

## Public Law 24-149

### Bill No. 13 (COR)

As amended by the Author and as further amended on the Floor.

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**AN ACT TO REPEAL AND REENACT CHAPTER 67 OF TITLE 9, GUAM CODE ANNOTATED, AND TO REPEAL §80.33 AND §§80.33.1 THROUGH 80.33.10, OF TITLE 9, GUAM CODE ANNOTATED RELATING TO THE REGULATION AND ENFORCEMENT OF CONTROLLED SUBSTANCES AND THE "DRUG TREATMENT AND ENFORCEMENT FUND" WHICH WAS CREATED TO SUPPORT DRUG TREATMENT AND EDUCATION AND LAW ENFORCEMENT.**

#### **BE IT ENACTED BY THE PEOPLE OF GUAM:**

**Section 1.** Legislative Intent. The Guam Uniform Controlled Substances Act (Chapter 67 of Title 9 of the Guam Code Annotated) was adopted in 1972, and since then, few changes have been made to the Act to reflect the changing problem of drug abuse. Even though the penalties have been addressed through tougher sentencing requirements, the crime itself has always been viewed only as an abuse of "illegal," drugs. Controlled substance abuse is not limited to the illegal manufacture, distribution and use of Schedule I controlled substances, but it also includes the transfer of legitimate controlled substances, listed in Schedules II through V, into the illegal market. These "legal" controlled substances which, may be readily available in hospitals and pharmacies for medical treatment, are diverted into illegal use by individuals by means of prescription forgeries, multiple physician visits/record alterations, or outright thefts.

The National Institute of Drug Abuse, which provides Drug Abuse Warning Network (DAWN) data, has found that approximately thirty percent (30%) of all drug overdose injuries and fatalities recorded in emergency rooms in the United States are caused by drugs that have legal medical uses. In the 1992 data the number of lawful controlled

substance emergency cases exceeded that of heroin, PCP, LSD and amphetamine combined.

The Guam Department of Public Health & Social Services ("DPH&SS") is the lead agency responsible for administering the present Act relating to the manufacture, distribution and dispensing of controlled substances. Through inspections, record audits and investigations, DPH&SS has discovered numerous instances of unaccountability of controlled substances by regulated businesses and practitioners. Of the approximately twenty (20) record audits and inspections conducted by DPH&SS on regulated businesses in 1992 and 1993, more than half had some form of serious discrepancy ranging from improper record-keeping to unaccountability of controlled eighteen (18) substances. In addition, three (3) practitioners and numerous suspected drug diverters were investigated, and the problems continue to exist.

It is the intent of the Twenty-Fourth Guam Legislature to explicitly acknowledge the existence of diversion of controlled substances and to address that problem by granting broader enforcement and regulatory powers to DPH&SS. In addition, it is the intent to direct the Attorney General's Office, the Guam Police Department and the Department of Mental Health & Substance Abuse to work hand-in-hand in combating this diversion and specifically indicate the roles each involved agency will play; update the scheduled drug listing; broaden criminal activities involved in controlled substances; create uniformity with Federal law; and to keep the present criminal penalties intact, with additional penalties added.

**Section 2.** Chapter 67 and §§80.33, and 80.33.1 through 80.33.10 of Title 9 of the Guam Code Annotated, and the "Drug Treatment and Enforcement Fund," are hereby repealed in their entirety and reenacted to read as follows:

"CHAPTER 67. ARTICLE 1.

**Section 67.100.** Definitions. As used in this Act:

1. 'Act' means the Uniform Controlled Substances Act of Guam.
2. 'Administer,' unless the context otherwise requires, means to apply a controlled substance, whether by injection, inhalation, ingestion or any other means, directly to the body of a patient or research subject by:
  - (i) a practitioner, or in the practitioner's presence, by the practitioner's authorized agent; or
  - (ii) the patient or research subject at the direction and in the presence of the practitioner.
3. 'Anabolic Steroid' means any drug or hormonal substance chemically and pharmacologically related to testosterone (other than estrogens, progestin, and corticosteroids) that promotes muscle growth.
4. 'Attorney General' means the Attorney General of Guam or any individual he designates.
5. (i) 'Controlled substance analog' means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance listed in or added to Schedule I or II and:

- (A) which has a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; or
  - (B) with respect to a particular individual, which the individual represents or intends to have a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; but
- (ii) the term does not include:
- A) a controlled substance;
  - B) a substance for which there is an approved new drug application;
  - C) a substance with respect to which an exemption is in effect for investigational use by a particular person under §505 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. §355) to the extent conduct with respect to the substance is permitted by the exemption; or
  - D) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.
6. ‘Deliver’ or ‘Delivery,’ unless the context otherwise requires, means to transfer a substance, actually or constructively, from one person to another, whether or not there is an agency relationship.
  7. ‘Department of Mental Health and Substance Abuse’ (‘DMHSA’) means the Director of the Department of Mental Health and Substance Abuse of the government of Guam, or its successor, or any individual he designates.
  8. ‘Department of Public Health and Social Services’ (‘DPHSS’) means the Director of the Department of Public Health and Social Services of the government of Guam, or its successor, or any individual of the department he designates.
  9. ‘Dispense’ means to deliver a controlled substance to the ultimate user, patient or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.
  10. ‘Dispenser’ means any person who dispenses.
  11. ‘Distribute’ means to deliver other than by administering or dispensing a controlled substance.
  12. ‘Distributor’ means a person who distributes.
  13. ‘Drug’ means:
    - (i) a substance recognized as a drug in the official United States Pharmacopoeia, National Formulary, or the official Homeopathic Pharmacopoeia of the United States, or a supplement to any of them;
    - (ii) a substance intended for use in the diagnosis, cure, mitigation, treatment, or
    - (iii) revention of disease in individuals or animals;

(iii) a substance, other than food, intended to affect the structure or a function of the body of individuals or animals; and

(iv) a substance intended for use as a component of an article specified in this Paragraph.

The term does not include a device or its components, parts or accessories.

14. 'Drug Enforcement Administration' ('DEA') means the Drug Enforcement Administration of the United States Department of Justice, or its successor agency.
15. 'Guam Police Department' ('GPD') means the Chief of Police of the Guam Police Department of Guam, or its successor, or any individual he designates.
16. 'Immediate Precursor' means a substance:
  - (i) that the Department of Public Health and Social Services has found to be, and by rule has designated to be, the principal compound used, or produced primarily for use, in the manufacture of a controlled substance;
  - (ii) that is an immediate chemical intermediary used or likely to be used in the manufacture of the controlled substance; and
  - (iii) the control of which is necessary to prevent, curtail or limit the manufacture of the controlled substance.
17. 'Inventory' means all factory and branch stocks in finished form of a controlled substance manufactured or otherwise acquired by a registrant, whether in bulk, commercial containers or contained in pharmaceutical preparations in the possession of the registrant, including stocks held by the registrant under separate registration as a manufacturer, importer, exporter or distributor, and a list of such.
18. 'Isomer' means an optical isomer, but in §67.100(21)(v) Appendix A: A.(12) and A.(34), and Appendix B: A.(4) of this Act, the term includes a geometric isomer; in Appendix A: A.(1), A.(8) and A.(42), and Appendix D: C. of this Act the term includes a positional isomer; and in Appendix A: A.(35) and C., and Appendix C: A. of this Act the term includes a positional or geometric isomer.
19. 'Manufacture' means to produce, prepare, propagate, compound, convert or process a controlled substance, directly or indirectly, by extraction from substances of natural origin, chemical synthesis, or a combination of extraction and chemical synthesis, and includes packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation, compounding, packaging, repackaging, labeling or relabeling of a controlled substance:
  - (i) by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or
  - (ii) by a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.
20. 'Marijuana,' means all parts of the plant *Cannabis*, whether growing or not; its seeds; the resin extracted from any part of such plant; and every compound, salt, derivative, mixture or preparation of the plant, or 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, salt, derivative,

- mixture or preparation of the mature stalks, except resin extracted therefrom; fiber, oil or cake; or the sterilized seed of the plant which is incapable of germination.
21. 'Narcotic drug' means any of the following, however manufactured:
    - (i) Opium, opium derivative and any derivative of either, including any salts, isomers and salts of isomers of them that are theoretically possible within the specific chemical designation, but not isoquinoline alkaloids of opium;
    - (ii) synthetic opiate and any derivative of synthetic opiate, including any isomers, esters, ethers/salts, and salts of isomers, esters, and ethers of them that are theoretically possible within the specific chemical designation;
    - (iii) poppy straw and concentrate of poppy straw;
    - (iv) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine and derivatives of ecgonine, or their salts, have been removed;
    - (v) cocaine, or any salt, isomer or salt of isomer of cocaine;
    - (vi) cocaine base;
    - (vii) ecgonine, or any derivative, salt, isomer or salt of isomer of ecgonine; and
    - (viii) compound, mixture or preparation containing any quantity of a substance listed in this Paragraph.
  22. 'Narcotic Treatment Program' ('NTP') means a program engaged in maintenance and/or detoxification treatment with narcotic drugs.
  23. 'Opiate' means a substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term includes opium, opium derivatives and synthetic opiates. The term does not include, unless specifically scheduled as a controlled substance pursuant to §67.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes the racemic and levorotatory forms of dextromethorphan.
  24. 'Opium poppy' means the plant of the species *Papaver somniferum L.*, except its seeds.
  25. 'Person' means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government or governmental subdivision or agency, or any other legal or commercial entity.
  26. 'Pharmacist' means any pharmacist licensed on Guam to practice his/her profession and any other person (e.g. pharmacist intern) authorized by Guam to practice under the supervision of a pharmacist licensed on Guam.
  27. 'Physician, dentist, veterinarian and podiatrist' means any persons who are licensed to practice those respective professions in Guam.
  28. 'Poppy straw' means all parts, except the seeds, of the opium poppy, after mowing.
  29. 'Practitioner' means a physician, dentist, veterinarian, scientific investigator, pharmacist, pharmacy, hospital, or other person licensed, registered, or otherwise

- permitted, by Guam, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.
30. 'Prescription' means an order for medication which is dispensed to or for an ultimate user, but does not include an order for medication which is dispensed for immediate administration to the ultimate user (e.g. an order to dispense a drug to a bed patient for immediate administration in a hospital is not a prescription).
  31. 'Production,' unless the context otherwise requires, includes the manufacturing of a controlled substance and the planting, cultivating, growing or harvesting of a plant from which a controlled substance is derived.
  32. 'Registrant' means any person registered pursuant to this Act.
  33. 'State' means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or a territory or insular possession subject to the jurisdiction of the United States, including Guam.
  34. 'Ultimate user' means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

## ARTICLE 2. STANDARDS AND SCHEDULES.

### **Section 67.201.** Authority to Control.

(a) The Department of Public Health and Social Services shall administer this Act and may add substances to or delete or re-schedule substances listed in Appendices A, B, C, D or E of this Act pursuant to the Administrative Adjudication Law, Title 5 Guam Code Annotated §9100, *et seq.*

(b) In making a determination regarding a substance, DPHSS shall consider the following:

- (1) the actual or relative potential for abuse;
- (2) the scientific evidence of its pharmacological effect, if known;
- (3) the state of current scientific knowledge regarding the substance;
- (4) the history and current pattern of abuse;
- (5) the scope, duration and significance of abuse;
- (6) the risk to the public health;
- (7) the potential of the substance to produce psychic or physiological dependence liability; and
- (8) whether the substance is an immediate precursor of a controlled substance.

(c) DPHSS may consider findings of the Federal Food and Drug Administration or the Drug Enforcement Administration as *prima facie* evidence relating to one (1) or more of the determinative factors.

(d) After considering the factors enumerated in Subsection (b), DPHSS shall make findings with respect to them and adopt and publish a rule controlling the substance upon finding the substance has a potential for abuse.

(e) DPHSS, without regard to the findings required by Subsection (d) or §§67.204, 67.206, 67.208, 67.210 and 67.212, or the procedures prescribed by Subsections (a) - (d), may add an immediate precursor to the same schedule in which the controlled substance

of which it is an immediate precursor is placed or to any other schedule. If DPHSS designates a substance as an immediate precursor, substances that are precursors of the controlled precursor are not subject to control solely because they are precursors of the controlled precursor.

(f) If a substance is designated, rescheduled or deleted as a controlled substance under Federal law, DPHSS shall similarly treat the substance under this Act after the expiration of thirty (30) days from the date of publication in the Federal Register of a final order designating the substance as a controlled substance or rescheduling or deleting the substance or from the date of issuance of an order of temporary scheduling under §508 of the Federal Dangerous Drug Diversion Control Act of 1984 [21 U.S.C. §811(h)], unless within the thirty (30) day period, DPHSS or an interested party objects to the treatment of the substance. If no objection is made, DPHSS shall adopt and publish, without making the determinations or findings required by Subsections (a) - (d) or §§67.204, 67.206, 67.208, 67.210 or 67.212, a final rule treating the substance. If an objection is made, DPHSS shall make a determination with respect to the treatment of the substance as provided by Subsections (a) - (d). Upon receipt of an objection to the treatment by DPHSS, DPHSS shall publish notice of the receipt of the objection, and action by DPHSS under this Act is stayed until DPHSS adopts a rule as provided by Subsection (d).

