(a) A criminal background check request form, prescribed by the Authority that includes but is not limited to:
(A) First, middle and last name;
(B) Any aliases;
(C) Date of birth;
(D) Driver's license information; and
(E) Address and recent residency information.
(b) Fingerprints in accordance with the instructions on the Authority's webpage: http://mmj.oregon.gov.
(2) The Authority may request that the PRF disclose his or her Social Security Number if notice is provided that:
(a) Indicates the disclosure of the Social Security Number is voluntary; and
(b) That the Authority requests the Social Security Number solely for the purpose of positively identifying the PRF during the criminal records check process.

(3) The Authority shall conduct a criminal records check in order to determine whether the PRF has been convicted of the manufacture or delivery of a controlled substance in Schedule I or Schedule II in any state.
(4) The Authority must conduct a criminal background check in accordance with this rule on a PRF every year at the time of application renewal.
(5) If a PRF wishes to challenge the accuracy or completeness of information provided by the Department of State Police, the Federal Bureau of Investigation and agencies reporting information to the Department of State Police or Federal Bureau of Investigation, those challenges must be made through the Department of State Police, Federal Bureau of Investigation or reporting agency and not through the contested case process specified in OAR 333-008-1060(2).

333-008-1140 - Security for Registered Facilities
(1) The PRF must ensure that a registered facility complies with OAR 333-008-1140 through 333-008-1180.
(2) The PRF is responsible for the security of all usable marijuana and immature plants in the registered facility, including providing adequate safeguards against theft or diversion of usable marijuana and immature plants and records that are required to be kept.
(3) The PRF must ensure that commercial grade, non-residential door locks are installed on every external door at a registered facility prior to opening for business and used while a facility is registered.
(4) During all hours when the registered facility is open for business, the PRF must ensure that:
(a) All usable marijuana and immature plants received and all usable marijuana and immature plants available for transfer to a patient or a designated primary caregiver are kept in a locked, secure area that can only be accessed by authorized personnel.
(b) All areas where usable marijuana or immature plants are received for transfer by a registered facility are identified as a restricted access area by posting a sign not less than 12 inches wide and 12 inches long, composed of letters not less than one-half inch in height that reads, “Restricted Access Area — Authorized Personnel Only”.
(c) All areas where usable marijuana or immature plants are available for transfer to a patient or designated primary caregiver are:
(A) Identified as a restricted access area and clearly identified by the posting of a sign not less than 12 inches wide and 12 inches long, composed of letters not less than one-half inch in height that reads “Restricted Access Area — No Minors Allowed”;
(B) Supervised by the PRF or an employee of the registered facility at all times when a patient or designated primary caregiver is present; and
(C) Separate from any area where usable marijuana or immature plants are being transferred to a registered facility.

(5) During all hours when the registered facility is not open for business the PRF must ensure that:
(a) All entrances to and exits from the facility are securely locked and any keys or key codes to the facility remain in the possession of the PRF or authorized employees;
(b) All usable marijuana is kept in a safe; and
(c) All immature plants are in a locked room.
(6) The PRF must ensure that:
(a) Electronic records are encrypted, and securely stored to prevent unauthorized access and to ensure confidentiality;
(b) There is an electronic back-up system for all electronic records; and
(c) All video recordings and archived required records not stored electronically are kept in a locked storage area. Current records may be kept in a locked cupboard or desk outside the locked storage area during hours when the registered facility is open.

333-008-1150 - Alarm System for Registered Facilities
(1) Prior to opening for business, a PRF must ensure that a registered facility has a security alarm system, installed by an alarm installation company, on all facility entry or exit points and perimeter windows.
(2) At the time of application a PRF must submit to the Authority documentation of the:
(a) Alarm system that is installed or proposed for installation;
(b) Company that installed the system or plans to install the system;
(c) Features of the system that meet the criteria of this rule.
(3) A PRF must ensure that the facility is continuously monitored by the alarm system.
(4) The security alarm system for the registered facility must:
(a) Be able to detect movement inside the registered facility;
(b) Be programmed to notify a security company that will notify the PRF or his or her designee in the event of a breach; and
(c) Have at least two “panic buttons” located inside the registered facility that are linked with the alarm system.

333-008-1160 - Video Surveillance Equipment for Registered Facilities
(1) Prior to opening for business, a PRF must install a fully operational video surveillance recording system.
(2) At the time of application a PRF must submit to the Authority documentation of the:
(a) Video surveillance system that is installed or proposed for installation;
(b) Company or person that installed the system or plans to install the system;
(c) Features of the system that meet the criteria of this rule.
(3) Video surveillance equipment must, at a minimum:
(a) Consist of:

(A) Digital or network video recorders;
(B) Cameras capable of meeting the requirements of OAR 333-008-1170 and this rule;
(C) Video monitors;
(D) Digital archiving devices; and
(E) A color printer capable of producing still photos.
(b) Be equipped with a failure notification system that provides prompt notification to the PRF or employees of any prolonged surveillance interruption or failure; and
(c) Have sufficient battery backup to support a minimum of one hour of recording time in the event of a power outage.
(4) All video surveillance equipment and recordings must be stored in a locked secure area that is accessible only to the PRF, authorized employees of the registered facility and the Authority.

333-008-1170 - Required Camera Coverage and Camera Placement for Registered Facilities
(1) A PRF must ensure that a registered facility has camera coverage for:
(a) All secure and restricted access areas described in OAR 333-008-1140;
(b) All point of sale areas;
(c) All points of entry to or exit from secure and restricted access areas; and
(d) All points of entry to or exit from the registered facility.
(2) A PRF must ensure that camera placement is capable of identifying activity occurring within 15 feet of all points of entry to the registered facility and exit from the registered facility and shall allow for the clear and certain identification of any individual and activities on the facility premises.

333-008-1180 - Video Recording Requirements for Registered Facilities
(1) The PRF must ensure that all camera views of all secure and restricted access areas and points of entry to or exit from the registered facility are continuously monitored by motion sensor video equipment or similar technology 24 hours a day.
(2) A PRF must ensure that:
(a) All surveillance recordings are kept for a minimum of 30 days and are in a format that can be easily accessed for viewing;
(b) The surveillance system has the capability to produce a color still photograph from any camera image;
(c) The date and time is embedded on all surveillance recordings without significantly obscuring the picture;
(d) Video recordings are archived in a format that ensures authentication of the recording as a legitimately-captured video and guarantees that no alterations of the recorded image has taken place; and

(e) Video surveillance records and recordings are available upon request to the Authority for the purpose of ensuring compliance with ORS 475.314 and these rules.

333-008-1190 - Testing

(1) A PRF must ensure that usable marijuana and immature plants are tested for pesticides, mold and mildew in accordance with this rule prior to the usable marijuana or immature plants being transferred to a patient or a designated primary caregiver.
(2) Upon usable marijuana being transferred to a registered facility in accordance with OAR 333-008-1230, the PRF must ensure the usable marijuana is segregated into batches, that each batch is placed in an individual container or bag, and that a label is attached to the container or bag that includes at least the following information:
(a) A unique identifier;
(b) The name of the person who transferred it; and
(c) The date the usable marijuana was received by the registered facility.
(3) Sampling. A PRF must ensure that random samples from each batch are taken in an amount necessary to conduct the applicable test, that the samples are labeled with the batch's unique identifier, and submitted for testing.
(4) Testing. A PRF must ensure that each sample is tested for pesticides, mold, and mildew and for an analysis of the levels of tetrahydrocannabinol (THC) and Cannabidiol (CBD).
(a) Immature Plants. An immature plant may be tested for pesticides, mold or mildew by conducting a macroscopic or microscopic screening to determine if the plant has visible pesticide residue, mold or mildew.
(b) Flowers or other usable marijuana plant material. Usable marijuana in the form of flowers or other plant material must be:
(A) Tested for pesticides, mold and mildew using valid testing methodologies and macroscopic or microscopic screening may not be used;
(B) Tested for pesticides by testing for the following analytes:
(i) Chlorinated Hydrocarbons;
(ii) Organophosphates;
(iii) Carbamates; and
(iv) Pyrethroids; and
(C) Analyzed, using valid testing methodologies, to determine the levels of THC and CBD.
(c) Edibles, Liquids and Solid Extracts. If the usable marijuana used in the edible, liquid or solid extract has been tested in accordance with this rule and tested negative for pesticides, mold or mildew, the edible, liquid or solid extract does not need to be tested for pesticides, mold and mildew but does need to be tested for an analysis of the levels of THC and CBD. If the usable marijuana used in the edible, liquid, or solid extract was not tested in accordance with this rule, the edible, liquid or solid extract must be tested for pesticides, mold or mildew in accordance with subsection (4)(b) of this rule.

(5) Laboratory Requirements. A PRF must ensure that all testing, except for testing of immature plants, is done by a third party or in-house laboratory that:
(a) Uses valid testing methodologies; and
(b) Has a Quality System for testing of pesticides, mold and mildew that is compliant with the:
(A) 2005 International Organization for Standardization 17025 Standard; or
(B) 2009 National Environmental Laboratory Accreditation Conference Institute TNI Standards.
(6) Macroscopic or microscopic screening of immature plants must be conducted by a person who has a minimum of a bachelor's degree in horticulture, botany, plant pathology, microbiology, or an equivalent degree but is not required to be done by a laboratory.
(7) Testing Results. A laboratory must provide testing results to the PRF signed by an official of the laboratory who can attest to the accuracy of the results, and that includes the levels of pesticides, mold or mildew detected and the levels of THC and CBD.
(a) If an immature plant has visible pesticide residue, mold or mildew it must be deemed to test positive and must be returned to the person who transferred the immature plant to the registered facility.
(b) A sample of usable marijuana shall be deemed to test positive for mold and mildew if the sample has levels that exceed the maximum acceptable counts in Appendix A.
(c) A sample of usable marijuana shall be deemed to test positive for pesticides with a detection of more than 0.1 parts per million of any pesticide.
(8) If an immature plant or sample of usable marijuana tests positive for pesticides, mold or mildew based on the standards in this rule the PRF must ensure the entire batch from which the sample was taken is returned to the person who transferred the immature plant or usable marijuana to the registered facility and must document how many or how much was returned, to whom, and the date it was returned.
(9) A registered facility may perform its own testing as long as the testing complies with this rule.
(10) The PRF may permit laboratory personnel or other persons authorized to do testing access to secure or restricted access areas of the registered facility where usable marijuana or immature plants are stored. The PRF must log the date and time in and out of all such persons.
[ED. NOTE: Tables referenced are not included in rule text. Click here for PDF copy of table(s).]

333-008-1200 - Operation of Registered Facilities

(1) A PRF must ensure that a registered facility does not permit:
(a) A minor to be present in any area of a registered facility where usable marijuana or immature plants are present, even if the minor is a patient or an employee; and

(b) Consumption, ingestion, inhalation or topical application of usable marijuana anywhere on the premises of the registered facility, except that an employee of a registered facility who is a patient may consume usable marijuana during their work shift as necessary for his or her medical condition, in a closed room, alone if the usable marijuana is being smoked, not visible to the public or to patients or caregivers on the premises of the registered facility to receive a transfer of usable marijuana or an immature plant.
(2) A PRF must ensure that a registered facility uses an Oregon Department of Agriculture approved scale to weigh all usable marijuana.
(3) The following persons are the only persons permitted in any area of a registered facility where usable marijuana or immature plants are present, and only in accordance with these rules, as applicable:
(a) A PRF;
(b) An owner of a registered facility;
(c) An employee of the registered facility;
(d) Laboratory personnel in accordance with OAR 333-008-1190;
(e) A contractor authorized by the PRF to be on the premises of a registered facility;
(f) A patient, designated primary caregiver, or growers;
(g) An authorized employee or authorized contractor of the Authority; and
(h) Other government officials that have jurisdiction over some aspect of the registered facility or that otherwise have authority to be on the premises of the registered facility.
(4) A PRF must have written detailed policies and procedures and training for employees on the policies and procedures that at a minimum, cover the following:
(a) Security;
(b) Testing;
(c) Transfers of usable marijuana and plants to and from the facility;
(d) Operation of a registered facility;
(e) Required record keeping;
(f) Labeling; and
(g) Violations and enforcement.

333-008-1210 - Record Keeping
(1) A PRF must ensure that the following information is documented and maintained electronically in a manner that can easily be shared with the Authority or accessed by the Authority:
(a) All Authorization to Transfer forms, including the date on which a form was received;
(b) Any written notifications from a patient with regard to any change in status as required by ORS 475.309(7)(a)(B) or (10)(a);
(c) Any revocation of an Authorization to Transfer form;
(d) All transfer information required in OAR 333-008-1230 and 333-008-1240;

(e) Documentation of the costs of doing normal and customary business used to establish the reimbursement amounts for transfers of usable marijuana or immature plants, including costs related to transferring, handling, securing, insuring, testing, packaging and processing usable marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage.
(f) The amount of money paid by a registered facility to a grower for each transfer of usable marijuana or immature plants;
(g) The amount of money paid by each patient or designated primary caregiver for a transfer of usable marijuana or an immature plant;
(h) The laboratory reports of all testing and other information required to be documented in OAR 333-008-1190; and
(i) All other information required to be documented and retained in these rules.
(2) The PRF must ensure that information required to be documented pursuant to section (1) of this rule is maintained in a safe and secure manner that protects the information from unauthorized access, theft, fire, or other destructive forces, and is easily retrievable for inspection by the Authority upon request, either at the registered facility or online.
(3) A PRF must ensure that a registered facility uses an electronic data management system for the recording of transfers of usablel marijuana and immature plants. The system must meet the following minimum requirements:
(a) Record the information required to be documented in this rule and OAR 333-008-1230 and 333-008-1240;
(b) Provide for off-site or secondary backup system;
(c) Assign a unique transaction number for each transfer to or from the registered facility;
(d) Monitor date of testing and testing results;
(e) Track products by unique transaction number through the transfer in, testing and transfer out processes;
(f) Generate transaction and other reports requested by the Authority viewable in PDF format;
(g) Produce reports, including but not limited to inventory reports; and
(h) Provide security measures to ensure patient and grower records are kept confidential.
(4) Documents and information required to be maintained in these rules must be retained by the PRF for at least one year.
(5) A PRF must provide the Authority with any documentation required to be maintained in these rules upon request, in the format requested by the Authority, or permit the Authority access to such documentation on-site.

333-008-1220 - Labeling
(1) Prior to transferring usable marijuana a PRF must ensure that a label is affixed to the usable marijuana that includes but is not limited to:

(a) The amount of THC and CBD in the usable marijuana;
(b) If pre-packaged, the weight or volume of the packaged usable marijuana in metric units;
(c) The amount of usable marijuana in a finished product in metric units;
(d) Potency information; and
(e) Who performed the testing.
(2) If the registered facility transfers usable marijuana in a form that is edible, the PRF must ensure that the usable marijuana has a warning label on the outside of the packaging that includes the following: “WARNING: MEDICINAL PRODUCT — KEEP OUT OF REACH OF CHILDREN” in bold capital letters, in a font size that is larger than the type-size of the other printing on the label such that it is easy to read and prominently displayed on the product.

333-008-1225 - Packaging
(1) For purposes of this rule:
(a) "Child-resistant safety packaging" means:
(A) Tamper-proof, child-proof containers designed and constructed to be significantly difficult for children under five years of age to open and not difficult for adults to use properly;
(B) Opaque so that the product cannot be seen from outside the packaging;
(C) Closable for any product intended for more than a single use or containing multiple servings; and
(D) Labeled in accordance with OAR 333-008-1220.
(b) "Container" means a sealed, hard or soft-bodied receptacle in which a tetrahydrocannabinol-infused product is placed prior to being transferred to a patient or caregiver.
(c) "Packaged in a manner not attractive to minors" means the tetrahydrocannabinol-infused product is not in a container that is brightly colored, depicts cartoons or images other than the logo of the facility, unless the logo of the facility depicts cartoons, in which case only the name of the facility is permitted.
(2) A registered facility may not transfer any tetrahydrocannabinol-infused product that is meant to be swallowed or inhaled, unless the product is:
(a) Packaged in child-resistant safety packaging; and
(b) Packaged in a manner that is not attractive to minors.

333-008-1230 - Transfers to a Registered Facility
(1) A patient may authorize usable marijuana or immature marijuana plants to be transferred to a registered facility by signing an Authorization to Transfer form prescribed by the Authority. A patient may authorize transfers to more than one registered facility. A separate form must be provided for each registered facility. The Authorization must include, but is not limited to, the following information:

(a) The patient's name, OMMP card number and expiration date and contact information;
(b) The name and contact information of the individual who is authorized to transfer the usable marijuana or immature marijuana plants to the registered facility and that individual's OMMP card number and expiration date;
(c) The name and address of the registered facility that is authorized to receive the usable marijuana or immature marijuana plants; and
(d) The date the authorization expires, if earlier than the expiration date of the patient's OMMP card.
(2) Only a patient, the patient's designated primary caregiver, or the patient's grower may be authorized to transfer usable marijuana or immature plants to a registered facility.
(3) The original Authorization to Transfer form must be provided to the registered facility to which a transfer may be made by the patient or person authorized to transfer the usable marijuana or immature plants. The patient should retain a copy of the Authorization to Transfer form for his or her records and provide a copy to the person authorized to transfer the usable marijuana or immature plants.
(4) An Authorization to Transfer form automatically expires on the date the patient's OMMP card expires, unless the patient has specified an earlier expiration date. If the patient renews his or her OMMP card the patient may execute a new Authorization to Transfer form in accordance with this rule.
(5) Once usable marijuana or an immature plant is transferred to a registered facility pursuant to a valid Authorization to Transfer form, the usable marijuana or immature plant is no longer the property of the patient unless the usable marijuana or immature plants are returned by the registered facility.
(6) Prior to a registered facility accepting a transfer of usable marijuana or immature plants the PRF must ensure that:
(a) It has a valid Authorization to Transfer form on file that authorizes the individual that is transferring the usable marijuana or immature plants to make the transfer; and
(b) The individual transferring the usable marijuana or immature plants is the individual authorized to make the transfer.
(7) A PRF must ensure that when a registered facility accepts a transfer of usable marijuana or an immature plant the batch of usable marijuana and each immature plant are segregated in accordance with the testing rule, OAR 333-008-1190 and that the following information is documented, as applicable:
(a) The unique identifier;
(b) The weight in metric units of all usable marijuana received by the registered facility;
(c) The number of immature plants received by the registered facility;
(d) The amount of a finished product received by the registered facility, including, as applicable, the weight in metric units, or the number of units of a finished product;

(e) A description of the form the usable marijuana was in when it was received, for example, oil or an edible product;
(f) Who transferred the usable marijuana or the immature plant, the individual's OMMP card number and expiration date of the card, a copy of the individual's picture identification, the date the usable marijuana or an immature plant was received, and the name of the patient who authorized the transfer; and
(g) The amount of reimbursement paid by the registered facility.
(8) Nothing in these rules requires a PRF or a registered facility to accept a transfer of usable marijuana or immature plants.
(9) A PRF must ensure that:
(a) From the time that a batch or plant has been received by the registered facility until it is tested in accordance with these rules, the usable marijuana and immature plants are segregated, withheld from use, and kept in a secure location so as to prevent the marijuana or plants from becoming contaminated or losing efficacy, or from being tampered with or transferred except that samples may be removed for testing; and
(b) No usable marijuana or immature plants are transferred to a patient or designated primary caregiver until testing has been completed, the registered facility has received a written testing report, and the usable marijuana and immature plants have tested negative for pesticides, mold and mildew.
(10) Usable marijuana and immature plants must be kept on-site at the facility. The Authority may cite a PRF for a violation of these rules if during an inspection it cannot account for its inventory or if the amount of usable marijuana at the registered facility is not within five percent of the documented inventory.

333-008-1240 - Transfers to a Patient or Designated Primary Caregiver
(1) Prior to a registered facility transferring usable marijuana or an immature plant to a patient or a designated primary caregiver the PRF must ensure that:
(a) The usable marijuana or an immature plant has not tested positive for mold, mildew or pesticides as specified in OAR 333-008-1190; and
(b) The identity and cardholder status of the person requesting usable marijuana or an immature plant is verified by viewing the person's OMMP card and picture identification and making sure the two match.
(2) The PRF must ensure that for each transfer of usable marijuana or an immature plant to a patient or a designated primary caregiver the following information is documented:
(a) The name, OMMP card number and expiration date of the card of each person to whom the registered facility transfers usable marijuana or an immature plant;
(b) A copy of the person's picture identification;
(c) The amount of usable marijuana transferred in metric units, if applicable;
(d) The number of immature plants transferred, if applicable;

(e) The amount of a finished product transferred in metric units, or units of the finished product, if applicable;
(f) A description of what was transferred;
(g) The date of the transfer; and
(h) The amount of money paid by a patient or a designated primary caregiver to a registered facility for the transfer of usable marijuana or an immature plant.
(3) The PRF must ensure that a registered facility does not transfer at any one time more usable marijuana or immature plants than a patient or designated primary caregiver is permitted to possess under ORS 475.320(1)(a). A PRF is not responsible for determining whether a patient or designated primary caregiver is limited in the amount of usable marijuana he or she can possess under 475.320(1)(b).

