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EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

Administration Response to Arizona Proposition 200 and California Proposition 215

AGENCY: Office of National Drug Control Policy, Executive Office of the President.

ACTION: Notice.

SUMMARY: This notice lists the Federal government response to the recent passage of propositions which make dangerous drugs more available in California and Arizona. These measures pose a threat to the National Drug Control Strategy goal of reducing drug abuse in the United States. At the direction of the President, the Office of National Drug Control Policy (ONDCP) developed a coordinated administration strategy to respond to the actions in Arizona and California with the other agencies of the Federal Government to minimize the tragedy of drug abuse in America.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding this notice should be directed to Mr. Dan Schecter, Office of Demand Reduction, ONDCP, Executive Office of the President, 750 17th Street N.W., Washington, D.C. 20503, (202) 395-6733.

SUPPLEMENTARY INFORMATION: A Federal interagency working group chaired by ONDCP met four times in November and December. In developing this strategy, the inter-agency group gave due consideration to two key principles: federal authority vis a vis that of the states, and the requirement to ensure American citizens are provided safe and effective medicine. The President has approved this strategy, and Federal drug control agencies will undertake the following coordinated courses of action:

A. Objective 1—Maintain Effective Enforcement Efforts Within the Framework Created by the Federal Controlled Substances Act and the Food, Drug, and Cosmetic Act

Department of Justice's (DOJ) position is that a practitioner's action of recommending or prescribing Schedule I controlled substances is not consistent with the "public interest" (as that phrase is used in the federal Controlled Substances Act) and will lead to administrative action by the Drug Enforcement Administration (DEA) to revoke the practitioner's registration.

DOJ and Department of Health and Human Services (HHS) will send a letter to national, state, and local practitioner associations and licensing boards which states unequivocally that DEA will seek to revoke the DEA registrations of physicians who recommend or prescribe Schedule I controlled substances. This letter will outline the authority of the Inspector General for HHS to exclude specified individuals or entities from participation in the Medicare and Medicaid programs.

DOJ will continue existing enforcement programs using the following criteria: (a) the absence of a bona fide doctor-patient relationship; (b) a high volume of prescriptions or recommendations of Schedule I controlled substances; (c) the accumulation of significant profits or assets from the prescription or recommendation of Schedule I controlled substances; (d) Schedule I controlled substances being provided to minors; and/or (e) special circumstances, such as when death or serious bodily injury results from drugged driving. The five U.S. Attorneys in California and Arizona will continue to review cases for prosecution using these criteria.

DEA will adopt seizures of Schedule I controlled substances made by state and local law enforcement officials following an arrest where state and local prosecutors must decline prosecution because of the Propositions. Once in DEA's possession the drugs can be summarily forfeited and destroyed by DEA. State and local law enforcement officials will be encouraged to continue to execute state law to the fullest extent by having officers continue to make arrests and seizures under state law, leaving defendants to raise the medical

use provisions of the Propositions only as a defense to state prosecution.

Department of the Treasury (Treasury) and the Customs Service will continue to protect the nation's borders and take strong and appropriate enforcement action against imported or exported marijuana and other illegal drugs. The Customs Service will continue to: (a) seize unlawfully imported or exported marijuana and other illegal drugs; (b) assess civil penalties against persons violating federal drug laws; (c) seize conveyances facilitating the illegal import or export of marijuana and other illegal drugs; and (d) arrest persons committing Federal drug offenses and refer cases for prosecution to the appropriate Federal or state prosecutor.

Treasury and the Internal Revenue Service (IRS) will continue the enforcement of existing Federal tax laws which discourage illegal drug activities.

IRS will enforce existing Federal tax law as it relates to the requirement to report gross income from whatever source derived, including income from activities prohibited under Federal or state law.

Treasury will recommend that the IRS issue a revenue ruling, to the extent permissible under existing law, that would deny a medical expense deduction for amounts expended for illegal operations or treatments and for drugs, including Schedule I controlled substances, that are illegally procured under Federal or state law.

IRS will enforce existing Federal tax law as it relates to the disallowance of expenditures in connection with the illegal sale of drugs. To the extent that state laws result in efforts to conduct sales of controlled substances prohibited by Federal law, the IRS will disallow expenditures in connection with such sales to the fullest extent permissible under existing Federal tax law.

