The Regulation and Taxation of Cannabis Commerce

Report of the
NATIONAL TASK FORCE on CANNABIS REGULATION

December 1982
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"Laws and institutions are constantly tending to gravitate. Like clocks, they must be occasionally cleansed, and wound up, and set to true time."

Henry Ward Beecher, 1859

"We threw on the table as spoils to be gambled for by the enemies of society the revenue that our government had theretofore received, and the underworld acquired unparalleled resources thereby.... The only business of the country that was not helping to support the government was in a real sense being supported by the government.... Unquestionably, our tax burden would not be so heavy nor the forms that it takes so objectionable if some reasonable proportion of the unaccounted millions now paid to those whose business has been reared upon [Prohibition] could be made available for the expense of government."

Franklin D. Roosevelt, 1932
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I.

SUMMARY OF FINDINGS AND RECOMMENDATIONS

The regulation and taxation of cannabis, as a policy alternative to prohibition, is feasible, practical, and in the best interests of the United States. The Task Force has prepared, and includes in this report, a discussion draft of a federal cannabis regulation and taxation statute, which the Task Force contends will achieve the following goals: protecting public health, eliminating illicit trafficking, creating new industries, producing new revenue, and, most of all, enforcing responsibility in the use of marijuana by those who choose to use it.
II.

CONTROLLING CANNABIS COMMERCE

Introduction and Commentary to the Cannibis Revenue Act

1983 marks the fiftieth anniversary of a remarkable event in American history. In 1933, alcohol prohibition was repealed, and new alcohol policies were put into place, subjecting the alcohol industry, for the first time, to agricultural, public health and revenue controls.

As a policy, alcohol prohibition was a serious failure. For one thing, it glamorized alcohol, instead of stopping people from using or abusing it. For another, it produced widespread violence, particularly among people in the industry. Unlike their legal counterparts, people in the alcohol business did not enter into insurance contracts to protect valuable cargo against theft or casualty. When disputes arose, courtrooms were not accessible for the non-violent resolution of differences. Too, thousands of people were poisoned by bootleg liquor, there being no enforceable standards of purity, potency and packaging. Whether Prohibition was truly a "noble experiment" remains a question for debate, but there is no doubt that it was a failed experiment.

As a policy, the nearly fifty-year prohibition of cannabis (marijuana) has been as dramatically unsuccessful as was the prohibition of alcohol. The failure of that policy, of serious concern to both proponents and detractors of cannabis, is the starting point of this report. In these pages, an attempt is made to review present policies, to make some informed judgments, and to suggest the details of a new policy at the Federal level.

The Task Force

This report is an effort at law reform performed by a volunteer, informal group of private citizens, including lawyers, economists, businessmen, and public employees. The members approached the matter of cannabis regulation seeking to craft an alternative cannabis policy rationally structured to meet feasible and appropriate goals, independent of the policies of any group or organization. Rather, it is the best interests of the public that the Task Force has sought to serve in advancing these proposals.

This report is not aimed at advancing marijuana smoking, creating jobs or serving the interest of the marijuana industry. The recommended policies may be seen by parochial interests as distasteful, but they are solely designed to serve the interests of all who are affected by marijuana—and in this country that includes every citizen.
The Task Force begins its work by asserting that present public policy on marijuana is based upon a faulty premise, namely, that any use of marijuana by any person, at any time, in any circumstance, constitutes "drug abuse."  

The existing policy, based on that notion, has been to try to eliminate all marijuana use. The chief method chosen to bring that about is to make possession, cultivation and sale of marijuana a serious crime. Backing up the law enforcement approach are extensive drug abuse prevention, treatment and rehabilitation programs. This two-pronged approach, carried out at both the federal and state levels, is itself based on the historically false premise that marijuana use can be eradicated by these measures. If it could, one would expect that the billions of dollars spent by federal, state and local governments over decades would have seriously reduced the marijuana industry.

That has not happened. When marijuana was first made illegal by the Federal Government in 1937, only a few minority groups had used the substance. Today, 45 years and billions of dollars later some 80 million people—1/4 of the American population—have used marijuana at least once and close to 30 million use it regularly—at least once a month.

The specific signs of the failure of present marijuana policy are apparent to many, but deserve to be briefly outlined.

- It is illegal, but it is everywhere. Despite decades of the best, most intense efforts by law enforcement officials and drug abuse prevention experts, marijuana is generally available in our society. In the words of The New York Times, it is "the most widely accepted illegal indulgence since liquor during Prohibition." While some cite marijuana's widespread acceptance and use to point out the terrible aspect of "the marijuana problem," we draw the opposite conclusion, namely, that if it were not for the dubious glamor provided by marijuana's illegality, its use would be complete matter-of-fact.

- Enforcement costs of the current prohibition are astronomical. The federal government spends a billion dollars, at the least, in a host of different programs and agencies trying to eradicate marijuana and its demand. Consider: The Drug Enforcement Administration budget has exceeded $200 million for the last three years. 20% of the federal prison population has been sentenced for drug trafficking, approximately one half of those for marijuana. The Coast Guard budget is $2 billion per year; its major law enforcement mission is to interdict marijuana smugglers off the Atlantic and Gulf Coasts. A major effort of the U.S. Customs Service, at every port of entry, is to intercept persons who meet the profiles of drug smugglers. Even the U.S. Armed Forces are now engaged in the effort to police the use of marijuana by preventing its availability.
Last year, more than twice as many persons were arrested for marijuana than for rape, robbery and murder combined, 6 misallocating scarce law enforcement resources from the investigation and prevention of the kind of crime that the public justifiably dreads. At $1500 per arrest, more than $600,000,000 is expended annually in direct law enforcement resources toward marijuana offenders.

Public officials, exploiting the concern about crime, have tapped the public treasury for every opportunity to stamp out marijuana, from DEA coloring books 7 to the Goodyear Blimp.

Legislation recently enacted by Congress will authorize the use of military satellites and reconnaissance aircraft, capable of examining every person's backyard. The price tag for the military hardware has not been estimated.

This money must be considered a lost opportunity for other programs, including predatory crime prevention, education, and health care.

- Marijuana prohibition has fostered widespread disrespect for law and science, resulting in loss of credibility about marijuana's health effects and statements about other drugs. To a great many Americans, the marijuana laws have not earned, and are not worthy of respect.

- Anyone who admits familiarity with marijuana's effects implicitly admits to breaking the law. Consequently, those whose duty it is to teach children about the drug are forced into the dilemma of choosing between expressing false ignorance about the drug or confessing to law breaking. A large gap of credibility, therefore, has developed between those who use marijuana and those who have the responsibility of teaching how to avoid its abuse. Marijuana's illegality thwarts effective public awareness and education by parents, school officials, and drug abuse educators about the responsible use of marijuana by those who choose to use it. "Imagine teaching driver education," said Maureen Porter, a Westhampton, Massachusetts, high school teacher, "if cars were illegal."

- Demand for marijuana by one in ten Americans has spawned an enormous underground economy. Hundreds of millions of dollars in cash transactions are never reported as income. Hundreds of millions of dollars leave America, never to be invested here, boosting the international trade deficit. Hundreds of millions of dollars have been accumulated and spent perniciously to inflate the economy of South Florida. Government measures of employment are skewed so that economic policies to encourage the economy may be fueling inflation to reduce non-existent unemployment—the hidden "unemployed" who are actually working in the marijuana industry, underground. Marijuana entrepreneurs face an urgent need to launder their proceeds through dishonest banks and businesses. Otherwise law abiding citizens must choose between turning in their neighbors or friends, or being corrupted into a conspiracy of silence that supports their businesses and the local economy. Regulators of legal industries such as banking, shipping, real estate and so forth as well as narcotics investigators, airport operators, police and seamen are all subject to the temptation of accepting tens of thousands of dollars for looking the other way when the marijuana is going through. Corruption is flourishing.
The public health has been endangered. During alcohol prohibition, thousands of people died or were permanently blinded or paralyzed by drinking poisonous preparations containing—and often not containing—alcohol. Unfortunately, a similar situation occurs today with marijuana and other illicit drugs. While alcohol itself presents serious physical side effects, consumers have little need to fear that adulterants will blind them or paralyze them even if they drink only a little. But Americans who buy marijuana are unavoidably exposed to health risks unrelated to the marijuana itself. Marijuana is sometimes sold mixed with PCP or other dangerous drugs. Sometimes it contains natural contaminants as a result of improper storage or processing. Ironically, the marijuana consumer who seeks the assurance of purity by cultivating his own marijuana greatly multiplies his risk of going to jail.

Policy Goals

The central issue for policymakers then becomes, What ought to be done about the situation? Before considering the options, it is important to establish the basis upon which our recommendations were reached, namely, the goals sought to be achieved.

