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ACTION: Interpretive rule.

SUMMARY: For the reasons provided in the memorandum set forth below, the Attorney General has determined that assisting suicide is not a ''legitimate medical purpose'' within the meaning of 21 CFR 1306.04 (2001), and that prescribing, dispensing, or administering federally controlled substances to assist suicide violates the Controlled Substances Act. Such conduct by a physician registered to dispense controlled substances may ''render his registration . . . inconsistent with the public interest'' and therefore subject to possible suspension or revocation under 21 U.S.C. 824(a)(4). The Attorney General's conclusion applies regardless of whether state law authorizes or permits such conduct by practitioners or others and regardless of the condition of the person whose suicide is assisted. The Attorney General recognizes, however, that pain management is a legitimate medical purpose justifying a physician's dispensing of controlled substances. Finally, the Attorney General's determination makes no change in the current standards and practices of the DEA in any State other than Oregon.

EFFECTIVE DATE: November 9, 2001.

FOR FURTHER INFORMATION CONTACT: Patricia Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, telephone 202–307–7297.

SUPPLEMENTARY INFORMATION: The text of the Attorney General's memorandum follows:

Memorandum for Asa Hutchinson, Administrator, The Drug Enforcement Administration

From: John Ashcroft, Attorney General

Subject: *Dispensing of Controlled Substances to Assist Suicide*

As you are aware, the Supreme Court reaffirmed last term that the application of federal law regulating controlled substances is uniform throughout the United States and may not be nullified by the legislative decisions of individual States. See *United States* v. *Oakland Cannabis Buyers' Coop.,* 532 U.S. 483 (2001). In light of this decision, questions have been raised about the validity of an Attorney General letter dated June 5, 1998, which overruled an earlier Drug Enforcement Administration (DEA) determination that narcotics and other dangerous drugs controlled by federal law may not be dispensed consistently with the Controlled Substances Act, 21 U.S.C. 801–971 (1994 & Supp. II 1996) (CSA), to assist suicide in the United States. Upon review of the *Oakland Cannabis* decision and other relevant authorities, I have concluded that the DEA's original reading of the CSA—that controlled substances may not be dispensed to assist suicide—was correct. I therefore advise you that the original DEA determination is reinstated and should be implemented as set forth in greater detail below.

The attached Office of Legal Counsel opinion, entitled *''Whether Physician-Assisted Suicide Serves a ''Legitimate Medical Purpose'' Under The Drug Enforcement Administration's Regulations Implementing the Controlled Substances Act''* (June 27, 2001) (''OLC Opinion'') (attached) sets forth the legal basis for my decision.

1. *Determination on Use of Federally Controlled Substances to Assist Suicide.* For the reasons set forth in the OLC Opinion, I hereby determine that assisting suicide is not a ''legitimate medical purpose'' within the meaning of 21 CFR § 1306.04 (2001), and that prescribing, dispensing, or administering federally controlled substances to assist suicide violates the CSA. Such conduct by a physician registered to dispense controlled substances may ''render his registration * * * inconsistent with the public interest'' and therefore subject to possible suspension or revocation under 21 U.S.C. 824(a)(4). This conclusion applies regardless of whether state law authorizes or permits such conduct by practitioners or others and regardless of the condition of the person whose suicide is assisted.

I hereby direct the DEA, effective upon publication of this memorandum in the **Federal Register**, to enforce and apply this determination, notwithstanding anything to the contrary in the June 5, 1998, Attorney General's letter.

2. *Use of Controlled Substances to Manage Pain Promoted.* Pain management, rather than assisted suicide, has long been recognized as a legitimate medical purpose justifying physicians' dispensing of controlled substances. There are important medical, ethical, and legal distinctions between intentionally causing a patient's death and providing sufficient dosages of pain medication necessary to eliminate or alleviate pain.

3. *No Change in Current DEA Policies and Enforcement Practices Outside Oregon.* The reinstated determination makes no change in the current standards and practices of the DEA in any State other than Oregon. Former Attorney General Janet Reno's June 5, 1998, letter relating to this matter emphasized that action to revoke the DEA registration of a physician who uses federally controlled substances to assist a suicide ''may well be warranted * * * where a physician assists in a suicide in a state that has not authorized the practice under any conditions.'' The reinstated determination does not portend any increase in investigative activity or other change from the manner in which the DEA presently enforces this policy outside of Oregon.

4. *Enforcement in Oregon.* Under 3 Oregon Revised Statutes (O.R.S.) § 127.855 (1999), an attending physician who writes a prescription for medication to end the life of a qualified patient must document the medication prescribed. Under 3 O.R.S. § 127.865(1)(b) (1999), the State of Oregon's Health Division must require any health care provider upon dispensing medication pursuant to the Death with Dignity Act to file a copy of the dispensing record with the Division. Those records should contain the information necessary to determine whether those holding DEA registrations who assist suicides in accordance with Oregon law are prescribing federally controlled substances for that purpose in violation of the CSA as construed by this Memorandum and the attached OLC Opinion.