(g) DPHSS, by rule and without regard to the requirements of Subsections (a) - (c), may schedule a substance in Schedule I, whether or not the substance is substantially similar to a controlled substance included in Schedule I or II, if DPHSS finds that scheduling of the substance on an emergency basis is necessary to avoid an imminent hazard to the public safety and the substance is not in any other schedule or no exemption or approval is in effect for the substance under §505 of the Federal Food, Drug and Cosmetic Act [21 U.S.C. §3551]. Upon receipt of notice under §67.214, DPHSS shall initiate scheduling of the controlled substance analog on an emergency basis pursuant to this Subsection. The scheduling of a substance under this Subsection expires one (1) year after the adoption of the scheduling rule. With respect to the finding of an imminent hazard to the public safety, DPHSS shall consider whether the substance has been scheduled on a temporary basis under Federal law or factors set forth in Subsections (b)(4), (5) and (6), and may also consider clandestine importation, manufacture or distribution, and, if available, information concerning the other factors set forth in Subsection (b). A rule may not be adopted under this Subsection until DPHSS initiates a rulemaking proceeding under Subsections (a) - (d) with respect to the substance. A rule adopted under this Subsection lapses upon the conclusion of the rulemaking proceeding initiated under Subsections (a) - (d) with respect to the substance.

(h) Authority of DPHSS to control under this Section does not extend to distilled spirits, wine, malt beverages or tobacco.

**Section 67.202.** Nomenclature. The controlled substances listed in or added to the schedules in Appendices A, B, C, D and E of this Act are listed or added by any official, common, usual, chemical or trade name used.

**Section 67.203.** Schedule I. Unless specifically excepted by Guam or Federal laws, or Guam or Federal regulation, or more specifically included in another schedule, Schedule I controlled substances are listed in Appendix A of this Act.

**Section 67.204.** Schedule I Tests. DPHSS shall add, in accordance with §67.201

(a), a substance to Schedule I upon finding that the substance:

- (1) has a high potential for abuse;
- (2) has no currently accepted medical use in treatment in the United States; and
- (3) lacks accepted safety use under medical supervision.

(b) DPHSS may add a substance to Schedule I without making the findings required by Subsection (a) if the substance is controlled under Schedule I of the Federal Controlled Substances Act by a Federal agency as the result of an international, treaty, convention or protocol.

**Section 67.205.** Schedule II. Unless specifically excepted by Guam or Federal law, or Guam or Federal regulation, or more specifically included in another schedule, Schedule II controlled substances are listed in Appendix B of this Act.

**Section 67.206.** Schedule II Tests. DPHSS shall add, in accordance with §67.201

(a), a substance to Schedule II upon finding that:

- (1) the substance has a high potential for abuse;
- (2) the substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and
- (3) the abuse of the substance may lead to severe psychological or physical dependence.

(b) DPHSS may add a substance to Schedule II without making the findings required by Subsection (a) if the substance is controlled under Schedule II of the Federal Controlled Substances Act by a Federal agency as the result of an international treaty, convention or protocol.

**Section 67.207.** Schedule III. Unless specifically excepted by Guam or Federal law, or regulation or more specifically included in another schedule, Schedule III controlled substances are listed in Appendix C of this Act.

**Section 67.208.** Schedule III Tests. DPHSS shall add, in accordance with §67.201

(a), a substance to Schedule III upon finding that:

- (1) the substance has a potential for abuse less than the substances included in Schedules I and II;
- (2) the substance has currently accepted medical use in treatment in the United States; and
- (3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

(b) DPHSS may add a substance to Schedule III without making the findings required by Subsection (a) if the substance is controlled under Schedule III of the Federal Controlled Substances Act by a Federal agency as the result of an international treaty, convention or protocol.

**Section 67.209.** Schedule IV. Unless specifically excepted by Guam or Federal law, or Guam or Federal regulation, or more specifically included in another schedule, Schedule IV controlled substances are listed in Appendix D of this Act.



**Section 67.210.** Schedule IV Tests. DPHSS shall add, in accordance with §67.201

(a), a substance to Schedule IV upon finding that:

- (1) the substance has a low potential for abuse relative to substances included in Schedule III;
- (2) the substance has currently accepted medical use in treatment in the United States; and
- (3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to substances included in Schedule III.

(b) DPHSS may add a substance to Schedule IV without making the findings required by Subsection (a) if the substance is controlled under Schedule IV of the Federal Controlled Substances Act by a Federal agency as the result of an international treaty, convention or protocol.

**Section 67.211.** Schedule V. Unless specifically excepted by Guam or Federal law, or Guam or Federal regulation or more specifically included in another schedule, Schedule V controlled substances are listed in Appendix E of this Act.

**Section 67.212.** Schedule V Tests. DPHSS shall add a substance, in accordance with §67.201(a), to Schedule V upon finding that:

- (1) the substance has a low potential for abuse relative to substances included in Schedule IV;
- (2) the substance has currently accepted medical use in treatment in the United States; and
- (3) abuse of the substance may lead to physical dependence or psychological dependence relative to the substances included in Schedule IV.

DPHSS may add a substance to Schedule V without being required to make the findings required by Subsection (a) if the substance is controlled under Schedule V of the Federal Controlled Substances Act by a Federal agency as the result of an international treaty, convention, or protocol.

**Section 67.213.** Publishing of Schedules. DPHSS may publish updated schedules periodically. Failure to publish updated schedules is not a defense for any administrative or judicial proceeding under this Act.

**Section 67.214.** Controlled Substance Analog Treated as Schedule I Substance. A controlled substance analog, to the extent intended for human consumption, must be treated, for the purposes of this Act, as a substance included in Schedule I. Within twenty (20) days after the initiation of prosecution with respect to a controlled substance analog by indictment or information, the Attorney General shall notify DPHSS of information relevant to emergency scheduling as provided for in §67.201(g). After final determination that the controlled substance analog should not be scheduled, no prosecution relating to that substance as a controlled substance analog may be commenced or continued.

ARTICLE 3. REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES.

**Section 67.301. Rules.**

(a) DPHSS shall adopt rules and charge reasonable fees relating to the registration and control of the manufacture, distribution and dispensing of controlled substances in Guam.

(b) The fees provided for in this Section shall be collected to combat diversion of controlled substances and must be forwarded to the Department of Administration for the use provided in Subsection (c). The Department of Administration shall establish the ‘*Controlled Substances Diversion Fund*’ where fees shall be deposited.

(c) Moneys collected under the ‘Controlled Substances Diversion Fund’ account shall be utilized by the Department of Public Health and Social Services for their use of:

- (1) existing programs, or created, in monitoring of controlled substances to identify and detect its diversion;
- (2) acquiring equipment and supplies, and entering into contracts, necessary to monitor controlled substances; and
- (3) training of employees assigned to administer the Act.

(c) Moneys in the account are appropriated on a continuing basis and are not subject to lapsing and related appropriations restraints.

(d) The Department of Public Health and Social Services shall administer expenditures from the fund. Expenditures may be made only for the monitoring of controlled substances through acquisition of equipment and supplies, entering into contracts, and training of employees administering the Act to keep them abreast of new and changing information regarding controlled substances and related matters. Moneys from the Fund may not supplant other local, state or Federal funds.

**Section 67.302. Registration Requirements.**

(a) A person who manufactures, distributes or dispenses a controlled substance within Guam or who proposes to engage in the manufacture, distribution or dispensing of a controlled substance within Guam, shall obtain annually a registration issued by DPHSS in accordance with rules adopted by DPHSS.

(b) A person registered by DPHSS under this Act to manufacture, distribute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense or conduct research with controlled substances to the extent authorized by the registration and in conformity with this Article.

(c) The following persons need not register and may lawfully possess controlled substances under this Act:

- (1) an agent or employee of a registered manufacturer, distributor or dispenser of a controlled substance if the agent or employee is acting in the usual course of business or employment;
- (2) a common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment; and
- (3) an ultimate user or a person in possession of a controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a substance included in Schedule V.

(d) DPHSS, by rule, may waive the requirement for registration of certain manufacturers, distributors or dispensers upon finding it consistent with the public health and safety.

- (e) A separate registration is required for each principal place of business or professional practice where the applicant manufactures, distributes or dispenses controlled substances.
- (f) DPHSS may inspect the establishment of a registrant or applicant for registration in accordance with rules adopted by DPHSS.

**Section 67.303. Registration.**

(a) DPHSS shall register an applicant to manufacture or distribute substances included in Schedules I through V, unless DPHSS determines that the issuance of the registration would be inconsistent with the public interest. In determining the public interest, DPHSS shall consider the following factors:

- (1) maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific research or industrial channels;
- (2) compliance with Federal and local law;
- (3) promotion of technical advances in the art of manufacturing controlled substances and the development of new substances;
- (4) convictions of the applicant under laws of another country or Federal or state laws relating to a controlled substance;
- (5) past experience of the applicant in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion of controlled substances into other than legitimate medical, scientific, research or industrial channels;
- (6) furnishing by the applicant of false or fraudulent material in an application filed under this Act;
- (7) suspension or revocation of the applicant's Federal registration or the applicant's registration in another state to manufacture, distribute or dispense controlled substances as authorized by Federal law; and
- (8) any other factors relevant to and consistent with the public health and safety.

(b) Registration under Subsection (a) entitles a registrant to manufacture or distribute a substance included in Schedule I or II only if it is specified in the registration.

(c) A practitioner must be registered with DPHSS before dispensing a controlled substance or conducting research with respect to a controlled substance included in Schedules II through V. DPHSS need not require separate registration under this Article for a practitioner engaging in research with non-narcotic substances included in Schedules II through V if the registrant is already registered under this Article in another capacity. A practitioner registered under Federal law to conduct research with a substance included in Schedule I may conduct research with the substance in Guam upon furnishing DPHSS evidence of the Federal registration.

(d) A manufacturer or distributor registered under the Federal Controlled Substances Act (21 U.S.C. §801, *et seq.*) may submit a copy of the Federal application as an application for registration as a manufacturer or distributor under this Section. DPHSS may require a manufacturer or distributor to submit information in addition to the application for registration under the Federal act.

(e) A dispenser of narcotic drugs to a narcotic drug dependent person, as defined in §67.308.2(a), registered under the Federal Controlled Substances Act (21 U.S.C. §801, *et seq.*) may submit a copy of the Federal application as an application for registration as a dispenser of narcotic drugs to a drug dependent person under this Section. DPHSS may

require a dispenser to submit information in addition to the application for registration under the Federal act.

**Section 67.304.** Suspension or Revocation of Registration.

(a) DPHSS may suspend or revoke a registration under §67.303 to manufacture, distribute or dispense a controlled substance upon finding that the registrant has:

- (1) furnished false or fraudulent material information in an application filed under this Act;
- (2) been convicted of a felony under state or Federal law relating to a controlled substance;
- (3) had the registrant's Federal registration suspended or revoked and is no longer authorized by Federal law to manufacture, distribute or dispense controlled substances; or
- (4) committed an act that would render registration under §67.303 inconsistent with the public interest as determined under that Section.

(b) DPHSS may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) If a registration is suspended or revoked, DPHSS may place under seal all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. When a revocation order becomes final, the court may order the controlled substances forfeited to DPHSS.

(d) DPHSS may seize or place under seal any controlled substance owned or possessed by a registrant whose registration has expired or who has ceased to practice or do business in the manner permitted by the registration. The controlled substance must be held for the benefit of the registrant or the registrant's successor in interest. DPHSS shall notify a registrant, or the registrant's successor in interest, whose controlled substance is seized or placed under seal, of the procedures to be followed to secure the return of the controlled substance and the conditions under which it will be returned. DPHSS may not dispose of a controlled substance seized or placed under seal under this Subsection until the expiration of one hundred eighty (180) days after the controlled substance was seized or placed under seal. Costs incurred by seizing, placing under seal, maintaining custody and disposing of any controlled substance under this Subsection may be recovered from the registrant, any proceeds obtained from the disposition of the controlled substance, or from both. All monies collected from this Section shall be deposited in the Controlled Substances Diversion Fund, as provided in §67.301.

**Section 67.305.** Order to Show Cause.

(a) Before denying, suspending, revoking or refusing to renew a registration, DPHSS shall serve upon the applicant or registrant an order to show cause why registration should not be denied, suspended or revoked, or the renewal refused. The order must state its grounds and direct the applicant or registrant to appear before DPHSS at a specified time and place not less than thirty (30) days after the date of service of the order. In case of a refusal to renew a registration, the order must be served not later than thirty (30) days

before expiration of the registration. The proceedings must be conducted in accordance with the Administrative Adjudication Law, 5 GCA §9100, *et seq.* The proceedings do not preclude any criminal prosecution or other proceeding. A proceeding to refuse to renew a registration does not affect the existing registration, which remains in effect until completion of the proceedings.

(b) DPHSS may suspend, without an order to show cause, a registration simultaneously with the institution of proceedings under §67.304, or if renewal, of registration is refused, upon finding that there is an imminent danger to the public health and safety which warrants the action. The suspension continues in effect until the conclusion of the proceedings, including judicial review, unless earlier by DPHSS or dissolved by a court of competent jurisdiction.