The Task Force believes that a cannabis policy should achieve the following goals:

1. The minimization of cannabis abuse. "Abuse" is defined as the use of cannabis to the extent that such use interferes with personal development or achievement or encroaches upon the rights of others.

2. The protection of public health. A cannabis policy should contain strong disincentives for adulterated or contaminated cannabis, as such disincentives exists for foods and other ingestibles.

3. Elimination of the illicit market in cannabis, permitting the concentration of law enforcement resources on the prevention and investigation of crime against persons, property and the public.

4. The production of revenue, by subjecting the cannabis industry, and profits made in it, to taxation.

5. The removal of legal obstacles to the emergence of a new hemp industry, stimulating American agriculture and creating many new jobs and industrial products.

A corollary to curbing abuse is allowing the responsible use of cannabis by adults, to the extent that such use does not invade the rights of others. This privilege is essential to any workable cannabis policy, and unless it is established, none of the policy goals can be achieved with available resources and law enforcement techniques our Constitution and most deeply-held values will permit.

In attempting to formulate a comprehensive policy on marijuana that would achieve these goals, the Task Force has been guided by certain principles that apply
directly to the problem of cannabis policy formulation. The first such principle is that individuals must bear full and ultimate responsibility for the consequences of their own actions, and cannot look to government for self-protection. The role of government "is to protect us from each other, not from ourselves." Ronald Reagan often observed during the 1980 Presidential campaign. The Task Force shares this view.

The second principle has to do with the balance of authority between state governments and the federal government on matters of sumptuary policy, i.e., what people should or should not be allowed to eat, drink or smoke. In a nutshell, the Task Force believes that federal involvement in such matters should be kept at a minimum, and states should be free to adopt such additional policies as each state sees fit, within strict limits of Constitutionality.

The Task Force has carefully considered the legacy of alcohol prohibition and its repeal, and suspects that if the architects of alcohol legalization were given another chance, they would do some things differently today. License quotas and price controls, for instance, would not today be viewed as effective curbs on availability. The supply will keep up with demand, regardless of the paucity of suppliers. The role of alcohol advertising, said by many to account for alcohol's pervasive use in America, would be closely examined. Too, the architects might consider making alcohol "pay its way," i.e., require the alcohol industry to be responsible for the social costs caused by its products.

Options

Having considered the goals of cannabis policy, the principles sought thereby to be upheld, and the historical experience of the repeal of Prohibition, the Task Force has considered, and rejected, three of what it considers the four broad policy options available to policymakers today.

The first option, rejected by the Task Force, is the strict enforcement of current law. Applying legal sanctions to a sizeable sample of marijuana consumers would require the creation of an all out police state. One conjures up images of marijuana monitors stationed in movie theaters and baseball stadiums. Constitutionality aside, legislators would be loathe to allocate the funds that this effort would require. The Task Force believes that an emphasis on law enforcement to discourage marijuana use is like throwing money down a hole. If prohibition could possibly work, it would have by now. It hasn't, it can't, and it won't. We must realize that the criminal law is the most poorly equipped, most costly, most destructive and least effective means of discouraging marijuana use and abuse.

The second option that the Task Force has likewise rejected is outright legalization, i.e., the total repeal of prohibition, producing a situation where marijuana is treated under the law like tomatoes and other foodstuffs. The goals of the cannabis policy we propose require moderate regulation to protect public health, forbid sales to minors and produce significant tax revenue.

The third option has been widely discussed in recent years, and has been enacted as the law in eleven states. It is partial prohibition, more commonly known as
decriminalization. Under decriminalization, having a small quantity of marijuana is not a crime, but growing it and transferring it—selling it or giving it away—remain a crime. Decriminalization is a rational, short-term response to the marijuana situation that has evolved since marijuana became popular in the 1960's. However, decriminalization does not address the basic policy goals that the Task Force believes a good cannabis policy ought to address, detailed above.

The Model

The fourth policy option, which the Task Force has considered and adopted, is regulation and taxation of the cannabis industry. To implement this option, the Task Force has drafted a model federal statute called The Cannabis Revenue Act (CRA). The proposed statute rescinds current provisions in federal law governing cannabis and replaces them with the legal mechanisms necessary for a regulated, taxed market in marijuana. The Act would be administered by the Secretary of the Treasury.

Basically, the CRA is enabling legislation that allows states to adopt a variety of alternative policies to control marijuana use and commerce. Because the Task Force is of the view that federal involvement in cannabis regulation should be minimized, the statute regulates by federal law only those aspects of the cannabis market which, in the view of the Task Force, are demanding of uniformity throughout the United States, to prevent the emergence of another underground market derived from interstate smuggling, as now occurs to some extent with cigarettes. The CRA would also provide sufficient regulation that a state would be relieved from setting up an entire state regulatory scheme and bureaucracy in order to reap the benefits of regulation and taxation.

If the CRA were enacted into law, states would have a wide range of cannabis policy options from which to choose:

I. In the first place, a state could make no changes in its law governing cannabis, in which case cannabis would remain illegal, and adults would have no legal access to regulated, taxed cannabis in that state. The situation would be similar to that following the repeal of Prohibition, which shifted to the states authority to legalize the sale and consumption of alcohol, and a federal framework called The Federal Alcohol Administration Act was enacted into law.10 As there were many "dry" states following repeal (and many "dry" counties remain today), there would no doubt remain after enactment of the CRA many states where cannabis would remain illegal.

II. A second choice available to states would be to participate with the federal government in the regulation and taxation of cannabis under the CRA. Under this option, a state would repeal its current provisions of law governing cannabis, and replace them only with the following provisions, required by the CRA (as, under one option, a condition to recovering revenue from the federal government):

I. Measures restricting sale or distribution of cannabis to minors, imposing such sanctions as each state determines.
2. Measures restricting the operation of motor vehicles under the influence of marijuana, with appropriate penalties, civil and/or criminal, as determined by the state, as well as legal safeguards which are based on quantitative standards for determining actual levels of impairment.

Without further regulation at the state level, commerce in cannabis would be regulated exclusively by the CRA and the administrative regulations promulgated thereunder by the Secretary of the Treasury. The resulting cannabis market would have the following features:

- An individual who wishes to go into the business of cultivating, processing, storing, distributing or selling cannabis, even on a small scale, would be required to obtain a license. Such license would be readily obtainable, and would pose no obstacle to any qualified person's engaging in legal cannabis commerce. Adults would be free to grow, possess and give away cannabis for personal use. As current alcohol laws now permit individuals to brew a quantity of beer and wine for personal and household use, so too would individuals be allowed personal cultivation, possession and non-commercial distribution of cannabis.

- Like wine, cannabis would be commercially available for purchase by adults from licensed retailers. Cannabis packages, like pipe tobacco or herbal tea, would contain one ounce of processed cannabis. The package would bear a tax stamp, and the label would reveal the origin of the cannabis, the identity of the contents by species and variety, the net quantity, potency and a cautionary label.

- Retail sales of cannabis, like the retail sale of tobacco cigarettes, would take place from a wide variety of merchants, including liquor stores and tobacco retailers. Since the retail price will contain a large revenue component, the price of cannabis packages will be relatively high, compared to packages of tobacco cigarettes, probably from $25 to $50 per package. Storekeepers, always cautious about the security of small, high-priced items like watches or expensive cigars, will probably display cannabis packages in a glass case near the cash register. Cannabis will not be sold by vending machine.

- Advertising would be regulated, but not necessarily banned. The Task Force has included optional provisions in the CRA concerning advertising (§5941). Option One would ban all advertising; Option Two would subject cannabis advertising to the same restrictions that the wine and beer industry are now subject to.

- The CRA also contains alternative provisions for disposition of revenue collected by the federal tax on cannabis (§5936). Under Option One, revenue is shared between the federal government and the states that regulate; under Option Two, revenue would be retained by the federal government.

III. A third choice available to states would be to impose their own regulatory and/or taxation schemes in addition to the CRA, as many states now do with alcohol and tobacco. For example, a state may impose the following restrictions on the cannabis industry:

1. License quotas, such as now exist for retail alcohol licenses.
2. Restrictions on public use of cannabis, including the types of public establishments where cannabis can be consumed.

3. Further taxation of cannabis, perhaps earmarking cannabis revenue for particular purposes, like housing for the elderly, energy conservation or research institutes.

States would not be eligible for federal revenue sharing if they imposed further restrictions on advertising, labelling or personal use as defined in the CRA (§5921(b)).

Revenue

The question inevitably arises, What is the revenue potential of a regulated, taxed, cannabis market? Considered responses to that question can vary widely; the only thing that can be said for sure is that no one knows. There simply is not available a data base from which a reliable projection can be made. How many Americans are smoking marijuana and how much are they smoking? They aren't saying.

