CHAPTER 11
Controlled Substances

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§ 1111. Short title.

This chapter may be cited as the "Trust Territory Controlled Substances Act."

Source: COM PL 5-110 § 251; TT Code 1980, 63 TTC 251.

Case annotations:

Controlled Substances

The Trust Territory Controlled Substance Act is based on the United States Uniform Controlled Substance Act, therefore United States Cases construing the law are examined because it is presumed that the law adopted from the U.S. will be given the same construction in the FSM. *Kallop v. FSM*, 4 FSM R. 170, 174 (App. 1989).

§ 1112. Definitions.

As used in this chapter:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means to the body of a patient or research subject by:

(a) a practitioner (or, in his presence, by his authorized agent), or

(b) the patient or research subject at the direction and in the presence of the practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser but does not include a common or contract carrier, public warehouseman, or employee thereof.

(3) "Controlled substance" means a drug, substance, or immediate precursor in schedules I through V of subchapter II of this chapter.

(4) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.

(5) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a controlled substance whether or not there exists an agency relationship.

(6) "Director" means the director of the Department of Health Services of the Government of the Trust Territory.

(7) "Dispense" means to deliver a controlled substance to the ultimate user or human research subject by or pursuant to the lawful order of a practitioner, including prescribing, administering, packaging, labeling, and compounding necessary to prepare the substance for such delivery.

(8) "Dispenser" is a practitioner who dispenses.

(9) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(10) "Distributor" means a person who distributes.

(11) "Drug" means:

(a) substances recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; and

(b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and

(c) substances (other than food) intended to affect the structure or any function of the body of man or other animals; and

(d) substances intended for use as a component of any article specified in paragraphs (a), (b), or (c) of this subsection, but does not include devices or their components, parts, or accessories.

(12) "Drug dependent person" means a person who is using a controlled substance and who is in a state of psychic or physical dependence, or both, arising from administration of that controlled substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence.

(13) "Federal law" means a law enacted by the Congress of the United States.

(14) "Immediate precursor" means a substance which the director has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture.

(15) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled substance:

(a) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(b) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to research, teaching, or chemical analysis and not for sale.

(16) "Marihuana" means all parts of the plant *cannabis sativa L.*, whether growing or not, the seeds thereof, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil, or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

(17) "Narcotic drug" means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(b) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision (a) of this subsection, but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw;

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(18) "Opiate" means any 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. It does not include, unless specifically designated as controlled under section 1113 of this chapter, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(19) "Opium poppy" means the plant of the species *papaver somniferum L.*, except the seeds thereof.

(20) "Person" means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(21) "Poppy straw" means all parts, except the seeds of the opium poppy, after mowing.

(22) "Practitioner" means:

(a) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered or otherwise authorized by the director to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this territory;

(b) a pharmacy, hospital or other institution licensed, registered, or otherwise authorized by the director to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in the Trust Territory.

(23) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(24) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administration to an animal owned by him or by a member of his household.

Source: COM PL 5-110 § 252; TT Code 1980, 63 TTC 252.

Editor's note: Subsections rearranged in alphabetical order in this 1995 edition of this code.

Case annotations: Because the legislative intent in defining *cannabis sativa L.* in 11 F.S.M.C. 1112(14) [now subsection 1112(16)] has to embrace all species of marijuana, the government need not prove a defendant guilty of dealing in *cannabis sativa L.*, but only in marijuana. *Kallop v. FSM*, 4 FSM R. 170, 174 (App. 1989).

SUBCHAPTER II
Standards and Schedules

§ 1116. Reports and recommendations by director to Congress; Amendment of schedule by Congress.

(1) Annually, upon the convening of each annual session of the Congress of Micronesia, the director shall report to the Congress of Micronesia the effects of the implementation of this chapter in relation to the problems of drug abuse in the Trust Territory, and shall recommend to the Congress of Micronesia any additions, deletions or revisions in the schedules of substances enumerated in sections 1119, 1121, 1123, 1125, and 1127 of this chapter, and any other recommendations which he deems necessary. The director shall not recommend any additions, deletions or revisions in such schedules until after notice and an opportunity for a hearing is afforded all interested parties, except such hearing shall not be required if official notice has been received that the substance has been added, deleted, or rescheduled as a controlled substance under Federal law. In making a determination regarding a substance, the director shall assess the degree of danger or probable danger of the substance by considering the following:

(a) the actual or probable abuse of the substance including:

(i) its history and current pattern of abuse;

(ii) the scope, duration and significance of abuse; and

(iii) a judgment of the degree of actual or probable detriment which may result from the abuse of the substance.