**Section 67.306.** Records of Registrants. A person registered to manufacture, distribute or dispense controlled substances under this Act shall keep records and maintain inventories in compliance with Federal law, and rules adopted by DPHSS.

**Section 67.307.** Order Forms. A registrant may distribute a substance included in Schedule I or II to another registrant only by means of an order form. Compliance with Federal law respecting order forms constitutes compliance with this Section.

**Section 67.308.1.** Prescriptions. As used in this Section, ‘medical treatment’ includes dispensing or administering a narcotic drug for pain, including intractable pain; however, this does not include dispensing any controlled substance to a fighting cock or a competitive racing dog for their performance or appearance enhancement.

(b) A person may dispense a controlled substance only as provided in this Section.

(c) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a substance included in Schedule II may not be dispensed without the written prescription of a practitioner and pursuant to rules adopted by DPHSS. A prescription for a Schedule II, III, IV or V substance shall not be filled by a pharmacist more than seven (7) days after its date of issuance; however, refill(s) indicated on a prescription submitted within the seven (7) days for controlled substance listed in Schedule III, IV or V, may be filled after the seven (7) days of issuance. Any original prescription in need of being filled after the seven (7) days shall be renewed by a practitioner.

(d) In an emergency, as defined by rules of DPHSS, a substance included in Schedule II may be dispensed upon oral prescription of a practitioner, reduced promptly to writing, signed by the practitioner, and filed by the pharmacy. The pharmacy shall keep prescriptions in conformity with §67.306. A prescription for a substance included in Schedule II may not be refilled.

(e) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a substance included in Schedule III or IV, which is a prescription drug as determined under this Act, may not be dispensed without a written or oral prescription of a practitioner. The prescription must not be refilled more than six (6) months after its date unless renewed by the practitioner.

(f) A substance included in Schedule V may be distributed or dispensed only for a medical purpose, including medical treatment or authorized research.

- (g) A practitioner may dispense or deliver a controlled substance to or for an individual or animal only for medical treatment or authorized research in the ordinary course of that practitioner's profession.
- (h) No civil or criminal liability or administrative sanction may be imposed on a pharmacist for action taken in reliance on a reasonable belief that an order purporting to be a prescription was issued by a practitioner in the usual course of professional treatment or in authorized research.
- (i) An individual practitioner may not dispense a substance included in Schedule II, III or IV for that individual practitioner's personal use except in a medical emergency.

**Section 67.308.2.** Administering or Dispensing of Narcotic Drugs.

- (a) 'Narcotic drug dependent' means an individual who physiologically needs heroin or a morphine-like drug to prevent the onset of signs of withdrawal.
- (b) The administering or dispensing, but not prescribing, of narcotic drugs listed in any schedule to a narcotic drug dependent person for 'detoxification treatment' or 'maintenance treatment' as defined in §102 of the Federal Controlled Substances Act (21 U.S.C. §802) shall be deemed to be within the meaning of the term 'in the course of his professional practice or research' in §308(e) and §102(20) of the Federal Controlled Substances Act (21 U.S.C. §828(e)); provided, that the practitioner is separately registered with the United States Attorney General as required by §303(g) of the Federal Controlled Substances Act (21 U.S.C. §823(g)) and then thereafter complies with the regulatory standards imposed relative to treatment qualification, security, records and unsupervised use of drugs pursuant to the Federal Controlled Substances Act.
- (c) Nothing in this Section shall prohibit a physician who is not specifically registered to conduct a narcotic treatment program from administering, but not prescribing, narcotic drugs to a person for the purpose of relieving acute withdrawal symptoms when necessary while arrangements are being made for referral for treatment. Not more than one (1) day's medication may be administered to the person or for the person's use at one time. Such emergency treatment may be carried out for not more than three (3) days and may not be renewed or extended. This Section is not intended to impose any limitations on a physician or authorized hospital staff member to administer or dispense narcotic drugs in a hospital to maintain or detoxify a person as an incidental adjunct to medical or surgical treatment of conditions other than addiction, or to administer or dispense narcotic drugs to persons with intractable pain in which no relief or cure is possible or none has been found after reasonable efforts.

**Section 67.309.** Diversion Prevention and Control.

- (a) In this Section, 'diversion' means the transfer of a controlled substance from a lawful to an unlawful channel of distribution or use.
- (b) DPHSS may periodically prepare and make available to other state regulatory, licensing and law enforcement agencies a report on the patterns and trends of distribution, diversion and abuse of controlled substances.
- (c) DPHSS and the Guam Police Department, with the assistance of the Attorney General, shall enter into written agreements with state and Federal agencies to improve identification of sources of diversion and to improve enforcement of and compliance with

this Act and other laws and regulations pertaining to unlawful conduct involving controlled substances. An agreement must specify the roles and responsibilities of each agency that has information or authority to identify, prevent or control drug diversion and drug abuse. DPHSS, GPD and the Attorney General shall arrange for cooperation and exchange of information among agencies and with other states and the Federal government. DPHSS, GPD and the Attorney General shall report annually to the Governor and to the Speaker of the Guam Legislature on the outcome of the program with respect to its effect on distribution and abuse of controlled substances, including recommendations for improving control and prevention of the diversion of controlled substances in Guam.

#### ARTICLE 4. OFFENSES AND PENALTIES.

##### **Section 67.401.1.** Possession, Etc. for Illegal Delivery, Dispensing or Manufacturing; Defined; Punishments Classified According to Drug Class Involved.

(a) Except as authorized by this Act, it shall be unlawful for any person knowingly or intentionally:

- (1) to manufacture, deliver or possess with intent to manufacture, deliver or dispense a controlled substance; or
- (2) to manufacture, or deliver, or possess with intent to manufacture or deliver, a controlled substance that, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or a likeness thereof, of a manufacturer, distributor, or dispenser, other than the person who manufactured, distributed or dispensed the substance.

(b) Any person who violates Subsection (a) with respect to:

- (1) a substance classified in Schedule I, II or III shall be guilty of a felony of the first degree and shall not be eligible for work release or educational programs outside the confines of prison.
- (2) a substance classified in Schedule IV or V shall be guilty of a felony of the second degree, provided that any person convicted under this Subsection receiving a term of imprisonment shall not be eligible for work release or educational programs outside the confines of prison.

##### **Section 67.401.2.** Illegal Possession; Defined and Punishment.

(a) It is unlawful for any person knowingly or intentionally to possess a controlled substance, unless such substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the Act.

(b) Any person who violates Subsection (a) with respect to:

- (1) any controlled substance except marijuana shall be guilty of a felony of the third degree.
- (2) more than one (1) ounce of marijuana shall be guilty of a petty misdemeanor.
- (3) one (1) ounce or less of marijuana shall be guilty of a violation and punished by a fine of One Hundred Dollars (\$100.00).

**Section 67.401.3. Penalties in Addition to Any Civil Penalties.**

Penalties imposed for violation of this Act and civil remedies provided under this Act are in addition to, and not in lieu of, any civil remedy, administrative penalty or sanction otherwise authorized by law.

**Section 67.401.4. Prison Terms for Drug Offenders.** Any person who is convicted of an offense pursuant to §67.401.1 of this Act shall be sentenced as follows:

(a) If he is guilty of an offense pursuant §67.401.1(b)(1) of this Act, he shall be sentenced to imprisonment for not less than ten (10) nor more than twenty (20) years and may, in addition, be fined not more than Fifty Thousand Dollars (\$50,000.00). The sentence shall include a special parole term of not less than three (3) years in addition to such term of imprisonment. Imposition or execution of such sentence shall not be suspended and probation shall not be granted. Parole or work release shall not be granted to the offender until he has served at least ten (10) years of his sentence or imprisonment.

(b) If he is guilty of an offense pursuant to §67.401.1(b)(1) of this Act and if he has been convicted on one (1) or more felonies under any provision of this Act, any law of the United States relating to controlled substances or for any offense under state or foreign law relating to narcotic drugs listed in Schedule I as per Appendix A of this Act or Schedule II as per Appendix B of this Act which offense would be a felony under this Act and one (1) or more of the convictions are final, he shall be sentenced to a term of imprisonment which shall not be less than fifteen (15) years and which may be up to life imprisonment, and may, in addition, be fined not more than One Hundred Thousand Dollars (\$100,000.00). The sentence, if for a term of years, shall include a special parole term of not less than six (6) years in addition to such term of imprisonment. Imposition of execution of such sentence shall not be suspended, and probation shall not be granted. Parole or work release shall not be granted to the offender until he has served at least fifteen (15) years of his sentence of imprisonment.

(c) If he is guilty of an offense pursuant to §67.401.1(a) of this Act committed while he was released on bail pursuant to Chapter 40 of Title 8 of the Guam Code Annotated, *Criminal Procedure*, on a charge of violating §67.401.1(a), he shall be sentenced to a term of imprisonment which shall not be less than fifteen (15) years and which may be up to life imprisonment and, in addition, may be fined not more than One Hundred Thousand Dollars (\$100,000.00). The sentence, if for a term of years, shall include a special parole term of not less than six (6) years in addition to such term of imprisonment. Imposition or execution of such sentence shall not be suspended and probation shall not be granted. Parole or work release shall not be granted to the offender until he has served at least fifteen (15) years of sentence of imprisonment.

(d) The imposition of a minimum term of imprisonment and the prohibitions against suspension of sentence and granting of probation and requirement for service of a minimum term of imprisonment prior to granting parole as prescribed by Subsections (a), (b) and (c) of this Section shall not apply in the case of a person whom the court determines violated §67.401.1(a) of this Act for the primary purpose of enabling him to obtain a narcotic drug which he requires for his personal use because of his addiction to such drug.

(e) If he is guilty of an offense involving a controlled substance listed in Schedule I or II of this Act which is not a narcotic drug or a controlled substance listed in Schedule III of



this Act he shall be sentenced to a term of imprisonment of not more than five (5) years and may be fined not more than Fifteen Thousand Dollars (\$15,000.00). The sentence shall include a special parole term of not less than two (2) years in addition to such term of imprisonment. Imposition or execution of such sentence shall not be suspended and probation shall not be granted.

(f) If he is guilty of an offense involving a controlled substance listed in Schedule I or II of this Act which is not a narcotic drug or a controlled substance in Schedule III of this Act and if he has been convicted of one (1) or more prior offenses punishable under the provisions of Subsection (e) of this Section, a felony under any provision of this Act, any law of the United States, a state or foreign jurisdiction relating to narcotic drugs, marijuana, or depressant or stimulant substances and one (1) or more of the convictions are final, he shall be sentenced to a term of imprisonment of not more than ten (10) years and, in addition, may be fined not more than Thirty Thousand Dollars (\$30,000.00). The sentence shall include a special parole term of at least two (2) years in addition to such term of imprisonment. Imposition or execution of such sentence shall not be suspended and probation shall not be granted. Parole or work release shall not be granted to the offender until he has served at least ten (10) years of his sentence of imprisonment.

(g) If he is guilty of an offense involving a controlled substance listed in Schedule IV of this Act he shall be sentenced to a term of imprisonment of not more than three (3) years and may, in addition, be fined not more than Ten Thousand Dollars (\$10,000.00). The sentence shall include a special parole term of not less than one (1) year in addition to such term of imprisonment. Imposition or execution of such sentence shall not be suspended and probation shall not be granted.

(h) If he is guilty of an offense involving a controlled substance listed in Schedule IV of this Act and if he has been convicted of a felony under a provision of this Act; or a law of the United States, a state or foreign jurisdiction relating to narcotic drugs, marijuana, or depressant or stimulant substances, and such convictions are final, then he shall be sentenced to a term of imprisonment of not more than six (6) years and, in addition, may be fined not more than Twenty Thousand Dollars (\$20,000.00). The sentence shall include a special parole term of at least two (2) years in addition to such term of imprisonment. Imposition or execution of such sentence shall not be suspended and probation shall not be granted.

(i) If he is guilty of an offense involving a controlled substance listed in Schedule V of this Act he shall be sentenced to a term of imprisonment of not more than one (1) year or a fine of not more than Five Thousand Dollars (\$5,000.00), or both. Imposition or execution of such sentence shall not be suspended and probation shall not be granted.

(j) If he is guilty of an offense involving a controlled substance listed in Schedule V of this Act and if he has been convicted of a felony under a provision of this Act, or a law of the United States, a state or foreign jurisdiction relating to narcotic drugs, marijuana, or depressant or stimulant substances, and such convictions are final, then he shall be sentenced to a term of imprisonment of not more than two (2) years or a fine of not more than Ten Thousand Dollars (\$10,000.00), or both. Imposition or execution of such sentence shall not be suspended and probation shall not be granted.

(k) Notwithstanding the provisions of this Section, any person who is guilty of an offense pursuant to §67.401.1(a) of this Act by distributing less than one (1) pound of marijuana for no remuneration shall be sentenced as provided in §67.412 of this Act.

(l) A special parole term imposed under the provisions of §67.407 of this Act may be revoked if its terms and conditions are violated. In such circumstances the original term of imprisonment shall be increased by the period of the special parole term and the resulting new term of imprisonment shall not be diminished by the time which was spent on special parole. A person whose special parole term has been revoked may be required to serve all or part of the remainder of the new term of imprisonment. A special parole term provided for in §67.407 of this Act shall be, in addition to, and not in lieu of, any other parole provided for by law.