Despite the scarcity of reliable data, a thorough analysis of this question was done by Alan S. Garber, an attorney, in a paper presented at the National Drug Abuse Conference in 1977.1 Using 1974 data from the Drug Abuse Council and the National Institute on Drug Abuse reflecting an adult market of twelve million users and an average retail price of $32 per ounce, Garber arrived at a potential tax revenue of 1.8 billion dollars. He emphasized that this was a very conservative figure, since his data base included only "current" adult users (defined as having used within the past month). NIDA estimates that the number of regular users is twice today what it was in 1974.12

At the other extreme, using the law enforcement estimate that marijuana is a $25 billion industry,13 if only half of the money that is now going to pay people to take the risks to import, cultivate or sell cannabis were devoted to tax revenue, then the revenue possibilities could conceivably run as high as ten to twelve billion dollars each year.

Both approaches make several key assumptions. They are:

1. That the government will attempt to extract the highest possible revenue without creating a troublesome illicit market in untaxed cannabis.

2. That in a regulated, taxed market, production costs will continue to comprise only a small percentage of the retail price.

3. That consumers largely will prefer legal cannabis to illicit cannabis, because its quality will be assured and consistent, and there will be no legal risks if used responsibly.
The only conclusion, albeit tentative, that can be drawn today on potential tax revenues is that they will be sizeable. As for the amount, the Task Force cautiously tends toward Garber's projections, adjusted for the best data available today on levels of consumption. The uncertainty regarding potential tax revenues underscores the need for research in this area. The Task Force recommends that the government, private industry, universities and foundations fund and undertake the research projects necessary to provide lawmakers and the public with accurate information on the economic impact of a regulated cannabis industry. Such studies should cover not only tax revenues, but also agriculture, common carriers, the packaging industry, law enforcement, the income tax system, and the many other elements of the nation's economy.

Industrial Hemp

For thousands of years, the cannabis plant has been recognized for the superior quality of its fibre and the oil produced by its seeds. A significant product—hardly a by-product—of replacing cannabis prohibition with a policy of regulation and taxation is that a whole new industry will open up, providing many new products and many new employment opportunities. The Task Force did not delve into this subject, but instead has included in this report a comprehensive bibliography of agricultural and industrial hemp.

Under the Cannabis Revenue Act, the hemp industry would be exempt from all cannabis excise taxes and almost all aspects of regulation.

Conclusion

The Task Force wishes to emphasize that the recommendations of this report are hardly chiselled into stone; they are not meant to be the last word on cannabis regulation and taxation, but rather, a beginning word in an informed and responsible public debate over marijuana policy in the 1980's. The Cannabis Revenue Act is a statutory rendering of a regulated, taxed market in cannabis that the Task Force strongly believes is in the immediate and long term best interests of this country. This plan is a prototype, inviting modifications and refinements.

While honest disagreements remain among members of the Task Force concerning many details of cannabis regulation and taxation, all its members are resolutely of the view that the regulation and taxation of cannabis will be a necessary ingredient not only to this nation's economic recovery, but also as a method of bringing some control to marijuana use in the United States. The Task Force therefore calls on Congress and the state legislatures to undertake a close examination of this and other models for cannabis regulation and taxation as are calculated to achieve the stated policy goals.
FOOTNOTES

1E.g., Drug Abuse Prevention, Treatment, and Rehabilitation in Fiscal Year 1980, Third Annual Report from the Secretary of the Department of Health and Human Services to the President and Congress of the United States, U.S. GPO 1981-341-166/6357, released October, 1981, p. 8: Drug use prevalence surveys, commissioned and relied upon by the government, "do not routinely distinguish between drug use and drug abuse."

2Title 21, United States Code, Section 101 et seq., The Controlled Substances Act.

3Drug Abuse Prevention, Treatment, and Rehabilitation in Fiscal Year 1980, supra.


10Federal Alcohol Administration Act, Title 21, United States Code.


III.
CANNABIS REGULATION AND TAXATION AND
THE SINGLE CONVENTION ON NARCOTIC DRUGS
by
Robert L. Pisani

The Single Convention on Narcotic Drugs (hereinafter called the "Convention") is the major international treaty that deals with cannabis. It was signed in 1961 under the auspices of the United Nations, took effect in 1964, was ratified by the United States in 1967, and presently has 110 parties. It superseded ten major international agreements going back to 1912, hence the title, "single" convention.

To what extent, if any, does the Convention pose an obstacle to the regulation and taxation of cannabis in the United States?

At first glance, the Convention appears to foreclose this possibility. Article 4(c) obligates the parties to "take legislative measures as may be necessary... subject to the provisions of this Convention, to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs" (including cannabis). This purpose is reinforced by the provisions of Article 36, which obligates parties to provide for penal provisions and other actions "which... may be contrary to the provisions of this Convention." While several authorities who are charged with enforcing the Convention have ruled that decriminalization does not violate the treaty, they have expressed the view that outright legalization for nonmedical purposes would.

Upon closer examination, however, the Convention does not appear to pose a substantial legal obstacle to the adoption by any party of a policy of regulation and taxation of cannabis.

For one thing, the Convention itself could be modified or amended, as provided within the Convention itself. Article 3 of the Convention establishes a series of schedules whereby all drugs covered by the Convention are placed in one of three schedules, the criteria for which include the drug's susceptibility to abuse and its risk to public health and social welfare. Cannabis is placed in Schedule I, the harshest category. Article 3 provides, however, that drugs can be re-scheduled or even deleted from the schedules altogether at the request of a party to the Convention. Upon request of a party, the Commission on Narcotic Drugs, entrusted with policy-making in the field of international drug control, would then render a decision as to whether such a deletion should be made. The Economic and Social Council (ECOSOC) reviews the decision of the Commission at the request of any party.
The Convention could also be amended under Article 47, by removing cannabis from the Convention entirely or allowing the parties the option of legal regulation and taxation of cannabis. This proposal would also ultimately come before ECOSOC, which would call a conference of all parties concerned to discuss the amendment.

Another option available is denunciation of the Convention under Article 46, i.e., a declaration by a party that it no longer chooses to be bound by the treaty. In order that a policy of cannabis regulation and taxation could be enacted and pursued by a party without turning its back on the international control of other drugs covered by the treaty (opiates and cocaine), the party could combine a denunciation with a re-ratification containing reservations in accordance with Article 49. It may also be possible to denounce selectively the provisions of the convention dealing exclusively with cannabis, providing that the parties agree to the separability of the treaty provisions.6

With regard to the international control of cannabis, it is important to point out that the Convention does not today in any way restrict parties from adopting whatever policies they wish concerning the leaves of the cannabis plant, or any part of the plant cultivated for industrial purposes (fibre and seed) or for horticultural purposes (Article 28). The leaves were left out because they are used to make a popular drink in India and Pakistan, and representatives of those countries opposed banning the beverage. It has been often pointed out that the United States could immediately legalize (i.e., regulate and tax) the use of and commerce in leaves without contravening the Convention, as well as commerce in cannabis for industrial or horticultural purposes.7

Another step that a party could take to accommodate a policy of cannabis regulation and taxation would be to invoke a rule of international law that allows states to withdraw from treaties. The Vienna Convention on the Law of Treaties, a compilation of international law practices with respect to treaties and conventions, lists no fewer than fourteen circumstances under which a state may withdraw from, modify or suspend the operation of a treaty under international law.8 Of these, at least one can be said to be squarely applicable in the case of cannabis: a fundamental change of circumstances.

The doctrine of "changed circumstances" can be invoked when the underlying conditions upon which a treaty was premised fundamentally change.9 Such is the case with cannabis. When the Convention was promulgated in 1961, one of its stated goals was to combat "addiction to narcotic drugs [which] constitutes a serious evil for the individual and is fraught with social and economic danger to mankind.10

Medical knowledge concerning cannabis has advanced considerably since 1961. While the issue of marijuana's relative harmfulness or harmlessness continues to be widely debated, it is now generally agreed that cannabis is not addictive and is not a narcotic. Unlike the case in 1961, few authorities take the position today that addiction to narcotics is curbed by continuing international restrictions on cannabis.

Domestic U.S. law can also play a part in the establishment of cannabis regulation vis-à-vis the Single Convention. It is well established that if Congress
enacts a law that is inconsistent with a treaty, then the law supersedes and abrogates the treaty obligation, to the extent that the Congress expresses its purpose to do so. In other words, all that would be required of Congress to remove any legal barrier to regulation and taxation of cannabis, as far as domestic law is concerned, would be to pass a bill along the lines of the Cannabis Revenue Act.

Regulation and taxation are not consistent, however, with previous commitments under the treaty, hence it would be incumbent on Congress to make some provisions for the adjustment of those obligations, lest the nation be accused in other parts of the world of not making good on our promises. Accordingly, such legislation usually includes a provision stating the Congressional purpose that inconsistent treaty provisions be abrogated, requesting and directing the President to take the necessary steps to carry out this purpose. The Cannabis Revenue Act contains such a provision as Sec. 3, "Treaty and Convention Termination."

