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STATE MARIJUANA LEGALIZATION

DOJ Should Document Its Approach to Monitoring the Effects of Legalization

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Chairman Grassley, Co-Chairman Feinstein, and Members of the Caucus,

Thank you for the opportunity to discuss the actions Colorado and Washington have taken to implement their recreational marijuana laws, the mechanisms the Department of Justice (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. 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.¹ 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.² In November 2012, 2 of these states—Colorado and Washington—passed 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.³

DOJ is responsible for enforcing the CSA and in recent years has updated its marijuana enforcement policy in response to the rising number of states that have legalized marijuana under state law.⁴ In August 2013, DOJ updated its marijuana enforcement guidance with instructions for DOJ's prosecutorial and law enforcement components to

¹21 U.S.C. §§ 841, 844.

²In 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.

³In November 2014, voters in Alaska, Oregon, and the District of Columbia approved ballot measures legalizing marijuana for recreational use.

⁴According to a series of memorandums DOJ 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.

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, gangs and cartels, preventing violence and the use of firearms in the cultivation and distribution of marijuana, and preventing the distribution of marijuana to minors.

My statement today is based on our December 2015 report on DOJ's marijuana enforcement efforts and plans for monitoring the effects of state legalization of marijuana.⁵ My statement, like the report, addresses: (1) the features of Colorado's and Washington's systems to regulate the production, processing, and sale of recreational marijuana; (2) the extent DOJ is monitoring the effects of state marijuana legalization relative to its 2013 marijuana enforcement policy guidance; and (3) the factors DOJ field officials reported affecting their marijuana enforcement actions in selected states that have legalized marijuana for medical purposes.

To conduct the work for the report that is the basis for this statement, we reviewed laws and regulations governing recreational marijuana in Colorado and Washington, as well as DOJ documentation related to its marijuana enforcement policy and efforts to monitor the effects of state marijuana laws relative to its 2013 marijuana enforcement policy. We also interviewed relevant officials from Colorado and Washington state regulatory agencies responsible for developing, implementing, and enforcing the two states' recreational marijuana laws, as well as DOJ officials responsible for issuing and implementing DOJ's marijuana enforcement policy, including officials from the Office of the Deputy Attorney General (ODAG), Drug Enforcement Administration (DEA), and United States Attorneys' offices (USAO).⁶ More detailed information on our scope and methodology can be found in our December 2015 report. We conducted the work on which this statement is based in accordance with generally accepted government auditing standards.

⁵GAO, *State Marijuana Legalization: DOJ Should Document Its Approach to Monitoring the Effects of Legalization*, [GAO-16-1](#) (Washington, D.C.: Dec. 30, 2015.)

⁶U.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.

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

In general, the Colorado and Washington state regulatory systems for recreational marijuana share similar features, including requirements for licensing, licensee and employee background checks, facility security measures, and product labeling and packaging.⁷ Table 1 shows selected features of the 2 states' regulatory systems as of July 2015.

Table 1: Selected Features of Colorado's and Washington's Recreational Marijuana Systems, as of July 2015

Selected features	Colorado	Washington
Licensee eligibility requirements		
State residency	At least 2 years ^a	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
Facility location restrictions		
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.

⁷In 2014, Colorado and Washington began to implement their recreational marijuana regulations. 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.

Selected features	Colorado	Washington
Facility security measures		
Monitored alarm system	Yes	Yes
Video surveillance system	Yes	Yes
Video recording storage	At least 40 days	At least 45 days
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
Inventory tracking		
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
Labeling and packaging		
Single serving definition	10 milligrams of delta-9-tetrahydrocannabinol (THC) ^b	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
Consumer restrictions		
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-16-419T

^aNon-owner employees of recreational marijuana facilities are required to obtain an occupational license and be current residents.

^bTHC is the psychoactive or mind-altering chemical contained in marijuana. Marijuana refers to the dried leaves, flowers, stems, and seeds from the cannabis plant.

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

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.⁸ 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 addition to conducting individual enforcement actions, including criminal prosecutions, focused on the priorities.⁹ Figure 1 lists the eight marijuana enforcement priorities outlined in the August 2013 DOJ guidance.

⁸ODAG advises and assists the Attorney General in formulating and implementing DOJ policies and programs and in providing overall supervision and direction to all DOJ organizational units.

