



December 2015

# STATE MARIJUANA LEGALIZATION

## DOJ Should Document Its Approach to Monitoring the Effects of Legalization

# GAO Highlights

Highlights of [GAO-16-1](#), a report to congressional requesters

## Why GAO Did This Study

An increasing number of states have adopted laws that legalize marijuana for medical or recreational purposes under state law, yet federal penalties remain. In 2012, Colorado and Washington became the first states to legalize marijuana for recreational purposes. In 2013, DOJ updated its marijuana enforcement policy by issuing guidance clarifying federal marijuana enforcement priorities and stating that DOJ may challenge those state marijuana legalization systems that threaten these priorities. GAO was asked to review issues related to Colorado's and Washington's actions to regulate recreational marijuana and DOJ's mechanisms to monitor the effects of state legalization.

This report examines, among other issues, (1) DOJ's efforts to monitor the effects of state marijuana legalization relative to DOJ's 2013 guidance and (2) factors DOJ field officials reported affecting their marijuana enforcement in selected states with medical marijuana laws. GAO analyzed DOJ marijuana enforcement guidance and drug threat assessments, and evaluated DOJ's monitoring efforts against internal control standards. GAO also interviewed cognizant DOJ officials, including U.S. Attorneys and DEA officials in six states.

## What GAO Recommends

GAO recommends that DOJ document a plan specifying its process for monitoring the effects of state marijuana legalization, and share the plan with DOJ components. DOJ concurred with GAO's recommendations.

View [GAO-16-1](#). For more information, contact Jennifer Grover at (202) 512-7141 or [groverj@gao.gov](mailto:groverj@gao.gov).

December 2015

# STATE MARIJUANA LEGALIZATION

## DOJ Should Document Its Approach to Monitoring the Effects of Legalization

### What GAO Found

Officials from the Department of Justice's (DOJ) Office of the Deputy Attorney General (ODAG) reported monitoring the effects of state marijuana legalization relative to DOJ policy, generally in two ways. First, officials reported that U.S. Attorneys prosecute cases that threaten federal marijuana enforcement priorities (see fig. below) and consult with state officials about areas of federal concern, such as the potential impact on enforcement priorities of edible marijuana products. Second, officials reported they collaborate with DOJ components, including the Drug Enforcement Administration (DEA) and other federal agencies, including the Office of National Drug Control Policy, and assess various marijuana enforcement-related data these agencies provide. However, DOJ has not documented its monitoring process, as called for in *Standards for Internal Control in the Federal Government*. Documenting a plan specifying its monitoring process would provide DOJ with greater assurance that its monitoring activities relative to DOJ marijuana enforcement guidance are occurring as intended. Further, making this plan available to appropriate DOJ components can provide ODAG with an opportunity to gain institutional knowledge with respect to its monitoring plan, including the utility of the data ODAG is using. This can better position ODAG to identify state systems that are not effectively protecting federal enforcement priorities and, if necessary, take steps to challenge these systems in accordance with DOJ marijuana enforcement guidance.

#### DOJ Marijuana Enforcement Priorities

	Preventing the distribution of marijuana to minors		Preventing violence and the use of firearms in the cultivation and distribution of marijuana
	Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels		Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use
	Preventing the diversion of marijuana from states where it is legal under state law in some form to other states		Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands
	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 marijuana possession or use on federal property

Source: Department of Justice; Department of the Interior (logo). | GAO-16-1

U.S. Attorneys and DEA officials in six states with medical marijuana laws reported their perspectives on various factors that had affected their marijuana enforcement actions. These include

- applying resources to target the most significant public health and safety threats, such as violence associated with drug-trafficking organizations;
- addressing local concerns regarding the growth of the commercial medical marijuana industry; and
- implementing DOJ's updated marijuana enforcement policy guidance.

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### Abbreviations

CBD	cannabidiol
CSA	Controlled Substances Act of 1970
DEA	Drug Enforcement Administration
DOJ	Department of Justice
EOUSA	Executive Office for United States Attorneys
FBI	Federal Bureau of Investigation
HIDTA	High Intensity Drug Trafficking Area
LIONS	Legal Information Online Network System
Colorado MED	Colorado Marijuana Enforcement Division
OCDETF	Organized Crime Drug Enforcement Task Forces Program
ODAG	Office of the Deputy Attorney General
ONDCP	Office of National Drug Control Policy
RFID	radio frequency identification
THC	delta-9-tetrahydrocannabinol
USAO	United States Attorney's Office
Washington State LCB	Washington State Liquor and Cannabis Board

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December 30, 2015

The Honorable Charles E. Grassley  
Chairman  
Committee on the Judiciary  
United States Senate

The Honorable Dianne Feinstein  
United States Senate

Under the Controlled Substances Act of 1970 (CSA), generally it is a federal crime for any person to knowingly or intentionally manufacture, distribute, dispense, or possess marijuana.<sup>1</sup> For many years, all 50 states had uniform drug control laws or similar provisions that mirrored the CSA with respect to their treatment of marijuana, making their violation a state criminal offense. However, as of June 2015, 24 states and the District of Columbia have passed laws legalizing marijuana for medical purposes under certain circumstances—yet federal penalties remain under the CSA with regard to marijuana.<sup>2</sup> In November 2012, 2 of these states—Colorado and Washington—became the first states to pass ballot initiatives to legalize the possession of marijuana for recreational use under state law. The ballot initiatives in Colorado and Washington generally were to allow for personal possession of up to an ounce of marijuana for those at least 21 years of age and required the states to establish regulatory and enforcement systems to control the production, processing, and sale of marijuana.<sup>3</sup> More recently, in November 2014, voters in Alaska, Oregon, and the District of Columbia approved ballot measures legalizing marijuana for recreational use.

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<sup>1</sup>21 U.S.C. §§ 841, 844.

<sup>2</sup>In addition to the 24 states and the District of Columbia, that have passed laws legalizing marijuana for medical purposes, 15 states have laws pertaining to only the use of products containing cannabidiol (CBD), one of the active ingredients in marijuana plants. We provide more details later in this report.

<sup>3</sup>For Colorado's regulatory framework regarding the production, processing, and sale of recreational marijuana, see 1 Colo. Code Regs. 212-2, Retail Marijuana Code. For Washington's regulatory framework regarding the production, processing, and sale of recreational marijuana, see Wash. Admin. Code ch. 314-55, Marijuana Licenses, Application Process, Requirements, and Reporting.

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The Department of Justice (DOJ) is responsible for enforcing the CSA and developing policies and strategies to do so. In 2009 and 2011, DOJ issued guidance to prosecutors concerning marijuana enforcement under the CSA. On August 29, 2013, DOJ updated that marijuana enforcement guidance following the passage of Colorado's and Washington's state ballot initiatives legalizing recreational marijuana under state law. The guidance described examples of circumstances where the federal government may seek to challenge the regulatory system implemented by a state to control the production, processing, and sale of marijuana because it was likely to threaten federal enforcement priorities. In particular, the guidance instructed DOJ's prosecutorial and law enforcement components to focus marijuana enforcement efforts on priorities that it stated were particularly important to the federal government, such as preventing revenue from the sale of marijuana from going to criminal enterprises, preventing violence and the use of firearms in the cultivation and distribution of marijuana, and preventing the distribution of marijuana to minors. DOJ indicated that the guidance rests on its expectation that states and local governments that have legalized marijuana will implement strong and effective regulatory and enforcement systems that will address the threat that those state laws could pose to these priorities.

You requested that we review the actions Colorado and Washington had taken to implement their recreational marijuana laws, the mechanisms DOJ and its components have established to monitor their effects, and the lessons learned from DOJ's enforcement efforts in response to states' medical marijuana laws. This report examines the following questions:

- What are the features of Colorado's and Washington's systems to regulate the production, processing, and sale of recreational marijuana?
- To what extent is DOJ monitoring the effects of state marijuana legalization relative to DOJ's 2013 marijuana enforcement policy guidance?
- What factors have DOJ field officials reported affecting their marijuana enforcement actions in selected states that have legalized marijuana for medical purposes?

To determine how Colorado and Washington regulate the production, processing, and sale of recreational marijuana, we reviewed laws and regulations governing recreational marijuana in Colorado and Washington

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as well as reports describing the development and implementation of these laws and regulations, such as the state of Colorado task force report providing recommendations for implementing Colorado's recreational marijuana legalization law.<sup>4</sup> To obtain additional perspectives on these regulations, we interviewed officials from the state regulatory agencies responsible for developing, implementing, and enforcing the regulations, including the Colorado Department of Revenue's Marijuana Enforcement Division (MED) and the Washington State Liquor and Cannabis Board (Washington State LCB). In addition, we observed Washington State LCB officials conduct inspections at three recreational marijuana facilities. We also interviewed officials from each of the states' state patrols and offices of the attorney general, to obtain their perspectives on implementation and enforcement of the regulations.

To determine how DOJ is monitoring the effects of state marijuana legalization laws relative to DOJ's 2013 marijuana enforcement policy, we reviewed DOJ documentation related to its marijuana enforcement and monitoring efforts, including marijuana enforcement guidance memorandums the Office of the Deputy Attorney General (ODAG) issued to federal prosecutors beginning in 2009, and information DOJ provided to the Senate Judiciary Committee regarding its marijuana enforcement policy. We also reviewed DOJ component agency documentation including Drug Enforcement Administration (DEA) reports describing national drug threat and enforcement trends and guidance describing DOJ investigative and prosecutorial case management systems used by DEA and United States Attorneys' offices (USAO). We interviewed DOJ headquarters officials from ODAG, DEA, the Executive Office for United States Attorneys (EOUSA), and other DOJ components including the Criminal Division and the Office of Justice Programs.<sup>5</sup> We also interviewed officials from the Office of National Drug Control Policy

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<sup>4</sup>State of Colorado, *Task Force Report on the Implementation of Amendment 64* (Denver, CO: March 13, 2013).

<sup>5</sup>DOJ's Criminal Division develops, enforces, and supervises the application of all federal criminal laws except those specifically assigned to other divisions. The division and the 93 U.S. Attorneys have the responsibility for overseeing criminal matters as well as certain civil litigation. EOUSA, among other things, facilitates coordination between the Offices of the United States Attorneys and other organizational units of DOJ. The Office of Justice Programs works in partnership with the justice community to identify the most pressing crime-related challenges confronting the justice system and to provide information, training, coordination, and innovative strategies and approaches for addressing these challenges. We discuss DEA and the USAOs later in this report.



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(ONDCP), with which DOJ reported coordinating as part of its efforts to monitor the effects of state marijuana legalization.<sup>6</sup> We then evaluated DOJ's reported efforts to monitor the effects of state legalization of marijuana against standards in *Standards for Internal Control in the Federal Government*.<sup>7</sup>

To determine the factors DOJ field officials reported affecting their marijuana enforcement actions in selected states that have legalized marijuana for medical purposes, we selected 6 states for our review, to include (1) Colorado and Washington because, in addition to their recreational marijuana laws, they have long-standing medical marijuana legalization laws in place, and (2) 4 additional states—Alaska, California, Maine, and Oregon—that were the earliest states to pass laws legalizing marijuana for medical purposes. We interviewed officials from the six DEA field divisions and 10 USAOs with jurisdiction for these selected states.<sup>8</sup> The information we obtained from DOJ field officials in these selected states is not generalizable to DOJ field officials in all states with medical marijuana legalization laws, but these interviews provided valuable information and perspectives about the experiences of DOJ field offices in the states. We also interviewed and obtained information from officials from federal agencies that DOJ reported partnering with in its marijuana enforcement actions, including the U.S. Postal Inspection Service, U.S. Forest Service, Bureau of Land Management, National Park Service, and ONDCP High Intensity Drug Trafficking Area (HIDTA) Program offices in selected states.<sup>9</sup> Furthermore, we reviewed

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<sup>6</sup>ONDCP is a component of the Executive Office of the President that advises the President on drug control issues, coordinates drug-control activities and related funding across the federal government, and produces the annual [National Drug Control Strategy](#), which outlines administration efforts to reduce illicit drug use, manufacturing and trafficking, drug-related crime and violence, and drug-related health consequences.