(m) The Court may, in its sole discretion and after consultation with the Attorney General, reduce the minimum sentence of imprisonment by not more than twenty percent (20%) of the minimum term established by law of a person sentenced pursuant to Subsections (a), (b) or (c) of this Section if it finds such person was a pusher and if such person offers credible and necessary evidence as to the identity of his supplier, supervisor or as to the source of his supply of drugs. As used in this Subsection, "pusher" means a person not engaged in a continuing criminal enterprise as defined in §67.409 of this Act and who sells controlled substances in such a manner that the majority of the sales are to ultimate users of said controlled substances.

**Section 67.401.5. Fines for Drug Offenses.** Any person who is guilty of an offense pursuant to §67.402(a) of this Act may, in addition to imprisonment for felony of the third degree, be fined not more than Twenty-five Thousand Dollars (\$25,000.00) except that if any person commits such offense after previously being convicted of one (1) or more prior offenses involving §67.402(a) of this Act, or for a felony under any other provision of this Act or other law of the United States, state or foreign jurisdiction relating to narcotic drugs, marijuana, or depressant or stimulant substances, and one (1) or more of the convictions have become final, such person may, in addition to imprisonment for felony of the third degree, be fined not more than Fifty Thousand Dollars (\$50,000.00).

**Section 67.401.6. Additional Fines in Drug Offenses.** Any person who is guilty of an offense pursuant to §67.403(a) of this Act may, in addition to imprisonment for felony of the third degree, be fined not more than Thirty Thousand Dollars (\$30,000.00); is except that if any person commits such offense after previously being convicted of one (1) or more offenses pursuant to §67.403(a) of this Act or for any felony under any other provision of this Act or other law of the United States, state or foreign jurisdiction relating to narcotic drugs, marijuana, or depressant or stimulant substances, and one (1) or more of the convictions have become final, such person shall be sentenced to a term of imprisonment of not more than eight (8) years and, in addition, may be fined not more than Sixty Thousand Dollars (\$60,000.00).

**Section 67.401.7. Information for Sentencing.** Except as otherwise provided in Chapter 80 of Title 9 of the Guam Code Annotated, no limitation shall be placed in the information concerning the background, character and conduct of a person convicted of an offense which the Superior Court of Guam may receive and consider for the purpose of imposing an appropriate sentence under this Act.

**Section 67.401.8. Establishing Previous Convictions.**

(a)

- (1) No person who stands convicted of an offense under §§67.401.1 - 67.401.3 or §§67.402 - 67.408 or §§67.410 - 67.412 of this Act shall be sentenced to increased punishment by reason of one (1) or more prior convictions unless, before trial or before entry of a plea of guilty, the Attorney General files an information with the Court, and serves a copy of such information on the person or counsel for the person, stating the previous conviction to be relied upon. Upon a showing by the Attorney General that facts regarding prior convictions could not by due diligence be obtained prior to trial or before entry of a plea of guilty, the Court may postpone the trial or the taking of the plea of guilty for a reasonable period for the purpose of obtaining such facts. Clerical mistakes in the information may be amended at any time prior to the pronouncement of sentence.
- (2) An information may not be filed under this Section if the increased punishment which may be imposed is imprisonment for a term of excess of three (3) years, unless the person either waived or was afforded prosecution by indictment for the offense for which such increased punishment may be imposed.

(b) If the Attorney General files an information under this Section, the Court shall after conviction, but before pronouncement of sentence inquire of the person with respect to whom the information was filed whether he affirms or denies that he has been previously convicted as alleged in the information, and shall inform him that any challenge to a prior conviction which is not made before sentence is imposed may not thereafter be raised to attach the sentence.

(c)

- (1) If the person denies any allegation of the information of prior conviction or claims that any conviction alleged is invalid, he shall file a written response to the information. A copy of the response shall be served upon the Attorney General. The Court shall hold a hearing to determine any issues raised by the response which would exempt the person from increased punishment. The failure of the Attorney General to include in the information the complete criminal record of the person or any facts in addition to the convictions to be relied upon shall not constitute grounds for invalidating the notice given in the information required by §67.401.8(a)(1). The hearing shall be before the Court without a jury and either party may introduce evidence. Except as otherwise provided in §67.401.8(c)(2), the Attorney General shall have the burden of proof beyond a reasonable doubt on any issue of fact. At the request of either party, the Court shall enter findings of fact and conclusions of law.
- (2) A person claiming that a conviction alleged in the information was obtained in violation of applicable provisions of the Constitution of the United States or the Organic Act of Guam shall set forth his claim and the factual basis therefore with particularity in his response to the information. The person shall have the burden of proof by a preponderance of the evidence on any issue of fact raised by the response. Any challenge to a prior conviction not raised by response to the information before an increased sentence is imposed

in reliance thereon shall be waived, unless good cause be shown for failure to make a timely challenge.

(d)

- (1) If the person files no response to the information or if the court determines, after hearing, that the person is subject to increased punishment by reason of prior convictions, the Court shall proceed to impose sentence.
- (2) If the Court determines that the person has not been convicted as alleged in the information, that a conviction alleged in the information is invalid, or that the person is otherwise not subject to an increased sentence as matter of law, the Court shall, at the request of the Attorney General, postpone sentence to allow an appeal from that determination. If no such request is made, the Court shall impose sentence. The person may appeal from an order postponing sentence as if sentence had been pronounced and a final judgment of conviction entered.

(e) No person who stands convicted of an offense under §§67.401.1 - 67.401.3 or §§67.402 - 67.408 or §§67.410 - 67.412 of this Act may challenge the validity of any prior conviction alleged under this Section which occurred more than five (5) years before the date of the information alleging such prior conviction.

**Section 67.401.9. Importation and Exportation Penalties.**

(a) Any person who:

- (1) contrary to §§67.601 or 67.602 of this Act, knowingly or intentionally imports or exports a controlled substance; or
- (2) contrary to §67.604 of this Act, knowingly or intentionally brings or possesses on board a vessel or aircraft a controlled substance; or
- (3) contrary to §67.608 of this Act, manufacturers who distribute a controlled substance shall be punished as provided in §67.401.9(b).

(b)(1) In the case of an offense under Subsection (a) of this Section involving a controlled substance listed in Schedules I, II, III, IV or V of this Act which is a narcotic, the person guilty of such an offense shall be imprisoned not less than ten (10) years nor more than twenty (20) years and may, in addition, be fined not more than Fifty Thousand Dollars (\$50,000.00). The sentence shall include a special parole term of not less than three (3) years in addition to such terms of imprisonment.

(2) In the case of an offense under Subsection of this Section with respect to a controlled substance other than a narcotic drug listed in Schedules I, II, III, IV or V of this Act, the person guilty of such offense shall be imprisoned for not less than three (3) years nor more than ten (10) years and may, in addition, be fined not more than Fifteen Thousand Dollars (\$15,000.00). The sentence shall, in addition to such term of imprisonment, include:

- (A) a special parole term of not less than two (2) years if such controlled substance is listed in Schedules I, II or III of this Act, or
- (B) a special parole term of not less than one (1) year if such controlled substance is listed in Schedule IV of this Act.

(c) The minimum term of imprisonment prescribed by Subsection (b)(1) of this Section shall not apply in the case of a person whom the Court determines violated Subsection (a)(1) of this Section for the primary purpose of enabling him to obtain a narcotic drug

which he requires for his personal use because of his addiction to such drug. The Court shall take into consideration the amount of the controlled substance imported in determining if the offender's primary purpose is importation or exportation for his own use.

(d) In the case of any sentence under this Section, imposition or execution of such sentence shall not be suspended and probation shall not be granted nor shall parole or work release be granted until the person has served the minimum term of imprisonment. A special parole term imposed under this Section or §67.411 of this Act may be revoked if its terms and conditions are violated. In such circumstances, the original term of imprisonment shall be increased by the period of the special parole term and the resulting new term of imprisonment shall not be diminished by the time which was spent on special parole. A person whose special parole term has been revoked may be required to serve all or part of the remainder of the new term of imprisonment. The special term provided for in this Section and in §67.411 of this Act is in addition to and not in lieu of any other parole provided for by law.

**Section 67.401.10. Transshipment and In-Transit Shipment Penalties.**

Any person who is guilty of an offense pursuant to §67.603 of this Act shall be subject to the following penalties:

- (1) Except as provided in §67.401.10(2), any such person shall, with respect to any such offense, be fined not more than Twenty-five Thousand Dollars (\$25,000.00).
- (2) If such an offense is prosecuted by an information or indictment which alleges and the trier of fact specifically finds that the offense was committed knowingly or intentionally, the defendant shall be sentenced to imprisonment for not more than one (1) year or a fine of not more than Twenty-five Thousand Dollars (\$25,000.00), or both.

**Section 67.401.11. Mandatory Sentencing for Persons Convicted of a Third-Degree Felony Relative to the Possession of Methamphetamine.**

Except as stipulated in §67.401.12, the Court shall impose a sentence of imprisonment of no less than three (3) years and no more than five (5) years, and a fine of Fifteen Thousand Dollars (\$15,000.00), on persons convicted of a third-degree felony under the provisions of §67.401.2 when the controlled substance the person is convicted of possessing is the substance known as methamphetamine. Sentence in these cases shall also include mandatory community service of no less than one hundred and fifty (150) hours, mandatory enrollment and attendance in a drug rehabilitation program at the Department of Mental Health and Substance Abuse and a mandatory term of probation of five (5) years.

**Section 67.401.12. Mandatory Sentencing for First-Time Offenders of a Third-Degree Felony Relative to the Possession of Methamphetamine.**

In cases where §67.401.11 is applicable to the sentencing of a person, a person who has not been previously convicted of a felony relative to the possession of any controlled substance and has been convicted of a felony for the first time relative to possession of methamphetamine shall be sentenced to a term of imprisonment of no more than three (3) years and a fine of Five Thousand Dollars (\$5,000.00). Sentence in these cases must also

include mandatory community service of no less than one hundred and fifty (150) hours, mandatory enrollment and attendance in a drug rehabilitation program at the Department of Mental Health and Substance Abuse or any other drug rehabilitation program approved by the Superior Court, and a mandatory term of probation of five (5) years.

**Section 67.402. Prohibited Acts B; Penalties.**

- (a) A person shall not knowingly or intentionally:
  - (1) Distribute or dispense a controlled substance in violation of §§67.308.1 and 67.308.2, if said person is subject to Article 3.
  - (2) Manufacture a controlled substance not authorized by that person's registration, or distribute or dispense a controlled substance not authorized by that person's registration to another registrant or other authorized person, if the said manufacturer, distributor or dispenser is a registrant.
  - (3) Refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this Act.
  - (4) Refuse entry into any premises for an inspection authorized by this Act.
  - (5) Who is a manufacturer or distributor, or agent or employee of a manufacturer or distributor, to deliver a controlled substance to a person who will possess or distribute a controlled substance in violation of this Act.
  - (6) Keep, maintain, manage, control, rent, lease or make available for use any store, shop, warehouse, dwelling, building, vehicle, vessel, aircraft, room, enclosure, or other structure or place, which the person knows is resorted to for the purpose of keeping for distribution, transporting for distribution, or distributing controlled substances in violation of this Act.
- (b) Any person who violates this Section is guilty of a felony of the third degree.

**Section 67.403. Prohibited Acts C; Penalties.**

- (a) A person shall not knowingly or intentionally:
  - (1) distribute a controlled substance included in Schedule I or II, except pursuant to an order form required by §67.307, if said person is a registrant;
  - (2) use in the course of the manufacture, distribution or dispensing of a controlled substance, or to use for the purpose of acquiring or obtaining a controlled substance, a registration number that is fictitious, revoked, suspended or issued to another person;
  - (3) acquire or obtain possession of a controlled substance by is misrepresentation, fraud, forgery, deception or subterfuge;
  - (4) furnish false or fraudulent material information in, or omit material information from, an application, report or other document required to be kept or filed under this Act, or a record required to be kept by this Act; or
  - (5) possess a false or fraudulent prescription or alter an otherwise valid prescription with intent to obtain a controlled substance.
- (b) Any person who violates this Section is guilty of a felony of the third degree.

**Section 67.404. Counterfeit Substance Prohibited; Penalty.**

- (a) A person may not knowingly or intentionally make or distribute or possess a punch, die, place, stone or other thing designed to print, imprint or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or

a likeness of any of the foregoing upon any drug or container or labeling of it without authorization.

- (b) Any person who violates this Section is guilty of a felony of the third degree.

**Section 67.405. Imitation Controlled Substances Prohibited; Penalty.**

- (a) A person may not knowingly or intentionally deliver, or possess with intent to deliver, a noncontrolled substance representing it to be a controlled substance.
- (b) A person may not knowingly or intentionally deliver or possess with intent to deliver, a noncontrolled substance intending it to be used or distributed as a controlled substance or under circumstances in which the person has reasonable cause to believe that the noncontrolled substance will be used or distributed for use as a controlled substance.
- (c) It is not a defense that the accused believed the noncontrolled substance to be a controlled substance.
- (d) A person who violates this Section is guilty of a felony of the second degree.