If the request were merely in the form of a resolution (as opposed to inconsistent legislation), then the President could choose to obey it or ignore it. Should the request be put in the form of a bill by itself, the President could veto it, and should the veto be overridden, he would be on very shaky ground legally if he refused at that point to terminate the treaty. There are very few instances in history where the President has refused to issue a notice of termination pursuant to the passing of conflicting legislation.

More important than the President's refusal or acquiescence in the denunciation of treaties, is the fact that the Congress has the effective power to terminate treaties with regard to domestic law. The President, as the sole organ of communication with foreign powers, has the right to give notice of denunciation; but his refusal to do so when conflicting legislation has been passed does not alter the fact that the domestic law is no longer bound by the terms of the treaty in question. The President's refusal to abrogate the treaty under these circumstances would create a breach of international law enabling another party adversely affected to seek relief in the International Court of Justice; however, it would not be an effective barrier to the implementation of superseding legislation.

Conclusion

There are three approaches to accommodating obligations of the United States under the Single Convention on Narcotic Drugs to a domestic cannabis policy of regulation and taxation: amending the treaty or denouncing the treaty. As stated previously, denunciation could be combined with an effort to re-sign and re-ratify the treaty with a reservation on cannabis use, or partial denunciation could be achieved by separating the provisions dealing with cannabis from the rest of the treaty. Enacting domestic law which conflicts with the treaty produces valid domestic law, but does not deal with international obligations and expectations.

The difficulty with amending is that it would, in almost all cases, require the agreement of a substantial portion of the other parties to the Convention. Not only does this severely limit the likelihood that such a change could be implemented, but it dramatically increases the time span under which a change could be brought about, since international conferences and indeed even international correspondence would take many years to plan and accomplish.
The most efficient means of dealing with international law issues vis-a-vis cannabis regulation and taxation is to enact superseding legislation, with a denunciation provision. While renegotiating of foreign treaties may be desirable for the purpose of explaining to friendly countries around the world the reasons behind the adoption of a new domestic policy on cannabis, such would not be required by the terms of law.

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FOOTNOTES

1There are 110 parties to the 1961 Single Convention on Narcotic Drugs and to the 1972 Protocol amending the Single Convention on Narcotic Drugs. See United Nations Document E/CN. 7/659, 21 November 1980, "Implementation of the International Treaties on the Control of Narcotic Drugs and Psychotropic Substances." The chief effect of the 1972 Protocol was to expand the power of the International Narcotics Control Board (INCB), which was created to enforce the technical provisions of the Convention.


3Id., Article 36, Section 1.


5Lande is quite emphatic on this point: "Parties cannot legally authorize possession of drugs for other than medical and scientific purposes..." (Page 113). The INCB, in its Report for 1975 (E/INCB/29, paragraph 28), reiterated this position: "Parties are...obliged to take the necessary measures to prevent any non-medical consumption. However... apart from authorizing its use licitly, each government is free to decide...on the most appropriate measures for preventing the non-medical consumption of cannabis." (Emphasis supplied).


8Vienna Convention, Articles 48-54, 57-64.
9Id., Article 62.

10Preamble, Single Convention on Narcotic Drugs.

See e.g., The American Law Institute, Foreign Relations Law of the United States, St. Paul, Minnesota, 1965, Section 145: (1) An act of Congress enacted after an international agreement of the United States becomes effective, that is inconsistent with the agreement, supersedes it as domestic law of the United States, if the purpose of Congress to supersede the agreement is clearly expressed. For relevant court citations see ibid. pg. 447, following.


13One of the few instances occurred in 1920, when President Wilson signed into law the Merchant Marine Act (Jones Act), but refused to comply with Section 34 of the Act, requiring that the President abrogate all treaties "which restrict the right of the United States to impose discriminatory customs duties on imports entering the United States on foreign vessels." (18 Stat. 1007). A press release issued by the Department of State on September 24, 1920, pointed out that the treaties in question did not contain provisions for termination, and that Section 34 was passed without having any language in the rest of the bill affect the treaties in question. In other words, nothing in the Jones Act was inconsistent with treaty obligations then in existence; the Congress merely sought to indicate that they may wish to impose discretionary import duties in the future, which would then have conflicted with international obligations. Wilson realized that this Congressional second-guessing amounted to a constitutional interference to the right of the President to formulate foreign affairs.

Upon examination, it is clear that the case is somewhat of an aberration in the history of U.S. treaty termination. More specifically, it does not apply to the case at hand, because (1) the Single Convention does contain a clear denunciation clause, and (2) any superseding legislation would clearly contradict existing international agreements.


14See Nelson, op. cit., supra note 13, pg. 278. See especially note at 59.
IV.

THE CANNABIS REVENUE ACT

A Prototype Federal Statute for the Regulation
and Taxation of Cannabis Commerce
DISCUSSION DRAFT

BRACKETS [ ] INDICATE OPTIONAL OR ARBITRARY PROVISIONS

98th Congress
1st Session

H.R. ________________________________

IN THE HOUSE OF REPRESENTATIVES

Mr./Mrs./Ms. __________________________ introduced the following bill;
which was referred to the Committee on _________________________

A BILL

To amend the Internal Revenue Code to tax and regulate the interstate
and foreign commerce in Cannabis, to amend the Controlled Substances
Act to delete marijuana and for other purposes.

BE IT ENACTED by the Senate and House of Representatives of the
United States of America in Congress assembled,

That Title 26 of the United States Code is amended by inserting
following Chapter 53 a new chapter to read as follows:

TITLE 26, UNITED STATES CODE
SUBTITLE E, EXCISE TAXES
CHAPTER 54, CANNABIS

Subchapter

A. Short title; statement of policy; definitions.
   §5901. Short title
   §5902. Statement of policy
   §5903. Definitions

B. Administration.
   §5904. Administration

C. Licenses.
   §5921. Unlawful businesses
   §5922. Licenses requirements and qualifications
   §5923. Exemptions
   §5924. Commercial cultivation, possession and trading of cannabis

D. Revenue.
   §5931. Imposition of tax
   §5932. Liability, determination and method of payments
   §5933. Exemption from taxation
   §5934. Credit, refund or allowance of tax
   §5935. Losses caused by a disaster
   §5936. Disposition of revenue
E. Advertising.
   §5941. Advertising

F. General Provisions.
   §5951. Application to states and territories
   §5952. Separability
   §5953. Unfair competition and unlawful practices

G. Enforcement.
   §5961. Inspection
   §5962. Criminal penalties
   §5963. Civil penalties
   §5964. Detention of containers
   §5965. Disposition and release of seized property
   §5966. Forfeiture of cannabis not stamped, marked or branded as required by law
   §5967. Burden of proof in cases of seizure of cannabis
   §5968. Penalty for having, possessing or using cannabis or property intended to be used in violating provisions of this chapter

SUBCHAPTER A - SHORT TITLE: STATEMENT OF POLICY: DEFINITIONS

§5901. Short title. This chapter shall be called The Cannabis Revenue Act of 1983.

§5902. Statement of policy. It is the policy of Congress and the purpose of this chapter to establish a comprehensive federal program to regulate the commerce in cannabis in the United States whereby

(a) the abuse of cannabis is diminished;

(b) the use of cannabis by children is curtailed;

(c) the public health is protected by regulating the purity of cannabis in commerce;

(d) illegal trafficking in cannabis is eliminated;

(e) the commerce in cannabis is taxed sufficiently to generate revenue commensurate to its place in the national economy;

(f) national resources shall no longer be diverted to ineffective law enforcement efforts regarding cannabis;

(g) medical research concerning cannabis is encouraged; and

(h) barriers to the development of a domestic hemp industry are removed.
§5903. Definitions.

(a) The term "cultivation" as used in this chapter means the propagation, nurture and harvest of cannabis.

(b) The term "processing" as used in this chapter means the importing, cleaning, testing, preparation, packaging or labelling of cannabis for sale.

(c) The term "cannabis" as used in this chapter means any part of the plant Cannabis sativa L. or any species thereof, including Cannabis indica, Cannabis ruderalis, or any other variety of the species Cannabis sativa L. whether growing or not; the seeds thereof, and resin extracted from any part of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt derivative, mixture or preparation of the mature stalks except the resin extracted therefrom, fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

(d) The term "trade" as used in this chapter means the sale, transfer, exportation, or distribution for any kind of consideration, of cannabis, whether by wholesale or retail and includes speculation, or trading in contracts for future delivery or purchase of any quantity of cannabis.

(e) The term "secretary" as used in this chapter means the Secretary of the Treasury.

(f) The term "commercial" as used in this chapter means of, or related to, a non-gratuitous exchange; or an exchange with consideration.

(g) The term "United States" as used in this chapter means the several States and Territories and the District of Columbia; the term "State" includes a Territory and the District of Columbia.