<sup>7</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: Nov. 1, 1999).

<sup>8</sup>See app. I for a list of the DEA and USAO field offices whose officials we interviewed.

<sup>9</sup>The HIDTA Program, a federal grant program administered by ONDCP, provides resources to assist federal, state, local, and tribal agencies to coordinate activities in areas determined to be critical drug-trafficking regions of the United States. There are currently 28 HIDTAs, which include approximately 17 percent of all counties in the United States and approximately 60 percent of the U.S. population. HIDTA-designated counties are located in 48 states, as well as in Puerto Rico, the U.S. Virgin Islands, and the District of Columbia.

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information provided by DEA field divisions and USAOs in the selected states regarding their marijuana enforcement actions from fiscal years 2007 through 2014, including correspondence sent to medical marijuana dispensaries and case information reported in these field divisions' publicly available press releases.<sup>10</sup> We selected this time period to include information on DOJ marijuana enforcement 2 years before DOJ issued its first public marijuana enforcement guidance in 2009 and after its August 2013 guidance.<sup>11</sup>

We conducted this performance audit from July 2014 to November 2015 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

Marijuana refers to the dried leaves, flowers, stems, and seeds from the cannabis plant (shown in fig. 1), which contains the psychoactive or mind-altering chemical delta-9-tetrahydrocannabinol (THC), as well as other related compounds. Marijuana can be smoked or consumed in food or drinks, such as marijuana-infused brownies, cookies, peanut butter, candy, and soda. According to the Substance Abuse and Mental Health Services Administration, marijuana is the most widely used illicit drug in the United States. For example, according to the 2013 National Survey on Drug Use and Health, an estimated 44 percent of Americans aged 12 and older reported they had tried marijuana, and an estimated 7.6 percent of

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<sup>10</sup>Although the specifics vary by state, medical marijuana dispensaries generally provide for the transfer or sale of medical marijuana products.

<sup>11</sup>It is important to note that during the course of our review, the Department of Justice's appropriations act was passed and section 538 of the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, 128 Stat. 2130, 2217 (Dec. 16, 2014) stated that "[n]one of the funds made available in this Act to the Department of Justice may be used, with respect to the States of Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington, and Wisconsin, to prevent such States from implementing their own State laws that authorize the use, distribution, possession or cultivation of medical marijuana."

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Americans aged 12 and older reported having used marijuana in the past month.<sup>12</sup>

**Figure 1: Cannabis Plants**



Source: Colorado Marijuana Enforcement Division. | GAO-16-1

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<sup>12</sup>Funded by the Substance Abuse and Mental Health Services Administration, the National Survey on Drug Use and Health provides information on the use of illicit drugs, alcohol, and tobacco among noninstitutionalized Americans aged 12 and older. See United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, distributed by Inter-university Consortium for Political and Social Research, *National Survey on Drug Use and Health, 2013*, ICPSR35509-v1 (Ann Arbor, MI: Nov. 18, 2014).

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Marijuana is a controlled substance under federal law and is classified in the most restrictive of categories of controlled substances by the federal government. The CSA places all federally controlled substances in one of five “schedules,” depending, among other things, on the drug’s likelihood for abuse or dependence, and whether the drug has an accepted medical use. Marijuana is classified under Schedule I,<sup>13</sup> the classification reserved for drugs that have been found by the federal government to have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision.<sup>14</sup> In contrast, the other schedules are for drugs of varying addictive properties, but found by the federal government to have a currently accepted medical use. The CSA does not allow Schedule I drugs to be dispensed with a prescription, unlike drugs in the other schedules.<sup>15</sup> Furthermore, the CSA provides federal sanctions for possession, manufacture, distribution, dispensing, or use of Schedule I substances, including marijuana, except in the context of a government-approved research project.<sup>16</sup>

Within DOJ, two components have primary responsibility for enforcing the CSA. DEA is the primary federal law enforcement agency responsible for conducting criminal investigations of potential violations of the CSA. U.S. Attorneys are the chief federal law enforcement officers in federal judicial districts responsible for, among other things, prosecution of criminal cases brought by the federal government and prosecution of civil cases in which the United States is a party.<sup>17</sup> As part of their marijuana enforcement efforts, DEA and the U.S. Attorneys collaborate, often with state and local law enforcement, to conduct criminal investigations and

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<sup>13</sup>21 U.S.C. § 812(c), Schedule I (c)(10).

<sup>14</sup>21 U.S.C. § 812(b)(1).

<sup>15</sup>21 U.S.C. § 829.

<sup>16</sup>21 U.S.C. §§ 823(f), 841, 844.

<sup>17</sup>There are 93 U.S. Attorneys stationed throughout the United States, Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands. U.S. Attorneys are appointed by, and serve at the discretion of, the President of the United States, with the advice and consent of the United States Senate. One U.S. Attorney is assigned to each of the 94 judicial districts, with the exception of Guam and the Northern Mariana Islands, where a single U.S. Attorney serves in both districts. Each U.S. Attorney is the chief federal law enforcement officer of the United States within his or her particular jurisdiction.

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prosecutions, civil and criminal forfeiture, seizures, and eradications of cannabis plants.<sup>18</sup>

An increasing number of states have adopted laws that legalize the use of marijuana under state law. As of June 2015, 24 states and the District of Columbia had passed legislation or voter initiatives legalizing the possession and distribution of marijuana for medical purposes under state or territorial law.<sup>19</sup> In 1996, California became the first state to do so with its passage of the Compassionate Use Act,<sup>20</sup> and an increasing number of states have passed ballot initiatives, propositions, or legislation under state law to legalize medical marijuana in recent years. For example, from 2007 through June 2015, 13 states and the District of Columbia passed some type of measure to legalize marijuana for medical purposes under state law. The laws these states have passed legalizing medical marijuana vary, as does the extent to which the states have established regulatory and enforcement systems to implement them.

As of June 2015, 4 states and the District of Columbia had passed ballot initiatives legalizing marijuana for recreational purposes under state law. In 2012, Colorado and Washington became the first states to pass ballot initiatives legalizing the production, processing, and sale of marijuana for

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<sup>18</sup>For example, DEA's Domestic Cannabis Eradication/Suppression Program is a nationwide law enforcement program that exclusively targets drug-trafficking organizations involved in cannabis cultivation. According to DEA, in 2014, the program was responsible for the eradication of 3,904,213 cultivated outdoor cannabis plants and 396,620 indoor plants. In addition, the program accounted for 6,310 arrests and the seizure of more than \$27.3 million of cultivator assets.

<sup>19</sup>In addition to the 24 states, and the District of Columbia, which have passed laws legalizing marijuana for medical purposes, 15 states have laws pertaining to only the use of products containing CBD, one of the active ingredients in marijuana plants. These states have varying statutory provisions that allow the use of low-THC and high-CBD variants of marijuana to treat certain medical conditions.

<sup>20</sup>Compassionate Use Act of 1996, Proposition 215, Cal. Health & Safety Code § 11362.5.

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recreational use. In 2014, Alaska, Oregon, and the District of Columbia passed ballot initiatives legalizing marijuana for recreational use.<sup>21</sup>

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## DOJ's Marijuana Enforcement Policy

DOJ has updated its marijuana enforcement policy in recent years in response to the rising number of states that have legalized marijuana under state law. According to a series of memorandums ODAG issued to U.S. Attorneys beginning in 2009, DOJ is committed to enforcing the CSA for marijuana regardless of state law. However, DOJ has directed its field components to focus on the efficient and rational use of its investigative and prosecutorial resources to address the most significant threats to public health and safety. According to one of the memorandums, DOJ 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. Rather, DOJ has left such lower-level or localized marijuana activity to state and local law enforcement authorities through enforcement of their own drug laws.

While reiterating the department's approach to enforcing the CSA and focusing its resources to address the greatest public health and safety threats, each of the ODAG's memorandums provided additional clarification with respect to the conditions that may trigger federal action, including criminal investigation and prosecution. For example, in October 2009, ODAG issued guidance stating that DOJ's investigative and prosecutorial resources should be directed towards the prosecution of significant traffickers of illegal drugs, including marijuana, and the disruption of illegal drug manufacturing and trafficking networks. Moreover, the guidance stated as a general matter, pursuing those priorities should not result in a focus of federal resources on individuals whose actions were in clear and unambiguous compliance with state laws providing for the medical use of marijuana, including individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law or caregivers who provide such individuals with marijuana in compliance

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<sup>21</sup>In November 2014, voters in the District of Columbia approved a ballot initiative legalizing recreational marijuana possession and use, but this law does not allow for the sale of recreational marijuana. Legalization of Possession of Minimal Amounts of Marijuana for Personal Use Act of 2014, Ballot Initiative 71, D.C. Law 20-153, D.C. Code § 48-904.01. Similarly, in November 2014, voters in Alaska and Oregon voted for Measure 2, an act to tax and regulate the production, sale, and use of marijuana, and Measure 91, the Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act, respectively.

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with existing state law.<sup>22</sup> The memorandum identified various conduct that may indicate illegal drug-trafficking activity of federal interest,<sup>23</sup> while reiterating that U.S. Attorneys maintained prosecutorial discretion in addressing criminal matters within their districts.<sup>24</sup>

In June 2011, ODAG issued guidance stating that the 2009 memorandum was not intended to shield commercial marijuana operations from federal enforcement actions. Among other things, the guidance also stated that while DOJ's efficient use of limited federal resources had not changed, there had been an increase in the scope of commercial cultivation, sale, distribution, and use of marijuana for purported medical purposes, and that this activity remained of federal concern. Furthermore, the guidance stated that the term medical marijuana "caregiver" referred to individuals providing care to individuals with cancer or other serious illnesses, not commercial operations cultivating, selling, or distributing marijuana.

In August 2013, ODAG issued its first public guidance on marijuana enforcement since Colorado and Washington passed state ballot initiatives legalizing marijuana for recreational purposes. The guidance provided additional clarification of DOJ's priorities and certain circumstances that may warrant DOJ to challenge a state's implementation of its marijuana legalization program. The guidance outlined eight enforcement priorities that were particularly important to the federal government. These priorities generally focused on preventing the conduct ODAG outlined in its 2009 guidance, but with some additional activities specified. For example, the guidance included preventing the

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<sup>22</sup>The specific requirements for medical marijuana caregivers vary by state, but in general caregivers are persons permitted under state law to provide medical marijuana to certain medical marijuana patients.