333-008-1245 - Transfers to a Patient or Designated Primary Caregiver
(1) A registered facility may not transfer a tetrahydrocannabinol-infused product that is manufactured in a manner that is attractive to minors. For purposes of this section a product is considered to be manufactured in a manner that is attractive to minors if it is:
(a) Brightly colored; or
(b) In the shape of an animal or any other commercially recognizable toy or candy.
(2) Prior to a registered facility transferring usable marijuana or an immature plant to a patient or a designated primary caregiver the PRF must ensure that:
(a) The usable marijuana or an immature plant has not tested positive for mold, mildew or pesticides as specified in OAR 333-008-1190; and
(b) The identity and cardholder status of the person requesting usable marijuana or an immature plant is verified by viewing the person's OMMP card and picture identification and making sure the two match.
(3) The PRF must ensure that for each transfer of usable marijuana or an immature plant to a patient or a designated primary caregiver the following information is documented:
(a) The name, OMMP card number and expiration date of the card of each person to whom the registered facility transfers usable marijuana or an immature plant;
(b) A copy of the person's picture identification;
(c) The amount of usable marijuana transferred in metric units, if applicable;
(d) The number of immature plants transferred, if applicable;
(e) The amount of a finished product transferred in metric units, or units of the finished product, if applicable;
(f) A description of what was transferred;
(g) The date of the transfer; and
(h) The amount of money paid by a patient or a designated primary caregiver to a registered facility for the transfer of usable marijuana or an immature plant.

(4) The PRF must ensure that a registered facility does not transfer at any one time more usable marijuana or immature plants than a patient or designated primary caregiver is permitted to possess under ORS 475.320(1)(a). A PRF is not responsible for determining whether a patient or designated primary caregiver is limited in the amount of usable marijuana he or she can possess under 475.320(1)(b).

333-008-1250 - Inspections

(1) The Authority must conduct an initial inspection of every registered facility within six months of approving an application to ensure compliance with these rules, and must conduct a routine inspection of every registered facility at least every year.
(2) The Authority may conduct a complaint inspection at any time following the receipt of a complaint that alleges a registered facility is in violation of ORS 475.314 or these rules.
(3) The Authority may conduct an inspection at any time if it believes, for any reason, that a registered facility or a PRF is in violation of ORS 475.314 or these rules.
(4) A PRF and any employees, contractors, or other individuals working at a registered facility must cooperate with the Authority during an inspection.
(5) If an individual at a registered facility fails to permit the Authority to conduct an inspection the Authority may seek an administrative warrant authorizing the inspection pursuant to ORS 431.262.

333-008-1260 - Violations

(1) A registered facility is in violation of ORS 475.314 or these rules for:
(a) A PRF or an employee of a facility failing to cooperate with an inspection;
(b) The submission by a PRF of false or misleading information to the Authority in support of an application or in seeking to retain registration;
(c) Transferring usable marijuana or immature plants to an individual who is not a patient or a designated primary caregiver;
(d) Accepting a transfer of usable marijuana or immature plants without a valid authorization from the patient;
(e) Possessing a mature marijuana plant at the registered facility;
(f) Failing to document and maintain information in the manner required by these rules;
(g) Failing to account for usable marijuana or immature plants on the premises of the registered facility, taking into account a five percent loss;
(g) Failing to submit a plan of correction in accordance with OAR 333-008-1270;
(h) Failing to comply with a final order of the Authority, including failing to pay a civil penalty; or
(i) Failing to comply with ORS 475.314 or any of these rules.
(2) It is a violation of ORS 475.314 and these rules to operate a facility without being registered by the Authority.

333-008-1270 - Enforcement

(1)(a) Informal Enforcement. If, during an inspection the Authority documents violations of ORS 475.314 or any of these rules, the Authority may issue a written Notice of Violation to the PRF that cites the laws alleged to have been violated and the facts supporting the allegations.

(b) The PRF must submit to the Authority a signed plan of correction within 10 business days from the date the Notice of Violation was mailed to the person. A signed plan of correction will not be used by the Authority as an admission of the violations alleged in the Notice.

(c) A PRF must correct all deficiencies within 10 days from the date of the Notice, unless an extension of time is requested from the Authority. A request for such an extension shall be submitted in writing and must accompany the plan of correction.

(d) The Authority must determine if a written plan of correction is acceptable. If the plan of correction is not acceptable to the Authority it must notify the PRF in writing and request that the plan of correction be modified and resubmitted no later than 10 working days from the date the letter of non-acceptance was mailed.

(e) If the registered facility does not come into compliance by the date of correction reflected on the plan of correction, the Authority may propose to revoke the registration of the facility or impose civil penalties.

(f) The Authority may conduct an inspection at any time to determine whether a registered facility has corrected the deficiencies in a Notice of Violation.

(2) Formal Enforcement. If, during an inspection or based on other information the Authority determines that a registered facility or PRF is in violation of ORS 475.314 or these rules the Authority may issue:

(a) A Notice of Proposed Revocation in accordance with ORS 183.411 through 183.470; or

(b) A Notice of Imposition of Civil Penalties in accordance with ORS 183.745. Civil penalties may be issued for any violation of 475.314 and these rules, not to exceed $500 per violation per day.

(3) The Authority must determine whether to use the informal or formal enforcement process based on the nature of the alleged violations, whether there are mitigating or aggravating factors, and whether the PRF or the registered facility has a history of violations.

(4) The Authority must issue a Notice of Proposed Revocation if the:

(a) Facility no longer meets the criteria in ORS 475.314(3)(a) to (d); or

(b) PRF is not a resident of Oregon, has disqualifying criminal convictions as described in OAR 333-008-1120, or a court has issued an order that prohibits the PRF from participating in the OMMP under ORS 475.300 through 475.346 unless a new PRF is approved by the Authority.

(5) The Authority may maintain a civil action against a facility that is operating but not registered in accordance with ORS 475.314 and these rules.
(6) The Authority must post a final order revoking the registration of a facility on the Authority's website and provide a copy of the final order to the OMMP.
(7) To the extent permitted by law, if the Authority discovers violations that may constitute criminal conduct or conduct that is in violation of laws within the jurisdiction of other state or local governmental entities, the Authority may refer the matter to the applicable agency.
(8) If the registration of a facility is revoked the PRF must make arrangements to return the usable marijuana and immature plants in amounts still possessed by the facility, to the person who transferred the usable marijuana or immature plants and must document the same.

333-008-1275 - Enforcement
(1)(a) Informal Enforcement. If, during an inspection the Authority documents violations of ORS 475.314 or any of these rules, the Authority may issue a written Notice of Violation to the PRF that cites the laws alleged to have been violated and the facts supporting the allegations.
(b) The PRF must submit to the Authority a signed plan of correction within 10 business days from the date the Notice of Violation was mailed to the person. A signed plan of correction will not be used by the Authority as an admission of the violations alleged in the Notice.
(c) A PRF must correct all deficiencies within 10 days from the date of the Notice, unless an extension of time is requested from the Authority. A request for such an extension shall be submitted in writing and must accompany the plan of correction.
(d) The Authority must determine if a written plan of correction is acceptable. If the plan of correction is not acceptable to the Authority it must notify the PRF in writing and request that the plan of correction be modified and resubmitted no later than 10 working days from the date the letter of non-acceptance was mailed.
(e) If the registered facility does not come into compliance by the date of correction reflected on the plan of correction, the Authority may propose to revoke the registration of the facility or impose civil penalties.
(f) The Authority may conduct an inspection at any time to determine whether a registered facility has corrected the deficiencies in a Notice of Violation.
(2) Formal Enforcement. If, during an inspection or based on other information the Authority determines that a registered facility or PRF is in violation of ORS 475.314 or these rules the Authority may issue:
(a) A Notice of Proposed Revocation in accordance with ORS 183.411 through 183.470; or

(b) A Notice of Imposition of Civil Penalties in accordance with ORS 183.745. Civil penalties may be issued for any violation of ORS 475.314 and these rules, not to exceed $500 per violation per day.
(3) The Authority must determine whether to use the informal or formal enforcement process based on the nature of the alleged violations, whether there are mitigating or aggravating factors, and whether the PRF or the registered facility has a history of violations.
(4) The Authority must issue a Notice of Proposed Revocation if the:
(a) Facility no longer meets the criteria in ORS 475.314(3)(a) to (d); or
(b) PRF is not a resident of Oregon, has disqualifying criminal convictions as described in OAR 333-008-1120, or a court has issued an order that prohibits the PRF from participating in the OMMP under ORS 475.300 through 475.346 unless a new PRF is approved by the Authority.
(5) The Authority may maintain a civil action against a facility that is operating but not registered in accordance with ORS 475.314 and these rules.
(6) The Authority may revoke the registration of a facility for failure to comply with an ordinance adopted by a city or county pursuant to Oregon Laws 2014, chapter 79, section 2, if the city or county:
(a) Has provided the facility with due process substantially similar to the due process provided to a registration or license holder under the Administrative Procedures Act, ORS 183.413 to 183.470; and
(b) Provides the Authority with a final order that is substantially similar to the requirements for a final order under ORS 183.470 that establishes the facility is in violation of the local ordinance.
(7) The Authority must post a final order revoking the registration of a facility on the Authority's website and provide a copy of the final order to the OMMP.
(8) To the extent permitted by law, if the Authority discovers violations that may constitute criminal conduct or conduct that is in violation of laws within the jurisdiction of other state or local governmental entities, the Authority may refer the matter to the applicable agency.
(9) If the registration of a facility is revoked the PRF must make arrangements to return the usable marijuana and immature plants in amounts still possessed by the facility, to the person who transferred the usable marijuana or immature plants and must document the same.

333-008-1280 - Confidentiality
(1) Any criminal background information received by the Authority about a PRF during the criminal background check process is confidential and is not subject to disclosure without a court order.

(2) The name of a PRF and the address of a registered facility is confidential and is not subject to disclosure without a court order, except as provided in section (5) of this rule, or unless a PRF has authorized disclosure.
(3) If an application has been denied, the information submitted to the Authority in an application for registration of a facility is not confidential and may be subject to disclosure under ORS 192.410 through 192.505.
(4) A final order revoking the registration of a facility is not confidential and may be posted on the Authority's website or otherwise made public by the Authority.
(5) Authorized employees of state and local law enforcement agencies may verify with the Authority at all times whether:
(a) A location is the location of a registered facility; or
(b) A person is listed as the PRF of a registered facility.

333-008-1290 - Change of Location
(1) A registered facility that changes location must submit a new application that complies with OAR 333-008-1020.
(2) A facility may not operate at a new location unless it is registered by the Authority.

333-008-1400 - Moratoriums
(1) For purposes of this rule, "moratorium" means an ordinance, adopted by the governing body of a city or county by May 1, 2014, that specifically suspends the operation of registered medical marijuana facilities within the area subject to the jurisdiction of the city or county, for a period of time that does not extend past May 1, 2015.
(2) If a city or county adopts a moratorium it must notify the Authority and provide a copy of the ordinance.
(3) An applicant applying for registration of a facility proposing to operate in an area subject to a moratorium may submit a request, in writing, to withdraw the application and may request a refund of the fees.
(4) A PRF of a registered facility located in an area subject to a moratorium may submit a request, in writing, to surrender its registration and request a refund of the fees.
(5) Upon receipt of a request to withdraw an application or surrender a registration under sections (3) or (4) of this rule the Authority shall determine whether the ordinance falls within the definition of moratorium and inform the applicant or PRF in writing whether:
(a) The application is considered withdrawn and the fees refunded; or
(b) The registration has been surrendered and the fees refunded.
(6) The Authority may refund all fees, including the non-refundable registration fee.
(7) Notifications or requests described in sections (2) to (4) of this rule may be submitted to the Authority:
(a) By mail at P.O. Box 14116, Portland, OR 97293; or

(b) By electronic mail to medmj.dispensaries@state.or.us.

4. Washington Recreational Licensing Regulations

Chapter 314-55 WAC

Last Update: 3/19/14

MARIJUANA LICENSES, APPLICATION PROCESS, REQUIREMENTS, AND REPORTING

WAC Sections

314-55-005
What is the purpose of this chapter?

The purpose of this chapter is to outline the application process, qualifications and requirements to obtain and maintain a marijuana license and the reporting requirements for a marijuana licensee.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-005, filed 10/21/13, effective 11/21/13.]

314-55-010
Definitions.

Following are definitions for the purpose of this chapter. Other definitions are in RCW 69.50.101.

(1) "Applicant" or "marijuana license applicant" means any person or business entity who is considered by the board as a true party of interest in a marijuana license, as outlined in WAC 314-55-035.

(2) "Batch" means a quantity of marijuana-infused product containing material from one or more lots of marijuana.

(3) "Business name" or "trade name" means the name of a licensed business as used by the licensee on signs and advertising.

(4) "Child care center" means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington state department of early learning under chapter 170-295 WAC.

(5) "Elementary school" means a school for early education that provides the first four to eight years of basic education and recognized by the Washington state superintendent of public instruction.

(6) "Financier" means any person or entity, other than a banking institution, that has made or will make an investment in the licensed business. A financier can be a person or entity that provides money as a gift, loans money to the applicant/business and expects to be paid back the amount of the loan with or without interest, or expects any percentage of the profits from the business in exchange for a loan or expertise.

(7) "Game arcade" means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.

(8) "Library" means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

(9) "Licensee" or "marijuana licensee" means any person or entity that holds a marijuana license, or any person or entity who is a true party of interest in a marijuana license, as outlined in WAC 314-55-035.

(10) "Lot" means either of the following:

(a) The flowers from one or more marijuana plants of the same strain. A single lot of flowers cannot

weigh more than five pounds; or

(b) The trim, leaves, or other plant matter from one or more marijuana plants. A single lot of trim, leaves, or other plant matter cannot weigh more than fifteen pounds.

(11) "Marijuana strain" means a pure breed or hybrid variety of Cannabis reflecting similar or identical combinations of properties such as appearance, taste, color, smell, cannabinoid profile, and potency.

(12) "Member" means a principal or governing person of a given entity, including but not limited to: LLC member/manager, president, vice-president, secretary, treasurer, CEO, director, stockholder, partner, general partner, limited partner. This includes all spouses of all principals or governing persons named in this definition and referenced in WAC 314-55-035.

(13) "Pesticide" means, but is not limited to: (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest; (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and (c) any spray adjuvant. Pesticides include substances commonly referred to as herbicides, fungicides, and insecticides.

(14) "Perimeter" means a property line that encloses an area.

(15) "Plant canopy" means the square footage dedicated to live plant production, such as maintaining mother plants, propagating plants from seed to plant tissue, clones, vegetative or flowering area. Plant canopy does not include areas such as space used for the storage of fertilizers, pesticides, or other products, quarantine, office space, etc.

(16) "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, or federal government.

(17) "Public park" means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government, or metropolitan park district. Public park does not include trails.

(18) "Public transit center" means 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. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

(19) "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state, or federal government.

(20) "Residence" means a person's address where he or she physically resides and maintains his or her abode.

(21) "Secondary school" means a high and/or middle school: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington state superintendent of public instruction.

(22) "Unit" means an individually packaged marijuana-infused solid or liquid product meant to be eaten or swallowed, not to exceed ten servings or one hundred milligrams of active tetrahydrocannabinol (THC), or Delta 9.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-010, filed 10/21/13, effective 11/21/13.]

314-55-015

General information about marijuana licenses.

(1) A person or entity must meet certain qualifications to receive a marijuana license, which are continuing qualifications in order to maintain the license.

(2) All applicants and employees working in each licensed establishment must be at least twenty-one years of age.

(3) Minors restricted signs must be posted at all marijuana licensed premises.

(4) A marijuana license applicant may not exercise any of the privileges of a marijuana license until the board approves the license application.

(5) The board will not approve any marijuana license for a location where law enforcement access, without notice or cause, is limited. This includes a personal residence.

(6) The board will not approve any marijuana license for a location on federal lands.

(7) The board will not approve any marijuana retailer license for a location within another business. More than one license could be located in the same building if each licensee has their own area separated by full walls with their own entrance. Product may not be commingled.

(8) Every marijuana licensee must post and keep posted its license, or licenses, and any additional correspondence containing conditions and restrictions imposed by the board in a conspicuous place on the premises.

(9) In approving a marijuana license, the board reserves the right to impose special conditions as to the involvement in the operations of the licensed business of any former licensees, their former employees, or any person who does not qualify for a marijuana license.

(10) A marijuana processor or retailer licensed by the board shall conduct the processing, storage, and sale of marijuana-infused products using sanitary practices and ensure facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.

(11) Marijuana licensees may not allow the consumption of marijuana or marijuana-infused products on the licensed premises.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-015, filed 10/21/13, effective 11/21/13.]

314-55-020

Marijuana license qualifications and application process.

Each marijuana license application is unique and investigated individually. The board may inquire and request documents regarding all matters in connection with the marijuana license application. The application requirements for a marijuana license include, but are not necessarily limited to, the following:

(1) Per RCW 69.50.331, the board shall send a notice to cities and counties, and may send a notice to tribal governments or port authorities regarding the marijuana license application. The local authority has twenty days to respond with a recommendation to approve or an objection to the applicant, location, or both.

(2) The board will verify that the proposed business meets the minimum requirements for the type of marijuana license requested.

(3) The board will conduct an investigation of the applicants' criminal history and administrative violation history, per WAC 314-55-040 and 314-55-045.

(a) The criminal history background check will consist of completion of a personal/criminal history form provided by the board and submission of fingerprints to a vendor approved by the board. The applicant will be responsible for paying all fees required by the vendor for fingerprinting. These fingerprints will be submitted to the Washington state patrol and the Federal Bureau of Investigation for comparison to their criminal records. The applicant will be responsible for paying all fees required by the Washington state patrol and the Federal Bureau of Investigation.

(b) Financiers will also be subject to criminal history investigations equivalent to that of the license applicant. Financiers will also be responsible for paying all fees required for the criminal history check. Financiers must meet the three month residency requirement.

(4) The board will conduct a financial investigation in order to verify the source of funds used for the

acquisition and startup of the business, the applicants' right to the real and personal property, and to verify the true party(ies) of interest.

(5) The board may require a demonstration by the applicant that they are familiar with marijuana laws and rules.

(6) The board may conduct a final inspection of the proposed licensed business, in order to determine if the applicant has complied with all the requirements of the license requested.

(7) Per RCW 69.50.331 (1)(b), all applicants applying for a marijuana license must have resided in the state of Washington for at least three months prior to application for a marijuana license. All partnerships, employee cooperatives, associations, nonprofit corporations, corporations and limited liability companies applying for a marijuana license must be formed in Washington. All members must also meet the three month residency requirement. Managers or agents who manage a licensee's place of business must also meet the three month residency requirement.

(8) Submission of an operating plan that demonstrates the applicant is qualified to hold the marijuana license applied for to the satisfaction of the board. The operating plan shall include the following elements in accordance with the applicable standards in the Washington Administrative Code (WAC).

(9) As part of the application process, each applicant must submit in a format supplied by the board an operating plan detailing the following as it pertains to the license type being sought. This operating plan must also include a floor plan or site plan drawn to scale which illustrates the entire operation being proposed. The operating plan must include the following information:

Producer	Processor	Retailer
Security	Security	Security
Traceability	Traceability	Traceability
Employee qualifications and training	Employee qualifications and training	Employee qualifications and training
Transportation of product including packaging of product for transportation	Transportation of product	
Destruction of waste product	Destruction of waste product	Destruction of waste product
Description of growing operation including growing media, size of grow space allocated for plant production, space allocated for any other business activity, description of all equipment used in the production process, and a list of soil amendments, fertilizers, other crop production aids, or pesticides, utilized in the production process	Description of the types of products to be processed at this location together with a complete description of all equipment and solvents, gases, chemicals and other compounds used to create extracts and for processing of marijuana-infused products	
Testing procedures and protocols	Testing procedures and protocols	
	Description of the types of products to be processed at this location together with a complete description of processing of marijuana-infused products	
	Description of packaging and labeling of products to be processed	
		What array of products are to be sold and how are the products to be displayed to consumers

After obtaining a license, the license holder must notify the board in advance of any substantial change in their operating plan. Depending on the degree of change, prior approval may be required before the change is implemented.

(10) Applicants applying for a marijuana license must be current in any tax obligations to the Washington state department of revenue, as an individual or as part of any entity in which they have an ownership interest. Applicants must sign an attestation that, under penalty of denial or loss of licensure, that representation is correct.

(11) The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements.

(12) Upon failure to respond to the board licensing and regulation division's requests for information within the timeline provided, the application may be administratively closed or denial of the application will be sought.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-020, filed 10/21/13, effective 11/21/13.]

314-55-035

What persons or entities have to qualify for a marijuana license?

A marijuana license must be issued in the name(s) of the true party(ies) of interest.

(1) **True parties of interest -** For purposes of this title, "true party of interest" means:

True party of interest	Persons to be qualified
Sole proprietorship	Sole proprietor and spouse.
General partnership	All partners and spouses.
Limited partnership, limited liability partnership, or limited liability limited partnership	• All general partners and their spouses. All limited partners and spouses. •
Limited liability company	• All members and their spouses. • All managers and their spouses.
Privately held corporation	• All corporate officers (or persons with equivalent title) and their spouses. • All stockholders and their spouses.
Publicly held corporation	All corporate officers (or persons with equivalent title) and their spouses. All stockholders and their spouses.
Multilevel ownership structures	All persons and entities that make up the ownership structure (and their spouses).
Any entity or person (inclusive of **financiers**) that are expecting a percentage of the profits in exchange for a monetary loan or expertise.	Any entity or person who is in receipt of, or has the right to receive, a percentage of the gross or net profit from the licensed business during any full or partial calendar or fiscal year. Any entity or person who exercises control over the licensed business in exchange for money or expertise. For the purposes of this chapter: • "Gross profit" includes the entire gross receipts from all sales and services made in, upon, or from the licensed business. • "Net profit" means gross sales minus cost of goods sold.
Nonprofit corporations	All individuals and spouses, and entities having membership rights

in accordance with the provisions of the articles of incorporation or the bylaws.

(2) For purposes of this section, "true party of interest" does not mean:

(a) A person or entity receiving reasonable payment for rent on a fixed basis under a bona fide lease or rental obligation, unless the lessor or property manager exercises control over or participates in the management of the business.

(b) A person who receives a bonus as an employee, if: The employee is on a fixed wage or salary and the bonus is not more than twenty-five percent of the employee's prebonus annual compensation; or the bonus is based on a written incentive/bonus program that is not out of the ordinary for the services rendered.