**Section 67.406. Conspiracy; Solicitation; Attempt; Penalty.**

Any person who conspires, solicits or attempts to commit any offense defined in this Act shall be punished as prescribed for the commission of the offense which was the object of the conspiracy, solicitation or attempt.

**Section 67.407. Distribution to Individual Under Age 18; Distribution Near Schools or Colleges; Penalties.**

- (a) Any person who is at least eighteen (18) years of age who is found guilty of an offense pursuant to §67.401.1(a)(1) of this Act by distributing a substance listed in Schedule I or II as per Appendices A and B of this Act which is a narcotic drug to a person under eighteen (18) years of age shall be sentenced to serve, in addition to the sentence prescribed by §67.401.4, a term of five (5) years of imprisonment. Imposition or execution of such sentence shall not be suspended and probation shall not be granted. Parole or work release shall not be granted until the offender has served the additional five (5) year sentence prescribed by this Subsection.
- (b) Any person who is at least eighteen (18) years of age who is guilty of an offense pursuant to §67.401.1(a)(1) of this Act by distributing any non-narcotic controlled substance listed in Schedule I or II as per Appendices A and B of this Act, or a substance listed in Schedules III, IV or V as per Appendices C - E of this Act to a person under eighteen (18) years of age shall be sentenced to serve, in addition to the minimum sentence prescribe by §67.401.4 of this Act, three (3) years of imprisonment. Imposition of execution of such sentence shall not be suspended and probation shall not be granted. Parole or work release shall not be granted until the offender has served the additional three (3) years prescribed by this Subsection.
- (c) An individual may not violate §67.401.1(a)(1) of this Act by distributing a substance listed in Schedule I or II as per Appendices A and B of this Act which is a narcotic drug, in or on, or within one thousand feet (1,000') of, the real property comprising a public playground, a public or private elementary or

- secondary school, a public vocational school, or public or private college or university. An individual who violates this Subsection shall be sentenced to serve, in addition to the minimum sentence prescribed by §67.401.4 of this Act, a term of five (5) years of imprisonment. Imposition or execution of such sentence shall not be suspended and probation shall not be granted. Parole or work release shall not be granted until the offender has served the additional five (5) years prescribed by this Subsection.
- (d) An individual may not violate §67.401.1(a)(1) of this Act by distributing any non-narcotic controlled substance listed in Schedule I or II as per Appendices A and B of this Act or a substance listed in Schedules III, IV or V as per Appendices C - E of this Act, in or on, or within one thousand feet (1000) of, the real property comprising a public playground, a public or private elementary or secondary school, a public vocational school, or public or private college or university. An individual who violates this Subsection shall be sentenced to serve, in addition to the minimum sentence prescribed by §67.401.4 of this Act, a term of three (3) years of imprisonment. Imposition or execution of such sentence shall not be suspended and probation shall not be granted. Parole or work release shall not be granted until the offender has served the additional three (3) years prescribed by this Subsection.
  - (e) It is not a defense to a violation of Subsections (a) and (b) that the accused did not know the age of an individual to whom a controlled substance was distributed.
  - (f) It is not a defense to a violation of Subsections (c) or (d) that the accused did not know the distance involved.

**Section 67.408. Employment or Use of Individual Under 18 Years of Age in Drug Operations; Penalties.**

- (a) Any person who is eighteen (18) or more years of age shall not knowingly or intentionally employ, hire, use, persuade, induce, entice or coerce an individual under eighteen (18) years of age to violate or assist in avoiding detection or apprehension for a violation of this Act.
- (b) Any person who violates Subsection (a) is guilty of a felony of the first degree, and shall be sentenced, in addition to the minimum sentence prescribe by §67.401.4 of this Act, three (3) years of imprisonment. Imposition or execution of such sentence shall not be suspended and probation shall not be granted. Parole or work release shall not be granted until the offender has served the additional three (3) years prescribed by this Subsection.
- (c) It is not a defense to a violation of this Section that the accused did not know the age of a protected individual.

**Section 67.409. Continuing Criminal Enterprise.**

- (a) It shall be unlawful for any person knowingly or intentionally to engage in a continuing criminal enterprise relative to a controlled substance. A person is engaged in a continuing enterprise relative to a controlled substance if:
  - (1) he commits an offense under any provision of this Act and the offense is a felony; and
  - (2) such offense is part of a continuing series of offenses pursuant to this Act:



- (i) which are undertaken by such person in concert with two (2) or more other persons with respect to whom such person occupies a position of organizer, a supervisory position or any other position of management; and
  - (ii) from which such persons obtain substantial income or resources.
- (b) Any person convicted of engaging in a continuing criminal enterprise in violation of Subsection (a) shall be sentenced to a term of imprisonment which shall not be less than twenty (20) years and which may be up to life imprisonment, to a fine of not more than Five Hundred Thousand Dollars (\$500,000.00) and to the forfeiture described in §67.409(c), except that if any person engages in such activity after one (1) or more prior convictions of him under this Section have become final, he shall be sentenced to a term of imprisonment which shall not be less than thirty (30) years and which may be up to life imprisonment, to a fine of not more than One Million Dollars (\$1,000,000) and to the forfeiture prescribed in §67.409(c).
- (c) Any person who is convicted of engaging in a continuing criminal enterprise relative to a controlled substance shall forfeit to the government of Guam:
  - (1) the profits obtained by him in such enterprise; and
  - (2) any of his interest in, claims against or property or contractual rights of any kind affording a source of influence over such enterprise.
- (d) In the case of any sentence imposed under this Section, imposition or execution of such sentence shall not be suspended and probation shall not be granted. Parole or work release shall not be granted to the offender until the offender has served at least fifteen (15) years of his sentence of imprisonment.
- (e) The Superior Court of Guam shall have jurisdiction to enter such restraining orders or prohibitions or to take such other actions, including the acceptance of satisfactory performance bonds in connection with any property or other interest subject to forfeiture under this Section as it shall deem proper.

**Section 67.410. Money Laundering and Illegal Investment; Penalty.**

- (a) A person shall not knowingly or intentionally receive or acquire proceeds, or engage in transactions involving proceeds, known to be derived from a violation of this Act.
- (b) A person shall not knowingly or intentionally give, sell, transfer, trade, invest, conceal, transport or otherwise make available anything of value that the person knows is intended to be used to commit or further the commission of a violation of this Act.
- (c) A person shall not knowingly or intentionally direct, plan, organize, initiate, finance, manage, supervise or facilitate the transportation or transfer of proceeds that the person knows are derived from a violation of this Act.
- (d) A person shall not knowingly or intentionally conduct a financial transaction involving proceeds derived from a violation of this Act if the transaction is designed in whole or in part to conceal or disguise the nature, location source, ownership or control of the proceeds that the person knows are derived from a violation of this Act, or to avoid a transaction reporting requirement under state or Federal law.
- (e) Any person who is convicted of this Section is guilty of felony of the first degree.

**Section 67.411. Second or Subsequent Offenses; Penalties.**

(a)

(1) Any person convicted of an offense under Article 6 of this Act with respect to a controlled substance listed in Schedule I or II of this Act which is a narcotic drug, if it is the offender's second or subsequent offense, the person shall be sentenced to a term of imprisonment which may not be less than twenty (20) years and which may be up to life imprisonment and may, in addition, be fined not more than One Hundred Thousand Dollars (\$100,000.00). The sentence, if for a term of years, shall include a special parole term of not less than six (6) years in addition to such other term of imprisonment. In the case of any sentence under this Paragraph, imposition or execution of such sentence shall not be suspended and probation shall not be granted. Parole or work release shall not be granted to the offender until he has served at least twenty (20) years of his sentence of imprisonment.

(2) Any person who committed an offense under Article 6 of this Act with respect to a controlled substance listed in Schedule I or II of this Act which is a narcotic drug while such person was released on bail pursuant to Chapter 40 of Title 8 of the Guam Code Annotated, *Criminal Procedure*, in a charge of an offense under Article 6 of this Act shall be sentenced to a term of imprisonment which may not be less than twenty (20) years and which may be up to life imprisonment and may, in addition, be fined not more than One Hundred Thousand Dollars (\$100,000.00). The sentence, if for a term of years, shall include a special parole term of not less than six (6) years in addition to such term of imprisonment. In the case of any sentence under this Paragraph, imposition or execution of such sentence shall not be suspended and parole shall not be granted. Parole or work release shall not be granted to the offender until he has served at least twenty (20) years of his sentence of imprisonment.

(3) The minimum term of imprisonment prescribed in Paragraphs (1) and (2) of this Subsection shall not apply in the case of a person who the Court determines violated Article 6 of this Act for the primary purpose of enabling him to obtain a narcotic drug which he requires for his personal use because of his addiction to such drug. The Court shall take into consideration the amount of the controlled substance imported in determining if the offender's primary purpose is importation or exportation for his own use.

(b) For purposes of this Section, a person shall be considered convicted of a second or subsequent offense if, prior to the commission of such offense, he was convicted of one (1) or more felonies under any provision of this Act or law of the United States, a state or foreign jurisdiction relating to narcotic drugs, marijuana or depressant or stimulant drugs.

(c) Section 67.401.8 of this Act shall apply with respect to any proceeding to sentence a person under this Section.

**Section 67.412. Conditional Discharge and Dismissal for First Offenders; Permitted.**

Whenever any person who has not previously been convicted of an offense under this Act or under any statute of the United States or of any State relating to narcotic drugs, marijuana or stimulant, depressant or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under §67.401.2

- (a) , the Court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions. Upon violation of a term or condition, the Court may enter an adjudication of guilty and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the Court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this Section shall be without Court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and dismissal under this Section may occur only once with respect to any person.
- (b) Upon the dismissal of such person and discharge of the proceedings against him under Subsection (a), such person may apply to the Court for an order to expunge from all official records, other than the nonpublic records to be retained by the Court solely for the purposes of use by the Courts in determining whether or not, in subsequent proceedings, such person qualifies under this Section, all recordation relating to his arrest, indictment or information, trial, finding of guilty and dismissal and discharge pursuant to this Section. If the Court determines after hearing, that such person was dismissed and the proceedings against him discharged, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

**Section 67.412.1.** No Conditional Discharge and Dismissal Permitted for Offenses Involving Methamphetamine. The provisions of §67.412 shall not apply in the case of a violation defined as third degree felony in §67.401.2 that involves the controlled substance known as methamphetamine.

**Section 67.413.** Treatment Option for Violation of Act. If an individual is adjudicated guilty of a violation of this Act for which the individual is eligible for probation, the Court may impose a sentence authorized by this Act, may place the individual on probation as authorized by this Section, or may impose a combination of a sentence and probation as authorized by this Section. The Court, with the consent of the individual and with the consent of a treatment facility having inpatient or outpatient programs for the treatment of drug dependent individuals, may place the individual, if found by the Court to be in need of treatment, on probation upon terms and conditions, including participation in a treatment program of the facility. The Court shall order treatment for the period the treatment facility considers necessary. Treatment or a combination of a sentence and probation, including treatment may not exceed the maximum sentence allowable unless the convicted individual consents to continued treatment. Upon violation of a term or condition, including failure to participate in the treatment program, the Court may revoke the probation and proceed as otherwise provided. Upon fulfillment

of the terms and conditions, including attendance and successful completion of the treatment program, the Court shall terminate the probation.

**Section 67.414.** Assessment for Education and Treatment; Appropriation of Moneys.

(a) A person convicted of a violation of this Act, and every individual placed on probation under §67.412, must be assessed for each offense a sum of not less than Five Hundred Dollars (\$500.00) nor more than Three Thousand Dollars (\$3,000.00). The assessment is in addition to and not in lieu of any fine, restitution, other assessment, or forfeiture authorized or required by law.

(b) The assessment provided for in this Section must be collected as provided for collection of restitution and must be forwarded to the Probation Department as provided in Subsection (c).

(c) Moneys collected under this Section must be forwarded to the Probation Department for deposit in the Drug Treatment and Enforcement Fund. Moneys in the fund are appropriated on a continuing basis and are not subject to lapsing and related appropriations restraints.

(d) The Probation Department shall administer expenditures from the fund. Expenditures may be made only for drug abuse education, prevention and treatment services. Moneys from the fund may not supplant other local, state or Federal funds.

**Section 67.414.1.** Drug Treatment and Enforcement Fund. All fines collected by the Superior Court of Guam for violation of this Act shall be placed in a special fund maintained by the Department of Administration separately from the General Fund to be called the '*Drug Treatment and Enforcement Fund.*' Funds so placed shall be used exclusively for the support of drug treatment and education programs in Guam, as well as support of law enforcement efforts, subject to appropriation for those purposes by the Guam Legislature.

ARTICLE 5. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS.

**Section 67.501.** Powers of Enforcement Personnel.

(a) An officer or employee of GPD designated by the Chief of Police may:

- (1) carry firearms in the performance of the officer's and employee's official duties;
- (2) execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas and summons issued under the authority of Guam;
- (3) make arrests without warrant for an offense under this Act committed in the officer's presence, or if the officer or employee has probable cause to believe that the individual to be arrested has committed or is committing a violation of this Act which may constitute a felony;
- (4) make seizures of property pursuant to this Act; and
- (5) perform other law enforcement duties the Chief of Police assigns.