U.S. Postal Service will continue to pursue aggressively the detection and seizure of Schedule I controlled substances mailed through the US mails, particularly in California and Arizona, and the arrest of those using the mail to distribute Schedule I controlled substances.

DEA together with other Federal, state and local law enforcement agencies will work with private mail, parcel and freight services to ensure continuing compliance with internal company

policies dictating that these companies refuse to accept for shipment Schedule I controlled substances and that they notify law enforcement officials of such activities. Federal investigations and prosecutions will be instituted consistent with appropriate criteria.

B. Objective 2—Ensure the Integrity of the Medical-Scientific Process by Which Substances are Approved as Safe and Effective Medicines in Order to Protect Public Health

The Controlled Substances Act embodies the conclusion of the Congress, affirmed by DEA and HHS, that marijuana, as a Schedule I drug, has "high potential for abuse" and "no currently accepted medical use in treatment in the United States." To protect the public health, all evaluations of the medical usefulness of any controlled substance should be conducted through the Congressionally established research and approval process managed by the National Institutes of Health (NIH) and the Food and Drug Administration (FDA). Currently there are a few patients who receive marijuana through FDA approved investigations.

HHS to ensure the continued protection of the public health will: (a) examine all medical and scientific evidence relevant to the perceived medical usefulness of marijuana; (b) identify gaps in knowledge and research regarding the health effects of marijuana; (c) determine whether further research or scientific evaluation could answer these questions; and (d) determine how that research could be designed and conducted to yield scientifically useful results.

HHS will undertake discussions with medical organizations throughout the nation: (a) to address the "compassionate use" message; and (b) to educate medical and public health professionals by underscoring the dangers of smoked marijuana and explaining the views of NIH that a variety of approved medications are clinically proven to be safe and effective in treating the illnesses for which marijuana is purported to provide relief, such as pain, nausea, wasting syndrome, multiple sclerosis, and glaucoma.

C. Objective 3—Preserve Federal Drug-Free Workplace and Safety Programs

Transportation Workers: Department of Transportation (DOT) has issued a formal advisory to the transportation industry that safety-sensitive transportation workers who test positive under the Federally-required drug testing program may not under any circumstance use state law as a

legitimate medical explanation for the presence of prohibited drugs. DOT is encouraging private employers to follow its example.

General Contractors and Grantees: Under the Drug-Free Workplace Act, the recipients of Federal grants or contracts must have policies that prohibit the use of illegal drugs. Each Federal agency will issue a notice to its grantees and contractors to remind them: (a) of their responsibilities; (b) that any use of marijuana or other Schedule I controlled substances remains a prohibited activity; and (c) that the failure to comply with this prohibition will make the grantee or contractor subject to the loss of eligibility to receive Federal grants and contracts. Further, Federal agencies will increase their efforts to monitor compliance with the provisions of the Act, and to institute suspension or debarment actions against violators—with special priority given to states enacting drug medicalization measures.

Federal Civilian Employees: HHS will issue policy guidance to all 130 Federal Agency Drug-Free Workplace program coordinators, the 72 laboratories certified by HHS to conduct drug tests, and trade publications that reach medical review officers. This policy guidance states that the Propositions do not change the requirements of the Federal Drug-Free Workplace Program, which will continue to be fully enforced for federal civilian employees nationwide. Medical Review Officers will not accept physician recommendations for Schedule I substances as a legitimate explanation for a positive drug test.

Department of Defense (DOD) and the Military Services: DOD will instruct civilian employees and military personnel in the active, reserve and National Guard components, that DOD is a drug-free organization, a fact that is not changed by the Propositions. The requirement that all DOD contractors maintain drug-free workplaces will continue to be enforced.

Nuclear Industry Workers: The Nuclear Regulatory Commission will continue to demand drug-free employees in the nuclear power industry, and will develop a formal advisory to emphasize that its drug free workplace regulations continue to apply.