(c) A person or entity contracting with the applicant(s) to sell the property, unless the contract holder exercises control over or participates in the management of the licensed business.

(3) **Financiers -** The board will conduct a financial investigation as well as a criminal background of financiers.

(4) **Persons who exercise control of business -** The board will conduct an investigation of any person or entity who exercises any control over the applicant's business operations. This may include both a financial investigation and/or a criminal history background.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-035, filed 10/21/13, effective 11/21/13.]

314-55-040

What criminal history might prevent a marijuana license applicant from receiving or keeping a marijuana license?

(1) When the board processes a criminal history check on an applicant, it uses a point system to determine if the person qualifies for a license. The board will not normally issue a marijuana license or renew a license to an applicant who has accumulated eight or more points as indicated below:

Description	Time period during which points will be assigned	Points assigned
Felony conviction	Ten years	12 points
Gross misdemeanor conviction	Three years	5 points
Misdemeanor conviction	Three years	4 points
Currently under federal or state supervision for a felony conviction	n/a	8 points
Nondisclosure of any of the above	n/a	4 points each

(2) If a case is pending for an alleged offense that would earn eight or more points, the board will hold the application for the disposition of the case. If the disposition is not settled within ninety days, the board will administratively close the application.

(3) The board may not issue a marijuana license to anyone who has accumulated eight or more points as referenced above. This is a discretionary threshold and it is further recommended that the following exceptions to this standard be applied:

Exception to criminal history point assignment. This exception to the criminal history point assignment will expire on July 1, 2014:

(a) Prior to initial license application, two federal or state misdemeanor convictions for the possession only of marijuana within the previous three years may not be applicable to the criminal history points accumulated. All criminal history must be reported on the personal/criminal history form.

(i) Regardless of applicability, failure to disclose full criminal history will result in point accumulation;

(ii) State misdemeanor possession convictions accrued after December 6, 2013, exceeding the allowable amounts of marijuana, usable marijuana, and marijuana-infused products described in chapter 69.50 RCW shall count toward criminal history point accumulation.

(b) Prior to initial license application, any single state or federal conviction for the growing, possession, or sale of marijuana will be considered for mitigation on an individual basis. Mitigation will be considered based on the quantity of product involved and other circumstances surrounding the conviction.

(4) Once licensed, marijuana licensees must report any criminal convictions to the board within fourteen days.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-040, filed 10/21/13, effective 11/21/13.]

314-55-045

What marijuana law or rule violation history might prevent an applicant from receiving a marijuana license?

The board will conduct an investigation of all applicants' marijuana law or rule administrative violation history. The board will not normally issue a marijuana license to a person, or to an entity with a true party of interest, who has the following violation history; or to any person who has demonstrated a pattern of disregard for laws or rules.

Violation Type (see WAC 314-55-515)	Period of Consideration
• Three or more public safety violations;	• Violations issued within three years of the date the application is received by the board's licensing and regulation division.
• Four or more regulatory violations; or	
• One to four, or more license violations.	• Violations issued within the last three years the true party(ies) of interest were licensed.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-045, filed 10/21/13, effective 11/21/13.]

314-55-050

Reasons the board may seek denial, suspension, or cancellation of a marijuana license application or license.

Following is a list of reasons the board may deny, suspend, or cancel a marijuana license application or license. Per RCW 69.50.331, the board has broad discretionary authority to approve or deny a marijuana license application for reasons including, but not limited to, the following:

(1) Failure to meet qualifications or requirements for the specific marijuana producer, processor, or retail license, as outlined in this chapter and chapter 69.50 RCW.

(2) Failure or refusal to submit information or documentation requested by the board during the evaluation process.

(3) The applicant makes a misrepresentation of fact, or fails to disclose a material fact to the board during the application process or any subsequent investigation after a license has been issued.

(4) Failure to meet the criminal history standards outlined in WAC 314-55-040.

(5) Failure to meet the marijuana law or rule violation history standards outlined in WAC 314-55-045.

(6) The source of funds identified by the applicant to be used for the acquisition, startup and operation of

the business is questionable, unverifiable, or determined by the board to be gained in a manner which is in violation by law.

(7) Denies the board or its authorized representative access to any place where a licensed activity takes place or fails to produce any book, record or document required by law or board rule.

(8) Has been denied or had a marijuana license or medical marijuana license suspended or canceled in another state or local jurisdiction.

(9) Where the city, county, tribal government, or port authority has submitted a substantiated objection per the requirements in RCW 69.50.331 (7) and (9).

(10) The board shall not issue a new marijuana license if the proposed licensed business is within one thousand feet of the perimeter of the grounds of any of the following entities. The distance shall be measured as the shortest straight line distance from the property line of the proposed building/business location to the property line of the entities listed below:

(a) Elementary or secondary school;

(b) Playground;

(c) Recreation center or facility;

(d) Child care center;

(e) Public park;

(f) Public transit center;

(g) Library; or

(h) Any game arcade (where admission is not restricted to persons age twenty-one or older).

(11) Has failed to pay taxes or fees required under chapter 69.50 RCW or failed to provide production, processing, inventory, sales and transportation reports to documentation required under this chapter.

(12) Failure to submit an attestation that they are current in any tax obligations to the Washington state department of revenue.

(13) Has been denied a liquor license or had a liquor license suspended or revoked in this or any other state.

(14) The operating plan does not demonstrate, to the satisfaction of the board, the applicant is qualified for a license.

(15) Failure to operate in accordance with the board approved operating plan.

(16) The board determines the issuance of the license will not be in the best interest of the welfare, health, or safety of the people of the state.

[Statutory Authority: RCW 60.50.342 [69.50.342] and 69.50.345. WSR 14-06-108, § 314-55-050, filed 3/5/14, effective 4/5/14. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-050, filed 10/21/13, effective 11/21/13.]

314-55-070

Process if the board denies a marijuana license application.

If the board denies a marijuana license application, the applicants may:

(1) Request an administrative hearing per chapter 34.05 RCW, the Administrative Procedure Act.

(2) Reapply for the license no sooner than one year from the date on the final order of denial.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-070, filed 10/21/13, effective 11/21/13.]

314-55-075

What is a marijuana producer license and what are the requirements and fees related to a

marijuana producer license?

(1) A marijuana producer license allows the licensee to produce marijuana for sale at wholesale to marijuana processor licensees and to other marijuana producer licensees. Marijuana production must take place within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Outdoor production may take place in nonrigid 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.

(2) The application fee for a marijuana producer license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(3) The annual fee for issuance and renewal of a marijuana producer license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(4) The board will initially limit the opportunity to apply for a marijuana producer license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana producer application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana producer application window after the initial evaluation of the applications received and at subsequent times when the board deems necessary.

(5) Any entity and/or principals within any entity are limited to no more than three marijuana producer licenses.

(6) The maximum amount of space for marijuana production is limited to two million square feet. Applicants must designate on their operating plan the size category of the production premises and the amount of actual square footage in their premises that will be designated as plant canopy. There are three categories as follows:

(a) Tier 1 – Less than two thousand square feet;

(b) Tier 2 – Two thousand square feet to ten thousand square feet; and

(c) Tier 3 – Ten thousand square feet to thirty thousand square feet.

(7) The board may reduce a licensee's or applicant's square footage designated to plant canopy for the following reasons:

(a) If the amount of square feet of production of all licensees exceeds the maximum of two million square feet the board will reduce the allowed square footage by the same percentage.

(b) If fifty percent production space used for plant canopy in the licensee's operating plan is not met by the end of the first year of operation the board may reduce the tier of licensure.

(8) If the total amount of square feet of marijuana production exceeds two million square feet, the board reserves the right to reduce all licensee's production by the same percentage or reduce licensee production by one or more tiers by the same percentage.

(9) The maximum allowed amount of marijuana on a producer's premises at any time is as follows:

(a) Outdoor or greenhouse grows – One and one-quarter of a year's harvest; or

(b) Indoor grows – Six months of their annual harvest.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-075, filed 10/21/13, effective 11/21/13.]

314-55-077

What is a marijuana processor license and what are the requirements and fees related to a marijuana processor license?

(1) A marijuana processor license allows the licensee to process, package, and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers.

(2) A marijuana processor is allowed to blend tested useable marijuana from multiple lots into a single package for sale to a marijuana retail licensee providing the label requirements for each lot used in the blend are met and the percentage by weight of each lot is also included on the label.

(3) The application fee for a marijuana processor license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(4) The annual fee for issuance and renewal of a marijuana processor license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(5) The board will initially limit the opportunity to apply for a marijuana processor license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana processor application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana processor application window after the initial evaluation of the applications that are received and processed, and at subsequent times when the board deems necessary.

(6) Any entity and/or principals within any entity are limited to no more than three marijuana processor licenses.

(7) Marijuana processor licensees are allowed to have a maximum of six months of their average useable marijuana and six months average of their total production on their licensed premises at any time.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-077, filed 10/21/13, effective 11/21/13.]

314-55-079

What is a marijuana retailer license and what are the requirements and fees related to a marijuana retailer license?

(1) A marijuana retailer license allows the licensee to sell only usable marijuana, marijuana-infused products, and marijuana paraphernalia at retail in retail outlets to persons twenty-one years of age and older.

(2) Marijuana extracts, such as hash, hash oil, shatter, and wax can be infused in products sold in a marijuana retail store, but RCW 69.50.354 does not allow the sale of extracts that are not infused in products. A marijuana extract does not meet the definition of a marijuana-infused product per RCW 69.50.101.

(3) Internet sales and delivery of product is prohibited.

(4) The application fee for a marijuana retailer's license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(5) The annual fee for issuance and renewal of a marijuana retailer's license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(6) Marijuana retailers may not sell marijuana products below their acquisition cost.

(7) Marijuana retailer licensees are allowed to have a maximum of four months of their average inventory on their licensed premises at any given time.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-079, filed 10/21/13, effective 11/21/13.]

314-55-081

Who can apply for a marijuana retailer license?

(1) Using estimated consumption data and population data obtained from the office of financial management (OFM) population data, the liquor control board will determine the maximum number of marijuana retail locations per county.

The number of retail locations will be determined using a method that distributes the number of locations proportionate to the most populous cities within each county. Locations not assigned to a specific city will be at large. At large locations can be used for unincorporated areas in the county or in cities within the county that have no retail licenses designated. Once the number of locations per city and at large have been identified, the eligible applicants will be selected by lottery in the event the number of applications exceeds the allotted amount for the cities and county. Any lottery conducted by the board will be witnessed by an independent third party.

(2) The number of marijuana retail licenses determined by the board can be found on the liquor control board web site at www.liq.wa.gov.

(3) Any entity and/or principals within any entity are limited to no more than three retail marijuana licenses with no multiple location licensee allowed more than thirty-three percent of the allowed licenses in any county or city.

(4) The board will initially limit the opportunity to apply for a marijuana retailer license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana retailer license application to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana retailer application window after the initial evaluation of the applications received and at subsequent times when the board deems necessary.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-081, filed 10/21/13, effective 11/21/13.]

314-55-082

Insurance requirements.

Marijuana licensees shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the consumer should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the marijuana licensees. Marijuana licensees shall furnish evidence in the form of a certificate of insurance satisfactory to the board that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance, as required, may result in license cancellation.

(1) Commercial general liability insurance: The licensee shall at all times carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for bodily injury and property damage arising out of licensed activities. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the licensee or its officers, agents, representatives, assigns, or servants. The insurance shall also cover bodily injury, including disease, illness and death, and property damage arising out of the licensee's premises/operations, products, and personal injury. The limits of liability insurance shall not be less than one million dollars.

(2) Insurance carrier rating: The insurance required in subsection (1) of this section shall be issued by an insurance company authorized to do business within the state of Washington. Insurance is to be placed with a carrier that has a rating of A - Class VII or better in the most recently published edition of *Best's Reports*. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with chapters 48.15 RCW and 284-15 WAC.

(3) Additional insured. The board shall be named as an additional insured on all general liability, umbrella, and excess insurance policies. All policies shall be primary over any other valid and collectable insurance.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-082, filed 10/21/13, effective 11/21/13.]

314-55-083

What are the security requirements for a marijuana licensee?

The security requirements for a marijuana licensee are as follows:

(1) **Display of identification badge.** All employees on the licensed premises shall be required to hold and properly display an identification badge issued by the licensed employer at all times while on the licensed premises.

(2) **Alarm systems.** At a minimum, each licensed premises must have a security alarm system on all perimeter entry points and perimeter windows. Motion detectors, pressure switches, duress, panic, and hold-up alarms may also be utilized.

(3) **Surveillance system.** At a minimum, a complete video surveillance with minimum camera resolution of 640x470 pixel and must be internet protocol (IP) compatible and recording system for controlled areas within the licensed premises and entire perimeter fencing and gates enclosing an outdoor grow operation, to ensure control of the area. The requirements include image acquisition, video recording, management and monitoring hardware and support systems. All recorded images must clearly and accurately display the time and date. Time is to be measured in accordance with the U.S. National Institute Standards and Technology standards.

(a) All controlled access areas, security rooms/areas and all points of ingress/egress to limited access areas, all points of ingress/egress to the exterior of the licensed premises, and all point-of-sale (POS) areas must have fixed camera coverage capable of identifying activity occurring within a minimum of twenty feet of all entry and exit points.

(b) Camera placement shall allow for the clear and certain identification of any individual on the licensed premises.

(c) All entrances and exits to the facility shall be recorded from both indoor and outdoor vantage points, and capable of clearly identifying any activities occurring within the facility or within the grow rooms in low light conditions. The surveillance system storage device must be secured on-site in a lock box, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft.

(d) All perimeter fencing and gates enclosing an outdoor grow operation must have full video surveillance capable of clearly identifying any activities occurring within twenty feet of the exterior of the perimeter. Any gate or other entry point that is part of the enclosure for an outdoor growing operation must have fixed camera coverage capable of identifying activity occurring within a minimum of twenty feet of the exterior, twenty-four hours a day. A motion detection lighting system may be employed to illuminate the gate area in low light conditions.

(e) Areas where marijuana is grown, cured or manufactured including destroying waste, shall have a camera placement in the room facing the primary entry door, and in adequate fixed positions, at a height which will provide a clear, unobstructed view of the regular activity without a sight blockage from lighting hoods, fixtures, or other equipment, allowing for the clear and certain identification of persons and activities at all times.

(f) All marijuana or marijuana-infused products that are intended to be removed or transported from marijuana producer to marijuana processor and/or marijuana processor to marijuana retailer shall be staged in an area known as the "quarantine" location for a minimum of twenty-four hours. Transport manifest with product information and weights must be affixed to the product. At no time during the quarantine period can the product be handled or moved under any circumstances and is subject to auditing by the liquor control board or designees.

(g) All camera recordings must be continuously recorded twenty-four hours a day. All surveillance recordings must be kept for a minimum of forty-five days on the licensee's recording device. All videos are subject to inspection by any liquor control board employee or law enforcement officer, and must be copied and provided to the board or law enforcement officer upon request.

(4) **Traceability:** To prevent diversion and to promote public safety, marijuana licensees must track marijuana from seed to sale. Licensees must provide the required information on a system specified by the board. All costs related to the reporting requirements are borne by the licensee. Marijuana seedlings, clones, plants, lots of usable marijuana or trim, leaves, and other plant matter, batches of extracts, marijuana-infused products, samples, and marijuana waste must be traceable from production through processing, and finally into the retail environment including being able to identify which lot was used as base material to create each batch of extracts or infused products. The following information is required and must be kept completely up-to-date in a system specified by the board:

(a) Key notification of "events," such as when a plant enters the system (moved from the seedling or clone area to the vegetation production area at a young age);

(b) When plants are to be partially or fully harvested or destroyed;

(c) When a lot or batch of marijuana, marijuana extract, marijuana-infused product, or marijuana waste is to be destroyed;

(d) When usable marijuana or marijuana-infused products are transported;

(e) Any theft of usable marijuana, marijuana seedlings, clones, plants, trim or other plant material, extract, infused product, seed, plant tissue or other item containing marijuana;

(f) There is a seventy-two hour mandatory waiting period after the notification described in this subsection is given before any plant may be destroyed, a lot or batch of marijuana, marijuana extract, marijuana-infused product, or marijuana waste may be destroyed;

(g) There is a twenty-four hour mandatory waiting period after the notification described in this subsection to allow for inspection before a lot of marijuana is transported from a producer to a processor;

(h) There is a twenty-four hour mandatory waiting period after the notification described in this subsection to allow for inspection before usable marijuana, or marijuana-infused products are transported from a processor to a retailer;

(i) Prior to reaching eight inches in height or width, each marijuana plant must be tagged and tracked individually, which typically should happened when a plant is moved from the seed germination or clone area to the vegetation production area;

(j) A complete inventory of all marijuana, seeds, plant tissue, seedlings, clones, all plants, lots of usable marijuana or trim, leaves, and other plant matter, batches of extract, marijuana-infused products, and marijuana waste;

(k) All point of sale records;

(l) Marijuana excise tax records;

(m) All samples sent to an independent testing lab, any sample of unused portion of a sample returned to a licensee, and the quality assurance test results;

(n) All free samples provided to another licensee for purposes of negotiating a sale;

(o) All samples used for testing for quality by the producer or processor;

(p) Samples containing usable marijuana provided to retailers;

(q) Samples provided to the board or their designee for quality assurance compliance checks; and

(r) Other information specified by the board.

(5) **Start-up inventory for marijuana producers.** Within fifteen days of starting production operations a producer must have all nonflowering marijuana plants physically on the licensed premises. The producer must, within twenty-four hours, record each marijuana plant that enters the facility in the traceability system during this fifteen day time frame. No flowering marijuana plants may be brought into the facility during this fifteen day time frame. After this fifteen day time frame expires, 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.

(6) **Samples.** Free samples of usable marijuana may be provided by producers or processors, or used for product quality testing, as set forth in this section.

(a) Samples are limited to two grams and a producer may not provide any one licensed processor more than four grams of usable marijuana per month free of charge for the purpose of negotiating a sale. The producer must record the amount of each sample and the processor receiving the sample in the traceability system.

(b) Samples are limited to two grams and a processor may not provide any one licensed retailer more

than four grams of usable marijuana per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(c) Samples are limited to two units and a processor may not provide any one licensed retailer more than six ounces of marijuana infused in solid form per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(d) Samples are limited to two units and a processor may not provide any one licensed retailer more than twenty-four ounces of marijuana-infused liquid per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(e) Samples are limited to one-half gram and a processor may not provide any one licensed retailer more than one gram of marijuana-infused extract meant for inhalation per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(f) Producers may sample one gram of usable marijuana per strain, per month for quality sampling. Sampling for quality may not take place at a licensed premises. Only the producer or employees of the licensee may sample the usable marijuana for quality. The producer must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.

(g) Processors may sample one unit, per batch of a new edible marijuana-infused product to be offered for sale on the market. Sampling for quality may not take place at a licensed premises. Only the processor or employees of the licensee may sample the edible marijuana-infused product. The processor must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.

(h) Processors may sample up to one quarter gram, per batch of a new marijuana-infused extract for inhalation to be offered for sale on the market. Sampling for quality may not take place at a licensed premises. Only the processor or employee(s) of the licensee may sample the marijuana-infused extract for inhalation. The processor must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.

(i) The limits described in subsection (3) of this section do not apply to the usable marijuana in sample jars that may be provided to retailers described in WAC 314-55-105(8).

(j) Retailers may not provide free samples to customers.

[Statutory Authority: RCW 69.50.342, 69.50.345. WSR 14-07-116, § 314-55-083, filed 3/19/14, effective 4/19/14. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-083, filed 10/21/13, effective 11/21/13.]

314-55-084
Production of marijuana.

Only the following specified soil amendments, fertilizers, other crop production aids, and pesticides may be used in the production of marijuana:

(1) Materials listed or registered by the Washington state department of agriculture (WSDA) or Organic Materials Review Institute (OMRI) as allowable for use in organic production, processing, and handling under the U.S. Department of Agriculture's national organics standards, also called the National Organic Program (NOP), consistent with requirements at 7 C.F.R. Part 205.

(2) Pesticides registered by WSDA under chapter 15.58 RCW as allowed for use in the production, processing, and handling of marijuana. Pesticides must be used consistent with the label requirements.

(3) Commercial fertilizers registered by WSDA under chapter 15.54 RCW.

(4) Potting soil and other growing media available commercially in the state of Washington may be used in marijuana production. Producers growing outdoors are not required to meet land eligibility requirements outlined in 7 C.F.R. Part 205.202.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-084, filed 10/21/13, effective 11/21/13.]

314-55-085

What are the transportation requirements for a marijuana licensee?

(1) **Notification of shipment.** Upon transporting any marijuana or marijuana product, a producer, processor or retailer shall notify the board of the type and amount and/or weight of marijuana and/or marijuana products being transported, the name of transporter, times of departure and expected delivery. This information must be reported in the traceability system described in WAC 314-55-083(4).

(2) **Receipt of shipment.** Upon receiving the shipment, the licensee receiving the product shall report the amount and/or weight of marijuana and/or marijuana products received in the traceability system.

(3) **Transportation manifest.** A complete transport manifest containing all information required by the board must be kept with the product at all times.

(4) **Records of transportation.** Records of all transportation must be kept for a minimum of three years at the licensee's location.

(5) **Transportation of product.** Marijuana or marijuana products that are being transported must meet the following requirements:

(a) Only the marijuana licensee or an employee of the licensee may transport product;

(b) Marijuana or marijuana products must be in a sealed package or container approved by the board pursuant to WAC 314-55-105;

(c) Sealed packages or containers cannot be opened during transport;

(d) Marijuana or marijuana products must be in a locked, safe and secure storage compartment that is secured to the inside body/compartment of the vehicle transporting the marijuana or marijuana products;

(e) Any vehicle transporting marijuana or marijuana products must travel directly from the shipping licensee to the receiving licensee and must not make any unnecessary stops in between except to other facilities receiving product.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-085, filed 10/21/13, effective 11/21/13.]