(h) The term "wholesale" as used in this chapter means the sale or transfer to a retailer, or sale or transfer for purposes other than human consumption.

(i) The term "purity" as used in this chapter means freedom from substances not indigenous to cannabis, except for water.

(j) The term "gratuitous" as used in this chapter means without consideration; non-commercial. Transfer of anything of value contemporaneously with the sale or tendering for sale of any goods, services or other things of value, shall be deemed not gratuitous.
§5904. Administration.

(a) The Secretary of the Treasury shall enforce this chapter.

(b) The Secretary is authorized and directed to prescribe such rules and regulations as may be necessary to carry out the provisions of this chapter.

(c) The Secretary is authorized to require in such manner and form as shall be prescribed, such reports as are necessary to carry out his powers or duties.

(d) Not later than March 1 of each year following the effective date of this chapter, the Secretary shall submit to the Speaker of the House of Representatives and the President of the Senate a comprehensive and detailed written report with respect to the cultivation, processing, storage, handling and distribution of cannabis subject to the provisions of this chapter, the inspection of establishments operated in connection therewith and recommendations for legislation to improve the regulation of cannabis.

(e) The Secretary shall by regulation prescribe the type or kinds of containers which may be used to contain, store, transfer, convey, remove or withdraw cannabis prior to packing for sale at retail.

(f) In carrying out his duties prescribed by this chapter, the Secretary shall consult with the Secretary of Health and Human Services in order to further the purposes of this chapter.

§5921. Unlawful businesses.

(a) It shall be unlawful, except pursuant to a license issued under this chapter by the Secretary, and in compliance with the regulations promulgated under the authority of this chapter;

1. to cultivate cannabis for other than personal use;

2. to process cannabis for other than for personal use;

3. to distribute cannabis for consideration to any person;

4. to possess, cultivate or process cannabis with intent to distribute for consideration to any person;

5. to otherwise be engaged in commerce in cannabis for consideration.
(b) As used in this section, and Section 5962, "personal use" means the use or consumption of cannabis by a person or members of his immediate household and donees. The possession of in excess of the greater of

1. [25] cannabis plants; or
2. [5] pounds of crude cannabis

shall raise a rebuttable presumption that possession is not for personal use.

§5922. License requirements and qualifications.

(a) Applications for license. Every person, before commencing business as a cultivator, processor or trader of cannabis, and at such other time as the Secretary shall by regulation prescribe, shall make application for and obtain the appropriate license prescribed by this subsection. The application shall be in such form as the Secretary shall prescribe and shall set forth, truthfully and accurately, the information called for on the form. Applications shall not be denied unless the Secretary or his designee finds by a preponderance of the evidence following notice and a hearing, that such applicant has failed to disclose any material information required or made any material false statement in the application therefor; provided, however, that no license under this chapter shall be issued to any applicant who has not reached the age of [21] years.

(b) Conviction of any cannabis-related offense under state or federal law, prior to the effective date of this Act, shall not disqualify any applicant.

(c) Cannabis licenses issued pursuant to this chapter shall expire upon the [2nd] anniversary of the issuance thereof, unless renewed.

(d) The surviving spouse or legal representative of a deceased non-corporate licensee may continue to exercise the license for 30 days following the death of the licensee, but thereafter only with the written consent of the Secretary, which consent shall expire, if not sooner revoked, [15] months from the date of death. Consent shall be withheld unless the said surviving spouse or legal representative meets the qualifications prescribed by this chapter for the type of license sought to be retained.

(e) The Secretary, his agents and employees, may, during reasonable business hours and without notice thereof, conduct such inspections of the licensed premises, including the books, records and accounts of the licensee, as he shall deem appropriate for the enforcement of this chapter.

(f) Appeals. Any person aggrieved by an action of the Secretary shall have such recourse as provided in the Act of September 6, 1966, P.L. 89-554, as amended (Title 5, United States Code, Section 551 et seq. and Section 701 et seq.).
(g) Sale or distribution of cannabis by vending machine or similar automation is prohibited.

(h) No license issued under this chapter shall be transferrable to any other person, except in accordance with the subsection (d) of this section concerning death of the licensee.

§5923. Exemptions. The prohibitions contained in sections 5921(a)(3), 5921(a)(4) and 5921(a)(5) shall not apply to a common carrier or freight forwarder for hire.

§5924. Commercial cultivation, processing and trading of cannabis.

(a) Commercial Cultivation.

1. The Secretary shall issue cultivation licenses to any person who shall meet the requirements prescribed in §5922 of this chapter.

2. The holding of a commercial cultivation license shall be conditional upon compliance with this chapter and the regulations promulgated hereunder.

3. It shall be unlawful for the holder of a commercial cultivation license to distribute cannabis commercially to any person not holding a current license issued by authority of this chapter. A copy of the license bearing the seal of the Secretary shall constitute prima facie evidence of such license. Except in case of conspiracy or accomplice liability, holders of a commercial cultivation license shall not be liable for the acts of transferees in violation of this chapter. For purposes of this provision, transfer is accomplished when the cultivator makes physical delivery of the cannabis, despite any reservation of a security interest or delivery of a document of title at a different time or place.

(b) Processing.

1. The Secretary shall issue processing licenses to any person who shall meet the requirements prescribed in §5922 of this chapter.

2. The holding of a processing license shall be conditional upon compliance with this chapter and the regulations promulgated hereunder.

3. No person licensed to process shall distribute packaged cannabis if the package fails to bear a permanent label containing the following information, in such style and form as the Secretary may prescribe:

   a. the identity of the contents by species and variety;

   b. the name and place of business of the processor;
c. the following statements:

(1) "Caution: Smoking any substance irritates the mouth, throat, breathing passages and lungs, and may be harmful to other organs. Inexperience or overdose may cause confusion or disorientation. Do not use around or when operating hazardous equipment. Do not use during pregnancy. The operation of a motor vehicle under the influence of cannabis, alcohol, or any other intoxicant is a serious crime, and may result in the loss of your license to drive."

d. the net quantity of contents in terms of dry weight by grams;

e. potency as expressed as the percentage of THC by dry weight, without seeds;

f. such marking or branding as shall prevent deception of the consumer with respect to the contents of the quality thereof.

4. The Secretary shall promulgate regulations concerning the labelling of cannabis:

a. to prohibit deception of the consumer with respect to such cannabis or the quantity thereof and to prohibit, irrespective of falsity, such statements relating to age, cultivation processes, analyses, guarantees and scientific or irrelevant matters as the Secretary finds to be likely to mislead the consumers;

b. to prohibit statements on the label that are disparaging of a competitor's products or are false, misleading, obscene or indecent;

c. to prevent deception of the consumer by use of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, and to prevent the use of a graphic, pictorial or emblematic representation of any such individual or organization, if the use of such name or representative is likely to lead the consumer to believe that the product has been endorsed, made or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization. This clause shall not apply to the use of the name of any person engaged in business as a cultivator, processor, distributor, importer or retailer of cannabis, nor to the use by any person of a trade or brand name used by him or his predecessor in interest prior to the effective date of this chapter. This clause shall not apply to regulations requiring, at time of release from customs custody, certificates issued by foreign governments covering origin, age, and identity of imported cannabis. Provided further, that nothing herein, nor any decision, ruling, or regulation of any department of the Government shall deny the right of any person to use any trade name or brand of foreign origin not presently effectively registered in the United States Patent and Trademark Office which has been used by such person or predecessor in the United States for a period of at least five years
last past, if the use of such name or brand is qualified by the name of the locality in the United States in which the product is produced, and, in the case of the use of such name or brand on any label or in any advertisement, if such qualification is as conspicuous as such name or brand.

5. It shall be the duty of processing licensees to analyze and test cannabis intended for distribution and to determine potency of such cannabis for the purpose of labeling.

6. It shall be unlawful for any processing licensee to distribute or commercially possess for more than 24 hours any package containing cannabis which fails to bear a tax stamp or such other documentation as the Secretary may prescribe as evidence that the revenue imposed by this chapter has been paid.

7. The provisions of subsections (3), (4) and (5) shall not apply in the case of transfer of unpackaged cannabis between licensed processors.

8. Before any license required by this section is granted to a processor, the Secretary may require a bond in such form and amount as he may prescribe to insure compliance with the terms of the license and the provisions of this chapter.

9. It shall be unlawful for the holder of a processing license to distribute cannabis to any person not holding a current license issued by authority of this Act.

10. No holder of a processing license shall affix the tax stamps or such other documentation that the Secretary may require pursuant to subsection (4) to any package containing cannabis which contains a diluant, retardant or accelerator, preservative or any additive of any kind, the effect whereof is to reduce the purity of cannabis to less than 100%.

11. A processing licensee who takes possession of processed cannabis imported into the United States shall comply with all requirements set forth in this subsection.