<sup>23</sup>This memorandum identified characteristics of conduct that may indicate illegal drug trafficking of federal interest. These include unlawful possession or unlawful use of firearms; violence; sales to minors; financial and marketing activities inconsistent with the terms, conditions, or purposes of state law, including evidence of money laundering activity or financial gains or excessive amounts of cash inconsistent with purported compliance with state or local law; amounts of marijuana inconsistent with purported compliance with state or local law; illegal possession or sale of other controlled substances; or ties to other criminal enterprises.

<sup>24</sup>According to the *United States Attorneys' Manual*, prosecutorial discretion provides U.S. Attorneys with wide latitude in determining when, whom, how, and whether to prosecute for apparent violations of federal criminal law. See *United States Attorneys' Manual*, Chapter 9-27.000, Principles of Federal Prosecution.

diversion of marijuana from states where it is legal under state law in some form to other states, preventing the growing of marijuana on public lands, and preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use. Figure 2 lists the eight marijuana enforcement priorities outlined in the August 2013 DOJ guidance.

**Figure 2: DOJ's Marijuana Enforcement Priorities as Outlined in the August 2013 Marijuana Enforcement Guidance**



Source: Department of Justice; Department of the Interior (logo). | GAO-16-1

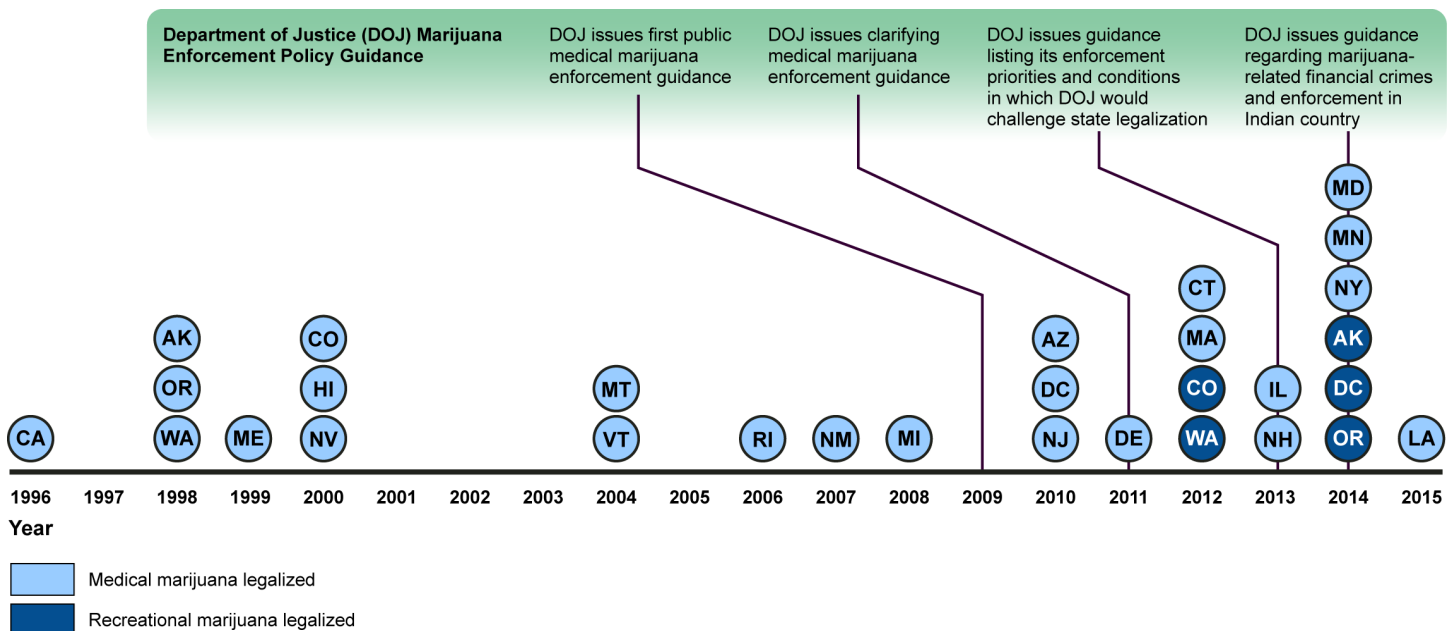
The guidance also stated that outside of these priorities, the enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. The guidance stated that in jurisdictions that have enacted laws legalizing marijuana in some form and that have 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 marijuana enforcement priorities. The guidance indicated DOJ's expectation that state systems must not only contain robust controls and procedures on paper, but must also be effective in practice, with jurisdictions providing the necessary resources and demonstrating the willingness to enforce their laws and regulations in a manner that does not undermine federal enforcement priorities. The guidance further stated that if state enforcement efforts are not sufficiently robust to protect



against certain harms outlined in the guidance, the federal government may seek to challenge the state regulatory structures themselves, in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on the enforcement priorities.

Figure 3 shows a timeline with the years in which states and the District of Columbia legalized medical and recreational marijuana and the years in which DOJ issued public guidance clarifying its marijuana enforcement policy.<sup>25</sup>

**Figure 3: Timeline Showing the Years States and the District of Columbia Passed Measures Legalizing Medical and Recreational Marijuana under State Law and the Years DOJ Issued Marijuana Enforcement Policy Guidance**



Source: GAO analysis of state laws and regulations; Department of Justice. | GAO-16-1

<sup>25</sup>In 2014, DOJ issued two additional guidance memorandums addressing financial crimes related to commercial marijuana activities and DOJ's marijuana enforcement on tribal lands. Specifically, in February 2014, ODAG issued a memorandum stating that investigations and prosecutions of certain financial crimes based upon marijuana-related activity should be subject to the same consideration and priorities listed in the August 2013 memorandum. The financial crimes listed in this memorandum include violations of money-laundering statutes, the unlicensed money remitter statute, and the Bank Secrecy Act. In October 2014, EOUSA issued a memorandum stating that the eight priorities listed in the August 2013 memorandum will guide USAOs' marijuana enforcement efforts in Indian country.

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## Features of Colorado's and Washington's Regulatory Systems for Recreational Marijuana

In November 2012, Colorado and Washington passed state ballot measures that legalized recreational marijuana production, processing, sales, and possession and designated regulatory agencies to develop, implement, and enforce regulations governing the recreational marijuana industry. In 2014, these recreational marijuana regulatory agencies—the Colorado MED and the Washington State LCB—began to implement the new regulations. In general, the two state regulatory systems share similar features, including requirements for licensing, licensee and employee background checks, facility security measures, and product labeling and packaging.<sup>26</sup> The following describes some of the features of the 2 states' regulatory systems.

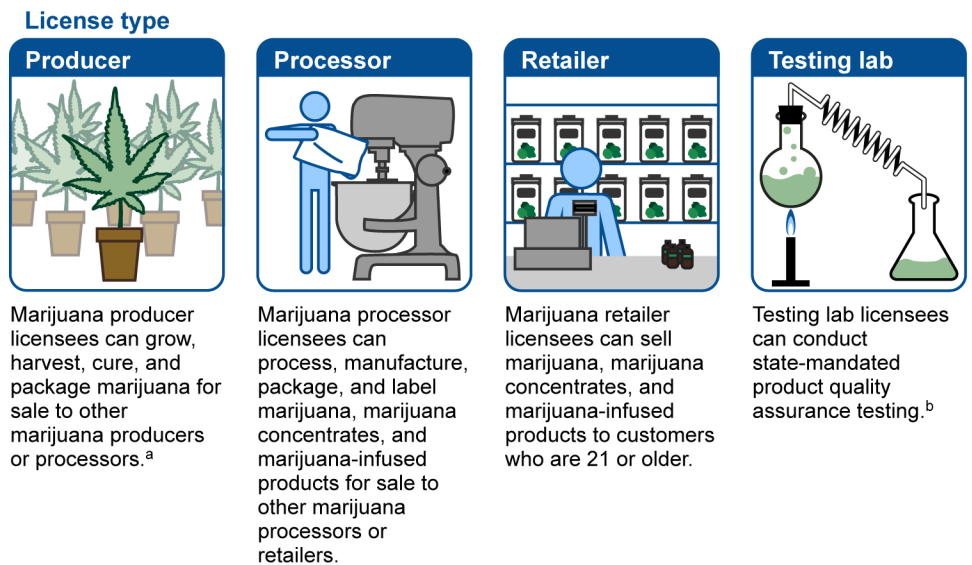
**Licensing.** The Colorado MED and the Washington State LCB have established four types of recreational marijuana licenses that allow licensees (or accredited testing facilities) to conduct specific tasks, including producing, processing, or selling marijuana products, or testing marijuana products for potency and potential contaminants.<sup>27</sup> Figure 4 shows the types of recreational marijuana licenses issued in Colorado and Washington.

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<sup>26</sup>For Colorado's regulatory framework regarding the production, processing, and sale of recreational marijuana, see 1 Colo. Code Regs. 212-2, Retail Marijuana Code. See also Colo. Rev. Stat. tit. 12, art. 43.4. For Washington's regulatory framework regarding the production, processing, and sale of recreational marijuana, see Wash. Admin. Code ch. 314-55, Marijuana Licenses, Application Process, Requirements, and Reporting. See also Wash. Rev. Code tit. 69, ch. 69.50.

<sup>27</sup>Colorado and Washington use different terminology for each type of license. For example, in Colorado's regulations a "retail marijuana products manufacturing facility" license allows the licensee to manufacture, prepare, package, store, and label retail marijuana product, whether in concentrated form or comprised of marijuana and other ingredients intended for use or consumption, such as edible products, ointments, or tinctures. Under Washington's regulations, a "marijuana processor" license allows the licensee to process, dry, cure, package, and label usable marijuana, marijuana concentrates, and marijuana-infused products for sale at wholesale to marijuana retailers. We use the Washington terminology in this report.

**Figure 4: Colorado and Washington Recreational Marijuana License Types**



Source: GAO analysis of Colorado and Washington recreational marijuana regulations. | GAO-16-1

Notes: Both states require licenses to be renewed annually.

Colorado allows an individual to concurrently hold marijuana producer, processor, and retailer licenses. In contrast, Washington allows individuals to concurrently hold both a marijuana producer and a marijuana processor license, but prohibits producers and processors from having a direct or indirect financial interest in a licensed marijuana retailer. Further, in Colorado, a person who is an owner of a retail marijuana producer, processor, or retailer may not be an owner of a retail marijuana testing facility. In Washington, a person with a financial interest in an accredited testing lab may not have a direct or indirect financial interest in a licensed marijuana producer or processor for whom he or she is conducting required quality assurance testing.

<sup>a</sup>In Colorado, marijuana producer licensees can also sell directly to marijuana retailers.

<sup>b</sup>Washington does not issue testing lab licenses, but has implemented a required accreditation process in order for labs to conduct quality assurance tests.

Table 1 shows the number of active recreational marijuana licenses by type as of August 2015, as reported by each of the 2 states' recreational marijuana regulatory agencies.

**Table 1: Reported Number of Recreational Marijuana Licenses Issued by Colorado and Washington, as of August 2015**

License type	Licenses issued in Colorado <sup>a</sup>	Licenses issued in Washington <sup>b</sup>
Marijuana producer	480	636
Marijuana processor	134	533
Marijuana retailer	380	191
Testing lab <sup>c</sup>	16	14
<b>Total</b>	<b>1,010</b>	<b>1,374</b>

Source: Colorado Marijuana Enforcement Division and Washington State Liquor and Cannabis Board | GAO-16-1

<sup>a</sup>Data as of August 3, 2015.

