



August 7, 2023

INDUSTRY BULLETIN: 23-05

RE: Marijuana Enforcement Division Performance Audit

The Colorado Department of Revenue's Marijuana Enforcement Division (Division) acknowledges the Office of the State Auditor (OSA) [findings and recommendations](#) released today.

The Division appreciates the work of the Office of the State Auditor (OSA) in identifying opportunities for improvement in terms of policy, procedure, and documentation. The Division is committed to fair and transparent regulation and looks forward to implementing the OSA's recommendations to enhance our work.

The Division provides the following additional context to clarify and emphasize how the audit findings inform the Division's next steps to implement the recommendations:

- **The audit scope covered the time period of Fiscal Year 2019-2022, which includes the period of the global COVID pandemic.** Like much of the world, the Division had to adjust the way it carried out some of its duties to properly respond to the public health issues that existed. This resulted in alternative approaches to all inspections, including underage compliance checks, that could limit potential transmission of COVID, appropriately evaluate sales transaction compliance on-site, and leverage available technology including remote inspections where possible. Not all of these alternative processes were captured or considered in the audit report, and many standard processes have resumed since operations returned to more of a pre-pandemic approach in 2022.
 - Since May 2022 the Division has conducted 622 underage compliance check operations and Retail Marijuana Stores have demonstrated a 99% compliance rate in those checks.
- **This audit focused on specific types of investigations and disciplinary actions related to Retail Marijuana Store licenses.** It is not reflective of all measures the Division takes to carry out its mission. Beyond targeted inspections and underage sales checks of Retail Marijuana Stores, the Division deploys resources focused on its top priorities of preventing youth access and protecting public safety across all license types in several additional ways, including:
 - Investigations into potential non-compliance with advertising, packaging, and labeling regulations. Specifically focused on advertising that may appear to target individuals under 21 years of age and ensuring child-resistant measures and Universal Symbols are in place for Regulated Marijuana sold to consumers.
 - Proactive and complaint-based investigations into potential indicators of diversion that may lead to youth access including medical sales compliance checks, reports of employee thefts, burglaries of licensed businesses, and findings of excess inventory at licensed businesses.

- The Division also deploys resources across all license types for the prioritization of investigations into product and consumer safety concerns including investigations into testing compliance, responding to adverse health event reports, reports of contamination and unsanitary conditions at facilities, and other public safety-related cases.
- **The Division is committed to pursuing appropriate enforcement action and making those actions publicly available.** In addressing potential non-compliance the Division utilizes a variety of intervention strategies and a progressive discipline approach. This includes the use of education and non-disciplinary tools such as verbal warnings, written warnings, and assurances of voluntary compliance to assist a licensee back into compliance. In addition, the Division routinely pursues recommendations for enforcement action when the facts and circumstances demonstrate the non-disciplinary tools are insufficient. Included in that evaluation is the analysis of aggravating and mitigating factors that are unique to the case and the licensee that will inform any recommendation for enforcement action.

The Division's Next Steps

This experience informs how the Division can further evaluate our operations to see across-the-board improvements. The Division has already started to take action and plan for the full implementation of the audit's recommendations.

- **Transparency in Operations:** Since 2022, the Division has taken steps to cultivate greater transparency in Division operations, including:
 - Launch of Data Dashboards, including the [MED Data Dashboard](#), illustrating data collected from across license types and regions; and
 - Publication of all [Final Agency Actions](#) (enforcement/discipline against licensees for noncompliance) since 2014.
- **Rulemaking:** The Division initiated its annual permanent rulemaking process in July and anticipates discussing and proposing rule revisions:
 - To clarify which violations are the highest severity and inappropriate for resolution by a verbal or written warning;
 - To clarify what factors and how the licensed community and investigators should consider mitigating and aggravating circumstances to inform any enforcement action; and
 - Review of inventory tracking system requirements that can be adjusted in rule and allow the Division to explore other technologies that accomplish the same degree of tracking that has made Colorado's regulatory framework successful.
- **Internal Policy Review & Training:** The Division is committed to providing staff with appropriate training and guidance and working with stakeholders to ensure transparency and support a culture of compliance, including:
 - Clarifying policies and procedures to provide more precise guidance to Division investigators and licensees regarding expectations for using monthly reports; and
 - Ensuring greater enforcement consistency across the state and licensees by clarifying which violations and circumstances are inappropriate for non-disciplinary resolution.

We recognize these audits are an important part of the state government process in ensuring transparency and accountability in how we carry out our duties as public servants. The Marijuana Enforcement Division is committed to implementing the recommendations identified in the report to the benefit of all Coloradans.