12. It shall be unlawful for any person to alter, mutilate, destroy, obliterate or remove any mark, brand or label upon cannabis held for distribution in interstate or foreign commerce or after shipment therein, except as authorized by federal law or except pursuant to regulations of the Secretary authorizing relabeling for purposes of compliance with the requirements of this chapter.

(c) Commercial trading.

1. The Secretary shall issue trade licenses to any person meeting the qualifications of §5922 for the sale of cannabis at retail.

2. It shall be unlawful for the holder of a trade license to sell, offer for sale or otherwise transfer with consideration cannabis to any person who has not reached the age of [18] years or who is intoxicated.
3. Before any license required by this section is granted to a trader, the Secretary may require a bond in such form and amount as he may prescribe to insure compliance with the terms of the license and the provisions of this chapter.

[(d) Research license. The Secretary shall issue research licenses for the conduct of bona fide medical, social, behavioral or other research upon such terms and conditions as he shall prescribe consistent with the purposes of this Act as set forth in §5902.]

[(d) Research license. Under such regulations as the Secretary may prescribe and on the filing of such bonds and applications as he may require, any scientific university, college of learning or institution of scientific research may produce, process, receive, blend, treat, test and store, without payment of tax, for experimental or research use but not for consumption (other than organoleptic tests) or sale, in such quantities as may be reasonably necessary for such purposes.]

SUBCHAPTER D - REVENUE

§5931. Imposition of tax.

(a) Subject to adjustment as provided herein, there is hereby imposed on all cannabis sold in or imported into the United States a tax at the rate of

1. [§20] per ounce of cannabis containing not more than 2% THC and a proportionate tax at the same rate on all fractional parts of an ounce of such cannabis;

2. [§25] per ounce of cannabis containing more than 2% but not more than 4% THC and a proportionate tax at the same rate on all fractional parts of an ounce of such cannabis;

3. [§35] per ounce of cannabis containing more than 4% but not more than 6% THC and a proportionate tax at the same rate on all fractional parts of an ounce of such cannabis;

4. [§45] per ounce of cannabis containing more than 6% THC and a proportionate tax at the same rate on all fractional parts of an ounce of such cannabis.
(b) Adjustment of tax rate.

1. On March 1 of each odd-numbered year following the enactment of this chapter, the aforesaid tax rates shall be increased by a percentage equal to the percent increase, if any, in the cost of living.

2. The cost of living shall be based on the "Revised (all urban consumer) Consumer Price Index-Cities (1967=100)," hereinafter called the Index, published by the Bureau of Labor Statistics of the United States Department of Labor. The Index number in the column entitled "All items" for the month of December next following the enactment of this chapter shall be the "base Index number" and the corresponding Index number for the month of December prior to the first day of March upon which adjustments are required to be made hereunder, shall be the "current Index number." The current Index number shall be divided by the base Index number. From the quotient thereof, there shall be subtracted the integer 1 and any resulting positive number shall be deemed to be the percentage of increase in the cost of living. 

(b) Adjustment of tax rate.

1. On March 1 of each odd-numbered year following the enactment of this chapter, the aforesaid tax rates shall be increased by a percentage equal to the percent increase, if any, if the cost of living.

2. The cost of living shall be based on the GNP implicit price deflator. The first increase, if any, shall reflect the percentage increase, if any, of the aforesaid GNP implicit price deflator published next prior to the date of such increase, compared to the GNP implicit price deflator published next prior to the enactment of this chapter. In subsequent odd-numbered years in which an increase, if any, to cannabis tax rates is required to be made as prescribed herein, such increase, if any, shall be the percentage of increase or decrease in the GNP implicit price deflator published next prior to the effective date of such increase, compared to the GNP implicit price deflator published next prior to the most recent increase in such cannabis tax rates.

3. For purposes of this section, the term "GNP implicit price deflator" means the preliminary estimate of the implicit price deflator, seasonally adjusted, for the gross national product, as computed and published by the Department of Commerce.

§5931. Imposition of Tax. The licensed processor shall remit to the Secretary [on a quarterly basis] [90%] of gross receipts from the sale of cannabis. For purposes of this provision, gross receipts shall include all consideration therefor, whether received by the processor or not.
§5932. Liability, determination and method of payments.

(a) Liability for tax. The holder of a processing license shall be liable for the taxes imposed thereon by §5931.

(b) Determination and method of payment. The taxes imposed by §5931 shall be determined at the time of removal of the cannabis from the processor's premises. Such taxes shall be paid on the basis of a return. The secretary shall, by regulation, prescribe the period or event for which such return shall be made, the information to be furnished, the time for making the return, and the time for payment of such taxes. Any postponement under this subsection of the payment of taxes determined at the time of removal may be conditioned upon the filing of such additional bonds, and upon compliance with such requirements, as the secretary may require. All administrative and penal provisions of this title, insofar as applicable, shall apply to any tax imposed by §5931.

(c) Use of government depositaries. The secretary may authorize Federal Reserve banks, and incorporated banks or trust companies which are depositaries or financial agents of the United States, to receive any tax imposed by this chapter, in such manner, at such times, and under such conditions as he may prescribe; and he shall prescribe the manner, time, and condition under which the receipt of such tax by such banks and trust companies is to be treated as payment for tax purposes.

(d) Assessment. Whenever any tax required to be paid by this chapter is not paid in full at the time required for such payment, it shall be the duty of the secretary, subject to the limitations prescribed in this chapter, on proof satisfactory to him, to determine the amount of tax to be paid which has been omitted, and to make an assessment therefor against the person liable for the tax. The tax so assessed shall be in addition to the penalties imposed by law for failure to pay such tax when required. Except in cases where delay may jeopardize collection of the tax, or where the amount is nominal or the result of an evident mathematical error, no such assessment shall be made until and after the person liable for the tax has afforded reasonable notice and opportunity to show cause, in writing, against such assessment.

§5933. Exemption from taxation.

(a) Cannabis for research purposes. The Secretary, upon proof by accredited scientific authorities or agencies that they are about to engage in or are engaging in research which requires the use of cannabis, may authorize the removal of cannabis from a processor's premises without tax stamps affixed and without the payment of tax, provided, however, that such cannabis packages shall be packaged and plainly marked, "For Research Purposes Only" and bear such other label as the secretary shall by regulation prescribe.

(b) Cannabis products released in bond from customs custody. Cannabis products, imported or brought into the United States, may be released from customs custody, without the payment of a tax, for
delivery to a processor duly licensed to import cannabis, in accordance with such rules and regulations and under such bond as the secretary shall prescribe.

(c) Processors of cannabis stalks or hemp shall be exempt from taxation under the terms of this chapter.

(d) Losses.

1. No tax shall be collected in respect of any cannabis lost or destroyed while in bond, except that tax shall be collected

   a. in the case of loss by theft, if the secretary shall find that the theft occurred with connivance, collusion, fraud or negligence on the part of the person responsible for the tax, or the owner, consignor, consignee, bailee, or carrier, or the agents of employees of such person; and

   b. in the case of voluntary destruction, unless the cannabis was destroyed under government supervision, or on such adequate notice to, and approval by, the secretary as regulations shall provide.

2. In any case in which the cannabis is lost or destroyed, whether by theft or otherwise, the secretary may require, by regulation, the processor or other person liable for the tax to file a claim for relief from the tax and submit proof as to the cause of such loss. In every case where it appears that the loss was by theft, the burden shall be on the processor or other person liable for the tax to establish to the satisfaction of the secretary, that such loss did not occur as the result of connivance, collusion, fraud, or negligence on his/her part or by the consignor, consignee, bailee, or carrier, or the agents or employees of such person.

(e) Packages of cannabis manufactured, imported, or packaged (1) for export from the United States or (2) for delivery to a vessel or aircraft, as supplies, for consumption beyond the jurisdiction of the Internal Revenue laws of the United States shall be exempt from the requirements of this chapter, but such exemptions shall not apply to cannabis manufactured, imported, or packaged for sale or distribution to members or units of the Armed Forces of the United States.

§5934. Credit, refund or allowance of tax.

(a) Credit or refund. Credit or refund of any tax imposed by this chapter shall be allowed or made [without interest] to the processor or trade licensee on proof satisfactory to the secretary that the claimant processor or trade licensee has paid the tax on cannabis withdrawn by him or lost by fire, casualty, or act of God, while in the possession or ownership of the claimant.
(b) Allowance. If the tax has not yet been paid on the cannabis products proved to have been withdrawn from the market or lost or destroyed as aforesaid, relief from the tax on such articles may be extended upon the filing of a claim for allowance therefor in accordance with such regulations as the secretary shall prescribe.

(c) Limitation. Any claim for credit or refund under this section shall be filed within six months after the date of the withdrawal from the market, loss, or destruction of the articles to which the claim relates, and shall be in such form and contain such information as the secretary shall by regulation prescribe.