314-55-086

What are the mandatory signs a marijuana licensee must post on a licensed premises?

(1) **Notices regarding persons under twenty-one years of age** must be conspicuously posted on the premises as follows:

Type of licensee	Sign must contain the following language:	Required location of sign
Marijuana producer, marijuana processor, and marijuana retailer	"Persons under twenty-one years of age not permitted on these premises."	Conspicuous location at each entry to premises.

The board will provide the required notices, or licensees may design their own notices as long as they are legible and contain the required language.

(2) **Signs provided by the board prohibiting opening a package of marijuana or marijuana-infused product in public or consumption of marijuana or marijuana-infused products in public,** must be posted as follows:

Type of premises	Required location of sign
Marijuana retail	Posted in plain view at the main entrance to the

establishment.

(3) **The premises' current and valid master license with appropriate endorsements** must be conspicuously posted on the premises and available for inspection by liquor enforcement officers.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-086, filed 10/21/13, effective 11/21/13.]

314-55-087

What are the recordkeeping requirements for marijuana licensees?

(1) Marijuana licensees are responsible to keep records that clearly reflect all financial transactions and the financial condition of the business. The following records must be kept and maintained on the licensed premises for a three-year period and must be made available for inspection if requested by an employee of the liquor control board:

(a) Purchase invoices and supporting documents, to include the items and/or services purchased, from whom the items were purchased, and the date of purchase;

(b) Bank statements and canceled checks for any accounts relating to the licensed business;

(c) Accounting and tax records related to the licensed business and each true party of interest;

(d) Records of all financial transactions related to the licensed business, including contracts and/or agreements for services performed or received that relate to the licensed business;

(e) All employee records, to include training;

(f) Records of each daily application of pesticides applied to the marijuana plants or growing medium. For each application, the producer shall record the following information on the same day the application is made:

(i) Full name of each employee who applied the pesticide;

(ii) The date the pesticide was applied;

(iii) The name of the pesticide or product name listed on the registration label which was applied;

(iv) The concentration and total amount of pesticide per plant; and

(v) For outdoor production, the concentration of pesticide that was applied to the field. Liquid applications may be recorded as, but are not limited to, amount of product per one hundred gallons of liquid spray, gallons per acre of output volume, ppm, percent product in tank mix (e.g., one percent). For chemigation applications, record "inches of water applied" or other appropriate measure.

(g) Soil amendment, fertilizers, or other crop production aids applied to the growing medium or used in the process of growing marijuana;

(h) Production and processing records, including harvest and curing, weighing, destruction of marijuana, creating batches of marijuana-infused products and packaging into lots and units;

(i) Records of each batch of extracts or infused marijuana products made, including at a minimum, the lots of usable marijuana or trim, leaves, and other plant matter used (including the total weight of the base product used), any solvents or other compounds utilized, and the product type and the total weight of the end product produced, such as hash oil, shatter, tincture, infused dairy butter, etc.;

(j) Transportation records as described in WAC 314-55-085;

(k) Inventory records;

(l) All samples sent to an independent testing lab and the quality assurance test results;

(m) All free samples provided to another licensee for purposes of negotiating a sale;

(n) All samples used for testing for quality by the producer or processor;

(o) Sample jars containing usable marijuana provided to retailers; and

(p) Records of any theft of marijuana seedlings, clones, plants, trim or other plant material, extract, marijuana-infused product, or other item containing marijuana.

(2) If the marijuana licensee keeps records within an automated data processing (ADP) and/or point-of-sale (POS) system, the system must include a method for producing legible records that will provide the

same information required of that type of record within this section. The ADP and/or POS system is acceptable if it complies with the following guidelines:

(a) Provides an audit trail so that details (invoices and vouchers) underlying the summary accounting data may be identified and made available upon request.

(b) Provides the opportunity to trace any transaction back to the original source or forward to a final total. If printouts of transactions are not made when they are processed, the system must have the ability to reconstruct these transactions.

(c) Has available a full description of the ADP and/or POS portion of the accounting system. This should show the applications being performed, the procedures employed in each application, and the controls used to ensure accurate and reliable processing.

(3) The provisions contained in subsections (1) and (2) of this section do not eliminate the requirement to maintain source documents, but they do allow the source documents to be maintained in some other location.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-087, filed 10/21/13, effective 11/21/13.]

314-55-089

What are the tax and reporting requirements for marijuana licensees?

(1) Marijuana licensees must submit monthly report(s) and payments to the board. The required monthly reports must be:

(a) On a form or electronic system designated by the board;

(b) Filed every month, including months with no activity or payment due;

(c) Submitted, with payment due, to the board on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day;

(d) Filed separately for each marijuana license held; and

(e) All records must be maintained and available for review for a three-year period on licensed premises (see WAC 314-55-087).

(2) **Marijuana producer licensees:** On a monthly basis, marijuana producers must maintain records and report purchases from other licensed marijuana producers, current production and inventory on hand, sales by product type, and lost and destroyed product in a manner prescribed by the board.

A marijuana producer licensee must pay to the board a marijuana excise tax of twenty-five percent of the selling price on each wholesale sale to a licensed marijuana processor.

(3) **Marijuana processor licensees:** On a monthly basis, marijuana processors must maintain records and report purchases from licensed marijuana producers, production of marijuana-infused products, sales by product type to marijuana retailers, and lost and/or destroyed product in a manner prescribed by the board.

A marijuana processor licensee must pay to the board a marijuana excise tax of twenty-five percent of the selling price on each wholesale sale of usable marijuana and marijuana-infused product to a licensed marijuana retailer.

(4) **Marijuana retailer's licensees:** On a monthly basis, marijuana retailers must maintain records and report purchases from licensed marijuana processors, sales by product type to consumers, and lost and/or destroyed product in a manner prescribed by the board.

A marijuana retailer licensee must pay to the board a marijuana excise tax of twenty-five percent of the selling price on each retail sale of usable marijuana or marijuana-infused products.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-089, filed 10/21/13, effective 11/21/13.]

314-55-092

What if a marijuana licensee fails to report or pay, or reports or pays late?

(1) If a marijuana licensee does not submit its monthly reports and payment(s) to the board as required in WAC 314-55-089: The licensee is subject to penalties.

Penalties: A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.

(2) Failure to make a report and/or pay the license taxes and/or penalties in the manner and dates outlined in WAC 314-55-089 will be sufficient grounds for the board to suspend or revoke a marijuana license.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-092, filed 10/21/13, effective 11/21/13.]

314-55-095

Marijuana servings and transaction limitations.

Marijuana dosage and transaction limitations are as follows:

(1) **Single serving.** A single serving of a marijuana-infused product amounts to ten milligrams active tetrahydrocannabinol (THC), or Delta 9.

(2) **Maximum number of servings.** The maximum number of servings in any one single unit of marijuana-infused product meant to be eaten or swallowed is ten servings or one hundred milligrams of active THC, or Delta 9. A single unit of marijuana-infused extract for inhalation cannot exceed one gram.

(3) **Transaction limitation.** A single transaction is limited to one ounce of usable marijuana, sixteen ounces of marijuana-infused product in solid form, seven grams of marijuana-infused extract for inhalation, and seventy-two ounces of marijuana-infused product in liquid form for persons twenty-one years of age and older.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-095, filed 10/21/13, effective 11/21/13.]

314-55-097

Marijuana waste disposal—Liquids and solids.

(1) Solid and liquid wastes generated during marijuana production and processing must be stored, managed, and disposed of in accordance with applicable state and local laws and regulations.

(2) Wastewater generated during marijuana production and processing must be disposed of in compliance with applicable state and local laws and regulations.

(3) Wastes from the production and processing of marijuana plants must be evaluated against the state's dangerous waste regulations (chapter 173-303 WAC) to determine if those wastes designate as dangerous waste. It is the responsibility of each waste generator to properly evaluate their waste to determine if it designates as a dangerous waste. If a generator's waste does designate as a dangerous waste, then that waste(s) is subject to the applicable management standards found in chapter 173-303 WAC.

(a) Wastes that must be evaluated against the dangerous waste regulations include, but are not limited to, the following:

(i) Waste from marijuana flowers, trim and solid plant material used to create an extract (per WAC 315-55-104).

(ii) Waste solvents used in the marijuana process (per WAC 315-55-104).

(iii) Discarded plant waste, spent solvents and laboratory wastes from any marijuana processing or quality assurance testing.

(iv) Marijuana extract that fails to meet quality testing.

(b) Marijuana wastes that do not designate as dangerous shall be managed in accordance with subsection (4) of this section.

(c) A marijuana plant, usable marijuana, trim and other plant material in itself is not considered dangerous waste as defined under chapter 173-303 WAC unless it has been treated or contaminated with a solvent.

(4) Marijuana waste that does not designate as dangerous waste (per subsection (3) of this section) must be rendered unusable following the methods in subsection (5) of this section prior to leaving a licensed producer, processor, retail facility, or laboratory. Disposal of the marijuana waste rendered unusable must follow the methods under subsection (6) of this section.

(a) Wastes that must be rendered unusable prior to disposal include, but are not limited to, the following:

(i) Waste evaluated per subsection (3) of this section and determined to not designate as "Dangerous Waste."

(ii) Marijuana plant waste, including roots, stalks, leaves, and stems that have not been processed with solvent.

(iii) Solid marijuana sample plant waste possessed by third-party laboratories accredited by the board to test for quality assurance that must be disposed of.

(iv) Other wastes as determined by the LCB.

(b) A producer or processor must provide the board a minimum of seventy-two hours notice in the traceability system described in WAC 314-55-083(4) prior to rendering the product unusable and disposing of it.

(5) The allowable method to render marijuana plant waste unusable is by grinding and incorporating the marijuana plant waste with other ground materials so the resulting mixture is at least fifty percent nonmarijuana waste by volume. Other methods to render marijuana waste unusable must be approved by LCB before implementation.

Material used to grind with the marijuana falls into two categories: Compostable waste and noncompostable waste.

(a) Compostable mixed waste: Marijuana waste to be disposed as compost feedstock or in another organic waste method (for example, anaerobic digester) may be mixed with the following types of waste materials:

(i) Food waste;

(ii) Yard waste;

(iii) Vegetable based grease or oils; or

(iv) Other wastes as approved by the LCB.

(b) Noncompostable mixed waste: Marijuana waste to be disposed in a landfill or another disposal method (for example, incinerator) may be mixed with the following types of waste materials:

(i) Paper waste;

(ii) Cardboard waste;

(iii) Plastic waste;

(iv) Soil; or

(v) Other wastes as approved by the LCB.

(6) Marijuana wastes rendered unusable following the method described in subsection (4) of this section can be disposed.

(a) Disposal of the marijuana waste rendered unusable may be delivered to a permitted solid waste facility for final disposition. Examples of acceptable permitted solid waste facilities include:

(i) Compostable mixed waste: Compost, anaerobic digester, or other facility with approval of the jurisdictional health department.

(ii) Noncompostable mixed waste: Landfill, incinerator, or other facility with approval of the jurisdictional health department.

(b) Disposal of the marijuana waste rendered unusable may be managed on-site by the generator in accordance with the standards of chapter 173-350 WAC.

(c) A record of the final destination of marijuana waste rendered unusable.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-097, filed 10/21/13, effective 11/21/13.]

314-55-099
Standardized scales.

(1) Marijuana producer and processor licensees must have at least one scale on the licensed premises for the traceability and inventory of products.

(2) The scales and other measuring devices are subject to chapter 19.94 RCW, and must meet the requirements of the most current version of chapters 16-662 and 16-664 WAC.

(3) Licensees must register scales on a business license application with business license services through the department of revenue as required under chapter 19.94 RCW.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-099, filed 10/21/13, effective 11/21/13.]

314-55-102
Quality assurance testing.

(1) A third-party testing lab must be certified by the board or their vendor as meeting the board's accreditation and other requirements prior to conducting required quality assurance tests. Certified labs will receive a certification letter from the board and must conspicuously display this letter in the lab in plain sight of the customers. The board can summarily suspend a lab's certification if a lab is found out of compliance with the requirements of WAC 314-55-102.

(2) A person with financial interest in a certified third-party testing lab may not have direct or indirect financial interest in a licensed marijuana producer or processor for whom they are conducting required quality assurance tests. A person with direct or indirect financial interest in a certified third-party testing lab must disclose to the board by affidavit any direct or indirect financial interest in a licensed marijuana producer or processor.

(3) As a condition of certification, each lab must employ a scientific director responsible to ensure the achievement and maintenance of quality standards of practice. The scientific director shall meet the following minimum qualifications:

(a) Has earned, from a college or university accredited by a national or regional certifying authority a doctorate in the chemical or biological sciences and a minimum of two years' post-degree laboratory experience; or

(b) Has earned a master's degree in the chemical or biological sciences and has a minimum of four years' of post-degree laboratory experience; or

(c) Has earned a bachelor's degree in the chemical or biological sciences and has a minimum of six years of post-education laboratory experience.

(4) As a condition of certification, labs must follow the most current version of the Cannabis Inflorescence and Leaf monograph published by the *American Herbal Pharmacopoeia* or notify the board

what alternative scientifically valid testing methodology the lab is following for each quality assurance test. The board may require third-party validation of any monograph or analytical method followed by the lab to ensure the methodology produces scientifically accurate results prior to them using those standards when conducting required quality assurance tests.

(5) As a condition of certification, the board may require third-party validation and ongoing monitoring of a lab's basic proficiency to correctly execute the analytical methodologies employed by the lab. The board may contract with a vendor to conduct the validation and ongoing monitoring described in this subsection. The lab shall pay all vendor fees for validation and ongoing monitoring directly to the vendor.

(6) The lab must allow the board or their vendor to conduct physical visits and inspect related laboratory equipment, testing and other related records during normal business hours without advance notice.

(7) Labs must adopt and follow minimum good lab practices (GLPs), and maintain internal standard operating procedures (SOPs), and a quality control/quality assurance (QC/QA) program as specified by the board. The board or authorized third-party organization can conduct audits of a lab's GLPs, SOPs, QC/QA, and inspect all other related records.

(8) The general body of required quality assurance tests for marijuana flowers and infused products may include moisture content, potency analysis, foreign matter inspection, microbiological screening, pesticide and other chemical residue and metals screening, and residual solvents levels.

(9) Table of required quality assurance tests.

Product	Test(s) Required	Sample Size Needed to Complete all Tests
Lots of marijuana flowers	1. Moisture content 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening	Up to 7 grams
Infused extract (solvent based) for inhalation made using n-butane, isobutane, propane, heptane, or other solvents or gases approved by the board of at least 99% purity	1. Potency analysis 2. Residual solvent test 3. Microbiological screening (only if using flowers and other plant material that failed initial test)	Up to 2 grams
Infused extract for inhalation made with a CO_2 extractor like hash oil	1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that failed initial test)	Up to 2 grams
Infused extract for inhalation made with ethanol or other approved food grade solvent	1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that failed initial test)	Up to 2 grams
Infused extract (nonsolvent) meant for inhalation infused with kief, hashish, or bubble hash	1. Potency analysis 2. Microbiological screening	Up to 2 grams
Infused edible	1. Potency analysis 2. Microbiological screening	1 unit
Infused liquid like a soda or tonic	1. Potency analysis 2. Microbiological screening	1 unit
Infused topical	1. Potency analysis 2. Microbiological screening	1 unit

(10) Independent testing labs may request additional sample material in excess of amounts listed in the table in subsection (9) of this section for the purposes of completing required quality assurance tests. Labs certified as meeting the board's accreditation requirements may retrieve samples from a marijuana licensee's licensed premises and transport the samples directly to the lab and return any unused portion of the samples.

(11) Labs certified as meeting the board's accreditation requirements are not limited in the amount of usable marijuana and marijuana products they may have on their premises at any given time, but they must have records to prove all marijuana and marijuana-infused products only for the testing purposes described in WAC 314-55-102.

(12) At the discretion of the board, a producer or processor must provide an employee of the board or their designee samples in the amount listed in subsection (9) of this section or samples of the growing medium, soil amendments, fertilizers, crop production aids, pesticides, or water for random compliance checks. Samples may be screened for pesticides and chemical residues, unsafe levels of metals, and used for other quality assurance tests deemed necessary by the board. All costs of this testing will be borne by the producer or processor.

(13) No lot of usable flower or batch of marijuana-infused product may be sold or transported until the completion of all required quality assurance testing.

(14) Any usable marijuana or marijuana-infused product that passed the required quality assurance tests may be labeled as "Class A." Only "Class A" usable marijuana or marijuana-infused product will be allowed to be sold.

(15) If a lot of marijuana flowers fail a quality assurance test, any marijuana plant trim, leaf and other usable material from the same plants automatically fails quality assurance testing also. Upon approval of the board, a lot that fails a quality assurance test may be used to make a CO_2 or solvent based extract. After processing, the CO_2 or solvent based extract must still pass all required quality assurance tests in WAC 314-55-102.

(16) At the request of the producer or processor, the board may authorize a retest to validate a failed test result on a case-by-case basis. All costs of the retest will be borne by the producer or the processor.

(17) Labs must report all required quality assurance test results directly into LCB's seed to sale traceability system within twenty-four hours of completion. Labs must also record in the seed to sale traceability system an acknowledgment of the receipt of samples from producers or processors and verify if any unused portion of the sample was destroyed or returned to the licensee.

[Statutory Authority: RCW 69.50.342, 69.50.345. WSR 14-07-116, § 314-55-102, filed 3/19/14, effective 4/19/14. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-102, filed 10/21/13, effective 11/21/13.]

314-55-104

Marijuana processor license extraction requirements.

(1) Processors are limited to certain methods, equipment, solvents, gases and mediums when creating marijuana extracts.

(2) Processors may use the hydrocarbons N-butane, isobutane, propane, or heptane or other solvents or gases exhibiting low to minimal potential human health-related toxicity approved by the board. These solvents must be of at least ninety-nine percent purity and a processor must use them in a professional grade closed loop extraction system designed to recover the solvents, work in a spark free environment with proper ventilation, and follow all applicable local fire, safety and building codes in processing and the storage of the solvents.

(3) Processors may use a professional grade closed loop CO_2 gas extraction system where every vessel is rated to a minimum of nine hundred pounds per square inch and follow all applicable local fire, safety and building codes in processing and the storage of the solvents. The CO_2 must be of at least ninety-nine percent purity.

(4) Processors may use heat, screens, presses, steam distillation, ice water, and other methods without employing solvents or gases to create kief, hashish, bubble hash, or infused dairy butter, or oils or fats derived from natural sources, and other extracts.

(5) Processors may use food grade glycerin, ethanol, and propylene glycol solvents to create extracts.

(6) Processors creating marijuana extracts must develop standard operating procedures, good

manufacturing practices, and a training plan prior to producing extracts for the marketplace. Any person using solvents or gases in a closed looped system to create marijuana extracts must be fully trained on how to use the system, have direct access to applicable material safety data sheets and handle and store the solvents and gases safely.

(7) Parts per million for one gram of finished extract cannot exceed 500 parts per million or residual solvent or gas when quality assurance tested per RCW 69.50.348.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-104, filed 10/21/13, effective 11/21/13.]

314-55-105
Packaging and labeling requirements.

(1) All usable marijuana and marijuana products must be stored behind a counter or other barrier to ensure a customer does not have direct access to the product.

(2) Any container or packaging containing usable marijuana or marijuana products must protect the product from contamination and must not impart any toxic or deleterious substance to the usable marijuana or marijuana product.

(3) Upon the request of a retail customer, a retailer must disclose the name of the accredited third-party testing lab and results of the required quality assurance test for any usable marijuana or other marijuana product the customer is considering purchasing.

(4) usable marijuana and marijuana products may not be labeled as organic unless permitted by the United States Department of Agriculture in accordance with the Organic Foods Production Act.

(5) The accredited third-party testing lab and required results of the quality assurance test must be included with each lot and disclosed to the customer buying the lot.

(6) A marijuana producer must make quality assurance test results available to any processor purchasing product. A marijuana producer must label each lot of marijuana with the following information:

(a) Lot number;

(b) UBI number of the producer; and

(c) Weight of the product.

(7) Marijuana-infused products meant to be eaten, swallowed, or inhaled, must be packaged in child resistant packaging in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act or use standards specified in this subsection. Marijuana-infused product in solid or liquid form may be packaged in plastic four mil or greater in thickness and be heat sealed with no easy-open tab, dimple, corner, or flap as to make it difficult for a child to open and as a tamperproof measure. Marijuana-infused product in liquid form may also be sealed using a metal crown cork style bottle cap.

(8) A processor may provide a retailer free samples of usable marijuana packaged in a sample jar protected by a plastic or metal mesh screen to allow customers to smell the product before purchase. The sample jar may not contain more than three and one-half grams of usable marijuana. The sample jar and the usable marijuana within may not be sold to a customer and must be either returned to the licensed processor who provide the usable marijuana and sample jar or destroyed by the retailer after use in the manner described in WAC 314-55-097 and noted in the traceability system.

(9) A producer or processor may not treat or otherwise adulterate usable marijuana with any organic or nonorganic chemical or other compound whatsoever to alter the color, appearance, weight, or smell of the usable marijuana.

(10) Labels must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling Regulation adopted in chapter 16-662 WAC.

(11) **All usable marijuana when sold at retail must include accompanying material that contains the following warnings that state:**

(a) "Warning: This product has intoxicating effects and may be habit forming. Smoking is hazardous to your health";

(b) "There may be health risks associated with consumption of this product";
(c) "Should not be used by women that are pregnant or breast feeding";
(d) "For use only by adults twenty-one and older. Keep out of reach of children";
(e) "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug";
(f) Statement that discloses all pesticides applied to the marijuana plants and growing medium during production and processing.