⁹During 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." Similarly, the Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, § 542, continued the restriction on the Department of Justice's use of funds, and added additional states to the list, Georgia, Louisiana, New York, North Carolina, Oklahoma, Texas, Virginia and Wyoming, as well as Guam and Puerto Rico.

Figure 1: DOJ's Marijuana Enforcement Priorities as Outlined in the August 2013 Marijuana Enforcement Guidance



Source: Department of Justice; Department of the Interior (logo). | GAO-16-419T

As we reported in December 2015, according to ODAG officials and information DOJ has provided to Congress, DOJ is taking actions to monitor the effects of state legalization of marijuana relative to DOJ's marijuana enforcement policy generally in two ways, as shown in table 2.

Table 2: 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.	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. 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.
ODAG officials collaborate with and assess information from DOJ components and other federal agencies.	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. 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. 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.

Source: GAO analysis of DOJ provided information. | GAO 16-419T

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.

However, in December 2015, we found that DOJ provided limited specificity with respect to aspects of its plan for monitoring the effect of state marijuana legalization. For example, ODAG officials did not state how they would make use of the various sources of information they reported assessing to monitor the effects of state marijuana legalization. Moreover, at the time of our review, DOJ had not documented its monitoring process. *Standards for Internal Control in the Federal Government* specify the need for internal controls to be clearly

documented and for information to 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 responsibilities¹⁰

ODAG 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.

Because documenting a plan specifying its monitoring process would provide DOJ with greater assurance that its monitoring activities are occurring as intended, we recommended in our December 2015 report that the Attorney General direct ODAG to document such a plan. We recommended that the plan include (1) identification of the data ODAG will use and their potential limitations for monitoring the effects of marijuana legalization and (2) discussion of how ODAG will use the information sources in its monitoring efforts. DOJ concurred with this recommendation, and said ODAG would document a plan with data sources it will use in its enforcement and monitoring efforts.

Further, we noted that the internal control standards state that documentation also provides a means to retain organizational knowledge, as well as a means to communicate that knowledge as needed to external parties. We reported that making a monitoring 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 so that DOJ can work with states to address concerns, and, if necessary, take steps to challenge these systems in accordance with DOJ marijuana enforcement guidance. Therefore, we

¹⁰See GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: Nov. 1, 1999). GAO recently revised and reissued its *Standards for Internal Control in the Federal Government*. These new standards became effective October 1, 2015. See GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

recommended that the Attorney General 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. DOJ concurred with our recommendation, and stated that to the greatest extent possible ODAG will publicly share the data it receives pursuant to the monitoring plan.

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

For our December 2015 report, 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. Below is a summary of the officials' perspectives. More details can be found in our December 2015 report.

- **Applying resources to target the most significant public health and safety threats, such as the violence associated with drug-trafficking organizations.** 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.
- **Addressing local concerns regarding the growth of 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. The letters emphasized that DOJ has the authority to enforce the CSA even when certain activities may be permitted under state law, and the recipients could be subject to federal civil and criminal penalties. In addition, officials in 3 states—California, Oregon, and Washington—reported conducting criminal

investigations and prosecutions or civil forfeiture suits in conjunction with their letter campaigns. 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. Officials reported that sending warning letters was an efficient way to close dispensaries and support local community concerns.

- **DOJ's updated marijuana enforcement policy guidance.** Officials from DEA field locations and USAOs we spoke with reported that their implementation of marijuana enforcement guidance ODAG has issued since 2009 had affected their marijuana enforcement actions to varying degrees.¹¹ 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. However, 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 of these field officials reported closing a limited number of cases that did not threaten the priorities. In addition, 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.

Chairman Grassley, Co-Chairman Feinstein, and Members of the Caucus, this completes my prepared statement. I would be pleased to respond to any questions that you may have at this time.

¹¹According to memorandums ODAG issued to U.S. Attorneys in 2009, 2011, and 2013, 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. See our December 2015 report, [GAO-16-1](#), for additional information regarding DOJ's marijuana enforcement policy.

GAO Contact and Staff Acknowledgments

For questions about this statement, please contact Jennifer Grover at (202) 512-7141, or at groverj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals making key contributions to this testimony were Tom Jessor (Assistant Director) and David Alexander, Jason Berman, David Bieler, Billy Commons, Dominick Dale, Alexandra Gonzalez, Eric Hauswirth, Susan Hsu, Stephen Komadina, Jan Montgomery, and Alexandra Rouse.

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