(b) An employee of DPHSS designated by the Director of DPHSS may:

- (1) execute and serve search warrants, administrative inspection warrants, subpoenas and summonses issued under the authority of Guam;
- (2) make seizures of property pursuant to this Act; and

(3) if necessary, perform other duties of enforcement under this Act, as assigned by the Director of DPHSS.

**Section 67.502.** Administrative Inspections and Warrants and Search is Warrant.

(a) In this Section, "controlled premises" means:

(1) places where persons registered or exempted from registration requirements under this Act are required to keep records; and

(2) places, including factories, warehouses, establishments and conveyances, in which persons registered or exempted from registration requirements under this Act are permitted to hold, manufacture, compound, process, sell, deliver or otherwise dispose of a controlled substance.

(b) The procedure for issuance and execution of administrative inspection warrants is as follows:

(1) A judge of the Guam Superior Court, upon proper oath or affirmation showing probable cause, may issue warrants to conduct administrative inspections of controlled premises authorized by this Act or rules adopted under this Act, and seizures of property appropriate to the inspections. For the purpose of issuance of an administrative inspection warrant, probable cause exists upon showing a valid public interest in the effective enforcement of this Act, or rules adopted under this Act, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant.

(2) A warrant may issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, the judge shall issue a warrant identifying the area, premises, building or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant must:

- (i) state the grounds for its issuance and the name of each individual whose affidavit has been taken in support thereof;
- (ii) be directed to an individual authorized by §67.501 to execute it;
- (iii) command the individual to whom it is directed to inspect the area, premises, building or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;
- (iv) identify the item or types of property to be seized, if any; and
- (v) direct that it be served during normal business hours and designate the judge to whom it must be returned.

(3) A warrant issued pursuant to this Section must be executed and returned within ten (10) days after its date unless, upon a showing of a need for additional time, the Court orders otherwise. If property is seized pursuant to a warrant, a copy must be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant must be made promptly, accompanied by a written inventory of any property taken. The inventory must be made in the presence of the individual executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one (1) credible individual other than the individual executing the warrant. A copy of the

inventory must be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant; and

(4) The judge who has issued a warrant shall attach to the warrant a copy of the return and all papers returnable in connection therewith and file them with the clerk of the Guam Superior Court in which the inspection was made.

(c) DPHSS and GPD may make administrative inspections of controlled premises in accordance with the following provisions:

(1) if authorized by an administrative inspection warrant issued pursuant to Subsection (b), an officer or employee designated by DPHSS and GPD, upon presenting the warrant and appropriate credentials to the owner, operator or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection;

(2) if authorized by an administrative inspection warrant, an officer or employee designated by DPHSS and GPD may:

- (i) inspect and copy records required by this Act to be kept;
- (ii) inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in Paragraph (4), all other things therein, including records, files, papers, processes, controls and facilities bearing on violation of this Act; and
- (iii) inventory any stock of a controlled substance therein and obtain samples thereof;

(3) This Section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with §9217 of Title 5 of the Guam Code Annotated, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

- (i) if the owner, operator or agent in charge of the controlled premises consents;
- (ii) in situations presenting imminent danger to health or safety as determined by DPHSS and/or GPD;
- (iii) in situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;
- (iv) in an emergency or other exceptional circumstance where time or opportunity to apply for a warrant is lacking; or
- (v) in all other situations in which a warrant is not constitutionally required.

(4) An inspection authorized by this Section may not extend to financial data, sales data other than shipment data or pricing data, unless the owner, operator or agent in charge of the controlled premises consents in writing.

**Section 67.502.1.** Items Subject to Forfeiture for Violation of this Act.

(a) The following shall be subject to forfeiture and no property right shall exist in them:

(1) all controlled substances which have been or are intended to be manufactured, distributed, dispensed, acquired or held in violation of the provisions of this Act; all raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of the provisions of this Act;

(3) all property which is used, or intended for use, as a container for property described in Paragraphs (1) and (2);

(4) all conveyances including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of property described in Paragraphs (1) or (2), except that:

- (i) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this Act, unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this Act; and
- (ii) no conveyance shall be forfeited under the provisions of this Section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent;
- (iii) a conveyance is not subject to forfeiture for a violation of §67.401.2; and
- (iv) a forfeiture of a conveyance encumbered by a *bona fide* security interest of the secured party if he neither had knowledge of nor consented to the act or omission.

(5) all books, records and research, including formulas, microfilm, tapes and data which are used, or intended for use, in violation of this Act;

(6) all moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this Act, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, securities used or intended to be used to facilitate any violation of this Act, shall be forfeited to the criminal justice agency making the seizure; and

(7) all firearms which are visible, carried during or used in furtherance of a violation of this Act.

(b) Any property subject to forfeiture under this Act may be seized by GPD upon process issued by the Superior Court, except that seizure without such process may be made when:

- (1) the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;
- (2) the property subject to seizure has been the subject of a prior judgment in a criminal injunction or forfeiture proceeding based upon this Act;
- (3) GPD or DPHSS has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or
- (4) GPD or DPHSS has probable cause to believe that the property has been used or intended to be used in violation of this Act.

In the event of seizure pursuant to this Subsection, proceedings under Subsection (c) shall be instituted promptly.

(c) Property taken or detained under this Section shall not be repleviable; but shall be deemed to be in the custody of the GPD or DPHSS only to the orders and decrees of the Court. Whenever property is seized under the provisions of this Act, GPD or DPHSS may:

- (1) place the property under seal; or
- (2) remove the property to a place designated by him.

(d) Whenever property is forfeited under this Act GPD or DPHSS may:

- (1) retain the property for official use;
- (2) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public; the proceeds shall be used for payment of all property expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and Court costs;
- (3) require the property to be taken into custody and removed for disposition in accordance with law; or
- (4) forward it to DEA for disposition; such disposition may include delivery for medical or scientific use to any Federal or state agency under regulations of the Attorney General of the United States.

(e) All substances listed in Schedule I that are possessed, transferred, sold or offered for sale in violation of the provisions of this Act shall be deemed contraband and seized and summarily forfeited to the government of Guam. Similarly, all substances listed in Schedule I which are seized or come into the possession of the government of Guam, the owners of which are unknown, shall be deemed contraband and summarily forfeited to the government of Guam:

- (1) All species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this Act, or of which the owners or cultivators are unknown, of which are wild growths, may be seized and summarily forfeited to the government of Guam.
- (2) The failure, upon demand by GPD of the person in occupancy or in control of land or premises upon which such species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, shall constitute authority for the seizure and forfeiture.

**Section 67.502.2. Search Warrant May Be Served Any Time.**

A search warrant relating to offenses involving controlled substances may be served at any time of the day or night if the judge or magistrate issuing the warrant is satisfied that there is probable cause to believe that grounds exist for the warrant.

**Section 67.503. Injunctions.**

- (a) The Guam Superior Court has jurisdiction to restrain or enjoin violations of this Act.
- (b) The defendant may demand trial by jury for an alleged violation of an injunction or restraining order under this Section.

**Section 67.504. Cooperative Arrangements and Confidentiality.** (a) The Attorney General, DPHSS and GPD shall cooperate with Federal and other state agencies in discharging their responsibilities concerning traffic in controlled substances and in



suppressing the abuse of controlled substances. To this end, the Attorney General, DPHSS and GPD may:

- (1) arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;
  - (2) coordinate and cooperate in training programs concerning controlled substance law enforcement at local and state levels;
  - (3) cooperate with the Drug Enforcement Administration by establishing a centralized unit to accept, catalog, file and collect statistics, including records of drug dependent persons and other controlled substance law offenders within Guam, and make the information available for Federal, state and local law enforcement purposes, but may not furnish the name or identity of a patient or research subject whose identity could not be obtained under Subsection (c); and
  - (4) conduct programs of eradication aimed at destroying wild growth or unlawful propagation of plant species from which controlled substances may be extracted.
- (b) Results, information and evidence received from the DEA relating to the regulatory functions of this Act, including results of inspections conducted by it, may be relied and acted upon by DPHSS and GPD in the exercise of its regulatory functions under this Act.
- (c) A practitioner engaged in medical practice or research is not required or compelled to furnish the name or identity of a patient or research subject to DPHSS, nor may the practitioner be compelled in any state or local civil, criminal, administrative, legislative or other proceedings to furnish the name or identity of an individual that the practitioner is obligated to keep confidential; provided however, that nothing herein shall be construed to prevent DPHSS from conducting a triplicate prescription program or any other drug monitoring program pursuant to rules adopted by DPHSS.

**Section 67.505.1.** Proof of Exemption and Exception Upon Defendant: Failure to Show Registration Cause for Forfeiture.

- (a) It shall not be necessary for the government to negate any exemption or exception in this Act in any complaint, information, indictment or other pleading or in any trial, hearing or other proceeding under this Act. The burden of proof of any such exemption or exception shall be upon the person claiming its benefit.
- (b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this Act, he shall be presumed not to be the holder of such registration or form, and the burden of proof shall be upon him to rebut such presumption.

**Section 67.505.2.** Burden of Proof; Liabilities.

- (a)
- (1) It shall not be necessary for the government to negate any exemption or exception in this Act in any complaint, information, indictment or other pleading or in any trial, hearing or other proceeding under this Act. The burden of proof of any such exemption or exception shall be upon the person claiming its benefit.
  - (2) In the case of a person charged under §67.401.1 of this Act with the possession of a controlled substance, any label identifying such substance for purposes of §503(b)(2) of the Federal Food, Drug and Cosmetic Act [21 USC §353(b)] shall be admissible in evidence and shall be prima facie evidence that

such substance was obtained pursuant to a valid prescription from a practitioner while acting in the course of his professional practice.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this Act, he shall be presumed not to be the holder of such registration or form and the burden of going forward with the evidence with respect to such registration or form shall be upon him.

(c) The burden of going forward with the evidence to establish that a vehicle, vessel or aircraft used in connection with controlled substances in Schedule I was used in accordance with the provisions of this Act shall be on the persons engaged in such use.

**Section 67.506.** Judicial Review. Final determinations, findings and conclusions of DPHSS under this Act are subject to review under the Administrative Adjudication Law, Title 5 Guam Code Annotated §9100, *et seq.*

**Section 67.507.** Education and Research.

(a) DPHSS or the Department of Mental Health and Substance Abuse, or both, may carry out education programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs DPHSS and DMHSA may:

- (1) promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;
- (2) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;
- (3) consult with interested groups and organizations to aid them in solving administrative and organizational problems;
- (4) evaluate procedures, projects, techniques and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;
- (5) disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to alleviate them; and
- (6) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(b) GPD, DPHSS and DMHSA may encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this Act, GPD, DPHSS and DMHSA may:

- (1) establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;
- (2) make studies and undertake programs of research to:
  - (i) develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this Act;
  - (ii) determine patterns of misuse and abuse of controlled substances and the social effects thereof; and
  - (iii) improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances; and
- (3) enter into contracts with public agencies, institutions of higher education and private organizations or individuals for the purpose of conducting research

demonstrations, or special projects that bear directly on misuse and abuse of controlled substances.

(c) DPHSS and DMHSA, with the approval of the Attorney General, may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. A person who obtains this authorization is not compelled in any civil, criminal, administrative, legislative or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(d) DPHSS and DMHSA with the approval of the Attorney General, may authorize the possession and distribution of controlled substances by persons engaged in research. A person who obtains this authorization is exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

**Section 67.508.** Findings of Fact: Appeal Permitted. All final determinations, findings and conclusions of the Attorney General under this Act are final and conclusive decisions of the matters involved. Any person aggrieved by such decision may obtain review of the decision in the Superior Court. Findings of fact by the Attorney General, if supported by substantial evidence are conclusive.

#### ARTICLE 6. IMPORTATION AND EXPORTATION.

**Section 67.600.** Definition. For the purpose of this Article, the term "import" means, with respect to any article, any bringing in or introduction of any such article into any area on Guam.

**Section 67.601.** Importation of Controlled Substances.

(a) Except for a person registered pursuant to §67.606 of this Act or exempted pursuant to §67.604 or §67.605 of this Act, it shall be unlawful and punishable as a felony of the first degree to import into Guam any controlled substance listed in Schedule I or II of this Act or any narcotic drug listed in Schedules III, IV or V of this Act, except that:

(1) such amounts of crude opium and coca leaves as the Attorney General finds to be necessary to provide for medical, scientific or other legitimate purposes; and  
(2) such amounts of any controlled substance listed in Schedule I or II of this Act or any narcotic drug listed in Schedule III, IV or V of this Act, that the Attorney General finds to be necessary to provide for the medical, scientific or other legitimate needs of Guam:

- (i) during an emergency in which domestic supplies of such substance or drug are found by the Attorney General to be inadequate; or
- (ii) in any case in which the Attorney General finds that competition among domestic manufacturers of the controlled substance is inadequate and will not be rendered adequate by the registration of additional manufacturers under Article 3 of this Act, may be so imported under such regulations as the Attorney General prescribe.