<sup>b</sup>Data as of August 25, 2015. License counts do not include pending issuances or closed facilities.

<sup>c</sup>In Washington, the testing lab count is the number of accredited facilities.

**Background checks.** Both Colorado and Washington conduct background checks to determine if applicants are eligible to obtain a license to operate a recreational marijuana facility. As part of the licensing process, both states' regulations require applicants to submit documentation that may include biographical information, fingerprints, financial information and funding sources, and facility floor plans. The regulatory agencies review this documentation to determine whether applicants meet eligibility requirements including state residency, age, and criminal history requirements. In order to own, manage, or invest in a marijuana facility, both states' regulations require applicants to be 21 or older and a state resident for at least 2 years in Colorado and 6 months in Washington.<sup>28</sup>

<sup>28</sup>In addition, Colorado regulations state that applicants for employment at recreational marijuana facilities must apply for an occupational license that requires them to be 21 or older and undergo a criminal history record check. In contrast, Washington regulations do not include an occupational license: Nonmanagement employees must be 21 or older, but they are not required to undergo criminal history record checks. The Washington State LCB adopted emergency rules, effective June 20, 2015, which changed the residency requirement from 3 to 6 months.

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According to state officials, the states' regulatory agencies are to conduct fingerprint-based criminal history record checks against the Federal Bureau of Investigation's (FBI) criminal history records. State regulatory agency officials are to examine the criminal history record check results and compare that information against the list of potentially disqualifying criminal offenses identified in the regulations to determine if an applicant is eligible for a license. According to Colorado and Washington regulations, generally, applicants who have received a felony conviction for controlled substances within the past 10 years of their application are disqualified; however, the 2 states' methods for making this determination differ. For example, in Colorado an applicant with a felony conviction during the past 5 years or a felony conviction for controlled substances during the past 10 years is disqualified.<sup>29</sup> In contrast, Washington uses a point system for different types of convictions to consider an applicant's eligibility, whereby an applicant with 8 or more points is normally disqualified. Under this system, a felony conviction during the past 10 years is worth 12 points, a gross misdemeanor or a misdemeanor conviction during the past 3 years is worth 5 or 4 points, respectively, and each failure to report a conviction is worth 4 points. Both states require licensees to inform the regulatory agency of new criminal convictions.<sup>30</sup>

**Facility security measures.** Colorado and Washington regulations require that recreational marijuana facilities have physical security measures installed to combat theft and diversion of marijuana. These generally include perimeter fencing at outdoor marijuana producer facilities; a security alarm system on all perimeter entry points and perimeter windows; as well as a video surveillance system with camera coverage of all points of entry and exit to the exterior of the licensed premises, point-of-sale areas, and other areas such as areas where marijuana is grown or manufactured. The regulations specify that licensees must store recordings with the time and date available for a

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<sup>29</sup>The Colorado MED may grant a license to a person if the person has a state felony conviction based on possession or use of marijuana or marijuana concentrate that would not be a felony if the person were convicted of the offense on the date of the application for a license.

<sup>30</sup>According to state regulations, both the Colorado MED and the Washington State LCB have the option during the license renewal process to fingerprint current licensees and conduct a follow-up criminal history record check. According to state regulations, this is done at the Director's discretion in Colorado and randomly in Washington. Washington State LCB officials reported that they had conducted follow-up criminal history checks for all first-time licensee renewals, and they will do so randomly in the future.

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minimum of 40 days in Colorado and 45 days in Washington. According to officials, the stored video records are used to verify information agency officials obtain from inspections as well as actions reported by licensees such as the destruction of a plant or shipping marijuana products to another marijuana licensee. For example, we observed an unannounced premises check of a Washington marijuana producer where there was a delay of approximately 10 minutes before the Washington State LCB officers were able to access the facility. The officers stated that in that type of situation they might examine the last 10 minutes of a facility's recorded video to check for suspicious activity.

**Inventory-tracking systems.** Both states' regulations require licensees to use inventory-tracking systems that the regulatory agencies operate and monitor. According to state officials, the regulatory agencies have implemented electronic systems for inventory tracking and require that unique identifier tags be attached to marijuana plants and marijuana-infused products. For example, according to state officials, the Colorado MED uses radio frequency identification (RFID) tags, while the Washington State LCB uses tags with a 16-digit number and an optional bar code. Licensees must enter each identifier tag number and information about the marijuana plant or product into the electronic inventory-tracking systems.<sup>31</sup> Licensees must document all inventory changes in the system, such as harvesting existing plants, transporting plants or products once they are sold to another licensee, destroying plant waste or unused plants and products, thefts, and sales to retail customers.

Colorado MED and Washington State LCB officials stated that they are able to use the inventory-tracking systems to trace specific marijuana plants and products through each stage of the supply chain, including production, processing, delivery to a retail store, and sale to a consumer. For example, Colorado MED officials reported an instance where the agency used the state inventory-tracking system to identify the lot numbers of marijuana-infused products made with potentially mold-contaminated marijuana and the retail stores that received those products in order to prevent them from being sold to consumers. Colorado MED and Washington State LCB officials reported that inventory-tracking

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<sup>31</sup>The states' inventory-tracking systems are the Colorado Marijuana Enforcement Tracking Reporting and Compliance system and the Washington Marijuana Traceability System.

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system data are actively monitored to identify possible irregularities and verify information from inspections. For example, Washington State LCB officials reported that their agency audited a retail licensee that reported significant sales in 1 month and zero sales in the subsequent month. Figure 5 shows a photo of marijuana plants with RFID and bar code tags at Colorado and Washington recreational marijuana facilities, respectively.

**Figure 5: Marijuana Plants with Inventory-Tracking System Tags at Colorado and Washington Recreational Marijuana Facilities**



Source: Colorado Marijuana Enforcement Division (left photograph) and Washington State Liquor and Cannabis Board (right photograph). | GAO-16-1

Both states' regulations require licensees to notify the Colorado MED or Washington State LCB about the transport of marijuana or marijuana-infused products to other licensed facilities. Licensees must generate a transport manifest from information entered into the inventory-tracking system, such as the type of product, amount or weight, destination, the driver, and the transport vehicle, as well as the departure time and expected delivery time. Colorado MED and Washington State LCB officials reported that transport manifests can be verified by state and local police if a marijuana delivery driver is stopped for traffic violations to confirm that drivers are legally transporting marijuana or marijuana products.

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**Product quality assurance testing.** The Colorado MED and Washington State LCB have established regulatory provisions for licensees to submit marijuana and marijuana-infused product samples to state-approved testing labs for quality assurance testing. According to the regulations, testing labs are to perform a number of tests on samples, including potency testing to determine the percentage of THC in the sample; screening for harmful microorganisms such as bacteria or fungus; and may include tests for certain contaminants.<sup>32</sup> Colorado and Washington regulations state that if a sample fails quality assurance tests, the batch of marijuana or marijuana-infused products it was taken from cannot be sold and must either be destroyed or retested.<sup>33</sup>

**Labeling and packaging.** Both states' regulations include labeling and packaging standards for recreational marijuana products. Marijuana product labels are required to state that the product contains marijuana and include warnings about the potential health impacts of consuming the product.<sup>34</sup> In addition, for edible marijuana-infused products, labels must also include an ingredients list, serving size statement and the number of

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<sup>32</sup>For example, Colorado MED officials reported that contaminant testing was not yet mandatory as of March 2015 and that the processes were being tested before full implementation. According to regulations, contaminant tests may include but are not limited to screening for pesticide, harmful chemicals, adulterants or other types of microbials, molds, metals, filth, or residual solvents. Washington State LCB officials reported that Washington does not currently require testing for pesticides, but they are working on the issue. According to regulations, additional testing includes screening for residual solvent levels in certain products and may include screening for unsafe levels of metals.

<sup>33</sup>Washington regulations permit a sample that fails a quality assurance test and the associated trim, leaf, and other usable material to be used to create extracts using hydrocarbon or carbon dioxide closed loop system upon approval of the board. After processing, the extract must still pass all required quality assurance tests.

<sup>34</sup>For example, Washington's regulations require all usable marijuana sold at retail stores to include the following warnings: "Warning: This product has intoxicating effects and may be habit forming. Smoking is hazardous to your health"; "There may be health risks associated with consumption of this product; Should not be used by women that are pregnant or breast feeding"; "For use only by adults twenty-one and older. Keep out of reach of children"; "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug"; and a statement that discloses all pesticides applied to the marijuana plants and growing medium during production and processing. There are similar but separate warning requirements for retail marijuana-infused products.



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servings of marijuana in the product, among other things.<sup>35</sup> The states' regulations also prohibit the packaging and labeling of a marijuana product from being designed in ways that are appealing to children or other persons under 21 years of age. For example, Colorado requires that multiple-serving edible marijuana product packaging maintain its child-resistant effectiveness for repeated openings or that single-serving edible marijuana products bundled into a larger package contain individually wrapped servings in child-resistant packaging.

Generally, Colorado regulations also require that multiple-serving edible retail marijuana products have single-serving amounts that are physically demarked and easily separated, while liquid edible multiple-serving retail marijuana products can either be marked on the container to show individual servings or include a measuring device. For example, a marijuana-infused chocolate bar may have scored pieces that each contain 10 milligrams of THC.<sup>36</sup> Washington regulations require that marijuana-infused edible products in solid form that contain more than one serving in the package must be packaged individually in single servings in childproof packaging and marijuana-infused edible products in liquid form that contain more than one serving in the package must include a measuring device with the product.

According to officials, the Washington State LCB has implemented a process for reviewing marijuana-infused products to determine if they may be sold by licensed retail facilities.<sup>37</sup> For example, Washington marijuana processor licensees must obtain approval from the Washington LCB for all marijuana-infused edible products, labeling, and packaging prior to offering these items for sale to a marijuana retailer. The processor licensee must submit a photo of the product, label, and package to the Washington State LCB for approval. According to Washington State LCB officials, a four-person working group meets on a weekly basis to review

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<sup>35</sup>Both states' regulations define a single serving as an amount of marijuana-infused product that contains 10 milligrams of THC and each sale unit of a marijuana-infused product such as a cookie or soda is limited to a maximum of 100 milligrams of THC.

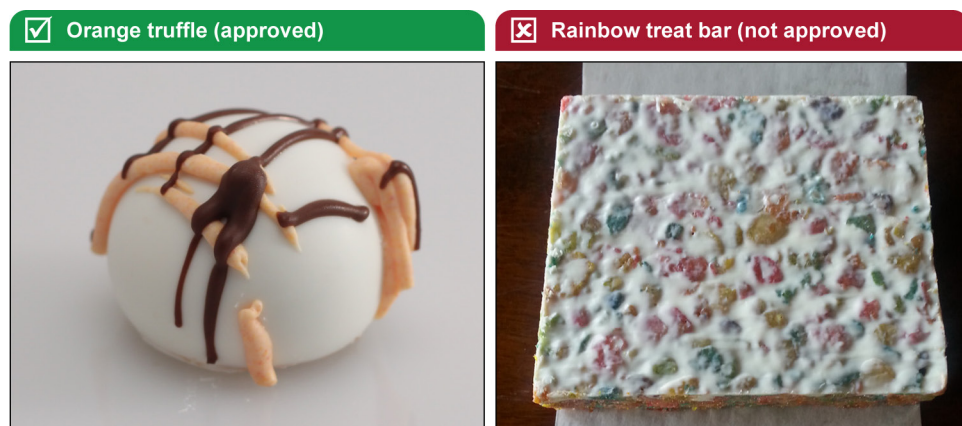
<sup>36</sup>By regulation, the size of a standard serving of marijuana shall be no more than 10 milligrams of active THC and no individual edible retail marijuana product unit for sale shall contain more than 100 milligrams of active THC.