§5935. Losses caused by a disaster.

(a) Authorization. Where the President has determined under the Disaster Relief Act of 1974, that a "major disaster" as defined in such Act has occurred in any part of the United States, the secretary shall pay [without interest] an amount equal to the amount of the Internal Revenue taxes paid or determined and customs duties paid on cannabis products removed, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of such disaster occurring in such part of the United States on and after the effective date of this section, if such cannabis products were held and intended for sale at the time of such disaster. The payments authorized by this section shall be made to the person holding such cannabis at the time of the disaster.

(c) Claims. No claims shall be allowed under this section unless

1. Filed within six months after the date on which the President makes the determination that the disaster referred to in subsection (a) has occurred; and

2. The claimant furnishes proof to the satisfaction of the secretary that

   a. he was not indemnified by any valid claim of insurance or otherwise in respect of the tax, or tax and duty, on the cannabis products covered by the claim, and

   b. he is entitled to payment under this section. Claims under this section shall be filed under such regulations as the secretary shall prescribe.

(c) Destruction of cannabis products. Before the secretary makes payments under this section in respect of the tax, or tax and duty, on the cannabis products condemned by a duly authorized official or rendered unmarketable, such cannabis products shall be destroyed under such supervision as the secretary may prescribe, unless such cannabis products were previously destroyed under supervision satisfactory to the secretary.
(d) Other laws applicable. All provisions of law, including penalties, applicable in respect of Internal Revenue taxes on cannabis products shall insofar as applicable and not inconsistent with this section, be applied in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of such taxes.

[§5936. Disposition of Revenue. All monies received by the secretary under this chapter, whether by cannabis taxes, license or application fees, or other such fees as the secretary shall by regulation prescribe and collect, shall be distributed as follows:

a. [ ]% to the general fund of the United States treasury;

b. [ ]% to such States as shall have elected to permit commerce in cannabis consistent with this chapter in such proportion as

the population of each state (as determined by the last decennial census) shall bear to the total population (as determined by the last decennial census) of all states allowing commerce in cannabis.

c. Such revenues shall be distributed to the several states entitled under this section 90 days following the end of the fiscal year.

d. Provided, however, that no state shall be eligible for revenue unless it permits commerce in cannabis and enacts and enforces appropriate provisions of law to

1. Regulate availability of cannabis to minors.

2. Prohibit the operation of motor vehicles under the influence of cannabis, based on quantitative standards for actual levels of impairment.

3. Secure to adults the privilege to possess and cultivate cannabis for personal use as defined in §5921 of this chapter.

e. No state shall be eligible for revenue sharing hereunder which enacts laws imposing further restrictions on advertising, labeling or personal use as defined in this chapter.]
§5936. Disposition of revenue. All monies received by the secretary under this chapter, whether by cannabis taxes, license or application fees, or other such fees as the secretary shall by regulation prescribe and collect, shall be deposited to the general fund of the United States treasury.

CHAPTER E - ADVERTISING

§5941. Advertising. No person shall, directly or indirectly, personally or through any agent or employee, whether for consideration or gratuitously cause to be published in a newspaper or magazine distributed anywhere in the United States or to be broadcast or cablecast to a radio or television receiver in the United States, or to appear in any display signs or personal solicitation, or in any manner of advertising, any advertisement of notice to promote or encourage the consumption or use in any way of cannabis or any cannabis product. The preceding prohibition shall not apply to the following:

(a) Cannabis packages, crates, cartons and boxes of cannabis products, provided, however, that no such items shall be used for any display, ornament or fixture on the licensed premises.

(b) Logos contained in private correspondence or trade publications not intended for public distribution.

(c) A single notice reading "[Authorized Cannabis Outlet]," in a style prescribed by the secretary.

§5941. Advertising. It shall be unlawful for any person engaged in business as a cultivator, processor, distributor, researcher or retailer of cannabis, or any agent, servant, or employee of such person, to publish or disseminate or cause to be published or disseminated by radio or television broadcast or cablecast, or in any newspaper, periodical or printed or graphic matter, any advertisement of cannabis or any cannabis products, if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with such regulations to be prescribed by the secretary:

(a) As will prevent deception of the consumer with respect to the products advertised and as will prohibit, irrespective of falsity, such statements relating to age, origin, cultivation, processes, analyses, guarantees and scientific or irrelevant matters as the secretary finds to be likely to mislead the consumer;
(b) As will provide the consumer with adequate information as to the identity and quality of the products advertised, the potency thereof, and the person responsible for the advertisement;

(c) As will prohibit statements that are disparaging of a competitor's products or are false, misleading, obscene or indecent; and

(d) As will prevent statements inconsistent with any statement on the labeling of the products advertised.

(e) The prohibitions of this subsection and regulations thereunder shall not apply to the publisher of any newspaper, periodical or other publication, or radio or television broadcaster or cablecaster, unless such publisher or radio or television broadcaster or cablecaster is engaged in business as a cultivator, processor, distributor or retailer, or as an importer or wholesaler of cannabis.


SUBCHAPTER F - GENERAL PROVISIONS

§5951. Application to states and territories.

(a) State law not contravened. Nothing in this act shall be construed as authorizing the possession, commercial distribution or possession of cannabis with intent to distribute commercially, in any state or territory in contravention of the laws of such state or territory.

(b) All cannabis transported into any State or Territory or the District of Columbia, and remaining therein for use, consumption, sale or storage therein, shall, upon the arrival within the limits of such State or Territory or the District of Columbia, be subject to the operation and effect of the laws of such State or Territory or the District of Columbia, enacted in the exercise of its police powers to the same extent and in the same manner as though such cannabis had been produced in such State or Territory or the District of Columbia, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

§5952. Separability. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby.
§5953. Unfair competition and unlawful practices. It shall be unlawful for any person engaged as a cultivator, processor, distributor, researcher or retailer of cannabis, directly or indirectly or through an affiliate to require, by agreement or otherwise, that any retailer engaged in the sale of cannabis purchase any such cannabis from such person to the exclusion in whole or in part of cannabis sold or offered for sale by other persons in interstate or foreign commerce, if such requirement is made in the course of interstate or foreign commerce, or if such person engages in such practice to such extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such requirement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce:

(1) by acquiring or holding (after expiration of any existing license) any interest in any license with respect to the premises of the retailer;

(2) by acquiring any interest in real or personal property owned, occupied or used by the retailer in the conduct of his business;

(3) by furnishing, giving, renting, lending or selling to the retailer, any equipment, fixtures, signs, supplies, money services or other thing of value, subject to such exceptions as the secretary shall by regulation prescribe, having due regard for public health, the quantity and value of articles involved, established trade customs not contrary to the public interest and the purposes of this subsection;

(4) by paying or crediting the retailer for any advertising, display or distribution service;

(5) by guaranteeing any loan or the repayment of any financial obligation of the retailer;

(6) by extending to the retailer credit for a period in excess of the credit period usual and customary to the industry for the particular class of transactions, as ascertained and prescribed by the secretary; or

(7) by requiring the retailer to take and dispose of a certain quota of any of such products.

SUBCHAPTER G - ENFORCEMENT

§5961. Inspection. All premises and activities conducted under license issued pursuant to this chapter shall be subject to inspection during reasonable hours. Cultivating, processing and storage of cannabis in violation of this chapter shall be subject to search and seizure in accordance with the Fourth Amendment to the Constitution and the Federal Rules of Criminal Procedure.
§5962. Criminal penalties.

(a) Whoever,

1. engages in business as a cultivator, processor, distributor, researcher, importer, or retailer of cannabis without having a current license issued in accordance with this chapter; or

2. with intent to defraud the United States shall purchase, receive, possess, offer for sale or sell or otherwise dispose of, after removal, any cannabis upon which the tax has not been determined in the manner and at the time prescribed by this chapter or regulations thereunder; or

3. with intent to defraud the United States shall purchase, receive, possess, offer for sale or sell or otherwise dispose of, after removal, any cannabis which is not put up in packages as required under §5924 or which are put up in packages not bearing the marks, labels and notices, as required under this section; shall, for each such offense, be fined not more than [§_________], or imprisoned not more than [____ mo./yrs.] or both.

(b) Whoever shall possess a quantity of cannabis upon which no tax has been paid, not for personal use as defined in §5921 of this chapter shall be fined not more than [§_________], or imprisoned not more than [____ mo./yrs.] or both.

(c) Whoever shall, with intent to defraud the United States, destroy, obliterate, or deface any mark, label or notice prescribed or authorized by this chapter or regulations thereunder, to appear on, or be affixed to, any package of cannabis before such package is emptied, shall be fined not more than [§_________], or imprisoned not more than [____ mo./yrs.] or both.

§5963. Civil penalties.