Public Housing: The Propositions will not affect the Department of Housing and Urban Development's (HUD) continued aggressive execution of the "One Strike and You're Out" policy to improve the safety and security of our nation's public housing developments. HUD's principal tool for implementing "One Strike" will be the systematic

evaluation of public housing agencies screening and evictions efforts through the Public Housing Management Assessment Program. This program will give HUD a standard measurement of the progress of all public housing authorities in developing effective law enforcement, screening, and occupancy policies to reduce the level of drug use, crime, and drug distribution and sales in their communities.

Safe Work Places: Department of Labor (DOL) will continue to implement its Working Partners Initiative, providing information to small businesses about workplace substance abuse prevention programs, focusing specific attention on trade and business organizations located in California and Arizona. DOL will accelerate its effort to post its updated Substance Abuse Information Database (SAID) on the Internet. SAID will provide information to businesses about workplace substance abuse and how to establish workplace substance abuse prevention programs. DOL will give priority to its efforts in California and Arizona.

DOL's Occupational Safety and Health Administration (OSHA) will send letters to the California and Arizona Occupational Safety and Health Administrations reiterating the dangers of drugs in the workplace and providing information on programs to help employers address these problems.

DOL's Mine Safety and Health Administration will continue to strictly enforce the prohibition on the use of alcohol and illegal drugs notwithstanding these Propositions.

D. Objective 4—Protect Children from Increased Marijuana Availability and Use

HHS and the Department of Education will educate the public in both Arizona and California about the real and proven dangers of smoking marijuana. A message will be tailored for preteens, teens, parents, educators, and medical professionals. Research demonstrates that, marijuana: (a) harms the brain, heart, lungs, and immune system; and (b) limits learning, memory, perception, judgment, and the ability to drive a motor vehicle. In addition, research shows that marijuana smoke typically contains over 400 carcinogenic compounds and may be addictive. The message will remind the public there is no medical use for smoked marijuana and will educate the public about strategies to prevent marijuana use. The message will also remind the public that the production, sale, and distribution of marijuana for medical uses not approved by DEA violates the

Controlled Substances Act and the Federal Food, Drug, and Cosmetic Act.

HHS will analyze all available data on marijuana use, expand ongoing surveys to determine current levels of marijuana use in California and Arizona, and track changes in marijuana use in those states.

HHS will develop the survey capacity to assess trends in drug use in all states on a state-by-state basis.

The Department of Education (Education) will use provisions of the Safe and Drug Free Schools Act to reinforce the message to all local education agencies receiving Federal Safe and Drug Free School funds that any drug possession or use will not be tolerated in schools. This affects approximately 95% of school districts. Notwithstanding the passage of the two Propositions, local education agencies must continue to: (a) develop programs which prevent the use, possession, and distribution of tobacco, alcohol, and illegal drugs by students; (b) develop programs which prevent the illegal use, possession, and distribution of such substances by school employees; and (c) ensure that programs supported by and with Federal Safe and Drug Free Schools funds convey the message that the illegal use of alcohol and other drugs, including marijuana, is wrong and harmful.

Education will review with educators in Arizona and California the effect Propositions 200 and 215 will have on drug use by students. They will also communicate nationally with school superintendents, administrators, principals, boards of education, and PTAs about the Arizona and California Propositions and the implications for their states.

Education will develop a model policy to confront "medical marijuana" use in schools and outline actions educators can take to prevent illicit drugs from coming into schools.

Education will develop model drug prevention programs to discourage marijuana use. These models will be disseminated to the states at a Spring 1997 conference.

ONDCP and DOT will provide recommendations pursuant to the October 19, 1996 Presidential directive to deter teen drug use and drugged driving through pre-license drug testing, strengthened law enforcement and other means. The recommendations will underscore the point that the use of marijuana for any reason endangers the health and safety of the public.

Legislative Enactments: ONDCP, HHS and DOJ will work with Congress to consider changes to the Federal Food, Drug, and Cosmetic Act and the Controlled Substances Act, as

appropriate, to limit the states' ability to rely on these and similar medical use provisions. The Administration believes that working with Congress is the course of action that will affirm the national policy to control substances that have a high potential for abuse and no accepted medical use. The objective is to provide a uniform policy which preserves the integrity of the medical-scientific process by which substances are approved as safe and effective medicines. We will also consider additional steps, including conditioning Federal funds on compliance with the Controlled Substances Act and the National Drug Control Strategy.