The Department has the authority to take appropriate measures to obtain copies of any such reports or records sent to the Oregon State Registrar. See 21 U.S.C. 876. When inspection of these documents discloses prohibited prescription of controlled substances to assist suicide following the effective date of this memorandum, then appropriate administrative action may be taken in accordance with 21 CFR §§ 1316.41 to 1316.68 (2001).

Thus, it should be possible to identify the cases in which federally controlled substances are used to assist suicide in Oregon in compliance with Oregon law by obtaining reports from the Oregon State Registrar without having to review patient medical records or otherwise investigate doctors. Accordingly, implementation of this directive in Oregon should not change the DEA's current practices with regard to enforcing the CSA so as materially to increase monitoring or investigation of physicians or other health care providers or to increase review of physicians' prescribing patterns of controlled substances used for pain relief.

5. *Distribution.* Please ensure that this Memorandum and the OLC opinion on which it is based are promptly distributed to appropriate DEA personnel, especially those with authority over the enforcement of the CSA in Oregon.

Attachment

Note: The attachment containing the Office of Legal Counsel opinion dated June 27, 2001, does not appear in the **Federal Register**. It is available from the Drug Enforcement Administration at the address listed in **FOR FURTHER INFORMATION CONTACT**.

Dated: November 6, 2001.

John Ashcroft,

Attorney General.

[FR Doc. 01–28358 Filed 11–7–01; 12:43 pm]

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

Acquisition of Title to Land in Trust

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Withdrawal of final rule.

SUMMARY: This action withdraws the final rule published in the **Federal Register** on January 16, 2001, entitled ''Acquisition of Title to Land in Trust.''

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DATES: The Acquisition to Title to Land in Trust rule, amending 25 CFR part 151, published in the **Federal Register** on January 16, 2001 (66 FR 3452), delayed by a document published February 5, 2001 (66 FR 8899), corrected by documents published February 20, 2001 (66 FR 10815) and June 13, 2001 (66 FR 31976), delayed by documents published April 16, 2001 (66 FR 19403) and August 13, 2001 (66 FR 42415), is withdrawn as of November 9, 2001.

FOR FURTHER INFORMATION CONTACT: Larry E. Scrivner, Deputy Director, Office of Trust Responsibilities, MS 4513 MIB, 1849 C Street, NW., Washington, DC 20240; telephone 202/208–5831.

SUPPLEMENTARY INFORMATION: This action withdraws in whole the rule entitled "Acquisition of Title to Land in Trust," published in the **Federal Register** on January 16, 2001, at 66 FR 3452, delayed by a notice published February 5, 2001 (66 FR 8899), corrected by notices published February 20, 2001 (66 FR 10815) and June 13, 2001 (66 FR 31976), delayed by notices published April 16, 2001 (66 FR 19403) and August 13, 2001 (66 FR 42415), and which received further comments through a notice published on August 13, 2001 (66 FR 42474).

On August 13, 2001, the Department of the Interior (Department) requested public comment on whether the final rule entitled "Acquisition of Title to Land in Trust" should be withdrawn and a further rule proposed to better address the public's continued concerns regarding the Department's procedures for taking land into trust for federally-recognized Indian tribes. The comment period closed on September 12, 2001, and the Department received a total of 139 submissions. Of the submissions received, 93 were from Indian tribes, 18 were from state and local governments and federally elected officials, and 28 other interested groups and individuals.

In its August 13, 2001, notice, the Department requested comments on specific areas of concern in the final rule. These areas of concern included individual applications for land into trust for housing or home site purposes; the requirement of land use plans for off-reservation acquisitions and as part of the designation of a Tribal Land Acquisition Area (TLAA); clarifying the standards contained in the final rule; the availability of applications for review and the use of technology to facilitate review of trust acquisition applications. Collectively, the comments received contained various opposing views about the identified issues of concern. For example, comments stated that the Department should withdraw the final rule in whole, withdraw the final rule in part, amend the final rule to include certain provisions, or make the final rule effective immediately.

The Department sought comments about prioritizing individual applications for land into trust for housing or home site purposes under a new proposed rule expediting applications containing five (5) acres of land or less for individual housing needs. Comments were received both supporting the individual applications for Indian housing priority and opposing the individual applications for Indian housing priority. Comments also noted that identifying housing or home site applications as acquisitions containing five (5) acres of land or less for the purpose of meeting individual housing needs was of little benefit to tribal housing issues/needs. Another area the Department sought comments on was the advisability of requiring tribes to submit land use plans for off-reservation acquisitions and for the designation of TLAA. The Department considered requiring that tribes submit land use plans for off-reservation acquisitions and requiring that the applications contain a land use plan for the TLAAs, which the Secretary would approve as part of her review and approval. Comments received opposed the requirement for submission of a land use plan in an application for off-reservation acquisitions noting that the final rule already requires the submission of enormous amounts of information concerning the use of the land. Comments, while not specifically solicited, strongly opposed the establishment of TLAAs.

