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State Needs to Improve Inspections of Retail Marijuana Stores and Enforcement of Marijuana Laws and Rules

DENVER—The Colorado Office of the State Auditor (OSA) has issued a performance audit of the Marijuana Enforcement Division (Division) within the Department of Revenue (Department). Overall, auditors concluded that the Division needs to improve its processes for prioritizing retail marijuana store inspections, taking enforcement action when investigations identify evidence of laws or rules that were violated, and procuring its seed-to-sale marijuana inventory tracking system.

The Division conducts targeted inspections that focus on a licensed store's compliance with specific laws and rules, as well as underage compliance checks that involve operatives under age 21 who attempt to buy marijuana from a licensed retail store. Auditors found that between Fiscal Years 2019 and 2022, the Division did not inspect 36 percent of newly-licensed retail marijuana stores (40 out of 112 newly-licensed stores) within 1 year of approving those licenses. The Division's policy states that it will strive to inspect them all within 1 year of licensure.

The Division also generates monthly targeted and underage compliance check reports listing stores that may be at greater risk of noncompliance with marijuana laws and rules to help with prioritizing its inspections. Auditors found that the Division did not inspect 182 of the 567 licensed retail marijuana stores (32 percent) that appeared on at least one monthly targeted inspection report during the 4-year period reviewed. Of the 182 stores, 75 were never inspected during the 4 years reviewed, despite the Division inspecting other stores multiple times during the same time period—the Division inspected one store 19 times. Lastly, auditors found that the Division did not complete an underage compliance check for 75 of the 629 (12 percent) retail marijuana stores that appeared on at least one monthly underage compliance check report during the 4-year period auditors

reviewed. Investigators were not provided sufficient guidance on how to weigh the various risk factors for a business when deciding which retail stores to inspect, including how to use these reports in combination with other factors such as location.

Auditors also found that the Division may not always pursue appropriate enforcement actions when investigations identify evidence of violations during inspections. For example, the Division did not pursue any disciplinary action against the stores for 23 of 44 violations of marijuana laws and rules that affected public safety (e.g., violations associated with marijuana sales to underage individuals and inventory tracking issues) in the auditor's sample. Also, investigators did not consistently cite retail marijuana stores for all violations associated with marijuana sales to underage individuals. For example, only three of the seven stores reviewed by auditors that sold marijuana to an underage operative were cited for all four of the violations typically associated with underage marijuana sales.

“The problems we found during this audit could erode public trust in the Division and Colorado's retail marijuana industry because they create the perception that the Division is not regulating the industry consistently across the state,” said Laura Russell, Legislative Audit Supervisor.

Auditors also took issue with the Department's documentation justifying its decision to award a sole source contract in 2018 for the ongoing support, licensing, and hosting of the METRC system. METRC is the Department's system that tracks regulated marijuana from either the seed or immature plant stage until the regulated marijuana or regulated marijuana product is sold. The Department's procurement documentation did not address why METRC was the only system on the market that could meet the Department's needs and why the Department did not need to pursue a competitive bidding process, as required.

Colorado voters approved Amendment 64 in 2012, which authorized personal use of marijuana, also referred to as “retail marijuana.” Adults age 21 and older can purchase retail marijuana at licensed stores. The Division is responsible for regulating Colorado's retail marijuana industry, including issuing business licenses, inspecting marijuana stores, investigating alleged violations of marijuana laws and rules, and pursuing enforcement actions.

The audit, which was conducted in response to a legislative request, makes six recommendations for improvements. The full audit report is available online at www.colorado.gov/auditor.

About the Office of the State Auditor

Under the direction of the State Auditor, the OSA's nonpartisan, professional staff promote government accountability by conducting independent performance, financial, and IT audits and evaluations of state agencies, departments, and institutions of higher education; conducting independent evaluations of the State's tax expenditures (e.g., credits, exemptions, deductions);

tracking about 4,000 Colorado local governments for compliance with the Local Government Audit Law; and operating a statewide fraud reporting hotline.

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