(12) **All marijuana-infused products sold at retail must include accompanying material that contains the following warnings that state:**
(a) "There may be health risks associated with consumption of this product";
(b) "This product is infused with marijuana or active compounds of marijuana";
(c) "Should not be used by women that are pregnant or breast feeding";
(d) "For use only by adults twenty-one and older. Keep out of reach of children";
(e) "Products containing marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug";
(f) "Caution: When eaten or swallowed, the intoxicating effects of this drug may be delayed by two or more hours";
(g) Statement that discloses all pesticides applied to the marijuana plants and growing medium during production of the base marijuana used to create the extract added to the infused product; and
(h) Statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or that are added to the extract.

(13) **Labels affixed to the container or package containing usable marijuana sold at retail must include:**
(a) The business or trade name and Washington state unified business identifier number of the licensees that produced, processed, and sold the usable marijuana;
(b) Lot number;
(c) Concentration of THC, THCA, CBD, including a total of active cannabinoids (potency profile);
(d) Net weight in ounces and grams or volume as appropriate;
(e) Warnings that state: "This product has intoxicating effects and may be habit forming";
(f) Statement that "This product may be unlawful outside of Washington state";
(g) Date of harvest.
(h) The board may create a logo that must be placed on all usable marijuana and marijuana-infused products.

(14) **Sample label mock up for a container or package containing usable marijuana sold at retail with required information:**

(15) **Labels affixed to the container or package containing marijuana-infused products sold at retail must include:**

(a) The business or trade name and Washington state unified business identifier number of the licensees that produced, processed, and sold the usable marijuana;

(b) Lot numbers of all base marijuana used to create the extract;

(c) Batch number;

(d) Date manufactured;

(e) Best by date;

(f) Recommended serving size and the number of servings contained within the unit, including total milligrams of active tetrahydrocannabinol (THC), or Delta 9;

(g) Net weight in ounces and grams, or volume as appropriate;

(h) List of all ingredients and any allergens;

(i) "Caution: When eaten or swallowed, the intoxicating effects of this drug may be delayed by two or more hours."

(j) If a marijuana extract was added to the product, disclosure of the type of extraction process and any solvent, gas, or other chemical used in the extraction process, or any other compound added to the extract;

(k) Warnings that state: "This product has intoxicating effects and may be habit forming";

(l) Statement that "This product may be unlawful outside of Washington state";

(m) The board may create a logo that must be placed on all usable marijuana and marijuana-infused products.

(16) **Sample label mock up (front and back) for a container or package containing marijuana-infused products sold at retail with required information:**

(Front of label)

(Back of label)

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-105, filed 10/21/13, effective 11/21/13.]

314-55-120
Ownership changes.

(1) Licensees must receive prior board approval before making any of the following ownership changes (see WAC 314-55-035 for the definition of "true party of interest"):

Type of change	Type of application	Fee
Change in the qualifying persons in a: Sole proprietorship, general partnership, limited partnership, or limited liability partnership.	New application.	Application fee and annual fee for current license privilege.
Change in the qualifying persons for a publicly or privately held corporation. The board will waive the fee for a corporate change when the proposed change consists solely of dropping an approved officer.	Application for change in corporate officer and/or stockholder.	$75
Change in the qualifying persons in a limited liability company.	Application for change of limited liability company member and/or manager.	$75

(2) The board may inquire into all matters in connection with any such sale of stock/units or proposed change in officers/members.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-120, filed 10/21/13, effective 11/21/13.]

314-55-125

Change of location.

(1) Changing your marijuana license to a new location requires an application, per the process outlined in WAC 314-55-020.

(2) A change of location occurs any time a move by the licensee results in any change to the physical location address.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-125, filed 10/21/13, effective 11/21/13.]

314-55-130
Change of business name.

(1) If you wish to change the name of your business, you must apply for a change of trade name with the department of revenue, business license service.

(2) If you wish to change your corporation or limited liability company name, you must apply for a change of name through the secretary of state.

(3) See chapter 434-12 WAC for guidelines for trade names.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-130, filed 10/21/13, effective 11/21/13.]

314-55-135
Discontinue marijuana sales.

You must notify the board's enforcement and education division in writing if you plan to stop doing business for more than thirty days, or if you plan to permanently discontinue marijuana sales.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-135, filed 10/21/13, effective 11/21/13.]

314-55-140
Death or incapacity of a marijuana licensee.

(1) The appointed guardian, executor, administrator, receiver, trustee, or assignee must notify the board's licensing and regulation division in the event of the death, incapacity, receivership, bankruptcy, or assignment for benefit of creditors of any licensee.

(2) The board may give the appointed guardian, executor, administrator, receiver, trustee, or assignee written approval to continue marijuana sales on the licensed business premises for the duration of the existing license and to renew the license when it expires.

(a) The person must be a resident of the state of Washington.

(b) A criminal background check may be required.

(3) When the matter is resolved by the court, the true party(ies) of interest must apply for a marijuana license for the business.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-140, filed 10/21/13, effective 11/21/13.]

314-55-145
Are marijuana license fees refundable?

When a license is suspended or canceled, or the licensed business is discontinued, the unused portion of the marijuana license fee will not be refunded.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-145, filed 10/21/13, effective 11/21/13.]

314-55-147
What hours may a marijuana retailer licensee conduct sales?

A marijuana retailer licensee may sell usable marijuana, marijuana-infused products, and marijuana paraphernalia between the hours of 8 a.m. and 12 a.m.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-147, filed 10/21/13, effective 11/21/13.]

314-55-150
What are the forms of acceptable identification?

(1) Following are the forms of identification that are acceptable to verify a person's age for the purpose of purchasing marijuana:

(a) Driver's license, instruction permit, or identification card of any state, or province of Canada, from a U.S. territory or the District of Columbia, or "identicard" issued by the Washington state department of licensing per RCW 46.20.117;

(b) United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents, which may include an embedded, digital signature in lieu of a visible signature;

(c) Passport;

(d) Merchant Marine identification card issued by the United States Coast Guard; and

(e) Enrollment card issued by the governing authority of a federally recognized Indian tribe located in Washington, if the enrollment card incorporates security features comparable to those implemented by the department of licensing for Washington driver's licenses.

(2) The identification document is not acceptable to verify age if expired.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-150, filed 10/21/13, effective 11/21/13.]

314-55-155
Advertising.

(1) **Advertising by retail licensees.** The board limits each retail licensed premises to one sign

identifying the retail outlet by the licensee's business name or trade name that is affixed or hanging in the windows or on the outside of the premises that is visible to the general public from the public right of way. The size of the sign is limited to sixteen hundred square inches.

(2) **General.** All marijuana advertising and labels of useable marijuana and marijuana-infused products sold in the state of Washington may not contain any statement, or illustration that:

(a) Is false or misleading;

(b) Promotes over consumption;

(c) Represents the use of marijuana has curative or therapeutic effects;

(d) Depicts a child or other person under legal age to consume marijuana, or includes:

(i) Objects, such as toys, characters, or cartoon characters suggesting the presence of a child, or any other depiction designed in any manner to be especially appealing to children or other persons under legal age to consume marijuana; or

(ii) Is designed in any manner that would be especially appealing to children or other persons under twenty-one years of age.

(3) No licensed marijuana producer, processor, or retailer shall place or maintain, or cause to be placed or maintained, an advertisement of marijuana, usable marijuana, or a marijuana-infused product in any form or through any medium whatsoever:

(a) Within one thousand feet of the perimeter of a school grounds, playground, recreation center or facility, child care center, public park, library, or a game arcade admission to which it is not restricted to persons aged twenty-one years or older;

(b) On or in a public transit vehicle or public transit shelter; or

(c) On or in a publicly owned or operated property.

(4) Giveaways, coupons, and distribution of branded merchandise are banned.

(5) All advertising must contain the following warnings:

(a) "This product has intoxicating effects and may be habit forming.";

(b) "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug.";

(c) "There may be health risks associated with consumption of this product."; and

(d) "For use only by adults twenty-one and older. Keep out of the reach of children."

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-155, filed 10/21/13, effective 11/21/13.]

314-55-160

Objections to marijuana license applications.

(1) **How can persons, cities, counties, tribal governments, or port authorities object to the issuance of a marijuana license?** Per RCW 69.50.331, the board will notify cities, counties, tribal governments, and port authorities of the following types of marijuana applications. In addition to these entities, any person or group may comment in writing to the board regarding an application.

Type of application	Entities the board will/may notify
• Applications for an annual marijuana license at a new location.	• Cities and counties in which the premises is located will be notified. Tribal governments and port authorities in which the premises is located may be notified.
• Applications to change the class of an existing annual marijuana license.	
• Changes of ownership at existing licensed premises.	• Cities and counties in which the premises is located will be notified.

Tribal governments and port authorities in which the premises is located may be notified.

(2) **What will happen if a person or entity objects to a marijuana license application?** When deciding whether to issue or deny a marijuana license application, the board will give substantial weight to input from governmental jurisdictions in which the premises is located based upon chronic illegal activity associated with the applicant's operations of the premises proposed to be licensed or the applicant's operation of any other licensed premises; and other persons or groups. Note: Per RCW 69.50.331, the board shall not issue a new marijuana license if any of the following are within one thousand feet of the premises to be licensed: Any elementary or secondary schools, playgrounds, recreation centers or facilities, child care centers, public parks, public transit centers, libraries, game arcade where admission is not restricted to persons twenty-one years of age or older.

(a) If the board contemplates issuing a license over the objection of a governmental jurisdiction in which the premises is located, the government subdivision may request an adjudicative hearing under the provisions of the Administrative Procedure Act, chapter 34.05 RCW. If the board, in its discretion, grants the governmental jurisdiction(s) an adjudicative hearing, the applicant will be notified and given the opportunity to present evidence at the hearing.

(b) If the board denies a marijuana license application based on the objection from a governmental jurisdiction, the applicant(s) may either:

(i) Reapply for the license no sooner than one year from the date on the final order of denial; or

(ii) Submit a written request on a form provided by the board for an adjudicative hearing under the provisions of the Administrative Procedure Act, chapter 34.05 RCW. The request must be received within twenty days of the date the intent to deny notification was mailed.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-160, filed 10/21/13, effective 11/21/13.]

314-55-165

Objections to marijuana license renewals.

(1) **How can local cities, counties, tribal governments, or port authorities object to the renewal of a marijuana license?**

(a) The board will give governmental jurisdictions approximately ninety days written notice of premises that hold annual marijuana licenses in that jurisdiction that are up for renewal.

(b) Per RCW 69.50.331, if a county, city, tribal government, or port authority wants to object to the renewal of a marijuana license in its jurisdiction, it must submit a letter to the board detailing the reason(s) for the objection and a statement of all facts on which the objections are based.

(c) The county, city, tribal government, or port authority may submit a written request to the board for an extension for good cause shown.

(d) This letter must be received by the board at least thirty days before the marijuana license expires. The objection must state specific reasons and facts that show issuance of the marijuana license at the proposed location or to the applicant business how it will detrimentally impact the safety, health, or welfare of the community.

(e) If the objection is received within thirty days of the expiration date or the licensee has already renewed the license, the objection will be considered as a complaint and possible license revocation may be pursued by the enforcement division.

(f) Objections from the public will be referred to the appropriate city, county, tribal government, or port authority for action under subsection (2) of this section. Upon receipt of the objection, the board licensing and regulation division will acknowledge receipt of the objection(s) and forward to the appropriate city, county, tribal government, or port authority. Such jurisdiction may or may not, based on the public objection, request nonrenewal.

(2) **What will happen if a city, county, tribal government, or port authority objects to the renewal of a marijuana license?** The board will give substantial weight to a city, county, tribal government, or port authority objection to a marijuana license renewal of a premises in its jurisdiction based upon chronic illegal activity associated with the licensee's operation of the premises. Based on the jurisdiction's input and any information in the licensing file, the board will decide to either renew the marijuana license, or to pursue nonrenewal.

(a) **Board decides to renew the marijuana license:**	(b) **Board decides to pursue nonrenewal of the marijuana license:**
(i) The board will notify the jurisdiction(s) in writing of its intent to renew the license, stating the reason for this decision.	(i) The board will notify the licensee in writing of its intent to not renew the license, stating the reason for this decision.
(ii) The jurisdiction(s) may contest the renewal and request an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW) by submitting a written request on a form provided by the board. The request must be received within twenty days of the date the intent to renew notification was mailed. If the board, in its discretion, grants the governmental jurisdiction(s) an adjudicative hearing, the applicant will be notified and given the opportunity to present evidence at the hearing.	(ii) The licensee may contest the nonrenewal action and request an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW) by submitting a written request on a form provided by the board. The request must be received within twenty days of the date the intent to deny notification was mailed. (iii) If the licensee requests a hearing, the governmental jurisdiction will be notified. (iv) During the hearing and any subsequent appeal process, the licensee is issued a temporary operating permit for the marijuana license until a final decision is made.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-165, filed 10/21/13, effective 11/21/13.]

314-55-200
How will the liquor control board identify marijuana, usable marijuana, and marijuana-infused products during checks of licensed businesses?

Officers shall identify marijuana, usable marijuana, and marijuana-infused products during on-site inspections of licensed producers, processors, and retailers of marijuana by means of product in the traceability system, and/or by observation based on training and experience. Products that are undetermined to be marijuana, usable marijuana, and marijuana-infused products will be verified by the following:

(1) Officers may take a sample large enough for testing purposes;

(2) Field test kits may be used if available and appropriate for the type of product being verified; and

(3) Those samples not able to be tested with a field test kit may be tested through the Washington state toxicology or crime lab.

[Statutory Authority: RCW 69.50.342, 69.50.345. WSR 14-07-116, § 314-55-200, filed 3/19/14, effective 4/19/14.]

314-55-210

Will the liquor control board seize or confiscate marijuana, usable marijuana, and marijuana-infused products?

The liquor control board may seize or confiscate marijuana, usable marijuana, and marijuana-infused products under the following circumstances:

(1) During an unannounced or announced administrative search or inspection of a licensed location, or vehicle involved in the transportation of marijuana products, where any product was found to be in excess of product limitations set forth in WAC 314-55-075, 314-55-077, and 314-55-079.

(2) Any product not properly logged in inventory records or untraceable product required to be in the traceability system.

(3) Marijuana, usable marijuana, and marijuana-infused product that are altered or not properly packaged and labeled in accordance with WAC 314-55-105.

(4) During a criminal investigation, officers shall follow seizure laws detailed in RCW 69.50.505 and any other applicable criminal codes.

[Statutory Authority: RCW 69.50.342, 69.50.345. WSR 14-07-116, § 314-55-210, filed 3/19/14, effective 4/19/14.]

314-55-220

What is the process once the board summarily orders marijuana, usable marijuana, or marijuana-infused products of a marijuana licensee to be destroyed?

(1) The board may issue an order to summarily destroy marijuana, usable marijuana, or marijuana-infused products after the board's enforcement division has completed a preliminary staff investigation of the violation and upon a determination that immediate destruction of marijuana, usable marijuana, or marijuana-infused products is necessary for the protection or preservation of the public health, safety, or welfare.

(2) Destruction of any marijuana, usable marijuana, or marijuana-infused products under this provision shall take effect immediately upon personal service on the licensee or employee thereof of the summary destruction order unless otherwise provided in the order.

(3) When a license has been issued a summary destruction order by the board, an adjudicative proceeding for the associated violation or other action must be promptly instituted before an administrative law judge assigned by the office of administrative hearings. If a request for an administrative hearing is timely filed by the licensee, then a hearing shall be held within ninety days of the effective date of the summary destruction ordered by the board.

[Statutory Authority: RCW 69.50.342, 69.50.345. WSR 14-07-116, § 314-55-220, filed 3/19/14, effective 4/19/14.]

314-55-230

What are the procedures the liquor control board will use to destroy or donate marijuana, usable marijuana, and marijuana-infused products to law enforcement?

(1) The liquor control board may require a marijuana licensee to destroy marijuana, usable marijuana, and marijuana-infused products found in a licensed establishment to be in excess of product limits set forth in WAC 314-55-075, 314-55-077, and 314-55-079.

(2) Destruction of seized marijuana, usable marijuana, marijuana-infused products, or confiscated marijuana after case adjudication, will conform with liquor control board evidence policies, to include the option of donating marijuana, usable marijuana, and marijuana-infused products, set for destruction, to local

and state law enforcement agencies for training purposes only.

(3) Marijuana, usable marijuana, and marijuana-infused products set for destruction shall not reenter the traceability system or market place.

[Statutory Authority: RCW 69.50.342, 69.50.345. WSR 14-07-116, § 315-55-230 (codified as WAC 314-55-230), filed 3/19/14, effective 4/19/14.]

314-55-505

What are the procedures for notifying a licensee of an alleged violation of a liquor control board statute or regulation?

(1) When an enforcement officer believes that a licensee has violated a board statute or regulation, the officer may prepare an administrative violation notice (AVN) and mail or deliver the notice to the licensee, licensee's agent, or employee.

(2) The AVN notice will include:

(a) A complete narrative description of the violation(s) the officer is charging;

(b) The date(s) of the violation(s);

(c) A copy of the law(s) and/or regulation(s) allegedly violated;

(d) An outline of the licensee's options as outlined in WAC 314-55-510; and

(e) The recommended penalty.

(i) If the recommended penalty is the standard penalty, see WAC 314-55-520 through 314-55-535 for licensees.

(ii) For cases in which there are aggravating or mitigating circumstances, the penalty may be adjusted from the standard penalty.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-505, filed 10/21/13, effective 11/21/13.]

314-55-506

What is the process once the board summarily suspends a marijuana license?

(1) The board may summarily suspend any license after the board's enforcement division has completed a preliminary staff investigation of the violation and upon a determination that immediate cessation of the licensed activities is necessary for the protection or preservation of the public health, safety, or welfare.

(2) Suspension of any license under this provision shall take effect immediately upon personal service on the licensee or employee thereof of the summary suspension order unless otherwise provided in the order.

(3) When a license has been summarily suspended by the board, an adjudicative proceeding for revocation or other action must be promptly instituted before an administrative law judge assigned by the office of administrative hearings. If a request for an administrative hearing is timely filed by the licensee or permit holder, then a hearing shall be held within ninety days of the effective date of the summary suspension ordered by the board.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-506, filed 10/21/13, effective 11/21/13.]

314-55-507

How may a licensee challenge the summary suspension of his or her marijuana license?

(1) Upon summary suspension of a license by the board pursuant to WAC 314-55-506, an affected licensee may petition the board for a stay of suspension pursuant to RCW 34.05.467 and 34.05.550(1). A petition for a stay of suspension must be received by the board within fifteen days of service of the summary suspension order. The petition for stay shall state the basis on which the stay is sought.

(2) A hearing shall be held before an administrative law judge within fourteen days of receipt of a timely petition for stay. The hearing shall be limited to consideration of whether a stay should be granted, or whether the terms of the suspension may be modified to allow the conduct of limited activities under current licenses or permits.

(3) Any hearing conducted pursuant to subsection (2) of this section shall be a brief adjudicative proceeding under RCW 34.05.485. The agency record for the hearing shall consist of the documentary information upon which the summary suspension was based. The licensee or permit holder shall have the burden of demonstrating by clear and convincing evidence that:

(a) The licensee is likely to prevail upon the merits at hearing;

(b) Without relief, the licensee will suffer irreparable injury. For purposes of this section, elimination of income from licensed activities shall not be deemed irreparable injury;

(c) The grant of relief will not substantially harm other parties to the proceedings; and

(d) The threat to the public health, safety, or welfare is not sufficiently serious to justify continuation of the suspension, or that modification of the terms of the suspension will adequately protect the public interest.

(4) The initial order on stay shall be effective immediately upon service unless another date is specified in the order.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-507, filed 10/21/13, effective 11/21/13.]

314-55-508

Review of orders on stay.

(1) The licensee, or agency, may petition the board for review of an initial order on stay. Any petition for review must be in writing and received by the board within ten days of service of the initial order. If neither party has requested review within ten days of service, the initial order shall be deemed the final order of the board for purposes of RCW 34.05.467.

(2) If the board receives a timely petition for review, the board shall consider the petition within fifteen days of service of the petition for review. Consideration on review shall be limited to the record of the hearing on stay.

(3) The order of the board on the petition for review shall be effective upon personal service unless another date is specified in the order and is final pursuant to RCW 34.05.467. Final disposition of the petition for stay shall not affect subsequent administrative proceedings for suspension or revocation of a license.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-508, filed 10/21/13, effective 11/21/13.]

314-55-510

What options does a licensee have once he/she receives a notice of an administrative

violation?

(1) **A licensee has twenty days from receipt of the notice to:**
(a) Accept the recommended penalty; or
(b) Request a settlement conference in writing; or
(c) Request an administrative hearing in writing.
A response must be submitted on a form provided by the agency.
(2) **What happens if a licensee does not respond to the administrative violation notice within twenty days?**
(a) If a licensee does not respond to the administrative violation notice within twenty days, the recommended suspension penalty will go into effect.
(b) If the penalty does not include a suspension, the licensee must pay a twenty-five percent late fee in addition to the recommended penalty. The recommended penalty plus the late fee must be received within thirty days of the violation notice issue date.
(3) **What are the procedures when a licensee requests a settlement conference?**
(a) If the licensee requests a settlement conference, the hearing examiner or designee will contact the licensee to discuss the violation.
(b) Both the licensee and the hearing examiner or designee will discuss the circumstances surrounding the charge, the recommended penalty, and any aggravating or mitigating factors.
(c) If a compromise is reached, the hearing examiner or designee will prepare a compromise settlement agreement. The hearing examiner or designee will forward the compromise settlement agreement, authorized by both parties, to the board, or designee, for approval.
(i) If the board, or designee, approves the compromise, a copy of the signed settlement agreement will be sent to the licensee and will become part of the licensing history.
(ii) If the board, or designee, does not approve the compromise, the licensee will be notified of the decision. The licensee will be given the option to renegotiate with the hearings examiner or designee, of accepting the originally recommended penalty, or of requesting an administrative hearing on the charges.
(d) If the licensee and the hearing examiner or designee cannot reach agreement on a settlement proposal, the licensee may accept the originally recommended penalty, or the hearing examiner or designee will forward a request for an administrative hearing to the board's hearings coordinator.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-510, filed 10/21/13, effective 11/21/13.]