The Department also solicited comments on clarifying the standards that will be used by the Secretary to determine whether to approve an application and defining the burdens of proof required for the applicant and those opposing a trust application. The Department noted in its proposed withdrawal notice that it was considering new regulatory language that for on-reservation acquisitions, a tribe or individual must show by substantial evidence that the acquisition facilitates tribal self-determination, economic development, Indian housing, land consolidation, or natural resource protection. The Department further considered requiring that opponents of on-reservation trust acquisitions show by clear evidence that the acquisition will result in severe negative impact to the environment or severe harm to the local government. For off-reservation acquisitions, the Department considered requiring that tribes show by substantial evidence that the acquisition is necessary to facilitate tribal self-determination, economic development, Indian housing, land consolidation, or natural resources protection, and the tribe be further required to show that no demonstrable harm to the local community is realized. The Department also considered requiring that opponents of off-reservation acquisitions show by clear evidence that the acquisitions will result in significant harm to the local community or severe negative impacts to the environment. Some commenters indicated confusion or lack of understanding of the criteria set out in the final rule. Comments received stated that the standards were not fair in that the "substantial evidence" burden of proof for the applicant is a lesser standard than the "clear evidence" requirement for the opponent of the application. Comments also stated that the existing standards are fair and provide sufficient criteria for a decision and need not be further amended. Additional comments stated that standards were burdensome and could not be met by an applicant.

In addition, comments were requested addressing the time-frames established for comment by the state and local communities and the uses of computer technology. Comments were split on the amount of time to allow for review, some commenters stating that the final rule allowed sufficient time to review applications and other requesting even more time than the additional 30 days the final rule allowed to review applications. Comments addressing the use of computer technology and the Internet were generally in support of using such tools to expedite review of applications and the decision-making process.

The Department finds that it is impracticable and inefficient to repeal only part of the final rule as the Bureau of Indian Affairs needs clear direction and standards to process land into trust applications. Considering the variety of comments received, the Department has decided to withdraw the final rule in whole to address these specific areas of concern in a new rule. Consistent with Departmental policy to consult with federally-recognized Indian tribes on proposed Federal actions that impact Indian tribes, the Department will conduct consultation with Indian tribes on the following areas in its efforts to promulgate a new rule: applications for housing or home site purposes to meet individual housing needs; the requirement of land use plans; the standards of review used in reaching a determination of whether to accept land

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into trust; the availability of applications for review; and the use of computer technology prior to the proposal of a new Acquisition of Title to Land in Trust rule.

The Department has determined that the withdrawal of the final rule entitled "Acquisition to Title to Land in Trust" must be effective immediately in order to prevent its becoming effective upon the expiration of the notice of delay as published on August 13, 2001, (66 FR 42415), and to allow for the current 25 CFR Part 151 to remain in effect during the pendency of the development of a new rulemaking addressing this matter. The Department, therefore, shows good cause for the immediate effective date of this rule in accordance with 5 U.S.C. 553(d).

Dated: November 5, 2001.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 01–28222 Filed 11–8–01; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Temporary Closure of Seasons and Changes in Harvest Limits for Moose in Unit 22 and Deer in Unit 8

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Temporary closure of seasons and changes in harvest limits.

SUMMARY: This provides notice of the Federal Subsistence Board's temporary closure and changes in harvest limits to protect moose populations in Unit 22(B), (D), and (E), and to help the recovery of deer populations in Unit 8. These regulatory adjustments and the closures provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on June 25, 2001. Those regulations established seasons, harvest limits, methods, and means relating to the taking of wildlife for subsistence uses during the 2001–2002 regulatory year.

DATES: The original emergency actions were effective August 1, 2001 through September 29, 2001. The extension of the emergency actions (temporary closure and changes to harvest limits) will be effective September 30, 2001 through March 31, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Subsistence Program Manager, USDA—Forest Service, Alaska Region, telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer title VIII through regulations at title 50, part 100 and title 36, part 242 of the Code of Federal Regulations (CFR). Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2001–2002 wildlife seasons, harvest limits, and methods and means were published on June 25, 2001, (66 FR 33744) Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Game (BOG), manages the general harvest and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

The temporary changes for early closure of seasons and changes in harvest limits is necessary to protect declining moose populations on the Seward Peninsula, and to help deer populations on Kodiak Island and adjacent islands to continue recovery following severe winter mortality that took place during the winter of 1998–99. This temporary change is authorized and in accordance with 50 CFR 100.19(e) and 36 CFR 242.19(e).

Unit 22 Moose

Moose populations in Unit 22 have declined in recent years from a overall population that ranged from 7,000 to 10,000 during the late 1980s to recent estimates of 5,000 to 7,000 animals. The declines are thought to be a result of winter mortality and lower calf survival.

The Federal subsistence moose harvest in Unit 22(D) for that portion within the Kuzitrin drainage was restricted to antlered bulls by the Federal Subsistence Board in 1998 due to the declining local moose population and heavy hunting pressure. As a result of a continuing regional trend in declining moose populations, the Federal Subsistence Board, in 2000, also restricted the harvest in Unit 22(B) to bulls only.

On July 13, 2001 the Alaska Department of Fish and Game using their emergency authority, shortened, but did not close, moose hunting seasons in four portions of Unit 22: Unit 22(B) west of the Darby Mountains, Unit

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