<sup>37</sup>Colorado does not currently have a comparable approval process for marijuana-infused products.

submitted products and determine if they are appealing to children. For example, the officials reported that the working group had previously approved marijuana-infused peanut brittle for sale, but did not approve hot chocolate mix, animal cookies, or gummy bears because these products were deemed to be appealing to children.

Figure 6 shows examples of marijuana-infused products that the Washington State LCB reviewed—one that was approved for sale and another that was not.

**Figure 6: Marijuana-Infused Products Reviewed by the Washington State Liquor and Cannabis Board**



Source: Washington State Liquor and Cannabis Board. | GAO-16-1

**Consumer restrictions.** Both Colorado’s and Washington’s recreational marijuana regulations include restrictions on consumer use of marijuana, including limits on who may possess marijuana, how much may be possessed, and where it may be used. For example, both states prohibit marijuana retailers from selling to anyone under age 21. In addition, the 2 states restrict the amount of marijuana that a marijuana retailer is permitted to sell to an individual. For example, Colorado prohibits retail marijuana stores from selling more than 1 ounce of retail marijuana or its equivalent in retail marijuana product during a single transaction to a Colorado resident and more than a quarter ounce of retail marijuana or its equivalent in retail marijuana product during a single sales transaction to

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a nonresident.<sup>38</sup> In Washington, a single transaction is limited to 1 ounce of usable marijuana, 16 ounces of solid marijuana-infused products meant to be eaten or swallowed, 7 grams of marijuana-infused extract or concentrates for inhalation, or 72 ounces of marijuana-infused products in liquid form meant to be eaten or swallowed. Neither state allows marijuana consumption in public or at marijuana retailer facilities.

To address the risk of drugged driving, both states have established THC blood level limits that are similar to the blood alcohol limits used for determining alcohol impairment.<sup>39</sup> Law enforcement can use roadside breath tests to test for alcohol impairment, but Colorado and Washington currently test for THC only using blood draws. According to state laws, generally, drivers suspected of being impaired by law enforcement officers can be required to undergo blood testing to determine if they are under the influence of drugs and if their blood contains 5 nanograms or more of THC per milliliter.

**Facility inspections.** Both Colorado's and Washington's regulations generally require marijuana licensees to grant regulatory agencies access to their facilities to carry out inspections. Colorado MED and Washington State LCB officials stated that they conduct scheduled and unscheduled inspections to verify regulatory compliance by licensees, including final inspections of new facilities and inspections of existing facilities. Colorado MED and Washington State LCB officials stated that they planned to conduct ongoing facility compliance checks modeled on their agencies' liquor enforcement procedures. For example, Colorado MED and Washington State LCB officials reported performing underage compliance checks at retail stores.

**Violations and penalties.** In both states, regulatory violations are addressed through penalties that can include monetary fines, suspension or cancellation of a license, and criminal charges. The Colorado MED and Washington State LCB report using a system of progressive discipline

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<sup>38</sup>Colorado allows any person 21 or older to grow up to six marijuana plants, three of which can be mature plants. Up to 1 ounce of marijuana can be given to a person 21 or older so long as there is no payment involved. Washington does not allow individuals to grow recreational marijuana.

<sup>39</sup>For more information on drug-impaired driving, see GAO, *Drug-Impaired Driving: Additional Support Needed for Public Awareness Initiatives*, [GAO-15-293](#) (Washington, D.C.: Feb. 24, 2015).

with escalating penalties for repeated infractions. For example, in Colorado, the penalty for selling marijuana to a minor could include “license suspension, a fine per individual violation, a fine in lieu of suspension up to \$100,000, and/or license revocation depending on the mitigating and aggravating circumstances.”<sup>40</sup> Washington regulations state that the sale of marijuana to a minor by a licensed marijuana business will result in a 10-day suspension or \$2,500 fine for the first offense, a 30-day license suspension on the second offense, and cancellation of the license on the third offense. Table 2 shows selected features of Colorado’s and Washington’s recreational marijuana regulations, as of July 2015.

**Table 2: Selected Features of Colorado’s and Washington’s Recreational Marijuana Systems, as of July 2015**

<b>Selected features</b>	<b>Colorado</b>	<b>Washington</b>
<b>Licensee eligibility requirements</b>		
State residency	At least 2 years <sup>a</sup>	At least 6 months
Age	At least 21 years old	At least 21 years old
Criminal history	Fingerprint-based check against Federal Bureau of Investigation (FBI) records to determine eligibility based on disqualifying offenses	Fingerprint-based check against FBI records to determine eligibility based on disqualifying offenses
<b>Facility location restrictions</b>		
Local approval	Local jurisdictions may prohibit recreational marijuana facilities	Local jurisdictions may raise objections, and prospective facilities must comply with local ordinances
Near areas where minors gather	Not specifically prohibited in state regulations. Local jurisdictions may impose time, place, manner, and location requirements	Not within 1,000 feet of a school, playground, recreation center, childcare center, public park, public transit center, library, or game arcade. Local jurisdictions may further reduce this distance to a minimum of 100 feet for every location except schools and playgrounds.
<b>Facility security measures</b>		
Monitored alarm system	Yes	Yes
Video surveillance system	Yes	Yes
Video recording storage	At least 40 days	At least 45 days

<sup>40</sup> Applicants and licensees can request an administrative hearing to appeal decisions by the Colorado MED and Washington State LCB, including an initial denial of a license and suspension or revocation of an existing license.

<b>Selected features</b>	<b>Colorado</b>	<b>Washington</b>
Perimeter fencing	No specific height, must prevent public from entering secure areas at outdoor marijuana producers	At least 8 feet high at outdoor marijuana producers
<b>Inventory tracking</b>		
Electronic inventory tracking system	Yes	Yes
Shipments and transport manifests	Shipments are entered into inventory tracking system. Transport manifests include product information, driver, vehicle, destination, departure time, and expected delivery time	Shipments are entered into inventory tracking system and quarantined for 24 hours. Transport manifests include product information, driver, vehicle, destination, departure time, and expected delivery time
<b>Labeling and packaging</b>		
Single serving definition	10 milligrams of THC delta-9-tetrahydrocannabinol (THC)	10 milligrams of THC
Maximum servings per sale unit	100 milligrams of THC	100 milligrams of THC
Child-resistant or childproof packaging required	Yes. Packaging and label design cannot be appealing to children.	Yes. Packaging and label design cannot be appealing to children.
Label statements	Serving size, ingredients, usage instructions, expiration date, health warnings, marijuana symbol, chemicals used in production	Serving size, ingredients, usage instructions, expiration date, health warnings, chemicals used in production
<b>Consumer restrictions</b>		
Marijuana possession limit	Up to 1 ounce of marijuana or equivalent amount of marijuana-infused product	Up to 1 ounce of marijuana, 16 ounces of solid marijuana-infused products, 7 grams of marijuana-infused extract for inhalation, or 72 ounces of liquid marijuana-infused products
Public consumption	No	No
Blood level for drugged driving	5 nanograms of THC per milliliter of blood	5 nanograms of THC per milliliter of blood

Source: GAO analysis of Colorado and Washington recreational marijuana laws and regulations | GAO 16-1

<sup>a</sup>Non-owner employees of recreational marijuana facilities are required to obtain an occupational license and be current residents.

**Regulatory development and revision.** Officials from both states reported using information from commissioned studies and working groups, as well as DOJ's marijuana enforcement guidance, to inform their recreational marijuana regulations and have continued to do so as they have adopted regulatory changes. For example, in Colorado, a state-commissioned task force developed recommendations for implementing

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Colorado's recreational marijuana law,<sup>41</sup> while Washington used a crime and drug policy consultant to inform its regulatory development.<sup>42</sup> Moreover, since recreational marijuana sales began in Colorado in January 2014 and in Washington in July 2014, both states have made revisions to their regulations. For example, in June 2015, the Washington State LCB adopted rules relating to marijuana-infused edible products, while in May 2015, the Colorado MED adopted changes regarding the packaging of marijuana products.

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## DOJ Reports Actions to Monitor the Effects of State Legalization of Marijuana, but Has Not Documented a Plan for Doing So

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### DOJ Reports Taking Actions to Monitor Effects of State Marijuana Legalization

As noted earlier, in August 2013, DOJ's ODAG issued guidance stating DOJ's expectation that state and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems to ensure that the laws do not undermine federal enforcement priorities. However, the guidance noted that if state enforcement efforts are not sufficiently robust to protect against threats to federal enforcement priorities, the federal government may seek to challenge the state regulatory structures themselves, in

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<sup>41</sup>State of Colorado, *Task Force Report on the Implementation of Amendment 64* (Denver, CO: March 13, 2013).

<sup>42</sup>For example, see Mark A. R. Kleiman, BOTEC Analysis Corporation, UCLA, *Alternative Bases for Limiting Cannabis Production*, (Los Angeles, CA: June 28, 2013).

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addition to conducting individual enforcement actions, including criminal prosecutions, focused on the priorities.<sup>43</sup>

According to ODAG officials and information DOJ has provided to Congress since issuing the August 2013 guidance, DOJ is taking actions to monitor the effects of state legalization of marijuana relative to DOJ's marijuana enforcement policy generally in two ways. First, DOJ continues to enforce the CSA by conducting individual law enforcement actions targeting those marijuana cases that threaten any of the eight enforcement priorities outlined in the August 2013 ODAG guidance. ODAG officials reported that U.S. Attorneys, as the senior federal law enforcement officials in the states, were effectively monitoring whether cases were implicating DOJ's marijuana enforcement priorities and prosecuting those cases that did. In addition to conducting federal prosecutions, officials from ODAG and the U.S. Attorneys for Colorado and Washington reported that U.S. Attorneys were actively engaged in consultation and discussion with state and local regulatory and law enforcement officials. Through these interactions, officials reported that U.S. Attorneys have been able to communicate federal enforcement priorities, assess the implications of legalization relative to the priorities, and identify specific areas of federal concern as state laws have been implemented. For example, officials reported that as state recreational marijuana legalization was being implemented in Colorado, the U.S. Attorney had consulted with state and local officials to identify concerns about edible marijuana products and the potential that their sale and use could threaten federal enforcement priorities.

Second, ODAG officials reported that DOJ was using various sources of information to monitor the effects of marijuana legalization under state laws. ODAG officials stressed that DOJ's focus was on monitoring the effects that legalization has had relative to DOJ's enforcement priorities,

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<sup>43</sup>It is important to note that during the course of our review, the Department of Justice's appropriations act was passed and section 538 of the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, 128 Stat. 2130, 2217 (Dec. 16, 2014) stated that "[n]one of the funds made available in this Act to the Department of Justice may be used, with respect to the States of Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington, and Wisconsin, to prevent such States from implementing their own State laws that authorize the use, distribution, possession or cultivation of medical marijuana."