314-55-515
What are the penalties if a marijuana license holder violates a marijuana law or rule?

(1) The purpose of WAC 314-55-515 through 314-55-540 is to outline what penalty a marijuana licensee can expect if a licensee or employee violates a liquor control board law or rule. (WAC rules listed in the categories provide reference areas, and may not be all inclusive.)
(2) Penalties for violations by marijuana licensees or employees are broken down into four categories:
(a) Group One—Public safety violations, WAC 314-55-520.
(b) Group Two—Regulatory violations, WAC 314-55-525.
(c) Group Three—License violations, WAC 314-55-530.
(d) Group Four—Producer violations involving the manufacture, supply, and/or distribution of marijuana by nonretail licensees and prohibited practices between nonretail licensees and retail licensees, WAC 314-55-535.
(3) For the purposes of chapter 314-55 WAC, a three-year window for violations is measured from the date one violation occurred to the date a subsequent violation occurred.
(4) The following schedules are meant to serve as guidelines. Based on mitigating or aggravating circumstances, the liquor control board may impose a different penalty than the standard penalties outlined

in these schedules. Based on mitigating circumstances, the board may offer a monetary option in lieu of suspension, or alternate penalty, during a settlement conference as outlined in WAC 314-55-510(3).

(a) **Mitigating circumstances**	(b) **Aggravating circumstances**
Mitigating circumstances that may result in fewer days of suspension and/or a lower monetary option may include demonstrated business policies and/or practices that reduce the risk of future violations.	Aggravating circumstances that may result in increased days of suspension, and/or increased monetary option, and/or cancellation of marijuana license may include business operations or behaviors that create an increased risk for a violation and/or intentional commission of a violation.
Examples include:	Examples include:
• Having a signed acknowledgment of the business' responsible handling and sales policies on file for each employee;	• Failing to call 911 for local law enforcement or medical assistance when requested by a customer, a liquor control board officer, or when people have sustained injuries.
• Having an employee training plan that includes annual training on marijuana laws.	

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-515, filed 10/21/13, effective 11/21/13.]

314-55-520
Group 1 violations against public safety.

Group 1 violations are considered the most serious because they present a direct threat to public safety. Based on chapter 69.50 RCW, some violations have only a monetary option. Some violations beyond the first violation do not have a monetary option upon issuance of a violation notice. The liquor control board may offer a monetary option in lieu of suspension days based on mitigating circumstances as outlined in WAC 314-55-515(4).

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Violations involving minors:	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license	
Sale or service to minor: Sale of marijuana and/or paraphernalia to a person under twenty-one years of age. WAC 314-55-079	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license	
Allowing a minor to frequent a restricted area. RCW 69.50.357	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine	
Employee under legal age. RCW 69.50.357	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine
Licensee and/or employee open and/or	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine

consuming marijuana on a retail licensed premises. RCW 69.50.357			
Conduct violations: Criminal conduct: Permitting or engaging in criminal conduct.	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Using unauthorized pesticides, soil amendments, fertilizers, other crop production aids. WAC 314-55-020(8) WAC 314-55-083(4) WAC 314-55-087 (1)(f)	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Adulterate usable marijuana with organic or nonorganic chemical or other compound. WAC 314-55-105(8)	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Using unauthorized solvents or gases in processing. WAC 314-55-104	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Refusal to allow an inspection and/or obstructing a law enforcement officer from performing their official duties. WAC 314-55-050	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Marijuana purchased from an unauthorized source.	Cancellation of license		
Marijuana sold to an unauthorized source.	Cancellation of license		
Sales in excess of transaction limitations. WAC 314-55-095(3)	Cancellation of license		

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-520, filed 10/21/13, effective 11/21/13.]

314-55-525
Group 2 regulatory violations.

Group 2 violations are violations involving general regulation and administration of retail or nonretail licenses.

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Hours of service: Sales of marijuana between 12:00 a.m. and 8:00 a.m.	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Advertising: Violations (statements/illustrations). WAC 314-55-155(2)	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Advertising violations – Sign exceeding 1600 square inches; within 1000 feet of prohibited areas; on or in public transit vehicles, shelters, or publicly owned or operated property. RCW 69.50.357 RCW 69.50.369	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine
Packaging and/or labeling violations (processor/retailer). WAC 314-55-105	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Licensee/employee failing to display required security badge. WAC 314-55-083(1)	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Failure to maintain required security alarm and surveillance systems. WAC 314-55-083 (2) and (3)	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Records: Improper recordkeeping. WAC 314-55-087 WAC 314-55-089 (3), (4), and (5)	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Failure to submit monthly tax reports and/or payments. WAC 314-55-089 WAC 314-55-092	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Signs: Failure to post required signs. WAC 314-55-086	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Failure to utilize and/or maintain traceability (processor or retail licensee). WAC 314-55-083(4)	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Violation of transportation requirements. WAC 314-55-085	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license

Exceeding maximum serving requirements for marijuana-infused products. WAC 314-55-095(2)	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Failure for a processor to meet marijuana waste disposal requirements. WAC 314-55-097	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Failure to maintain standardized scale requirements (processor/retailer). WAC 314-55-099	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Marijuana processor extraction requirements. WAC 314-55-104	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Retail outlet selling unauthorized products. RCW 69.50.357	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine
Retailer displaying products in a manner visible to the general public from a public right of way. RCW 69.50.357	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-525, filed 10/21/13, effective 11/21/13.]

314-55-530
Group 3 license violations.

Group 3 violations are violations involving licensing requirements, license classification, and special restrictions.

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
True party of interest violation. WAC 314-55-035	Cancellation of license			
Failure to furnish required documents. WAC 314-55-050	Cancellation of license			
Misrepresentation of fact. WAC 314-55-050	Cancellation of license			
Operating plan: Violations of a board-approved operating	5-day suspension or $500 monetary option	10-day suspension or $1,500 monetary option	30-day suspension	Cancellation of license

plan. WAC 314-55-020				
Failing to gain board approval for changes in existing ownership. WAC 314-55-120	30-day suspension	Cancellation of license		
Failure to maintain required insurance. WAC 314-55-080	30-day suspension	Cancellation of license		

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-530, filed 10/21/13, effective 11/21/13.]

314-55-535
Group 4 marijuana producer violations.

Group 4 violations are violations involving the manufacture, supply, and/or distribution of marijuana by marijuana producer licensees and prohibited practices between a marijuana producer licensee and a marijuana retailer licensee.

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Unauthorized sale to a retail licensee. WAC 314-55-075	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Failure to utilize and/or maintain traceability. WAC 314-55-083(4)	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Packaging and/or labeling violations (producer). WAC 314-55-105	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Unauthorized product/unapproved storage or delivery.	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Failure for a producer to meet marijuana waste disposal requirements. WAC 314-55-097	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Records: Improper recordkeeping. WAC 314-55-087 WAC 314-55-089 (2) and (4) WAC 314-55-092	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Violation of	$2,500 monetary fine	$5,000 monetary fine	$15,000 monetary fine	Cancellation of license

transportation requirements. WAC 314-55-085		and destruction of 25% of harvestable plants	and destruction of 50% of harvestable plants	
Failure to maintain required security alarm and surveillance systems. WAC 314-55-083 (2) and (3)	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Failure to maintain standardized scale requirements (producer). WAC 314-55-099	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Violation.				

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-535, filed 10/21/13, effective 11/21/13.]

314-55-540
Information about marijuana license suspensions.

(1) On the date a marijuana license suspension goes into effect, a liquor control officer will post a suspension notice in a conspicuous place on or about the licensed premises. This notice will state that the license has been suspended by order of the liquor control board due to a violation of a board law or rule.

(2) During the period of marijuana license suspension, the licensee and employees:

(a) Are required to maintain compliance with all applicable marijuana laws and rules;

(b) May not remove, alter, or cover the posted suspension notice, and may not permit another person to do so;

(c) May not place or permit the placement of any statement on the licensed premises indicating that the premises have been closed for any reason other than as stated in the suspension notice;

(d) May not advertise by any means that the licensed premises is closed for any reason other than as stated in the liquor control board's suspension notice.

(3) During the period of marijuana license suspension:

(a) A marijuana retailer or marijuana processor licensee may not operate his/her business during the dates and times of suspension.

(b) There is no sale, delivery, service, destruction, removal, or receipt of marijuana during a license suspension.

(c) A producer of marijuana may do whatever is necessary as a part of the producing process to keep current stock that is on hand at the time of the suspension from spoiling or becoming unsalable during a suspension, provided it does not include processing the product. The producer may not receive any agricultural products used in the production of marijuana during the period of suspension.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-540, filed 10/21/13, effective 11/21/13.]

5. Cole Memorandum from U.S. Department of Justice (August 29, 2013)

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

Michele M. Leonhart
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6. Washington Attorney General Opinion on Local Regulation of Marijuana Businesses

Opinion

Robert W. Ferguson

Attorney General of Washington

STATUTES—INITIATIVE AND REFERENDUM—ORDINANCES—COUNTIES—CITIES AND TOWNS—PREEMPTION—POLICE POWERS—Whether Statewide Initiative Establishing System For Licensing Marijuana Producers, Processors, And Retailers ~~Preempts~~ Local Ordinances

1. **Initiative 502, which establishes a licensing and regulatory system for marijuana producers, processors, and retailers, does not preempt counties, cities, and towns from banning such businesses within their jurisdictions.**

2. **Local ordinances that do not expressly ban state-licensed marijuana licensees from operating within the jurisdiction but make such operation impractical are valid if they properly exercise the local jurisdiction's police power.**

January 16, 2014

The Honorable Sharon Foster
Chair, Washington State Liquor Control Board
3000 Pacific Avenue SE
Olympia, WA 98504-3076

Cite As:
AGO 2014 No. 2

Dear Chair Foster:

By letter previously acknowledged, you have requested our opinion on the following paraphrased questions:

1. **Are local governments preempted by state law from banning the location of a Washington State Liquor Control Board licensed marijuana producer, processor, or retailer within their jurisdiction?**

2. **May a local government establish land use regulations (in excess of the Initiative 502 buffer and other Liquor Control Board requirements) or business license requirements in a fashion that makes it impractical for a licensed marijuana business to locate within their jurisdiction?**

BRIEF ANSWERS

1. No. Under Washington law, there is a strong presumption against finding that state law preempts local ordinances. Although Initiative 502 (I-502) establishes a licensing and regulatory system for marijuana producers, processors, and retailers in Washington State, it includes no clear indication that it was intended to preempt local authority to regulate such

businesses. We therefore conclude that I-502 left in place the normal powers of local governments to regulate within their jurisdictions.

2. Yes. Local governments have broad authority to regulate within their jurisdictions, and nothing in I-502 limits that authority with respect to licensed marijuana businesses.

BACKGROUND

I-502 was approved by Washington voters on November 6, 2012, became effective 30 days thereafter, and is codified in RCW 69.50. It decriminalized under state law the possession of limited amounts of useable marijuana[1] and marijuana-infused products by persons twenty-one years or older. It also decriminalized under state law the production, delivery, distribution, and sale of marijuana, so long as such activities are conducted in accordance with the initiative's provisions and implementing regulations. It amended the implied consent laws to specify that anyone operating a motor vehicle is deemed to have consented to testing for the active chemical in marijuana, and amended the driving under the influence laws to make it a criminal offense to operate a motor vehicle under the influence of certain levels of marijuana.

I-502 also established a detailed licensing program for three categories of marijuana businesses: production, processing, and retail sales. The marijuana producer's license governs the production of marijuana for sale at wholesale to marijuana processors and other marijuana producers. RCW 69.50.325(1). The marijuana processor's license governs the processing, packaging, and labeling of useable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers. RCW 69.50.325(2). The marijuana retailer's license governs the sale of useable marijuana and marijuana-infused products in retail stores. RCW 69.50.325(3).

Applicants for producer, processor, and retail sales licenses must identify the location of the proposed business. RCW 69.50.325(1), (2), (3). This helps ensure compliance with the requirement that "no license may be issued authorizing a marijuana business within one thousand feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older." RCW 69.50.331(8).

Upon receipt of an application for a producer, processor, or retail sales license, the Liquor Control Board must give notice of the application to the appropriate local jurisdiction. RCW 69.50.331(7)(a) (requiring notice to the chief executive officer of the incorporated city or town if the application is for a license within an incorporated city or town, or the county legislative authority if the application is for a license outside the boundaries of incorporated

[1] Useable marijuana means "dried marijuana flowers" and does not include marijuana-infused products. RCW 69.50.101(ll).

cities or towns). The local jurisdiction may file written objections with respect to the applicant or the premises for which the new or renewed license is sought. RCW 69.50.331(7)(b).

The local jurisdictions' written objections must include a statement of all facts upon which the objections are based, and may include a request for a hearing, which the Liquor Control Board may grant at its discretion. RCW 69.50.331(7)(c). The Board must give "substantial weight" to a local jurisdiction's objections based upon chronic illegal activity associated with the applicant's operation of the premises proposed to be licensed, the applicant's operation of any other licensed premises, or the conduct of the applicant's patrons inside or outside the licensed premises. RCW 69.50.331(9). Chronic illegal activity is defined as a pervasive pattern of activity that threatens the public health, safety, and welfare, or an unreasonably high number of citations for driving under the influence associated with the applicant's or licensee's operation of any licensed premises. RCW 69.50.331(9).[2]

In addition to the licensing provisions in statute, I-502 directed the Board to adopt rules establishing the procedures and criteria necessary to supplement the licensing and regulatory system. This includes determining the maximum number of retail outlets that may be licensed in each county, taking into consideration population distribution, security and safety issues, and the provision of adequate access to licensed sources of useable marijuana and marijuana-infused products to discourage purchases from the illegal market. RCW 69.50.345(2). The Board has done so, capping the number of retail licenses in the least populated counties of Columbia County, Ferry County, and Wahkiakum County at one and the number in the most populated county of King County at 61, with a broad range in between. *See* WAC 314-55-081.

The Board also adopted rules establishing various requirements mandated or authorized by I-502 for locating and operating marijuana businesses on licensed premises, including minimum residency requirements, age restrictions, and background checks for licensees and employees; signage and advertising limitations; requirements for insurance, recordkeeping, reporting, and taxes; and detailed operating plans for security, traceability, employee qualifications and training, and destruction of waste. *See generally* WAC 314-55.

Additional requirements apply for each license category. Producers must describe plans for transporting products, growing operations, and testing procedures and protocols. WAC 314-55-020(9). Processors must describe plans for transporting products, processing operations, testing procedures and protocols, and packaging and labeling. WAC 314-55-020(9). Finally, retailers must also describe which products will be sold and how they will be displayed, and may only operate between 8 a.m. and 12 midnight. WAC 314-55-020(9), -147.

The rules also make clear that receipt of a license from the Liquor Control Board does not entitle the licensee to locate or operate a marijuana processing, producing, or retail business in violation of local rules or without any necessary approval from local jurisdictions. WAC 314-

[2] The provision for objections based upon chronic illegal activity is identical to one of the provisions for local jurisdictions to object to the granting or renewal of liquor licenses. RCW 66.24.010(12).

-55-020(11) provides as follows: "The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements."

ANALYSIS

Your question acknowledges that local governments have jurisdiction over land use issues like zoning and may exercise the option to issue business licenses. This authority comes from article XI, section 11 of the Washington Constitution, which provides that "[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws." The limitation on this broad local authority requiring that such regulations not be "in conflict with general laws" means that state law can preempt local regulations and render them unconstitutional either by occupying the field of regulation, leaving no room for concurrent local jurisdiction, or by creating a conflict such that state and local laws cannot be harmonized. *Lawson v. City of Pasco*, 168 Wn.2d 675, 679, 230 P.3d 1038 (2010).

Local ordinances are entitled to a presumption of constitutionality. *State v. Kirwin*, 165 Wn.2d 818, 825, 203 P.3d 1044 (2009). Challengers to a local ordinance bear a heavy burden of proving it unconstitutional. *Id.* "Every presumption will be in favor of constitutionality." *HJS Dev., Inc. v. Pierce County ex rel. Dep't of Planning & Land Servs.*, 148 Wn.2d 451, 477, 61 P.3d 1141 (2003) (internal quotation marks omitted).

A. Field Preemption

Field preemption arises when a state regulatory system occupies the entire field of regulation on a particular issue, leaving no room for local regulation. *Lawson*, 168 Wn.2d at 679. Field preemption may be expressly stated or may be implicit in the purposes or facts and circumstances of the state regulatory system. *Id.*

I-502 does not express any indication that the state licensing and operating system preempts the field of marijuana regulation. Although I-502 was structured as a series of amendments to the controlled substances act, which does contain a preemption section, that section makes clear that state law "fully occupies and preempts the entire field of *setting penalties* for violations of the controlled substances act." RCW 69.50.608 (emphasis added).[3] It also allows "[c]ities, towns, and counties or other municipalities [to] enact only those laws and

[3] RCW 69.50.608 provides: "The state of Washington fully occupies and preempts the entire field of setting penalties for violations of the controlled substances act. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to controlled substances that are consistent with this chapter. Such local ordinances shall have the same penalties as provided for by state law. Local laws and ordinances that are inconsistent with the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of the city, town, county, or municipality." The Washington Supreme Court has interpreted this provision as giving local jurisdictions concurrent authority to criminalize drug-related activity. *City of Tacoma v. Luvene*, 118 Wn.2d 826, 835, 827 P.2d 1374 (1992).

ordinances relating to controlled substances that are consistent with this chapter." RCW 69.50.608. Nothing in this language expresses an intent to preempt the entire field of regulating businesses licensed under I-502.

With respect to implied field preemption, the "legislative intent" of an initiative is derived from the collective intent of the people and can be ascertained by material in the official voter's pamphlet. *Dep't of Revenue v. Hoppe*, 82 Wn.2d 549, 552, 512 P.2d 1094 (1973); *see also Roe v. TeleTech Customer Care Mgmt., LLC*, 171 Wn.2d 736, 752-53, 257 P.3d 586 (2011). Nothing in the official voter's pamphlet evidences a collective intent for the state regulatory system to preempt the entire field of marijuana business licensing or operation. Voters' Pamphlet 23-30 (2012). Moreover, both your letter and the Liquor Control Board's rules recognize the authority of local jurisdictions to impose regulations on state licensees. These facts, in addition to the absence of express intent suggesting otherwise, make clear that I-502 and its implementing regulations do not occupy the entire field of marijuana business regulation.

B. Conflict Preemption

Conflict preemption arises "when an ordinance permits what state law forbids or forbids what state law permits." *Lawson*, 168 Wn.2d at 682. An ordinance is constitutionally invalid if it directly and irreconcilably conflicts with the statute such that the two cannot be harmonized. *Id.*; *Weden v. San Juan County*, 135 Wn.2d 678, 693, 958 P.2d 273 (1998). Because "[e]very presumption will be in favor of constitutionality," courts make every effort to reconcile state and local law if possible. *HJS Dev.*, 148 Wn.2d at 477 (internal quotation marks omitted). We adopt this same deference to local jurisdictions.

An ordinance banning a particular activity directly and irreconcilably conflicts with state law when state law specifically entitles one to engage in that same activity in circumstances outlawed by the local ordinance. For example, in *Entertainment Industry Coalition v. Tacoma-Pierce County Health Department*, 153 Wn.2d 657, 661-63, 105 P.3d 985 (2005), the state law in effect at the time banned smoking in public places except in designated smoking areas, and specifically authorized owners of certain businesses to designate smoking areas. The state law provided, in relevant part: "A smoking area may be designated in a public place by the owner . . . ." Former RCW 70.160.040(1) (2004), *repealed by* Laws of 2006, ch. 2, § 7(2) (Initiative Measure 901). The Tacoma-Pierce County Health Department ordinance at issue banned smoking in all public places. The Washington Supreme Court struck down the ordinance as directly and irreconcilably conflicting with state law because it prohibited what the state law authorized: the business owner's choice whether to authorize a smoking area.

Similarly, in *Parkland Light & Water Co. v. Tacoma-Pierce County Board of Health*, 151 Wn.2d 428, 90 P.3d 37 (2004), the Washington Supreme Court invalidated a Tacoma-Pierce County Health Department ordinance requiring fluoridated water. The state law at issue authorized the water districts to decide whether to fluoridate, saying: "A water district by a

majority vote of its board of commissioners may fluoridate the water supply system of the water district." RCW 57.08.012. The Court interpreted this provision as giving water districts the ability to regulate the content and supply of their water systems. *Parkland Light & Water Co.*, 151 Wn.2d at 433. The local health department's attempt to require fluoridation conflicted with the state law expressly giving that choice to the water districts. As they could not be reconciled, the Court struck down the ordinance as unconstitutional under conflict preemption analysis.