Signed at Washington, D.C. this 15th day of January, 1997.

Barry R. McCaffrey,
Director.

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BILLING CODE 3180-02-P

Designation of New High Intensity Drug Trafficking Areas

AGENCY: Office of National Drug Control Policy, Executive Office of the President.

ACTION: Notice.

SUMMARY: This notice lists the five new High Intensity Drug Trafficking Areas (HIDTAs) designated by the Director, Office of National Drug Control Policy. HIDTAs are regions identified as having the most critical drug trafficking problems that adversely affect the United States. These new HIDTAs are designated pursuant to 21 U.S.C. 1504(c), as amended, to promote more effective coordination of drug control efforts. The additional resources provided by Congress enable task forces of local, State, and Federal officials to assess regional drug threats, design strategies to combat the threats, develop initiatives to implement the strategies, and evaluate effectiveness of these coordinated efforts.

FOR FURTHER INFORMATION CONTACT:

Comments and questions regarding this notice should be directed to Mr. Richard Y. Yamamoto, Director, HIDTA, Office of National Drug Control Policy, Executive Office of the President, 750 17th Street N.W., Washington, D.C. 20503, (202) 395-6755.

SUPPLEMENTARY INFORMATION: In 1990, the Director of ONDCP designated the first five HIDTAs. These original HIDTAs, areas through which most illegal drugs enter the United States, are Houston, Los Angeles, New York/New Jersey, South Florida, and the Southwest Border. In 1994, the Director

designated the Washington/Baltimore HIDTA to address the extensive drug distribution networks serving hardcore drug users. Also in 1994, the Director designated Puerto Rico/U.S. Virgin Islands as a HIDTA based on the significant amount of drugs entering the United States through this region.

In 1995, the Director designated three more HIDTAs in Atlanta, Chicago, and Philadelphia/Camden to target drug abuse and drug trafficking in those areas, specifically augmenting Empowerment Zone programs.

The five new HIDTAs will build upon the effective efforts of previously established HIDTAs. In Fiscal Year 1997, the HIDTA program will receive \$140 million in Federal resources. The program will support more than 150 co-located officer/agent task forces; strengthen mutually supporting local, State, and Federal drug trafficking and money laundering task forces; bolster information analysis and sharing networks; and, improve integration of law enforcement, drug treatment, and drug abuse prevention programs. The states and counties included in the five new HIDTAs are:

(1) *Cascade HIDTA:* State of Washington; King, Pierce, Skagit, Snohomish, Thurston, Whatcom, and Yakima counties;

(2) *Gulf Coast HIDTA:* State of Alabama; Baldwin, Jefferson, Mobile, and Montgomery counties; State of Louisiana; Caddo, East Baton Rouge, Jefferson, and Orleans parishes; and State of Mississippi; Hancock, Harrison, Hinds, and Jackson counties.

(3) *Lake County HIDTA:* State of Indiana; Lake County.

(4) *Midwest HIDTA:* State of Iowa; Muscatine, Polk, Pottawattamie, Scott, and Woodbury counties; State of Kansas; Cherokee, Crawford, Johnson, Labette, Leavenworth, Saline, Seward, and Wyandotte counties; State of Missouri; Cape Girardeau, Christian, Clay, Jackson, Lafayette, Lawrence, Ray, Scott, and St. Charles counties, and the city of St. Louis; State of Nebraska; Dakota, Dawson, Douglas, Hall, Lancaster, Sarpy, and Scott's Bluff counties; State of South Dakota; Clay, Codington, Custer, Fall River, Lawrence, Lincoln, Meade, Minnehaha, Pennington, Union, and Yankton counties.

(4) *Rocky Mountain HIDTA:* State of Colorado; Adams, Arapahoe, Denver, Douglas, Eagle, El Paso, Garfield, Jefferson, La Plata, and Mesa counties; State of Utah; Davis, Salt Lake, Summit, Utah, and Weber counties; and State of Wyoming; Laramie, Natrona, and Sweetwater counties.