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rather than evaluating specific requirements within states' legalization laws or regulatory systems. ODAG officials reported that DOJ as a whole shared responsibility for collecting information to inform DOJ's monitoring of the effects of state marijuana legalization, while ODAG was responsible for assessing this information to guide DOJ's response to state marijuana legalization—including whether DOJ might challenge the state laws or regulatory systems.

ODAG officials reported that their most detailed description of the data sources DOJ used in its monitoring efforts could be found in information DOJ sent to Congress in early 2015 as part of testimony for confirmation hearings for the Attorney General and Deputy Attorney General. According to this information, DOJ possessed quantitative and qualitative data and used these data to inform its marijuana enforcement efforts. ODAG reported that, as it carried out its monitoring efforts, DOJ would continue to consider all types of data on the degree to which state systems regulating marijuana-related activity protect federal enforcement priorities and public safety and health, including existing federal surveys on drug use; state and local research; and feedback from federal, state, and local law enforcement. To this end, the ODAG officials said that they were reviewing information developed by DOJ components such as DEA and USAOs, and other relevant information developed or published by other federal agencies. From within DOJ, ODAG officials cited DEA, EOUSA, and the Organized Crime Drug Enforcement Task Forces Program (OCDETF) as their primary data sources for monitoring the effects of state marijuana legalization.<sup>44</sup> In particular, ODAG officials reported that DEA's *National Drug Threat Assessments* were a source for identifying the effects of marijuana legalization. The *National Drug Threat Assessment*, prepared annually by DEA, assesses the threat posed to the United States by the trafficking and abuse of illicit drugs based upon law enforcement, intelligence, and public health data available for the review period. For example, DEA's 2014 *National Drug Threat Assessment* summarizes emerging developments related to drug trafficking and the use of illicit substances of abuse, including marijuana, and highlights

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<sup>44</sup>According to DOJ, the OCDETF Program, directed by ODAG, is the centerpiece of the Attorney General's drug strategy to reduce the availability of drugs by disrupting and dismantling major drug trafficking organizations and money laundering organizations and related criminal enterprises. The program operates nationwide and combines the resources and unique expertise of numerous federal, state, and local agencies in a coordinated effort against major drug trafficking and money-laundering organizations.



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concerns associated with the legalization of marijuana. Among other things, the report includes information regarding ingestion of marijuana edibles by children in states with medical marijuana availability, marijuana-related emergency department visits, and the increasing use of marijuana concentrates and the public safety threat posed by the process used to make these concentrates—noting that butane extraction has resulted in numerous explosions and injuries.<sup>45</sup> ODAG officials also cited information that they were considering from DOJ components' case management systems, including EOUSA's Legal Information Online Network System (LIONS) and OCDETF's Management Information System. According to DOJ, these systems include, among other things, information on cases opened or declined by the USAO, cases prosecuted, and their disposition.

ODAG officials also reported relying on information from other federal agencies that conduct public health and safety studies, such as ONDCP's HIDTA program and the National Institute on Drug Abuse.<sup>46</sup> For example, ODAG officials stated that they had reviewed reports that the Rocky Mountain HIDTA had issued describing the impacts of marijuana legalization in Colorado. These reports included information from various sources regarding impaired driving, youth marijuana use, emergency room and hospital marijuana-related admissions, and the diversion of marijuana from Colorado to other states.<sup>47</sup>

Furthermore, ODAG officials reported that ODAG and other DOJ components were sharing information regarding federal marijuana enforcement efforts in states that have legalized marijuana. In particular, ODAG officials cited the USAOs' establishment of a Marijuana

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<sup>45</sup>According to the DEA's 2014 *National Drug Threat Assessment*, marijuana concentrates are extracted from the leafy material of the marijuana plant in many ways, but the most common and potentially most dangerous method is butane extraction, which uses highly flammable butane gas to extract THC from the marijuana plant material.

<sup>46</sup>An institute of the National Institutes of Health, the National Institute on Drug Abuse reports that its mission is to lead the nation in bringing the power of science to bear on drug abuse and addiction. In this role, it reports that it provides strategic support and research across a broad range of disciplines while ensuring the rapid and effective dissemination and use of the results of that research to significantly improve prevention and treatment and to inform policy as it relates to drug abuse and addiction.

<sup>47</sup>Rocky Mountain High Intensity Drug Trafficking Area, Investigative Support Center, *The Legalization of Marijuana in Colorado: The Impact. Volume 3 Preview 2015*. (Denver, CO: 2015)

Enforcement Working Group, composed of U.S. Attorneys with jurisdiction for states that have legalized some form of marijuana who meet on a monthly basis to share information and perspectives regarding marijuana enforcement. ODAG officials reported participating in these meetings to discuss issues associated with DOJ's enforcement efforts. Officials also reported that DOJ is working with ONDCP to identify other mechanisms by which to collect and assess data on the effects of state marijuana legalization. For example, ODAG officials reported participating in ONDCP-led interagency working groups that have met periodically since August 2014 to discuss data collection and evaluation regarding the effects of state marijuana legalization. ODAG officials reported that, as part of their own monitoring efforts, they would consider any information regarding the effects of marijuana legalization on public health and safety that ONDCP developed and shared with them.

Table 3 identifies and summarizes the various actions ODAG officials reported that DOJ was taking to monitor the effects of state legalization of marijuana on its federal enforcement priorities.

**Table 3: Summary of Actions ODAG Officials Reported DOJ was Taking to Monitor the Effects of State Marijuana Legalization Relative to DOJ's August 2013 Marijuana Enforcement Policy Guidance**

Reported action	How reportedly used to monitor effects of state marijuana legalization
U.S. Attorneys conduct individual enforcement actions in states that have legalized marijuana and consult with state and local agencies in these states to address concerns regarding effects of marijuana legalization efforts.	<ul style="list-style-type: none"> <li>Office of the Deputy Attorney General (ODAG) officials reported that U.S. Attorneys, as the senior federal law enforcement officials in the states, were monitoring whether cases involve Department of Justice (DOJ) marijuana enforcement priorities and prosecuting those cases that do.</li> <li>U.S. Attorneys in Colorado and Washington reported working with state and local agencies to address federal concerns regarding the effects of state marijuana legalization systems relative to DOJ's marijuana enforcement priorities.</li> </ul>
ODAG officials collaborate with and assess information from DOJ components and other federal agencies.	<ul style="list-style-type: none"> <li>ODAG officials reported that they were assessing various data sources with information about the effects of state marijuana legalization, including the Drug Enforcement Administration's <i>National Drug Threat Assessments</i>, data from the U.S. Attorneys' case management system, and various data collected by federal agencies regarding public health and public safety.</li> <li>ODAG officials reported participating in the monthly meetings of U.S. Attorneys from states that have legalized some form of marijuana. These meetings were designed to share information on marijuana enforcement cases.</li> <li>ODAG officials reported that they participate in periodic Office of National Drug Control Policy-led interagency meetings to discuss the effects of state marijuana legalization.</li> </ul>

Source: GAO analysis of DOJ provided information. |GAO 16-1

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## DOJ Has Not Documented Its Plan for Monitoring the Effects of State Marijuana Legalization

Notwithstanding these efforts, DOJ has provided limited specificity with respect to aspects of its plan for monitoring the effect of state marijuana legalization relative to ODAG's August 2013 marijuana enforcement policy guidance. As we noted earlier, ODAG officials reported that they were considering various qualitative and quantitative data sources and identified some of the sources they were using, such as DEA's *National Drug Threat Assessments*. However, ODAG officials did not state how they would make use of the various information from the sources they cited to monitor the effects of state marijuana legalization. For example, ODAG officials reported that the most detailed description of DOJ's monitoring efforts is contained in responses to questions for the record that DOJ sent to Congress in early 2015. According to this information, DOJ identified LIONS and OCDEF data as information sources for its monitoring efforts, noting that these case management systems provided statistical information reflecting the efforts of DOJ in prosecuting violations of federal law. DOJ reported that these data collections systems collectively assist in informing the department's counterdrug policy, establishing law enforcement priorities, and making resource allocations. However, ODAG officials did not make clear how ODAG would be using these data in its efforts to monitor the effects of state marijuana legalization. For example, officials from EOUSA—which maintains LIONS—reported that USAOs do not consistently enter information in LIONS specifying the primary drug type involved in a case. Thus, officials said that LIONS would not provide reliable information regarding the extent of marijuana-related cases in a USAO district.<sup>48</sup>

Similarly, while officials identified DEA and HIDTA reports and various public health studies as sources of data for their monitoring efforts, they did not identify how they would use the data from these various reports and studies to monitor the effects of marijuana legalization relative to each of the eight marijuana enforcement priorities. ODAG officials also did not state how DOJ would use the information to determine whether

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<sup>48</sup>The DOJ Office of the Inspector General has previously examined limitations with LIONS, noting that it was not designed as a statistical system, and therefore can be an imperfect tool for responding to specific, detailed inquiries seeking comprehensive, uniform nationwide data sought for purposes other than case management. For example, see U.S. Department of Justice, Office of the Inspector General, *Audit of the Department of Justice's Efforts to Address Mortgage Fraud*, Audit Report 14-12, (Washington, D.C.: March 2014). Also see U.S. Department of Justice, Office of the Inspector General, *Resource Management of United States Attorneys' Offices*, Audit Report 09-03, (Washington, D.C.: November 2008).

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the effects of state marijuana legalization necessitated federal action to challenge a state's regulatory system.

Further, ODAG officials reported that they had not documented their monitoring process. These officials reported that they did not see a benefit in DOJ documenting how it would monitor the effects of state marijuana legalization relative to the August 2013 ODAG guidance. Rather, ODAG officials reported that they would continue to consider all sources of available data as part of their ongoing responsibilities and would be using these data to inform DOJ's efforts to protect its marijuana enforcement priorities. ODAG officials said they would consider documenting their monitoring plan in the future if they determined the need; however, they did not identify the conditions that might lead them to do so.

*Standards for Internal Control in the Federal Government* provides the overall framework for establishing and maintaining an effective internal control system.<sup>49</sup> The standards specify the need for internal controls to be clearly documented, and the documentation to be readily available for review. Moreover, information should be recorded and communicated to management and others within the entity who need it and in a form and within a timeframe that enables them to carry out their internal control and other responsibilities. Documentation also provides a means to retain organizational knowledge and mitigate the risk of having that knowledge limited to a few personnel, as well as a means to communicate that knowledge as needed to external parties.<sup>50</sup>

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<sup>49</sup>[GAO/AIMD-00-21.3.1](#). Internal control is an integral component of an organization's management that provides reasonable assurance that the following objectives are being achieved: effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations. These standards, issued pursuant to the requirements of the Federal Managers' Financial Integrity Act of 1982, provide the overall framework for establishing and maintaining internal control in the federal government. Also pursuant to the Federal Managers' Financial Integrity Act of 1982, the Office of Management and Budget issued *Circular A-123*, revised December 21, 2004, to provide the specific requirements for assessing the reporting on internal controls. Internal control standards and the definition of internal control in *Circular A-123* are based on GAO's *Standards for Internal Control in the Federal Government*.

<sup>50</sup>See GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014). GAO recently revised and reissued its *Standards for Internal Control in the Federal Government*. These new standards became effective October 1, 2015.