By contrast, Washington courts have consistently upheld local ordinances banning an activity when state law regulates the activity but does not grant an unfettered right or entitlement to engage in that activity. In *Weden v. San Juan County*, the Court upheld the constitutionality of the County's prohibition on motorized personal watercraft in all marine waters and one lake in San Juan County. The state laws at issue created registration and safety requirements for vessels and prohibited operation of unregistered vessels. The Court rejected the argument that state regulation of vessels constituted permission to operate vessels anywhere in the state, saying, "[n]owhere in the language of the statute can it be suggested that the statute creates an unabridged right to operate [personal watercraft] in all waters throughout the state." *Weden*, 135 Wn.2d at 695. The Court further explained that "[r]egistration of a vessel is nothing more than a precondition to operating a boat." *Id.* "No unconditional right is granted by obtaining such registration." *Id.* Recognizing that statutes often impose preconditions without granting unrestricted permission to participate in an activity, the Court also noted the following examples: "[p]urchasing a hunting license is a precondition to hunting, but the license certainly does not allow hunting of endangered species or hunting inside the Seattle city limits," and "[r]eaching the age of 16 is a precondition to driving a car, but reaching 16 does not create an unrestricted right to drive a car however and wherever one desires." *Id.* at 695 (internal citation omitted).

Relevant here, the dissent in *Weden* argued: "Where a state statute licenses a particular activity, counties may enact reasonable regulations of the licensed activity within their borders but they may not prohibit same outright[,]" and that an ordinance banning the activity "renders the state permit a license to do nothing at all." *Weden*, 135 Wn.2d at 720, 722 (Sanders, J., dissenting). The majority rejected this approach, characterizing the state law as creating not an unabridged right to operate personal watercraft in the state, but rather a registration requirement that amounted only to a precondition to operating a boat in the state.

In *State ex rel. Schillberg v. Everett District Justice Court*, 92 Wn.2d 106, 594 P.2d 448 (1979), the Washington Supreme Court similarly upheld a local ban on internal combustion motors on certain lakes. The Court explained: "A statute will not be construed as taking away the power of a municipality to legislate unless this intent is clearly and expressly stated." *Id.* at 108. The Court found no conflict because nothing in the state laws requiring safe operation of vessels either expressly or impliedly provided that vessels would be allowed on all waters of the state.

The Washington Supreme Court also rejected a conflict preemption challenge to the City of Pasco's ordinance prohibiting placement of recreational vehicles within mobile home parks. *Lawson*, 168 Wn.2d at 683-84. Although state law regulated rights and duties arising from mobile home tenancies and recognized that such tenancies may include recreational vehicles, the Court reasoned "[t]he statute does not forbid recreational vehicles from being placed in the lots, nor does it create a right enabling their placement." *Id.* at 683. The state law simply regulated recreational vehicle tenancies, where such tenancies exist, but did not prevent municipalities from deciding whether or not to allow them. *Id.* at 684.

Accordingly, the question whether "an ordinance . . . forbids what state law permits" is more complex than it initially appears. *Lawson*, 168 Wn.2d at 682. The question is not whether state law permits an activity in some places or in some general sense; even "[t]he fact that an activity may be licensed under state law does not lead to the conclusion that it must be permitted under local law." *Rabon v. City of Seattle*, 135 Wn.2d 278, 292, 957 P.2d 621 (1998) (finding no preemption where state law authorized licensing of "dangerous dogs" while city ordinance forbade ownership of "vicious animals"). Rather, a challenger must meet the heavy burden of proving that state law creates an entitlement to engage in an activity in circumstances outlawed by the local ordinance. For example, the state laws authorizing business owners to designate smoking areas and water districts to decide whether to fluoridate their water systems amounted to statewide entitlements that local jurisdictions could not take away. But the state laws requiring that vessels be registered and operated safely and regulating recreational vehicles in mobile home tenancies simply contemplated that those activities would occur in some places and established preconditions; they did not, however, override the local jurisdictions' decisions to prohibit such activities.

Here, I-502 authorizes the Liquor Control Board to issue licenses for marijuana producers, processors, and retailers. Whether these licenses amount to an entitlement to engage in such businesses regardless of local law or constitute regulatory preconditions to engaging in such businesses is the key question, and requires a close examination of the statutory language.

RCW 69.50.325 provides, in relevant part:

> (1) There shall be a marijuana producer's license to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers, regulated by the state liquor control board and subject to annual renewal. . . .
>
> (2) There shall be a marijuana processor's license to process, package, and label useable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers, regulated by the state liquor control board and subject to annual renewal. . . .

> (3) There shall be a marijuana retailer's license to sell useable marijuana and marijuana-infused products at retail in retail outlets, regulated by the state liquor control board and subject to annual renewal. . . .

RCW 69.50.325(1)-(3). Each of these subsections also includes language providing that activities related to such licenses are not criminal or civil offenses under Washington state law, provided they comply with I-502 and the Board's rules, and that the licenses shall be issued in the name of the applicant and shall specify the location at which the applicant intends to operate. They also establish fees for issuance and renewal and clarify that a separate license is required for each location at which the applicant intends to operate. RCW 69.50.325.

While these provisions clearly authorize the Board to issue licenses for marijuana producers, processors, and retail sales, they lack the definitive sort of language that would be necessary to meet the heavy burden of showing state preemption. They simply state that there "shall be a . . . license" and that engaging in such activities with a license "shall not be a criminal or civil offense under Washington state law." RCW 69.50.325(1). Decriminalizing such activities under state law and imposing restrictions on licensees does not amount to entitling one to engage in such businesses regardless of local law. Given that "every presumption" is in favor of upholding local ordinances (*HJS Dev., Inc.*, 148 Wn.2d at 477), we find no irreconcilable conflict between I-502's licensing system and the ability of local governments to prohibit licensees from operating in their jurisdictions.

We have considered and rejected a number of counterarguments in reaching this conclusion. First, one could argue that the statute, in allowing Board approval of licenses at specific locations (RCW 69.50.325(1), (2), (3)), assumes that the Board can approve a license at any location in any jurisdiction. This argument proves far too much, however, for it suggests that a license from the Board could override any local zoning ordinance, even one unrelated to I-502. For example, I-502 plainly would not authorize a licensed marijuana retailer to locate in an area where a local jurisdiction's zoning allows no retail stores of any kind. The Board's own rules confirm this: "The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements." WAC 314-55-020(11).

Second, one could argue that a local jurisdiction's prohibition on marijuana licensees conflicts with the provision in I-502 authorizing the Board to establish a maximum number of licensed retail outlets in each county. RCW 69.50.345(2); *see also* RCW 69.50.354. But there is no irreconcilable conflict here, because the Board is allowed to set only a *maximum*, and nothing in I-502 mandates a minimum number of licensees in any jurisdiction. The drafters of I-502 certainly could have provided for a minimum number of licensees per jurisdiction, which would have been a stronger indicator of preemptive intent, but they did not.

Third, one could argue that because local jurisdictions are allowed to object to specific license applications and the Board is allowed to override those objections and grant the license anyway (RCW 69.50.331(7), (9)), local jurisdictions cannot have the power to ban licensees altogether. But such a ban can be harmonized with the objection process; while some jurisdictions might want to ban I-502 licensees altogether, others might want to allow them but still object to specific applicants or locations. Indeed, this is the system established under the state liquor statutes, which I-502 copied in many ways. *Compare* RCW 69.50.331 *with* RCW 66.24.010 (governing the issuance of marijuana licenses and liquor licenses, respectively, in parallel terms and including provisions for local government input regarding licensure). The state laws governing liquor allow local governments to object to specific applications (RCW 66.24.010), while also expressly authorizing local areas to prohibit the sale of liquor altogether. *See generally* RCW 66.40. That the liquor opt out statute coexists with the liquor licensing notice and comment process undermines any argument that a local marijuana ban irreconcilably conflicts with the marijuana licensing notice and comment opportunity.

Fourth, RCW 66.40 expressly allows local governments to ban the sale of liquor. Some may argue that by omitting such a provision, I-502's drafters implied an intent to bar local governments from banning the sale of marijuana. Intent to preempt, however, must be "clearly and expressly stated." *State ex rel. Schillberg*, 92 Wn.2d at 108. Moreover, it is important to remember that cities, towns, and counties derive their police power from article XI, section 11 of the Washington Constitution, not from statute. Thus, the relevant question is not whether the initiative provided local jurisdictions with such authority, but whether it removed local jurisdictions' preexisting authority.

Finally, in reaching this conclusion, we are mindful that if a large number of jurisdictions were to ban licensees, it could interfere with the measure's intent to supplant the illegal marijuana market. But this potential consequence is insufficient to overcome the lack of clear preemptive language or intent in the initiative itself. The drafters of the initiative certainly could have used clear language preempting local bans. They did not. The legislature, or the people by initiative, can address this potential issue if it actually comes to pass.

With respect to your second question, about whether local jurisdictions can impose regulations making it "impractical" for I-502 licensees to locate and operate within their boundaries, the answer depends on whether such regulations constitute a valid exercise of the police power or otherwise conflict with state law. As a general matter, as discussed above, the Washington Constitution provides broad authority for local jurisdictions to regulate within their boundaries and impose land use and business licensing requirements. Ordinances must be a reasonable exercise of a jurisdiction's police power in order to pass muster under article XI, section 11 of the state constitution. *Weden*, 135 Wn.2d at 700. A law is a reasonable regulation if it promotes public safety, health, or welfare and bears a reasonable and substantial relation to accomplishing the purpose pursued. *Id.* (applying this test to the personal watercraft ordinance); *see also Duckworth v. City of Bonney Lake*, 91 Wn.2d 19, 26, 586 P.2d 860 (1978) (applying this

test to a zoning ordinance). Assuming local ordinances satisfy this test, and that no other constitutional or statutory basis for a challenge is presented on particular facts, we see no impediment to jurisdictions imposing additional regulatory requirements, although whether a particular ordinance satisfies this standard would of course depend on the specific facts in each case.

We trust that the foregoing will be useful to you.

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Attorney General

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7. Oregon Legislative Counsel Opinion on Regulation of Medical Marijuana Dispensaries (November 5, 2013)

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STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

November 5, 2013

Representative Peter Buckley
900 Court Street NE H272
Salem OR 97301

Re: Regulation of Medical Marijuana Dispensaries

Dear Representative Buckley:

You have asked us whether either chapter 4, Oregon Laws 2013 (special session) (Senate Bill 863), or chapter 726, Oregon Laws 2013 (House Bill 3460), preempts a local government from restricting or prohibiting the operation of a state-registered medical marijuana facility within the jurisdiction of the local government. We understand your question to arise from the announced intention of a municipality to deny business licenses to medical marijuana facilities on the grounds that operation of the facilities would violate the federal Controlled Substances Act (CSA), 21 U.S.C. 801 et seq.

We conclude that SB 863 may present some barriers to municipal attempts to specifically target medical marijuana facilities. We conclude that HB 3460 preempts most municipal laws specifically targeting medical marijuana facilities. Finally, we conclude that while a municipality may not be required to violate federal law to comply with a conflicting state law, a municipality may not act contrary to state law merely because the municipality believes that the action will better carry out the purposes and objectives of federal law.

Before reviewing the specific provisions of the CSA, SB 863 and HB 3460, we believe that it is helpful to review and discuss the law concerning home rule and state preemption.

Article IV, section 1, Article VI, section 10, and Article XI, section 2, of the Oregon Constitution, act as limitations on state regulation of local charters and acts of incorporation. The provisions affirm the right of a municipality to select the form of municipal government and to exercise police power (regulate for the common health and welfare) within the municipality. See generally La Grande/Astoria v. Public Employes Benefit Board, 281 Or. 137, 576 P.2d 1204 (1978), adhered to on rehearing 284 Or. 173, 586 P.2d 765 (1978). The general rule for noncriminal matters is that a municipality may enact ordinances regarding matters that are primarily of local concern, provided that the ordinances do not conflict with state law.

If a matter is primarily of state concern, or is of both state and local concern, the matter becomes more complicated. A state law that addresses a concern with the structure or policies of a municipality must be justified by a need to safeguard the interests of the persons or entities affected by the procedures of the municipality. However, if a state law primarily addresses substantive social, economic or other regulatory objectives, the state law prevails over a contrary municipal policy concern. See La Grande/Astoria. State law is generally presumed to not displace a local law that regulates local conditions absent a clear intent to do so, but state

law will prevail over a conflicting local law even without a clear expression of intent to preempt the municipal law. Springfield Utility Board v. Emerald People's Utility District, 191 Or. App. 536, 84 P.3d 167 (2004), aff'd, 339 Or. 631, 125 P.3d 740 (2005).

Section 2 of SB 863 finds and declares the existence of a paramount state interest and a need to safeguard economic concerns against contrary municipal concerns. Section 3 of SB 863 expressly prohibits a local government from adopting or enforcing any local law or measure "to inhibit or prevent the production or use of agricultural seed, flower seed, nursery seed or vegetable seed or products of agricultural seed, flower seed, nursery seed or vegetable seed." The definitions for agricultural seed, flower seed, and vegetable seed are established in statute. Nursery seed is defined in SB 863 as any propagant of "nursery stock," which is defined in ORS 571.005 to include plants and plant parts of a type kept for propagation or sale. We presume that SB 863 is to be construed in harmony with other state laws and therefore interpret the term "nursery seed" as referring only to propagants of those plants or plant parts that may be propagated and sold without violating state law. To the extent that the state has authorized the propagation and distribution of medical marijuana, we believe that medical marijuana falls within the statutory definition of nursery stock and is therefore within the coverage of SB 863. Although SB 863 does not state what constitutes a product of nursery seed, we believe that the definitions require that products of nursery seed include, at a minimum, marijuana plants or parts of marijuana plants. Whether State Department of Agriculture rules for the administration of SB 863 will define nursery seed products in a manner that includes resins, salts or other items falling within the ORS 475.005 definition of marijuana cannot be determined at this time.

Since medical marijuana plants and plant parts are nursery seed products for purposes of SB 863, a local government may not adopt or enforce any local law or measure to prevent or inhibit the production or use of medical marijuana seeds or seed products under conditions allowed by state law, including but not limited to the growing, possession or distribution of medical marijuana by a registered medical marijuana facility. We hasten to add, however, that SB 863 does not act as a barrier to local government enforcement of state or federal laws, including but not limited to any criminal laws, regarding the growing, possession or distribution of marijuana that is not expressly allowed under state law. Nor does Senate Bill 863 act as a barrier to the adoption of local criminal ordinances regarding marijuana other than medical marijuana. See, e.g., State v. Tyler, 168 Or. App. 600, 7 P.3d 624 (2000) (local government has broad authority under Article XI, section 2, of Oregon Constitution, to adopt criminal ordinances unless the local ordinance is incompatible with state law such as by criminalizing behavior that state law has decriminalized, unless state and local law cannot operate concurrently or unless legislature intended state law to be exclusive).

We interpret the SB 863 prohibition on local laws "to inhibit or prevent the production or use" of nursery seed and seed products to mean that a local law may not have the purpose of preventing or inhibiting production or use. The purpose of a local law may be express or may be inferred by the local law having a material impact on production or use. We do not believe that SB 863 prohibits a local law of general application that treats the production and use of nursery seed equally with other activities or that has only an incidental effect on production or use. For instance, a city could require that a state-registered medical marijuana facility comply with a city ordinance requiring a license for all businesses but could not enact or enforce the city ordinance in a manner that is intended to prevent or materially inhibit, or has the effect of preventing or materially inhibiting, the growing, possession or distribution of medical marijuana by a registered facility.

HB 3460 requires the Oregon Health Authority to adopt rules establishing a registration system for facilities to dispense medical marijuana to cardholders registered as provided under the Oregon Medical Marijuana Act (OMMA) or to caregivers for those cardholders. The bill sets forth the registration qualifications that a facility and its operator must meet and requires the authority to issue a facility registration if the facility and operator qualify. HB 3460 lacks express preemption language. Preemption may, however, also occur when state law is so pervasive as to occupy a field. There is no uniform test for occupation preemption. Occupation of one aspect of a field may leave other aspects of the field open to local regulation, so determining the existence of preemption by occupation must rely on a case-by-case evaluation of the state law.

Section 2 (1) of HB 3460 requires the Oregon Health Authority to establish a registration system "to authorize the transfer" of usable marijuana and immature marijuana plants from a cardholder or caregiver to the person responsible for a medical marijuana facility and from a medical marijuana facility to a caregiver or cardholder. Section 2 (3) sets out the qualifications that a medical marijuana facility must meet to obtain a state registration. Section 2 (5) provides that if an application is properly submitted, the facility meets the subsection (3) qualifications and the person to be responsible for the facility passes a criminal background check, the authority "shall register the medical marijuana facility and issue the person responsible for the medical marijuana facility proof of registration." Taken together, the provisions do not provide for a local government to impose additional requirements for the issuance of a state registration or require a facility to also obtain a local registration. That limitation is insufficient by itself to indicate that the state intended to preempt all aspects of the field of medical marijuana dispensaries, so it is necessary to determine whether and to what extent the adoption of local laws regarding medical marijuana facilities might conflict with HB 3460.

Since conflict due to impossibility is rare, we focus on whether and to what extent a local law regarding a state-registered medical marijuana facility might stand as an obstacle to the accomplishment and execution of the full purpose and objectives of House Bill 3460. Having already described section 2 of the bill, we believe it helpful to examine the legislative history to determine the purposes and objectives behind HB 3460. Multiple exhibits introduced for House Bill 3460 suggest a few primary purposes and objectives. In no particular order, those purposes and objectives were to: 1) Ensure that medical marijuana cardholders who are unable or unwilling to grow their own medical marijuana have access to a reliable source of medical marijuana; 2) ensure that medical marijuana obtained by cardholders is safe and of known quality; 3) discourage cardholder support of black-market marijuana sources; 4) supply law enforcement with information that would allow law enforcement to better distinguish lawful grow sites and suppliers from unlawful grow sites and suppliers; and 5) ensure a consistent and uniform approach throughout the state to law enforcement regarding medical marijuana facilities.

In light of the legislative history, we believe that a local law that prevents or materially restricts the operation of medical marijuana facilities would stand as an obstacle to the accomplishment and execution of the purposes and objectives of HB 3460 and would therefore be preempted. A local law that restricts medical marijuana facilities by imposing different criteria from criteria affirmatively established in HB 3460 would also conflict with the purposes and objectives of HB 3460 and therefore be preempted. It may be possible, though, for some types of local law to place a minor restriction on medical marijuana facilities that is sufficiently insignificant to avoid conflicting with the purposes and objectives of HB 3460. For instance, a local law that imposes special traffic control measures around medical marijuana facilities might not conflict with the purposes and objectives of HB 3460 as long as the measures did not unduly interfere with the operation of the facilities. We note, though, that validity of such a law under SB

863 cannot be determined until the State Department of Agriculture has adopted rules for implementing that bill.

As a final matter, we address the effect of state law and federal law conflict on the responsibilities of local government. It is common for state and local governments to engage in the enforcement of federal laws. However, Amendment X of the United States Constitution also stands for the proposition that the federal government may not require states or local jurisdictions to enforce federal laws. "It is well established that the federal government lacks constitutional authority to commandeer the policy-making or enforcement apparatus of the states by requiring them to enact or enforce a federal regulatory program." Willis v. Winters, 350 Or. 299, 253 P.3d 1058 (2011) (citing Printz v. United States, 521 U.S. 898, 925-931, 117 S. Ct. 2365, 138 L.Ed.2d 914 (1997), and New York v. United States, 505 U.S. 144, 161-169, 112 S. Ct. 2408, 120 L.Ed.2d 120 (1992). Therefore, while local governments are subject to compliance with both federal and state law, the enforcement of federal law by local government is a discretionary act.

Whether a local government may invoke federal law to avoid compliance with state law depends on whether the federal law conflicts with and supersedes the state law. The CSA does not expressly preempt state laws regulating controlled substances, nor does it occupy the field of controlled substances regulation. 21 U.S.C. 903. The CSA instead provides that state law is not preempted "unless there is a positive conflict" between the federal law provision and the state law "so that the two cannot consistently stand together." Those words are the classic description of preemption by conflict. Conflict may exist either because it is impossible for a person to be in compliance with both the state and federal law or, much more commonly, where the state law stands as an obstacle to accomplishing and executing the full purposes and objectives of the federal law.

For purposes of this opinion we limit our discussion to the theoretical impact of a state law and federal law conflict on local government. We expressly do not venture any examination for potential conflicts between HB 3460 and the CSA.

With regard to local governments, state law will conflict with the purposes and objectives of a federal law if the state law requires a local government to take an action that is prohibited under federal law or prohibits the local government from performing an action required under the federal law. See, e.g., State v. Ehrensing, 255 Or. App. 402, 296 P.3d 1279 (2013) (holding that law enforcement was excused from complying with OMMA provision requiring return of seized medical marijuana where return would violate federal Controlled Substances Act prohibition on delivery of controlled substance). In examining whether a state law interferes with accomplishing and executing the full purposes and objectives of a federal law, both the purposes and objectives of the federal law and the effect of the state law must be precisely identified. If a municipality believes that compliance with state law would require the municipality to take an action that would stand as an obstacle to accomplishing and executing the purposes and objectives of a federal law, the municipality should seek an adjudication of the matter. A municipality may not, however, take an action that is contrary to state law merely because the municipality believes that the municipal action will better achieve the purposes and objectives of federal law. See Willis v. Winters (law enforcement could not refuse to issue concealed weapon permit to OMMA cardholder qualifying under state law on grounds that refusal would better achieve purposes of federal Gun Control Act).

The opinions written by the Legislative Counsel and the staff of the Legislative Counsel's office are prepared solely for the purpose of assisting members of the Legislative Assembly in

the development and consideration of legislative matters. In performing their duties, the Legislative Counsel and the members of the staff of the Legislative Counsel's office have no authority to provide legal advice to any other person, group or entity. For this reason, this opinion should not be considered or used as legal advice by any person other than legislators in the conduct of legislative business. Public bodies and their officers and employees should seek and rely upon the advice and opinion of the Attorney General, district attorney, county counsel, city attorney or other retained counsel. Constituents and other private persons and entities should seek and rely upon the advice and opinion of private counsel.