(a) Whoever willfully omits, neglects or refuses to comply with any duty imposed upon him by this chapter, or to do, or cause to be done, any of the things required by this chapter, or does anything prohibited by this chapter, shall in addition to any other penalty provided in this title, be liable to penalty of [$1,000], to be recovered, with costs of suit, in a civil action, except where a penalty under subsection (b) may be collected from such person by assessment.

(b) Whoever fails to pay any tax imposed by this chapter at the time prescribed by law or regulations, shall, in addition to any other penalty provided in this title, be liable to a penalty of [5] percent of the tax due but unpaid.
§5964. Detention of containers. It shall be lawful for an internal revenue officer to detain any package or other container containing or supposed to contain cannabis when he has reason to believe that the tax imposed by law on such cannabis has not been paid or determined as required by law, or that such package or container is being removed in violation of law; and every such container may be held by him at a safe place until it shall be determined whether the property so detained is liable by law to be proceeded against for forfeiture; but such summary detention shall not continue in any case longer than 72 hours without process of law or intervention of the officer to whom such detention is to be reported.

§5965. Disposition and release of seized property.

(a) Forfeiture.

1. All cannabis forfeited, summarily or by order of court, under any law of the United States, shall be delivered to the Administrator of General Services to be disposed of as hereinafter provided.

2. The administrator of General Services shall dispose of all cannabis which has been delivered to him pursuant to paragraph (1)

   a. by delivery to such government agencies as have a need for such cannabis for medicinal or scientific purposes, or for any other official purpose for which appropriated funds may be expended by a government agency; or

   b. by gifts to such eleemosynary institutions as, in his opinion, have a need for such cannabis for medicinal or other lawful purposes; or

   c. by destruction.

3. Except as otherwise provided by law, no cannabis which has been seized under any law of the United States may be disposed of in any manner whatsoever except after forfeiture and as provided in this subsection.

4. The Administrator of General Services is authorized to make all rules and regulations necessary to carry out the provision of this subsection.

5. Nothing in this section shall affect the authority of the Secretary, under the customs or internal revenue laws, to remit or mitigate the forfeiture, or alleged forfeiture, of cannabis, or to compromise any civil or criminal case in respect of such cannabis prior to commencement of suit thereon, or to compromise any claim under the customs laws in respect to such cannabis.
(b) All cannabis sold by order of court, or under process of
distraint, shall be sold subject to tax; and the purchaser shall
immediately, and before he takes possession of said cannabis, pay
the tax thereon, pursuant to the applicable provisions of this
chapter and in accordance with regulations to be prescribed by
the secretary.

(c) Release of seized vessels or vehicles by courts. Notwith-
standing any provisions of law relating to the return on bond of
any vessel or vehicle seized for the violation of any law of the
United States, the court having jurisdiction of the subject
matter may, in its discretion and upon good cause shown by the
United States, refuse to order such return of any such vessel or
vehicle to the claimant thereof. As used in this subsection, the
word "vessel" includes every description of watercraft used, or
capable of being used, as a means of transportation in water or
in water and air; and the word "vehicle" includes every animal
and description of carriage or other contrivance used, or capable
of being used, as a means of transportation on land or through air.

§5966. Forfeiture of cannabis not stamped, marked or branded as
required by law.

(a) Unmarked or unbranded packages. All cannabis found in any
container or package required by this chapter or any regulation
issued pursuant thereto to bear a mark, brand or identification,
which container or package is not marked, branded or identified in
compliance with this chapter and regulations issued pursuant
thereto, shall be forfeited to the United States.

(b) Unstamped packages or containers. All cannabis found in any
container required by this chapter or any regulations issued
pursuant thereto to bear a stamp, which container is not stamped
in compliance with this chapter and regulations issued pursuant
thereto, shall be forfeited to the United States.

§5967. Burden of proof in cases of seizure of cannabis. Whenever
seizure is made of any cannabis found elsewhere than on the premises
of a cannabis processing plant, or than in any warehouse authorized
by law, or than in the store or place of business of a wholesale
cannabis dealer, or than in transit from any one of said places;
or if any cannabis found in any one of the places aforesaid, or in
transit therefrom, which have not been received into or sent out
therefrom in conformity to law, or in regard to which any of the
entries required by law or regulations issued pursuant thereto, to
be made in respect of such cannabis, have not been made at the time
or in the manner required, or in respect to which any owner or person
having possession, control or charge of said cannabis, has omitted
to do any act required to be done, or has done or committed any act
prohibited in regard to said cannabis, the burden of proof shall be
upon the claimant of said cannabis to show that no fraud has been
committed, and that all the requirements of the law in relation to
the payment of the tax have been complied with.
§5968. Penalty for having, possessing or using cannabis or property intended to be used in violating provisions of this chapter. It shall be unlawful to have or possess any cannabis or property intended for use in violating any provision of this chapter or regulations issued pursuant thereto, or which has been so used, and every person so having or possessing or using such cannabis or property, shall be fined not more than ($5,000), or imprisoned not more than [1] year or both.

REPORTS AND STUDIES

Sec. 2. (a) The Secretary shall report to the Congress any matters which require immediate changes in this chapter in order to prevent abuses and evasions of this chapter or the rules and regulations promulgated thereunder or to rectify undesirable conditions with the administration of this chapter.

(b) For the five years next following the enactment of this chapter, the Secretary shall carry on a continuous study and investigation of cannabis commerce in order (1) to ascertain any defects in this chapter or in the administration thereof or any evasion of said law or said rules and regulations as may arise or be practiced, and (2) to formulate recommendations for changes in said law and the rules and regulations promulgated thereunder to prevent such abuses and evasions, and (3) to guard against the use of said law and regulations issued thereunder as a cover for the carrying on of criminal activities. Such study and investigation shall thereafter be conducted every five years.

TREATY AND CONVENTION TERMINATION

Sec. 3. It is the judgment of the Congress that articles in treaties and conventions entered into by the United States, in so far as they provide for the prohibition of the cultivation, sale, use and importation of cannabis, and any other treaty provision in conflict with the provisions of this Act be denounced and terminated, and to this end the President be, and hereby is requested and directed, to give notice to the several governments, the United Nations and other appropriate international bodies, that all such treaties and conventions will terminate and cease to be of force on the expiration of such periods following notice of denunciation or abrogation provided for in such treaties and conventions.
AMENDMENTS TO TITLE 18, UNITED STATES CODE

Sec. 4.
(a) Section 842(d) of Title 18, United States Code is amended by striking out in paragraph (5), "marihuana (as defined in §4761 of the Internal Revenue Code of 1954) or."

(b) Section 842(i) of Title 18, United States Code is amended by striking out in paragraph (3) "marihuana (as defined in §4761 of the Internal Revenue Code of 1954) or."

(c) Section 992(d) of Title 18, United States Code, is amended by striking out in paragraph (3) "marihuana or."

(d) Sections 992(g) and (h), United States Code, are amended by striking out in paragraph (3) of each subsection "marihuana or."

(e) Section 2516 of Title 18, United States Code, is amended in paragraph (1)(e) by striking out "marihuana."

AMENDMENTS TO TITLE 19, UNITED STATES CODE

Sec. 5. Section 1584(a) of Title 19, United States Code, is amended in paragraph (2) in the second sentence by striking out "or marihuana," wherever it appears; and in the last sentence of such paragraph by striking out "and marihuana," and striking out "those terms by sections 102(17);" and by striking out "terms" where it first appears and inserting "term" in lieu thereof.

AMENDMENTS TO TITLE 21, UNITED STATES CODE

Sec. 6. (a) Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended by deleting paragraph (15) and redesignating all succeeding paragraphs.

(b) Section 202 of the Controlled Substances Act (21 U.S.C. 812) is amended by striking out in Schedule I(c)(10) "Marihuana," and redesignating succeeding paragraphs.

(c) Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended by

1. In subsection (b)(1)(A) striking out "marihuana."

2. In subsection (b)(1)(B) striking out "marihuana."


4. In subsection (b)(5) striking out "marihuana."
5. Striking out subsection (b)(6).

6. Redesignating subsection (b)(5) as subsection (b)(4).

AMENDMENTS TO TITLE 22, UNITED STATES CODE

Sec. 7. Section 502(a)(1), (b) of the Act of December 29, 1981, P.L. 97-113 (22 U.S.C. §2291(d)) is repealed.

AMENDMENTS TO TITLE 49, UNITED STATES CODE

Sec. 8. Section 787 of Title 49, United States Code (amended by Section 1102(r) of the Comprehensive Drug Abuse, Treatment and Prevention Act of 1970 (P.L. 91-513) is amended in subsection (d) by striking out "and shall also include marihuana as defined by section 103(15) of such Act."
V.

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The Regulation and taxation of cannabis commerce.

The following title has not been selected for cataloging and is herewith returned to you:

Sincerely,

Nathan R. Einhorn
Chief