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Documenting a plan specifying its monitoring process would provide DOJ with greater assurance that control activities—such as the ways DOJ is monitoring the effect of state marijuana legalization relative to federal enforcement priorities—are occurring as intended. Moreover, leveraging existing mechanisms to make this plan available to appropriate officials from DOJ components that are providing the various data can provide ODAG with an opportunity to gain institutional knowledge with respect to its monitoring plan, including the utility of the data ODAG is using. For example, ODAG cited LIONS as a key source of information for monitoring, yet EOUSA reported limitations with LIONS in tracking marijuana enforcement cases, and there may be limitations with other sources of information that ODAG officials are using, or planning to use, to monitor the effects of marijuana legalization. Incorporating the feedback into its monitoring plan can help ODAG ensure it is using the most appropriate data and thus better position it to identify those state systems that are not effectively protecting federal enforcement priorities—so that DOJ can work with states to address concerns and, if necessary, take steps to challenge those systems, in accordance with its 2013 marijuana enforcement guidance.

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## DOJ Field Officials Reported That Various Factors Have Affected Their Marijuana Enforcement Actions in Selected States That Have Legalized Marijuana for Medical Purposes

We interviewed officials from six DEA field divisions and 10 USAOs with jurisdictions for 6 states that have legalized marijuana for medical purposes: Alaska, California, Colorado, Maine, Oregon, and Washington. Overall, officials from these DEA field divisions and USAOs reported that their marijuana enforcement efforts were focused on addressing DOJ's marijuana enforcement priorities while ensuring they were effectively applying their limited resources. Officials reported their perspectives on factors that had affected their marijuana enforcement actions, including key public health and safety threats, local concerns regarding the commercial medical marijuana industry, and DOJ's updated marijuana enforcement policy.

**Applying resources to target most significant public health and safety threats.** Officials from all of the DEA divisions and USAOs we spoke with reported that they continued to apply their limited resources to address the most significant threats in their jurisdictions. In this way, officials generally reported that marijuana enforcement, while important, was nonetheless one of many competing priorities, along with investigating and prosecuting other types of drug crimes and, for USAOs, all federal crimes in their districts. For example:

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- Officials from the USAO for the Northern District of California reported dealing with a wide variety of federal crimes, including non-drug crimes, such as health care fraud, investment fraud, and computer hacking. Officials reported that they needed to be selective in how they directed their resources—and that those resources they directed toward marijuana enforcement generally involved gangs and violent crime, which pose significant threats to public safety.
  - Officials from the USAO for the Eastern District of California reported that their district is one of the largest sources of marijuana production in the country, and many of the district's cases involve marijuana grown on public lands or interstate trafficking involving drug-trafficking organizations; however, the largest portion of the district's drug cases involve methamphetamine cases. Officials attributed this to the district historically being one of the main domestic sources of methamphetamine production and transport, which officials said poses a more significant threat to public health and safety in the district than marijuana, including a high number of hospitalizations and involvement of violent Mexican drug-trafficking organizations. As a result, the USAO has used its prosecutorial discretion to direct greater resources to methamphetamine prosecutions rather than those for marijuana. Similarly, a senior official from the DEA Seattle Division reported that the division's priorities are the investigation of crimes involving heroin, methamphetamine, and Mexican drug cartels.
  - Officials from the DEA San Diego Division and the USAO for the Southern District of California reported that within their jurisdictions, large quantities of drugs are trafficked from Mexico through U.S. maritime and land borders. Accordingly, their top priority is addressing the major poly-drug-trafficking organizations involved in these drug operations and the violent crime that is typically associated with them.<sup>51</sup>
  - A senior official from the DEA Anchorage, Alaska, District office reported that the district has generally focused its investigative resources on drugs other than marijuana, including cocaine, heroin, and methamphetamine. This official reported that because most drug-trafficking organizations traffic more than one type of drug, marijuana is often a part of but not the focus of the district's investigations.

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<sup>51</sup>Poly-drug organizations manufacture or distribute more than one type of drug, such as cocaine, heroin, marijuana, and methamphetamine.

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- Officials from DEA field divisions and USAOs in 4 of 6 states—California, Colorado, Oregon, and Washington—reported taking actions to target individuals associated with the rising number of butane hash oil explosions in their jurisdictions. For example, according to the DEA San Diego Division, the presence of butane hash oil laboratories at indoor marijuana growing operations was a growing concern and resulted in approximately 20 explosions and fires in the San Diego County area during fiscal year 2014.

**Addressing concerns regarding the commercial medical marijuana industry.** Officials from DEA field divisions and USAOs reported targeting commercial marijuana operations having the most significant impacts on local communities in their jurisdictions. For example, officials from DEA field divisions and USAOs in 4 of 6 selected states—California, Colorado, Oregon, and Washington—reported sending warning letters to about 1,900 owners and lien holders of medical marijuana dispensaries during fiscal years 2007 through 2013. Officials reported taking this action partly in response to requests from civic leaders, municipalities, and law enforcement officials concerned about the growth in the commercial medical marijuana industry.

In general, the letters emphasized that DOJ has the authority to enforce the CSA even when certain activities may be permitted under state law. The letters also notified the recipients that they could be subject to federal civil and criminal penalties and advised them to discontinue the distribution of marijuana. Some letters, from officials in California, Oregon, and Washington, stated that while the dispensaries they targeted were illegal under the CSA, they were generally also illegal under the states' own medical marijuana programs. Furthermore, some officials in California reported that the dispensaries they targeted were also illegal under local ordinances. DEA and USAO officials reported that sending warning letters was an efficient and effective way to close dispensaries and support local community concerns. For example, officials from the USAO for the Central District of California reported that most of the nearly 700 dispensaries to which they sent letters closed. In addition, the U.S. Attorney for the District of Colorado reported sending letters in fiscal year 2012 to dozens of medical marijuana dispensaries operating within 1,000 feet of schools to protect the health, safety, and welfare of Colorado youth—and that all of the dispensaries that received letters closed or moved.

Officials in 3 states—California, Oregon, and Washington—also reported conducting criminal investigations and prosecutions or civil forfeiture suits

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in conjunction with their letter campaigns. For example, the four U.S. Attorneys in California reported that in October 2011, they began coordinated enforcement actions targeting the for-profit medical marijuana industry in California. According to officials from the USAOs, these actions included sending warning letters to owners and lien holders of medical marijuana dispensaries, conducting criminal investigations and prosecutions, and initiating civil forfeiture lawsuits.<sup>52</sup> Officials from the USAOs in California reported that they initiated these efforts in part to address concerns raised by civic leaders, municipalities, and law enforcement officials regarding the growing numbers of marijuana dispensaries in their districts. Officials reported that the number of dispensaries in their districts rose considerably beginning in 2009, and through discussions with state and local law enforcement, they began efforts to reduce the numbers of these dispensaries.<sup>53</sup>

**DOJ's updated marijuana enforcement policy.** Officials from DEA field locations and USAOs we spoke with reported that their implementation of the marijuana enforcement guidance ODAG has issued since 2009 had affected their marijuana enforcement actions to varying degrees.

- Officials from all DEA and USAO locations we spoke with reported that the series of marijuana enforcement guidance ODAG issued had not changed their enforcement focus, which continues to emphasize the most significant threats in their jurisdiction, and that they maintained active partnerships with state and local law enforcement officials. For example, the U.S. Attorney for the District of Colorado reported working closely with the state's Attorney General and the state's marijuana regulatory agency on various issues related to

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<sup>52</sup>For example, officials from the USAO for the Central District of California reported that these actions included a number of federal and state criminal prosecutions, more than 26 federal forfeiture actions, and the execution of more than 55 search warrants at over 100 locations.

<sup>53</sup>Officials from the USAOs responsible for the Districts of Alaska and Maine reported that they were not aware of any criminal prosecutions in their respective districts associated with the medical marijuana industry in recent years, nor had they sent letters to owners and lien holders of medical marijuana dispensaries. The U.S. Attorney for the District of Alaska attributed this, in part, to the fact that there were no operational dispensaries in Alaska, while officials from the USAO in Maine reported that Maine's eight state-registered dispensaries have generally caused limited problems that have been addressed through state enforcement efforts, but nothing that had risen to the level of federal interest.



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marijuana enforcement, including the sale of marijuana edibles and butane hash oil explosions.

- Some DEA and USAO field officials reported examining their existing caseloads following DOJ's August 2013 marijuana enforcement guidance to determine whether the cases were implicating DOJ's marijuana enforcement priorities, and some field officials reported closing a limited number of cases that did not threaten the priorities. For example:
  - Officials from the USAO for the District of Oregon reported that shortly after the August 2013 guidance was issued, they reviewed their open marijuana cases from 2011 to 2013 and determined that all of the cases were in compliance with the updated guidance. Similarly, the U.S. Attorney for the Eastern District of Washington reported that he was not aware of any cases that the USAO prosecuted prior to the August 2013 guidance that the USAO would no longer consider for prosecution.
  - Elsewhere, officials from the DEA Seattle Division and the USAO for the Central District of California reported reviewing their caseloads and closing a limited number of cases that did not threaten one of the eight marijuana enforcement priorities. For example, a senior official from the DEA Seattle Division reported closing seven investigations that did not threaten the priorities in the first several months after the guidance was issued, whereas officials from the USAO for the Central District of California reported closing some forfeiture cases.
- Officials from some DEA and USAO locations reported that the August 2013 DOJ guidance had led them to change their marijuana enforcement tactics, including scaling back their roles in targeting the commercial medical marijuana industry. For example:
  - Officials from USAOs in Alaska, California, and Oregon, and from one DEA field division in California, reported that, in accordance with the 2013 guidance, they would decline to consider for investigation and prosecution some marijuana-growing cases that they may have investigated and prosecuted prior to the 2013

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guidance because these cases did not threaten DOJ's marijuana enforcement priorities.<sup>54</sup>

- Officials from two DEA field divisions—Los Angeles and Seattle—reported that because they were now required to demonstrate that at least one marijuana enforcement priority was threatened in an investigation before the USAO would grant them a search warrant, it had become more difficult to gather the additional evidence that may have helped them do so. These officials expressed concern that the August 2013 marijuana enforcement policy guidance had made it more challenging for them to identify crimes that potentially affected DOJ's enforcement priorities.
- Officials from DEA and USAOs in the 4 states that had reported sending warning letters to owners and lien holders of medical marijuana dispensaries—California, Colorado, Oregon, and Washington—reported that they had not sent warning letters since the August 2013 guidance was issued. Officials attributed this change in part to the fact that the guidance requires that they no longer consider the size or commercial nature of a dispensary alone in taking marijuana enforcement actions, but rather whether a dispensary is implicating one or more of the enforcement priorities listed in the August 2013 guidance. For example, officials from one DEA field division reported that they were not directing resources to investigate dispensaries unless there was clear evidence that these priorities were being threatened.
- Officials from the USAO for the District of Alaska reported that while they continued their strong partnerships with state and local law enforcement, they had reduced some marijuana enforcement support to the state. Specifically, officials reported that prior to the issuance of the August 2013 guidance, they had a general understanding with Alaska state and local law enforcement that the USAO would accept for federal prosecution marijuana cases involving recidivists that the state had prosecuted at least twice before. Officials said the USAO had since moved away from supporting the state in this way unless the suspects in the case

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<sup>54</sup>According to the August 2013 guidance, in exercising prosecutorial discretion, prosecutors should no longer consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking threatens DOJ's enforcement priorities.