No crude opium may be so imported for the purpose of manufacturing heroin or smoking opium.

(b) It shall be unlawful and punishable as a felony of the third degree to import into Guam from any place outside thereof any non-narcotic controlled substance listed in Schedules III, IV or V of this Act, unless such non-narcotic controlled substance:

- (1) is imported for medical, scientific or other legitimate uses; and
- (2) is imported pursuant to such notification or declaration requirements as the Attorney General may, by rule, prescribe.

(c) In addition to the amount of coca leaves authorized to be imported into Guam under Subsection (a) of this Section, the Attorney General may permit the importation of additional amounts of coca leaves.

All cocaine and ecgonine, and all salts, derivatives and preparations from which cocaine or ecgonine may be synthesized or made, contained in such additional amounts of coca leaves imported under this Subsection shall be destroyed under the supervision of an authorized representative of the Attorney General.

**Section 67.602. Exportation of Controlled Substances.**

(a) It shall be unlawful and punishable as a felony of the first degree to export from Guam any narcotic drug listed in Schedule I, II, III or IV of this Act unless:

- (1) it is exported to a country which is a party to:
  - (i) the International Opium Convention of 1912 for the Suppression of the Abuses of Opium, Morphine, Cocaine and Derivative Drugs or to the International Opium Convention signed at Geneva on February 19, 1925; or
  - (ii) the Convention for Omitting the Manufacture and Regulating the Distribution of Narcotic Drugs concluded at Geneva, July 13, 1931, as amended by the protocol signed at Lake Success on December 11, 1946, and the protocol bringing under international control drugs outside the scope of the Convention of July 13, 1931, for limiting the manufacturing and regulating the distribution of narcotic drugs, as amended by the protocol signed at Lake Success on December 11, 1946, signed in Paris, November 19, 1948; or
  - (iii) the Single Convention on Narcotic Drugs, 1961, signed in New York, March 30, 1961;
- (2) such country has instituted and maintains, in conformity with conventions to which it is a party, a system for the control of imports of narcotic drugs which the Attorney General deems adequate;
- (3) the narcotic drug is consigned to a holder of such permits or licenses as may be required under the laws of the country of import and a permit or license to import such drug has been issued by the country of import;
- (4) substantial evidence is furnished to the Attorney General by the exporter that
  - (i) the narcotic drug is to be applied exclusively to medical or scientific uses within the country of import, and
  - (ii) there is an actual need for the narcotic drug for medical or scientific uses within such country; and
- (5) a permit to export the narcotic drug in each instance has been issued by the Attorney General.

(b) Notwithstanding Subsection (a) of this Section, the Attorney General may authorize any narcotic drug, including crude Opium and coca leaves, listed in Schedules I, II, III or

IV of this Act to be exported from Guam to a country which is a party to any of the international instruments mentioned in Subsection (a) of this Section if the particular drug is to applied to a special scientific purpose in the country of destination and the authorities of such country will permit the importation of the particular drug for such purpose.

(c) It shall be unlawful and punishable as a felony of the third degree to export from Guam any non-narcotic controlled substance listed in Schedule I or II of this Act unless:

- (1) there is furnished, before export, to the Attorney General documentary proof that importation is not contrary to the laws or regulations of the country of destination;
- (2) a special controlled substance invoice, in triplicate, accompanies the shipment setting forth such information as the Attorney General may prescribe to identify the parties to the shipment and the means of shipping; and
- (3) two (2) additional copies of the invoice are forwarded to the Attorney General before the controlled substance is exported from Guam.

**Section 67.603.** Transshipment and In-Transit Shipment of Controlled Substances.

Notwithstanding §§67.601, 67.602 and 67.605 of this Act:

(a) A controlled substance listed in Schedule I of the Act, may:

- (1) be imported into Guam for transshipment to another country, provided the controlled substance does not remain on Guam for more than seventy-two (72) hours and all necessary security controls are provided to prevent theft; or
- (2) be transferred or transshipped from one (1) vessel or aircraft to another vessel or aircraft within Guam for immediate exportation if and only if it is so imported, transferred or transshipped (i) for scientific, medical or other legitimate purposes in the country of destination and (ii) with the prior written approval of Attorney General, which shall be granted or denied within thirty (30) days of the request.

(b) A controlled substance listed in Schedules II, III or IV of this Act may be so imported, transferred or transshipped if and only if advance notice is given to the Attorney General in accordance with rules of the Attorney General.

**Section 67.604.** Possession on Board Vessel or Aircraft Arriving in or Departing from Guam.

(a) It shall be unlawful and punishable as a felony of the first degree for any person to bring or possess on board any vessel or aircraft arriving in or departing from Guam a controlled substance listed in Schedule I or II of this Act, unless such substance or drug is a part of the cargo entered in the manifest or part of the official supplies of the vessel or aircraft.

(b) Exempted from §§67.601(a) and (b), and §67.602 of this Act is any individual who has a controlled substance, except a substance listed in Schedule I, in his possession for his personal medical use or for administration to an animal accompanying him, if he lawfully obtained such substance from a practitioner in the ordinary course of that practitioner's profession.

(c) The Attorney General may, by rule, except any compound, mixture or preparation containing any depressant or stimulant substance listed in Schedule III of this Act or listed in Schedule IV or V from the application of all or any part of this Article if: (1) the

compound, mixture or preparation contains one (1) or more active medicinal ingredients not having a depressant or stimulant effect on the central nervous system, and (2) such ingredients are included therein in such combinations, quantity, proportion or concentration as to vitiate the stimulant or depressant effect on the central nervous system.

**Section 67.605. Persons Not Required to Register.**

(a) The following persons shall not be required to register under the provisions of this Section and may lawfully possess a controlled substance:

- (1) an agent or employee of any importer or exporter registered under §67.606 of this Act if such agent or employee is acting in the usual course of his business or employment;
- (2) a common or contract carrier or warehouseman or an employee thereof whose possession of any controlled substance is in the usual course of his business or employment; or
- (3) an ultimate user who possesses such substance for a purpose specified in §67.100 (#34) of this Act and in conformity with an exemption granted under §67.604.

(b) The Attorney General may, by rule, waive the requirement for registration of certain importers and exporters if the Attorney General finds it consistent with the public health and safety, and may authorize any such importer or exporter to possess controlled substances for purposes of importation and exportation.

**Section 67.606. Registration Requirements.**

(a) The Attorney General shall register an applicant to import or export a controlled substance listed in Schedule I or II if the Attorney General determines that such registration is consistent with the public interest and with United States obligations under international treaties, conventions or protocols in effect on the effective date of this Section. In determining the public interest, the factors enumerated in Paragraphs (1) - (8) of §67.303(a) of this Act shall be considered.

(b) Registration granted under Subsection (a) of this Section shall not entitle a registrant to import or export controlled substances listed in Schedule I or II of this Act other than those specified in the registration.

(c) The Attorney General shall register an applicant to import a controlled substance listed in Schedule III, IV or V unless the Attorney General determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the factors enumerated in Paragraphs (1) - (8) of §67.303 (a) of this Act shall be considered.

(d) No registration shall be issued under this part for a period in excess of one (1) year. Unless the rules of the Attorney General otherwise provide, §§67.302(f), 67.304 and 67.306 of this Act shall apply to persons registered under this Section to the same extent such Sections apply to persons registered under §67.303.

(e) The Attorney General is authorized to promulgate rules and charge reasonable fees relating to the registration of importers and exporters of controlled substances under this Section.

(f) Persons registered by the Attorney General under this Section to import or export controlled substances may import or export, and, for the purpose of so importing or exporting, may possess, such substances to the extent authorized by their registration and in conformity with the other provisions of this Act.

(g) A separate registration shall be required at each principal place of business where the applicant imports or exports controlled substances.

(h) Except in emergency situations as described in §67.601(a)(2)(i) of this Act, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance listed in Schedule I or II of this Act and prior to issuing a rule under §67.601(a) of this Act authorizing the importation of such a substance, the Attorney General shall give manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

**Section 67.607.** Manufacture or Distribution for Purposes of Unlawful Importation. It shall be unlawful and punishable, as a felony of the first degree, for any person to manufacture or distribute a controlled substance listed in Schedule I or II of this Act:

(1) intending that such substance be unlawfully imported into Guam; or

(2) knowing that such substance will be unlawfully imported into Guam.

This Section is intended to reach acts of manufacture or of distribution committed outside the territorial jurisdiction of Guam. The Superior Court of Guam shall have jurisdiction over persons violating provisions of this Article.

**Section 67.608.** Application of Federal Law and Cooperative Agreement Between Local and Federal Enforcement Agencies. Unless there is a positive conflict between this Act and the Federal Drug Abuse Prevention and Control Act so that the two (2) cannot consistently stand together, the U.S. Congress has provided (21 U.S.C. §901) that there is no intent on the part of Congress to occupy the field in which that provision operates, including criminal penalties to the exclusion of any state or territorial law on the same subject matter which would otherwise be within the authority of the state or territory. It is the Guam Legislature's intent that local agencies charged by the Governor with the enforcement of this Act, shall cooperate to the fullest extent with any Federal agency charged with enforcement of the Federal Act, (21 USC Chapter 13).

## ARTICLE 7. MISCELLANEOUS.

**Section 67.701.** Prospective Application. This Act applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations that occur following the effective date of this Act.

**Section 67.702.** Pending Proceedings.

(a) This Act does not affect or abate a prosecution for a violation of law occurring before the effective date of this Act. If the offense being prosecuted is similar to one set out in Article 4, the penalties under Article 4 apply if they are less than those under former law.

(b) This Act does not affect a civil seizure, forfeiture or injunctive proceeding commenced before the effective date of this Act.

(c) An administrative proceeding under laws that are superseded by this Act must be continued and brought to a final determination in accordance with the laws and rules in effect before the effective date of this Act. A substance controlled under superseded law, but which is not listed in Appendices A, B, C, D or E is automatically controlled without further proceedings and must be added in the appropriate schedule.

(d) DPHSS shall initially permit a person to register who owns or operates an establishment engaged in the manufacture, distribution or dispensing of a controlled substance before the effective date of this Act and who is registered or licensed in Guam.

**Section 67.703.** Continuation of Rules; Application to Existing Relationships. Orders issued and rules adopted under any law affected by this Act and in effect on the effective date of this Act and not in conflict with this Act continue in effect until modified, superseded or repealed. Rights and duties that matured, penalties that were incurred and proceedings that were begun before the effective date of this Act continue in effect and are not affected by §67.709.

**Section 67.704.** Continuing Criminal Enterprise; Civil Action.

(a) The Attorney General may maintain a civil action against a person who violates §67.411 to obtain a judgment for damages in an amount equal to the gross income and the value of assets acquired directly or indirectly by the person by reason of violation of §67.411, together with costs incurred for resources and personnel used in the investigation and prosecution of the proceedings through which liability was established.

(b) The standard of proof in actions brought under this Section is a preponderance of the evidence.

**Section 67.705.** Statute of Limitations. A civil action under this Act must be commenced within seven (7) years after the claim for relief became known or should have become known, excluding any time during which a party is out of Guam or in confinement, or during which criminal proceedings relating to a party are in progress.

**Section 67.706.** Short Title. This Act may be cited as the '*Guam Uniform Controlled Substances Act.*'

**Section 67.707.** Severability Clause. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

**Section 67.708.** Effective Date. This Act takes effect thirty (30) days after enactment.

#### APPENDIX A

A. Any of the following synthetic opiates, including any isomers, esters, ethers, salts, and salts of isomers, esters, and others of them that are theoretically possible within the specific chemical designation:

- (1) acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
- (2) acetylmethadol;
- (3) allylprodine;



- (4) alphacetylmethadol (except levoalphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);
- (5) alphameprodine;
- (6) alphamethadol;
- (7) alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);
- (8) alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl) ethyl-4-piperidinyl]-N-phenylpropanamide);
- (9) benzethidine;
- (10) betacetylmethadol;
- (11) beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);
- (12) beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);
- (13) betameprodine;
- (14) betamethadol;
- (15) betaprodine;
- (16) clonitazene;
- (17) dextromoramide;
- (18) diampromide;
- (19) diethylthiambutene;
- (20) difenoxin;
- (21) dimenoxadol;
- (22) dimepheptanol;
- (23) dimethylthiambutene;
- (24) dioxaphetyl butyrate;
- (25) dipipanone;
- (26) ethylmethylthiambutene;
- (27) etonitazene;
- (28) etoxeridine;
- (29) furethidine;
- (30) hydroxypethidine;
- (31) ketobemidone;
- (32) levomoramide;
- (33) levophenacymorphan;
- (34) 3-methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);
- (35) 3-methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
- (36) morpheridine;
- (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- (38) noracymethadol;
- (39) norlevorphanol;
- (40) normethadone;
- (41) norpipanone;

- (42) para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]propanamide;
- (43) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
- (44) phenadoxone;
- (45) phenampromide;
- (46) phenomorphan;
- (47) phenoperidine;
- (48) piritramide;
- (49) proheptazine;
- (50) properidine;
- (51) propiram;
- (52) racemoramide;
- (53) thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);
- (54) tilidine; and
- (55) trimeperidine.