Very truly yours,

DEXTER A. JOHNSON
Legislative Counsel

By
Charles Daniel Taylor
Senior Deputy Legislative Counsel

8. Oregon Legislative Counsel Opinion on Local Regulation of Medical Marijuana Facilities (February 5, 2014)

Dexter A. Johnson
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STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

February 5, 2014

Senator Floyd Prozanski, Chair
Senate Committee on Judiciary
900 Court Street NE H272
Salem OR 97301

Re: Local Regulation of Medical Marijuana Facilities

Dear Senator Prozanski:

You have asked us whether ORS 475.314 preempts a local government from restricting or prohibiting the operation of a state-registered medical marijuana facility within the jurisdiction of the local government. We understand your question to arise from the announced intention of several local governments to deny business licenses to medical marijuana facilities on the grounds that operation of the facilities would violate the federal Controlled Substances Act (CSA), 21 U.S.C. 801 et seq.

We conclude that ORS 475.314 preempts most municipal laws specifically targeting medical marijuana facilities. We further conclude that while a municipality may not be required to violate federal law to comply with a conflicting state law, a municipality may not act contrary to state law merely because the municipality believes that the action will better carry out the purposes and objectives of federal law.

Before reviewing the specific provisions of the CSA and ORS 475.314, we believe that it is helpful to review and discuss the law concerning home rule and state preemption.

Article IV, section 1, Article VI, section 10, and Article XI, section 2, of the Oregon Constitution, act as limitations on state regulation of local charters and acts of incorporation. The provisions affirm the right of a municipality to select the form of municipal government and to exercise police power (regulate for the common health and welfare) within the municipality. See generally La Grande/Astoria v. Public Employes Benefit Board, 281 Or. 137, 576 P.2d 1204 (1978), adhered to on rehearing 284 Or. 173, 586 P.2d 765 (1978). The general rule for noncriminal matters is that a municipality may enact ordinances regarding matters that are primarily of local concern, provided that the ordinances do not conflict with state law.

If a matter is primarily of state concern, or is of both state and local concern, the matter becomes more complicated. A state law that addresses a concern with the structure or policies of a municipality must be justified by a need to safeguard the interests of the persons or entities affected by the procedures of the municipality. However, if a state law primarily addresses substantive social, economic or other regulatory objectives, the state law prevails over a contrary municipal policy concern. See La Grande/Astoria. State law is generally presumed to not displace a local law that regulates local conditions absent a clear intent to do so, but state

law will prevail over a conflicting local law even without a clear expression of intent to preempt the municipal law. Springfield Utility Board v. Emerald People's Utility District, 191 Or. App. 536, 84 P.3d 167 (2004), aff'd, 339 Or. 631, 125 P.3d 740 (2005).

ORS 475.314 requires the Oregon Health Authority to adopt rules establishing a registration system for facilities to dispense medical marijuana to cardholders registered as provided under the Oregon Medical Marijuana Act (OMMA) or to caregivers for those cardholders. The statute sets forth the registration qualifications that a facility and its operator must meet and requires the authority to issue a facility registration if the facility and operator qualify. ORS 475.314 lacks express preemption language. Preemption may, however, also occur when state law is so pervasive as to occupy a field. There is no uniform test for occupation preemption. Occupation of one aspect of a field may leave other aspects of the field open to local regulation, so determining the existence of preemption by occupation must rely on a case-by-case evaluation of the state law.

ORS 475.314 (1) requires the Oregon Health Authority to establish a registration system "to authorize the transfer" of usable marijuana and immature marijuana plants from a cardholder or caregiver to the person responsible for a medical marijuana facility and from a medical marijuana facility to a caregiver or cardholder. ORS 475.314 (3) sets out the qualifications that a medical marijuana facility must meet to obtain a state registration. ORS 475.314 (5) provides that if an application is properly submitted, the facility meets the subsection (3) qualifications and the person to be responsible for the facility passes a criminal background check, the authority "shall register the medical marijuana facility and issue the person responsible for the medical marijuana facility proof of registration." Taken together, the provisions do not provide for a local government to impose additional requirements for the issuance of a state registration or for a facility to also obtain a local registration. That limitation is insufficient by itself to indicate that the state intended to preempt all aspects of the field of medical marijuana facilities, so it is necessary to determine whether and to what extent the adoption of local laws regarding medical marijuana facilities might conflict with ORS 475.314.

Because conflict due to impossibility is rare, we focus on whether and to what extent a local law regarding a state-registered medical marijuana facility might stand as an obstacle to the accomplishment and execution of the full purpose and objectives of ORS 475.314. Having already described ORS 475.314, we believe it helpful to examine the legislative history of that statute to determine the purposes and objectives behind the law.

ORS 475.314 was introduced during the 2013 regular session of the Legislative Assembly as House Bill 3460. Multiple exhibits introduced for that bill suggest a few primary purposes and objectives. In no particular order, those purposes and objectives were to: (1) ensure that medical marijuana cardholders who are unable or unwilling to grow their own medical marijuana have access to a reliable source of medical marijuana; (2) ensure that medical marijuana obtained by cardholders is safe and of known quality; (3) discourage cardholder support of black-market marijuana sources; (4) supply law enforcement with information that would allow law enforcement to better distinguish lawful grow sites and suppliers from unlawful grow sites and suppliers; and (5) ensure a consistent and uniform approach throughout this state to law enforcement regarding medical marijuana facilities.

In light of the legislative history, we believe that a local law that prevents or materially restricts the operation of medical marijuana facilities would stand as an obstacle to the accomplishment and execution of the purposes and objectives of ORS 475.314 and would therefore be preempted. A local law that restricts medical marijuana facilities by imposing

different criteria from criteria affirmatively established in ORS 475.314 would also conflict with the purposes and objectives of the statute and therefore be preempted. It may be possible, though, for some types of local law to place a minor restriction on medical marijuana facilities that is sufficiently insignificant to avoid conflicting with the purposes and objectives of ORS 475.314. For instance, a local law that imposes special traffic control measures around medical marijuana facilities might not conflict with the purposes and objectives of the statute as long as the measures did not unduly interfere with the operation of the facilities.

As a final matter, we address the effect of state law and federal law conflict on the responsibilities of local government. It is common for state and local governments to engage in the enforcement of federal laws. However, the Tenth Amendment to the United States Constitution also stands for the proposition that the federal government may not require states or local jurisdictions to enforce federal laws. "It is well established that the federal government lacks constitutional authority to commandeer the policy-making or enforcement apparatus of the states by requiring them to enact or enforce a federal regulatory program." Willis v. Winters, 350 Or. 299, 313, 253 P.3d 1058, 1066 (2011) (citing Printz v. United States, 521 U.S. 898, 925-931, 117 S. Ct. 2365, 138 L.Ed.2d 914 (1997), and New York v. United States, 505 U.S. 144, 161-169, 112 S. Ct. 2408, 120 L.Ed.2d 120 (1992)). Therefore, while local governments are subject to compliance with both federal and state law, the enforcement of federal law by local government is a discretionary act.

Whether a local government may invoke federal law to avoid compliance with state law depends on whether the federal law conflicts with and supersedes the state law. The CSA does not expressly preempt state laws regulating controlled substances, nor does it occupy the field of controlled substances regulation. 21 U.S.C. 903. The CSA instead provides that state law is not preempted "unless there is a positive conflict" between the federal law provision and the state law "so that the two cannot consistently stand together." Id. Those words are the classic description of preemption by conflict. Conflict may exist either because it is impossible for a person to be in compliance with both the state law and the federal law or, much more commonly, where the state law stands as an obstacle to accomplishing and executing the full purposes and objectives of the federal law.

For purposes of this opinion, we limit our discussion to the theoretical impact of a state law and federal law conflict on local government. We expressly do not venture any examination for potential conflicts between ORS 475.314 and the CSA.

With regard to local governments, a state law will conflict with the purposes and objectives of a federal law if the state law requires a local government to take an action that is prohibited under federal law or prohibits the local government from performing an action required under the federal law. See, e.g., State v. Ehrensing, 255 Or. App. 402, 296 P.3d 1279 (2013) (holding that law enforcement was excused from complying with OMMA provision requiring return of seized medical marijuana where return would violate CSA prohibition on delivery of controlled substance). In examining whether a state law interferes with accomplishing and executing the full purposes and objectives of a federal law, both the purposes and objectives of the federal law and the effect of the state law must be precisely identified. If a municipality believes that compliance with a state law would require the municipality to take an action that would stand as an obstacle to accomplishing and executing the purposes and objectives of a federal law, the municipality should seek an adjudication of the matter. A municipality may not, however, take an action that is contrary to a state law merely because the municipality believes that the municipal action will better achieve the purposes and objectives of a federal law. See Willis v. Winters (law enforcement could not refuse to issue

concealed weapon permit to OMMA cardholder qualifying under state law on grounds that refusal would better achieve purposes of federal Gun Control Act).

Feel free to contact us with any other questions or concerns on this matter.

The opinions written by the Legislative Counsel and the staff of the Legislative Counsel's office are prepared solely for the purpose of assisting members of the Legislative Assembly in the development and consideration of legislative matters. In performing their duties, the Legislative Counsel and the members of the staff of the Legislative Counsel's office have no authority to provide legal advice to any other person, group or entity. For this reason, this opinion should not be considered or used as legal advice by any person other than legislators in the conduct of legislative business. Public bodies and their officers and employees should seek and rely upon the advice and opinion of the Attorney General, district attorney, county counsel, city attorney or other retained counsel. Constituents and other private persons and entities should seek and rely upon the advice and opinion of private counsel.

Very truly yours,

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Legislative Counsel

By
Mark B. Mayer
Deputy Legislative Counsel

cc: Bill Taylor, Administrator
Senate Committee on Judiciary

Speaker Biographies

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Andy Aley's practice focuses on mergers and acquisitions, securities, corporate finance, and general corporate matters for both start up and established companies. For the 2008-2009 term, he was a law clerk to Judge Alfred T. Goodwin of the U.S. Court of Appeals for the 9th Circuit, where he assisted in the disposition of both federal appellate and district court matters.

Services

- Mergers and Acquisitions
- Emerging Companies and Venture Capital
- Privately Held Companies

Industries

- Emerging Companies
- Manufacturing and Distribution
- Maritime Companies and Fisheries

Education

- J.D., University of Washington School of Law, with honors, 2008
- B.A., Environmental Journalism, Western Washington University, *cum laude*, 2004

Admissions

- Washington, 2009
- U.S. Court of Appeals, 9th Circuit, 2009
- U.S. Court of Appeals, 3rd Circuit, 2011

Professional Recognition

- Named by peers as one of Washington's "Rising Stars" in *Super Lawyers*, a Thomson Reuters business, 2013

Publications

- "Reconsidering Gowen: Toward a Rationalized View of Fishing Permits and Maritime Liens," *Benedict's Maritime Bulletin*, Vol. 11, No. 3-4 Third/Fourth Quarter 2013.

Jennifer M. Bragar

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Jennifer Bragar's practice is focused on land use, municipal and environmental law. She represents business, community and government entities in matters unique to land use planning and municipal law. She has appeared before the Land Use Board of Appeals and is a frequent lecturer and author on Oregon land use law.

Jennifer has been involved with a number of significant cases in Oregon, including advocacy for a coalition of private property owners who challenged a Umatilla County ordinance that would have severely restricted land available for commercial wind facilities in 2011. The Oregon Land Use Board of Appeals upheld this challenge based on violations of the Constitution and administrative regulations. Further, Jennifer assists in the firm's representation of several cities as special counsel and general counsel, including Oregon City, Island City, and the City of Rivergrove. Ms. Bragar is also involved in representing multiple clients on hazardous waste cleanup actions arising under federal and state Superfund laws. This work involves negotiations with federal and state regulators, cost recovery and contribution actions, the allocation of liability among private parties, and natural resource damage claims.

Before entering private practice, Ms. Bragar founded JB Associates (1999-2003), a land use and political consulting firm in the Monterey Bay area providing services to clients around the central coast of California. She has worked closely with government agencies, developers and community activists to achieve balanced development proposals that satisfy the requirements of all participants in the review process. She has managed campaigns for the district attorney, other elected officials, and a variety of local Santa Cruz ballot measures.

Her experience and background serves clients well, providing first-hand perspective and understanding of the implications of the land use decision-making process in the local political arena. She offers clients a practical approach to dealing with their land use issues.

Services

- Land Use
- Condemnation and Eminent Domain
- Municipal Law
- Real Estate
- Environmental Law
- Natural Resources

Industries

- Government

Education

- J.D., Lewis & Clark Law School, *cum laude*, 2007
- B.A., Economics and Environmental Studies, University of California Santa Cruz, 1998
- Education Abroad Program, University of Melbourne, 1997

Admissions

- Washington, 2013
- Oregon, 2009
- California, 2008

Professional Recognition

- Named as an "Oregon Rising Star" in *Oregon Super Lawyers* magazine, 2012-2013

Professional Activities

- Member, Oregon Emerging Local Government Leaders Network, November 2012-present
- Member, American Bar Association, State and Local Government Section; Council Member, August 2013 – present; Member, 2010-present
- Member, Oregon Bar Association, 2009-present
- Member, Executive Committee, the Real Estate and Land Use Section, 2011-present, Secretary, 2014
- Member, Oregon Women Lawyers, 2009-present

•Member, Urban Land Institute, Young Leaders Group 2009-present

Community Activities

- President, Housing Land Advocates, 2012 – present; Board Member since 2009
- Board Member, Women of Wind Energy, 2013 – present; member since 2010
- Board Member, Oregon League of Conservation Voters, 2013 – present

Events

- Land Use Planning for Pot, Portland, OR, May 6, 2014
- What Is a Land Use Decision?, Garvey Schubert Barer, Portland, OR, January 23, 2014
- Women of Wind Energy (WoWE) Transmission Breakfast Series, Transmission and Wind Integration 101, Portland, OR, October 15, 2013
- Euclid Society Meeting: Dealing with the Downsides of Density, Garvey Schubert Barer Portland Office, June 6, 2013
- Euclid Takes on Farming, Garvey Schubert Barer, Portland, OR, September 11, 2012
- "Land Use Legislative Update 2012," RELU Annual Summer Conference, Salishan, OR, August 10, 2012
- "I Read the Cases So You Don’t Have To: Land Use Case Law Update 2012," Oregon County Counsel Association, Bend, OR, July 26, 2012
- How Do We Move Forward? An Update on the New Amendments to the Transportation Planning Rule, Garvey Schubert Barer, Portland, OR, June 6, 2012

- "Land Use Case Law Update - We Read the Cases so You Don't Have To," 2012 OR APA Planning Conference, Bend, OR, May 11, 2012
- "The View from Underneath the Turbine – An Update on Umatilla County's Efforts to Restrict Wind Energy Development," Women of Wind Energy, Portland Chapter , Garvey Schubert Barer, Portland, OR, March 21, 2012
- Real Estate for Planners: What Planners Should Know About Real Estate Issues , Garvey Schubert Barer, Portland, OR, February 8, 2012
- "Land Use Planning for Job Development," Digging Deeper into Real Estate and Land Use CLE, Oregon Bar's Real Estate and Land Use Section, Portland, OR, November 16, 2011
- It Ain't Easy Being Green: Standards and Strategies for Responding to Climate Change, Garvey Schubert Barer, Portland, OR, November 9, 2011
- "The Other Side of the River: Using Land Use Planning to Create a Regional Fair Share of Housing," OR-WA APA Conference , Portland, OR, October 20, 2011
- FAQs About EOAs: Economic Opportunity Analysis – Industrial Lands, Garvey Schubert Barer, Portland, OR, August 10, 2011
- "Land Use Case Law Update," Oregon County Counsel Association Annual Conference, Bend, OR, July 28, 2011
- "Land Use Case Law Update," Government Law Section, Oregon State Bar, Portland, OR, October 22, 2010
- "Land Use Case Law Update," 2010 Annual Meeting, Real Estate and Land Use Section, Oregon State Bar, Gleneden Beach, OR, August 13, 2010
- "Measure 49 and the Little Guy," Oregon County Counsel Association , Bend, OR, July 30, 2010
- "Comprehensive Planning Law Update," 2010 Spring Meeting, ABA Section of State and Local Government Law , Miami, FL, April 29, 2010
- "Measure 49: Oregon Voters Take Back the Right to Prevent Unimpeded Land Development Authorized by Measure 37," International Academic Association on Planning, Law, and Property Rights Conference, Dortmund, Germany, February 10-12, 2010

Publications

- "Recent Developments in Comprehensive Planning (2013)," *Urban Lawyer*, Vol. 45, No. 3 Summer 2013.
- "Recent Developments in Comprehensive Planning (2012)," *Urban Lawyer*, Vol. 44, No. 3 Summer 2012.
- "Final Decision in Washington Land Use Matter Not Rendered Until Decision on Local Motion for Reconsideration Issues," *RELU Digest*, November 2011.
- "Measure 37 Claimants Seek Vested Rights Determinations," *RELU Digest*, April 2011.
- "No Changing the Goal Posts in New Jersey," *RELU Digest*, September 2010.
- "The Augean Stables: Measure 49 and the Herculean Task of Correcting an Improvident Initiative Measure in Oregon," *46 Willamette L. Rev. 577,* 2010.
- "Local Aesthetic Regulations Can Trump the Federal Telecommunications Act," *Oregon Real Estate and Land Use Digest*, Volume 32, No. 2, April 2010.

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Bill Kabeiseman has been practicing Oregon land use and municipal law for over 15 years. He has represented cities, developers and neighbors in multiple forums, including representing planning commissions, city councils, as well as arguing before the Oregon Land Use Board of Appeals, the Oregon Court of Appeals and Oregon Supreme Court. Mr. Kabeiseman's broad experience and extensive knowledge of Oregon's land use laws are paramount to his successful practice. Mr. Kabeiseman is of counsel to Garvey Schubert Barer and also serves as an adjunct professor at the University of Oregon where he teaches Land Use Law.

Mr. Kabeiseman serves as general counsel for cities and other governmental entities, addressing the wide variety of issues that arise in land use, public contracting and election law. He also represents developers running the gamut from residential subdivisions to performing arts venues. Simultaneously, he represents neighbors seeking to make their input known on matters including landfill expansions, destination resorts, airports and other sensitive projects.

Before entering private practice, Mr. Kabeiseman clerked at both the Oregon Court of Appeals as well as the Oregon Supreme Court, giving him an immersion in Oregon appellate law, which he uses to this day in his practice representing clients at those courts and in other appellate forums. Mr. Kabeiseman also spent two years representing the territory of American Samoa in environmental affairs.

Mr. Kabeiseman is extensively engaged in community affairs, serving on the Multnomah County Planning Commission and other civic organizations. Mr. Kabeiseman also participates in a variety of bar activities, including chairing the Oregon State Bar Task Force on Sustainability, resulting in the formation of the Sustainable Futures section of the Oregon State Bar.

Representative Cases:

- *VinCEP v. Yamhill County*, 215 Or App 414, 171 P3d 368 (2007)
- *Stricklin v. City of Astoria*, 56 Or LUBA 535 (2007)
- *Horning v. Washington County*, 51 Or LUBA 303 (2006)
- *Wal-Mart Stores, Inc. v. City of Cent. Point*, 341 Or 393, 144 P3d 914 (2006)
- *Wal-Mart Stores, Inc. v. City of Oregon City*, 204 Or App 359, 129 P3d 702 (2006)
- *Springfield Utility Bd. ex rel. City of Springfield v. Emerald PUD*, 191 Or App 536, 84 P3d 167 (2004)

Services

- Municipal Law
- Land Use
- Condemnation and Eminent Domain
- Real Estate
- Public Policy, Lobbying and Political Law
- Environmental Law
- Natural Resources

Industries

- Government

Education

- J.D., University of Oregon School of Law, 1993
- B.A., Economics, College of William & Mary, 1987

Admissions

- Oregon, 1994
- American Samoa, 1995

Professional Activities

- LEED Certified, 2010
- Chair, Oregon State Bar Task Force on Sustainability
- Member, Oregon State Bar CLE Committee, Appellate Law and Real Estate and Land Use sections
- Member, Multnomah County Planning Commission
- Vice President, Oregon Shores Conservation Coalition, 2005; Member, Board of Directors, 1997-2005
- Member, Oregon Chapter of Surfrider, 1998-present

Community Activities

- *Pro Bono* Counsel, Friends of Yamhill County

Events

- Land Use Planning for Pot, Portland, OR, May 6, 2014
- What Is a Land Use Decision?, Garvey Schubert Barer, Portland, OR, January 23, 2014
- Euclid Society Meeting: Dealing with the Downsides of Density, Garvey Schubert Barer Portland Office, June 6, 2013
- Euclid Takes on Farming, Garvey Schubert Barer, Portland, OR, September 11, 2012
- How Do We Move Forward? An Update on the New Amendments to the Transportation Planning Rule, Garvey Schubert Barer, Portland, OR, June 6, 2012
- "Land Use Case Law Update - We Read the Cases so You Don't Have To," 2012 OR APA Planning Conference, Bend, OR, May 11, 2012
- Real Estate for Planners: What Planners Should Know About Real Estate Issues, Garvey Schubert Barer, Portland, OR, February 8, 2012

- "Events on Farmland," Digging Deeper into Real Estate and Land Use CLE, Oregon Bar's Real Estate and Land Use Section , Portland, OR, November 16, 2011
- It Ain't Easy Being Green: Standards and Strategies for Responding to Climate Change, Garvey Schubert Barer, Portland, OR, November 9, 2011
- FAQs About EOAs: Economic Opportunity Analysis – Industrial Lands, Garvey Schubert Barer, Portland, OR, August 10, 2011
- Introducing the Euclid Society: Managing the Clock – Making Decisions Within Statutory Timelines, Garvey Schubert Barer, Portland, OR, April 27, 2011

Publications

- "Oregon Court of Appeals Lays Down the Law on Farm Stands," Garvey Schubert Barer Legal Update, December 4, 2013