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were involved in activities that threatened DOJ's marijuana enforcement priorities.

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## Conclusions

It has been over 2 years since DOJ's ODAG issued guidance in August 2013 stating that in jurisdictions that have enacted laws legalizing marijuana in some form, if state enforcement efforts are not sufficiently robust to protect against threats to federal enforcement priorities, the federal government may seek to challenge the state regulatory structures themselves, in addition to continuing to bring individual enforcement actions, including criminal prosecutions. ODAG officials reported relying on U.S. Attorneys to monitor the effects of marijuana enforcement priorities through their individual enforcement actions and communication with state agencies about how state legalization may threaten these priorities. ODAG officials also reported using various information sources provided by DOJ components and other federal agencies to monitor the effects of marijuana legalization and the degree to which existing state systems regulating marijuana-related activity protect federal enforcement priorities and public health and safety. However, ODAG officials have not documented their monitoring process or provided specificity about key aspects of it, including potential limitations of the data they report using and how they will use the data to identify states that are not effectively protecting federal enforcement priorities. Given the growing number of states legalizing marijuana, it is important for DOJ to have a clear plan for how it will be monitoring the effects of state marijuana legalization relative to DOJ marijuana enforcement guidance. Documenting a plan that specifies its monitoring process, such as the various data ODAG is using for monitoring along with their potential limitations, the roles of U.S. Attorneys in the monitoring process, and how ODAG is using all these inputs to monitor the effects of state legalization can provide DOJ with greater assurance that its monitoring activities are occurring as intended. Sharing the plan with DOJ components responsible for providing information to ODAG can help ensure that ODAG has an opportunity to gain institutional knowledge with respect to whether its monitoring plan includes the most appropriate information. This will help place DOJ in the best position to identify state systems that are not effectively protecting federal enforcement priorities, and take steps to challenge those systems if necessary in accordance with its 2013 marijuana enforcement guidance.

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## Recommendations for Executive Action

We recommend that the Attorney General take the following actions:

- direct ODAG to document a plan specifying DOJ's process for monitoring the effects of marijuana legalization under state law, in accordance with DOJ's 2013 marijuana enforcement policy guidance, to include the identification of the various data ODAG will use and their potential limitations for monitoring the effects of state marijuana legalization, and how ODAG will use the information sources in its monitoring efforts to help inform decisions on whether state systems are effectively protecting federal marijuana enforcement priorities, and
- direct ODAG to use existing mechanisms to share DOJ's monitoring plan with appropriate officials from DOJ components responsible for providing information DOJ reports using regarding the effects of state legalization to ODAG, obtain feedback, and incorporate the feedback into its plan.

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## Agency Comments and Our Evaluation

On September 28, 2015, we provided a draft of this report to DOJ and ONDCP for their review and comment. We also provided excerpts of the draft report for review and comment to the Colorado MED, Colorado Attorney General's office, Washington State LCB, and Washington State Attorney General's office. ONDCP, the Colorado MED, Colorado Attorney General's office, Washington State LCB, and Washington State Attorney General's office provided technical comments, which we incorporated as appropriate.


In its written comments, reproduced in appendix II, DOJ concurred with both of our recommendations. DOJ stated that ODAG will document a plan to identify the various data sources that will assist DOJ and USAO's in making enforcement decisions, including decisions in individual criminal prosecutions or civil enforcement actions, regarding marijuana-related crimes. DOJ stated that it will also monitor these data, as well as other sources of information, to determine whether states that have legalized recreational marijuana are effectively protecting DOJ's federal enforcement priorities as articulated in DOJ's guidance memorandum dated August 28, 2013. Lastly, DOJ stated that to the greatest extent possible DOJ will seek to publicly share the data it receives pursuant to this plan. DOJ also provided technical comments, which we have incorporated as appropriate.

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As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Attorney General, the Director of National Drug Control Policy, the Director of the Colorado MED, the Director of the Washington State LCB, the attorney generals of Colorado and Washington, appropriate congressional committees and members, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions, please contact me at (202) 512-7141 or [groverj@gao.gov](mailto:groverj@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix III.

Sincerely yours,

A handwritten signature in black ink that reads "Jennifer Grover". The signature is written in a cursive, flowing style.

Jennifer Grover  
Director, Homeland Security and Justice

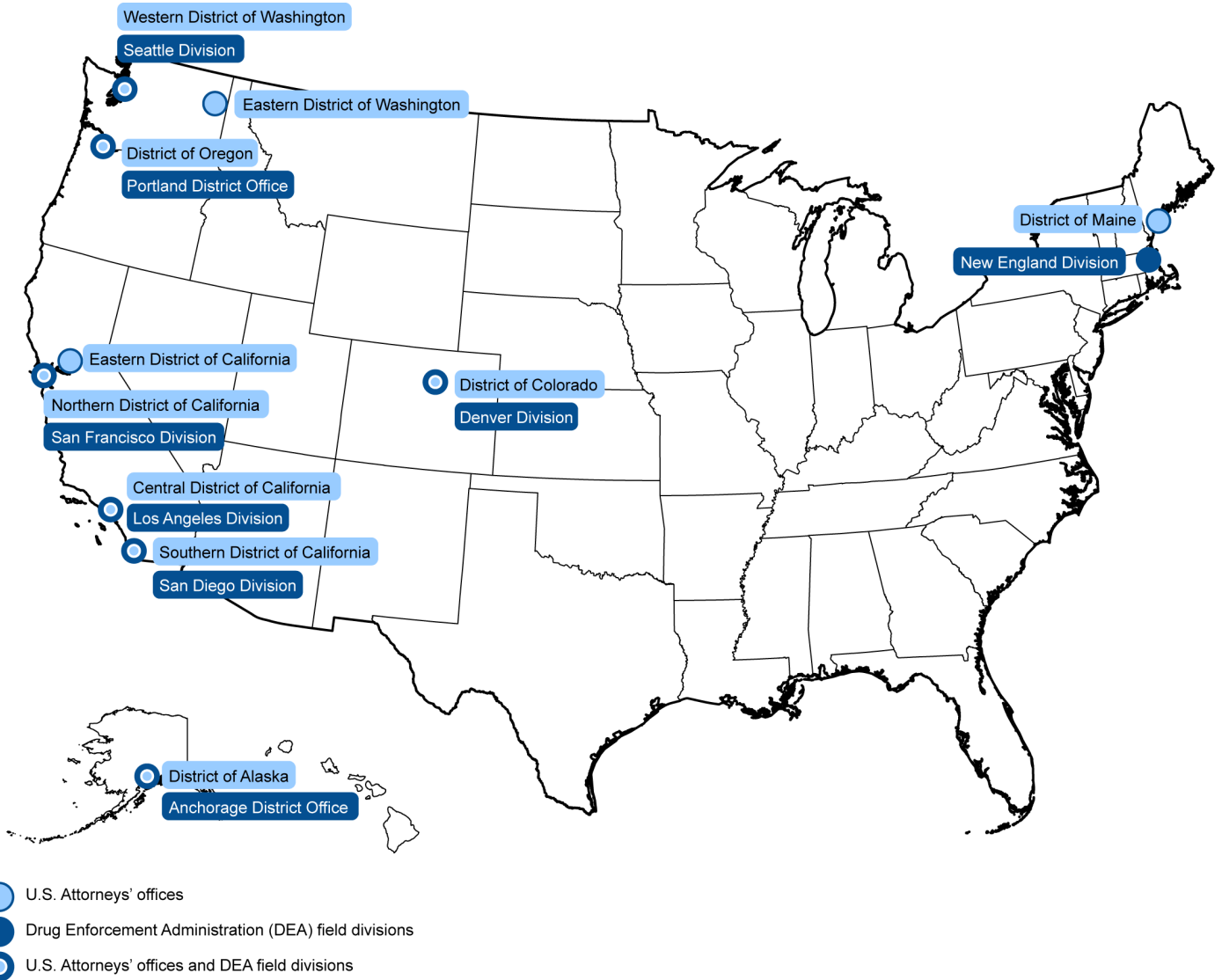
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# Appendix I: DOJ Field Components Contacted in Selected States

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To determine the factors Department of Justice (DOJ) field officials reported affecting their marijuana enforcement actions in selected states that have legalized marijuana for medical purposes, we selected 6 states for our review, to include (1) Colorado and Washington because, in addition to their recreational marijuana laws, they have long-standing medical marijuana legalization laws in place, and (2) 4 additional states—Alaska, California, Maine, and Oregon—that were the earliest states to pass laws legalizing marijuana for medical purposes. We interviewed officials from the six Drug Enforcement Administration (DEA) field divisions and 10 U.S. Attorneys' offices (USAO) with jurisdiction for these selected states. These DEA field divisions and USAOs include the following.

Figure 7: DOJ Field Components Contacted in Selected States



Source: GAO review of Department of Justice information; Map Resources (map). | GAO-16-1

Note: The DEA New England Division has jurisdiction for Maine. The DEA Seattle Division includes the Anchorage District Office and Portland District Office.

# Appendix II: Comments from the Department of Justice



U.S. Department of Justice

November 13, 2015

Washington, D.C. 20530

Jenny Grover  
Acting Director  
Homeland Security and Justice  
U.S. Government Accountability Office  
441 G Street, NW  
Rm. 6H19  
Washington, DC 20548

Re: Draft Report GAO-16-1, STATE MARIJUANA LEGALIZATION: DOJ Should Document Its Approach to Monitoring the Effects of Legalization

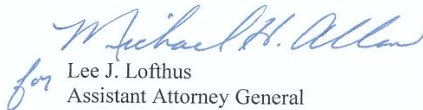
Dear Ms. Grover:

Thank you for providing the Department of Justice (Department) with the opportunity to review and comment on the draft Government Accountability Office (GAO) Report referenced above. The Department appreciates the work of the GAO team that prepared the report and the amount of data collected.

The Department concurs with both action items in the recommendation. The Department, through the Office of the Deputy Attorney General (ODAG) will document a plan to identify the various data sources that will assist the Department and the United States Attorneys' Offices in making enforcement decisions, including decisions in individual criminal prosecutions or civil enforcement actions, regarding marijuana-related crimes. The Department will also monitor this data, as well as other sources of information, to determine whether states that have legalized recreational marijuana are effectively protecting the Department's federal enforcement priorities as articulated in the Department's guidance memorandum dated August 28, 2013. To the greatest extent possible, the Department will seek to publicly share the data it receives pursuant to this plan.

Again, thank you for the opportunity to review and comment on this draft Report. Technical comments were previously provided under separate cover. Please feel free to contact me if you have any questions. We look forward to working with the GAO as we strive to improve our programs and further our commitment to make continuous improvements to the management of the Department.

Sincerely,

  
for Lee J. Lofthus  
Assistant Attorney General  
for Administration



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# Appendix III: GAO Contact and Staff Acknowledgments

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## GAO Contact

Jennifer Grover, (202) 512-7141 or [groverj@gao.gov](mailto:groverj@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Tom Jessor (Assistant Director) and Jason Berman (Analyst-in-Charge) managed this assignment. David Alexander, David Bieler, Billy Commons, Dominick Dale, Alexandra Gonzalez, Eric Hauswirth, Susan Hsu, Stephen Komadina, Jan Montgomery, and Alexandra Rouse made key contributions to this report.

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