B. Any of the following opium derivatives, including any salts, isomers and salts of isomers of them that are theoretically possible within the specific chemical designation:

- (1) acetorphine;
- (2) acetyldihydrocodeine;
- (3) benzylmorphine;
- (4) codeine methylbromide;
- (5) codeine-N-Oxide;
- (6) cyprenorphine;
- (7) desomorphine;
- (8) dihydromorphine;
- (9) drotebanol;
- (10) etorphine (except hydrochloride salt);
- (11) heroin;
- (12) hydromorphanol;
- (13) methyldesorphine;
- (14) methyldihydromorphine;
- (15) morphine methylbromide;
- (16) morphine methylsulfonate;
- (17) morphine-N-oxide;
- (18) myrophine;
- (19) nicocodeine;
- (20) nicomorphine;
- (21) normorphine;
- (22) pholcodine; and
- (23) thebacon.

C. Material, compound, mixture or preparation containing any quantity of the following hallucinogenic substances, including any salts, isomers, and salts of isomers of them that are theoretically possible within the specific chemical designation:

- (1) Alpha-ethyltryptamine (other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and AET);

- (2) 4-bromo-2,5-dimethoxy-amphetamine (other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA);
- (3) 4-bromo-2,5-dimethoxyphenethylamine (other names: 2-(4-bromo-2,5-dimethoxyphenyl)-i-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus);
- (4) 2,5-dimethoxyamphetamine (other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA);
- (5) 2,5-dimethoxy-4-ethylamphet-amine;
- (6) 4-methoxyamphetamine (other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine, PMA);
- (7) 5-methoxy-3,4-methylenedioxy-amphetamine;
- (8) 4-methyl-2,5-dimethoxy-amphetamine (other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; DOM; and STP);
- (9) 3,4-methylenedioxy amphetamine;
- (10) 3,4-methylenedioxymethamphetamine (MDMA);
- (11) 3,4-methylenedioxy-N-ethylamphetamine (other names: N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA);
- (12) N-hydroxy-3,4-methylenedioxyamphetamine (other names: N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine, and N-hydroxy MDA);
- (13) 3, 4, 5-trimethoxy amphetamine;
- (14) bufotenine (other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine);
- (15) diethyltryptamine (other names: N,N-Diethyltryptamine; DET);
- (16) dimethyltryptamine (other names: DMT);
- (17) ibogaine (other names: (7-Ethyl-6,6Beta, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepino [5,4-b] indole; tabernanthe iboga);
- (18) lysergic acid diethylamide;
- (19) marihuana;
- (20) mescaline;
- (21) parahexyl (other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo [b, d] pyran; Synhexyl);
- (22) peyote (all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, its seeds, any extract from any part of the plant, and every compound manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts);
- (23) N-ethyl-3-piperidyl benzilate;
- (24) N-methyl-3-piperidyl benzilate;
- (25) psilocybin;
- (26) psilocyn;
- (27) tetrahydrocannabinols;
- (28) ethylamine analog of phencyclidine (other names: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine; cyclohexamine, PCE);

(29) pyrrolidine analog of phencyclidine (other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy; PHP);

(30) thiophene analog of phencyclidine (other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP; TCP); and

(31) TCPy (other name: 1-[1-(2-thienyl)cyclohexyl] pyrrolidine.

D. Material, compound, mixture or preparation containing any quantity of the following substances having a depressant effect on the central nervous system, including any salts, isomers and salts of isomers of them that are theoretically possible within the specific chemical designation:

(1) mecloqualone; and

(2) methaqualone.

E. Material, compound, mixture or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers and salts of isomers:

(1) Aminorex (other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine);

(2) Cathinone (other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone);

(3) Fenethylamine;

(4) Methcathinone (other names: 2-(methylamino)-propionophenone; alpha-(methylamino)propionophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463 and UR1432), its salts, optical isomers and salts of optical isomers);

(5) (+/-)-cis-4-methylaminorex (other name: (+/-)-cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine);

(6) N-ethylamphetamine; and

(7) N,N-dimethylamphetamine (other name: N,N-alpha-rimethylphenethylamine).

## APPENDIX B

A. Any of the following substances, however manufactured:

(1) Opium and opium derivative, and any salt, compound derivative, or preparation of opium or opium derivative, excluding apomorphine, dextropropion, naltrexone, butorphanol, nalbuphine, nalmefene, naloxone, and naltrexone, but including:

(A) raw opium;

(B) opium extracts;

(C) opium fluid;

(D) powdered opium

(E) granulated opium;

(F) tincture of opium;

(G) codeine;

(H) ethylmorphine;

(I) etorphine hydrochloride;

(J) hydrocodone;

(K) hydromorphone;

(L) metopon;

(M) morphine;

- (N) oxycodone
- (O) oxymorphone;
- (P) thebaine;

(2) A salt, compound, derivative, or preparation that is chemically equivalent or identical with any of the substances listed in Subparagraph (1), but not isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, including cocaine and ecgonine and their salts, isomers, derivatives, and salts of isomers and derivatives, and any salt, compound, derivative, or preparation that is chemically equivalent or identical with any of the substances listed in this subparagraph, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine; and

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy)

B. Any of, the following synthetic opiates, including any isomers, esters, ethers, salts, and salts of isomers, esters, and ethers of them that are theoretically possible within the specific chemical designation:

- (1) alfentanil;
- (2) alphaprodine;
- (3) anileridine;
- (4) bezitramide;
- (5) carfentanil;
- (6) bulk dextropropoxyphene (non-dosage forms);
- (7) dihydrocodeine;
- (8) diphenoxylate;
- (9) fentanyl;
- (10) isomethadone;
- (11) levomethorphan;
- (12) levorphanol;
- (13) metazocine;
- (14) methadone;
- (15) methadone-intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;
- (16) moramide-intermediate, 2-methyl-3-morpholino-1, I-diphenylpropane-carboxylic acid;
- (17) pethidine (meperidine);
- (18) pethidine-intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (19) pethidine-intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (20) pethidine-intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (21) phenazocine;
- (22) piminodine;
- (23) racemethorphan;
- (24) racemorphan;
- (25) sufentanil; and

(26) levo-alpha-acetylmethadol (other names: levo-alpha- acetylmethadol, levomethadyl acetate, LAAM).

C. Material, compound, mixture, or preparation containing any quantity of the following substances, their salts, isomers, or salts of isomers, having a stimulant effect on the central nervous system:

- (1) amphetamine;
- (2) methamphetamine;
- (3) phenmetrazine; and
- (4) methylphenidate;

D. Material, compound, mixture, or preparation containing any quantity of the following substances having a depressant effect on the central nervous system, including any salts, isomers, and salts of isomers of them that are theoretically possible within the specific chemical designation:

- (1) amobarbital;
- (2) pentobarbital;
- (3) phencyclidine; and
- (4) secobarbital;
- (5) glutethimide;

E. Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product (other names for dronabinol: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol);

F. Nabilone ((another name for nabilone: (+/-)-trans-3-(1, I- dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one)); and

G. Material, compound, mixture, or preparation containing any quantity of the following substances:

- (1) Immediate precursor to amphetamine and methamphetamine: phenylacetone (other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone);
- (2) Immediate precursors to phencyclidine (PCP):
  - (i) 1-p,henylcyclohexylamine; and
  - (ii) I-piperidinocyclohexanecarbonitrile (PCC)

## APPENDIX C

A. A material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including any salts, isomers, and salts of isomers of them that are theoretically possible within the specific chemical designation:

- (1) a compound, mixture, or preparation in dosage unit form containing any stimulant substance included in Schedule II and which was listed as an excepted compound on August 25, 1971, pursuant to the federal Controlled Substances Act, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except for containing a lesser quantity of controlled substances;
- (2) benzphetamine;
- (3) chlorphentermine;

- (4) clortermine; and
  - (5) phendimetrazine;
- B. A material, compound, mixture, or preparation containing any quantity of the following substances having a depressant effect on the central nervous system:
- (1) a compound, mixture, or preparation containing any of the following drugs or their salts and one or more other active medicinal ingredients not included in any schedule:
    - (A) amobarbital;
    - (B) secobarbital; and
    - (C) pentobarbital;
  - (2) any of the following drugs, or their salts, in suppository dosage form, approved by the federal Food and Drug Administration for marketing only as a suppository:
    - (A) amobarbital;
    - (B) secobarbital, and
    - (C) pentobarbital;
  - (3) a substance containing any quantity of a derivative of barbituric acid or any salt of a derivative of barbituric acid;
  - (4) chlorhexadol;
  - (5) lysergic acid;
  - (6) lysergic acid amide;
  - (7) methyprylon;
  - (8) sulfondiethylmethane;
  - (9) sulfonethylmethane;
  - (10) sulfonmethane; and
  - (11) tiletamine and zolazepam or any of their salts (other names for a tiletamine-zolazepam combination product: Telazol; other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone; other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,41-diazepin-7(IH)-one; flupyrazapon);
- C. Nalorphine; and
- (D) A material compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:
- (1) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
  - (2) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
  - (3) not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;
  - (4) not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active-nonnarcotic ingredients in recognized therapeutic amounts;

- (5) not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
- (6) not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
- (7) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and
- (8) not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

E. Anabolic Steroids.

(1) Boldenone, Chlorotestosterone (4-chlorotestosterone), Clostebol, Dehydrochlormethyltestosterone; Dihydrotestosterone (4-dihydrotestosterone), Drostanolone, Ethylestrenol, Fluoxymesterone, Formebolone (formebolone), Mesterolone, Methandienone, Methandranone, Methandriol, Methandrostenolone, Methenolone, Methyltestosterone, Mibolerone, Nandrolone, Norethandrolone, oxandrolone, Oxymesterone, oxymetholone, Stanolone, Stanozolol, Testolactone, Testosterone, Trenbolone; and

(2) Any salt, ester, or isomer of a drug or substance described or listed in (1), if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this paragraph.

DPHSS may exempt by rule a compound, mixture, or preparation containing a stimulant or depressant substance listed in subsections A and B from the application of all or part of this Act, if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system and the admixtures are in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances having a stimulant or depressant effect on the central nervous system.

APPENDIX D

A. A material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

- (1) not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;
- (2) dextropropoxyphene (dosage forms); and



(3) dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2- diphenyl-3-methyl-2-propionoxybutane);

B. A material, compound, mixture, or preparation containing any quantity of the following substances having a depressant effect on the central nervous system, including any salts, isomers, and salts of isomers of them that are theoretically possible within the specific chemical designation:

- (1) alprazol.am;
- (2) barbital;
- (3) bromazepam;
- (4) camazepam;
- (5) chloral betaine;
- (6) chloral hydrate;
- (7) chlordiazepoxide;
- (8) clobazam;
- (9) clonazepam;
- (10) clorazepate;
- (11) clotiazepam;
- (12) cloxazolam;
- (13) delorazepam;
- (14) diazepam;
- (1.5) estazolam;
- (16) ethchlorvynol;
- (17) ethinamate;
- (18) ethyl loflazepate;
- (19) fludiazepam;
- (20) flunitrazepam;
- (21) flurazepam;
- (22) halazepam;
- (23) haloxazolam;
- (24) ketazolam;
- (2S) loprazolam;
- (26) lorazepam;
- (27) lormetazepam;
- (28) mebutamate;
- (29) medazepam;
- (30) meprobamate;
- (31) methohexital;
- (32) methylphenobarbital (mephobarbital);
- (33) midazolam;
- (34) nimetazepam;
- (35) nitrazepam;
- (36) nordiazepam;
- (37) oxazepam;
- (38) oxazolam;
- (39) paraldehyde;
- (40) petrichloral;

- (41) phenobarbital;
- (42) pinazepam;
- (43) prazepam;
- (44) quazepam;
- (45) temazepam;
- (46) tetrazepam;
- (47) triazolam; and
- (48) zolpidem

C. A material, compound, mixture, or preparation containing any quantity of the following substance, including any salts, isomers, and salts of isomers of it that are theoretically possible: fenfluramine;

D. A material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers:

- (1) cathine;
- (2) diethylpropion;
- (3) fencamfamin;
- (4) fenproporex;
- (5) mazindol;
- (6) mefenorex
- (7) pemoline (including organometallic complexes and chelates thereof);
- (8) phentermine;
- (9) pipradrol; and
- (10) SPA ((-)-i-dimethylamino-1,2-diphenylethane);

E. A material, compound, mixture, or preparation containing any quantity of the following substance, including its salts:

- (1) pentazocine
- (2) butorphanol (including its optical isomers)

F. DPHSS may exempt by rule any compound, mixture, or preparation containing a depressant substance listed in subsection B from the application of all or part of this Act, if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system and the admixtures are in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances having a depressant effect on the central nervous system.

## APPENDIX E

A. A material, compound, mixture, or preparation containing any of the following narcotic drug and its salts: buprenorphine;

B. A compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, - which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;
  - (2) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;
  - (3) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;
  - (4) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;
  - (5) not more than 100 milligrams of opium per 100 milliliters or per 100 grams;
- and
- (6) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit; and
- C. A material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers and salts of isomers:
- (1) pyrovalerone.