DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC 20511

ES 2014-00674

MEMORANDUM FOR: Distribution

SUBJECT: Adherence to Federal Laws Prohibiting Marijuana Use

REFERENCES:

A. Executive Order 13467, *Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees and Eligibility for Access to Classified National Security Information,* 30 June 2008
B. *Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana*, Memorandum for Selected United States Attorneys, Deputy Attorney General David W. Ogden, U.S. Department of Justice, Office of the Deputy Attorney General, 19 October 2009
C. *Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use*, Deputy Attorney General James M. Cole, U.S. Department of Justice, Office of the Deputy Attorney General, 29 June 2011
D. *Guidance Regarding Marijuana Enforcement*, Memorandum for All United States Attorneys, Deputy Attorney General James M. Cole, Department of Justice, Office of the Deputy Attorney General, 29 August 2013
E. *Federal Controlled Substances Act* (title II of the Comprehensive Drug Abuse Prevention and Control Act) 21 U.S.C. 801 – 971 (1970)
F. The Intelligence Reform and Terrorism Prevention Act (IRTPA), as amended, 50 U.S.C. 3343 (2008)
G. Executive Order 12564, *Drug Free Federal Workplace,* 25 September 1986
H. *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information,* 29 December 2005
I. Intelligence Community Policy Guidance ICPG 704.2, *Personnel Security Adjudicative Guidelines for Determining Eligibility for Access to Sensitive Compartmented Information and Other Controlled Access Program Information,* 2 October 2008

In recent years, several states and the District of Columbia have decriminalized the use of marijuana, allowing the use of marijuana for medicinal purposes or for limited recreational use. These changes to state law resulted in inquiries from a number of agencies about the impact to

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adjudications of persons proposed for eligibility for access to classified information or eligibility to hold a sensitive position. As the Security Executive Agent, I am responsible for issuing guidelines and instructions to agencies to ensure appropriate uniformity in processes relating to personnel security investigations and adjudications (Reference A). The purpose of this memorandum is to set out guidance in this area.

The Department of Justice issued guidance (References B, C, and D) making it clear that no state can authorize violations of federal law, including violations of the Controlled Substance Act (Reference E), which identifies marijuana as a Schedule I controlled drug. Moreover, IRTPA, as amended (Reference F), specifically prohibits a federal agency from granting or renewing a clearance to an unlawful user of a controlled substance or an addict, and under federal law, use of marijuana remains unlawful. Last, Executive Order 12564 (Reference G) mandates a drug-free workplace and drug-free federal workforce, and expressly states that use of illegal drugs on or off duty by federal employees in positions with access to sensitive information may pose a serious risk to national security and is inconsistent with the trust placed in such employees as servants of the public.

Accordingly, in keeping with statute, executive order, and Department of Justice guidance, I remind agency heads that changes to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines (Reference H and I). An individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual's judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

Heads of agencies are expected to advise their workforce that legislative changes by some states and the District of Columbia do not alter federal law or existing National Security Guidelines. Agencies continue to be prohibited from granting or renewing a security clearance to an unlawful user of a controlled substance, which includes marijuana. Questions pertaining to this memorandum should be directed to Ms. Pamela Dempsey at (571) 204-6505, or by email to SECEA@DNI.GOV or SECEA_WMA@CIA.IC.GOV.

James R. Clapper

25 OCTOBER 2014

Date

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