(b) The biomedical hazard of the substance including:

(i) its pharmacology: the effects and modifiers of effects of the substance;

(ii) its toxicology: the acute and chronic toxicity, interaction with other substances whether controlled or not, and liability to psychic or physiological dependence;

(iii) risk to public health and particular susceptibility of segments of the population; and

(iv) existence of therapeutic alternatives for substances which are or may be used for medical purposes.

(c) a judgment of the probable physical and social impact of widespread abuse of the substance.

(d) whether the substance is an immediate precursor of a substance already controlled under this chapter.

(e) the current state of scientific knowledge regarding the substance.

(2) After considering the factors enumerated above, the director shall make a recommendation to the Congress of Micronesia, specifying to what schedule the substance shall be

added, deleted or rescheduled if it finds that the substance has a degree of danger or probable danger. The director may make such recommendation to the Congress of Micronesia prior to the submission of its annual report in which case the director shall publish and give notice to the public of such recommendation.

(3) The Congress of Micronesia has the sole authority to add, delete, or reschedule all substances enumerated in the schedules in sections 1119, 1121, 1123, 1125, and 1127 of this chapter.

(4) If the Congress of Micronesia designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(5) If a substance is added, deleted or rescheduled as a controlled substance under Federal law and notice of the designation is given to the director, the director shall recommend that a corresponding change in Trust Territory law be made by the Congress of Micronesia, unless the director objects to the change. In that case, the director shall publish the reasons for objection and afford all interested parties an opportunity to be heard. Following the hearing, the director shall announce his decision and shall notify the Congress of Micronesia in writing of the change in Federal law or regulations and of the director's recommendations.

Source: COM PL 5-110 § 256; TT Code 1980, 63 TTC 256.

§ 1117. Nomenclature.

The following schedules include the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated.

Source: COM PL 5-110 § 257; TT Code 1980, 63 TTC 257.

§ 1118. Schedule I—Criteria for classification.

The director in his recommendation shall place a substance in schedule I if he finds that the substance:

(1) has a high potential for abuse; and

(2) has no accepted medical use in treatment in the United States, or lacks accepted safety for use in treatment under medical supervision.

Source: COM PL 5-110 § 258; TT Code 1980, 63 TTC 258.

§ 1119. Schedule I—Designated.

The controlled substances listed in this section are included in schedule I:

(1) any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(a) acetylmethadol,
(b) allylprodine,
(c) alphacetylmethadol,
(d) alphameprodine,
(e) alphamethadol,
(f) bensethidine,
(g) betacetylmethadol,

(h) betameprodine,
(i) betamethadol,
(j) betaprodine,
(k) clonitazene,
(l) dextromoramide,
(m) dextrorphan,
(n) diampromide,
(o) diethyliambutene,
(p) dimenoxadol,
(q) dimepheptanol,
(r) dimethylthiambutene,
(s) dioxaphetylbutyrate,
(t) dipipanone,
(u) ethylmethylthiambutene,
(v) etonitazene,
(w) etoxeridine,
(x) furethidine,
(y) hydroxpethidine,
(z) ketobemidone,
(aa) lavomoramide,
(bb) levophenacylmorphan,
(cc) morpheridine,
(dd) noracymethadol,
(ee) norlevorphanol,
(ff) normethadone,
(gg) norpipanone,
(hh) phenadoxone,
(ii) phenampromide,
(jj) phenomorphan,
(kk) phenoperidine,
(ll) piritramide,
(mm) proheptazine,
(nn) properidine,
(oo) propiram,
(pp) racemoramide, and
(qq) trimeperidine;

(2) any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) acetorphine,
(b) acetyldihydrocodeine,
(c) benzylmorphine,
(d) codeine methylbromide,
(e) codeine-N-Oxide,
(f) cyprenorphine,

(g) desoporphine,
(h) dihydromorphine,
(i) drotebanol,
(j) etorphine (except hydrochloride salt),
(k) heroin,
(l) hydromorphinol,
(m) methyldesorphine,
(n) methyldihydromorphine,
(o) morphine methylbromide,
(p) morphine methylsulfonate,
(q) morphine-N-Oxide,
(r) myrophine,
(s) nicocodeine,
(t) nicomorphine,
(u) normorphine,
(v) phoclodine, and
(w) thebacon;

(3) any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) 2, 5 dimethoxyamphetamine (2, 5-DMA),
(b) 3, 4-methylenedioxyamphetamine,
(c) 5-methoxy-3, 4-methylenedioxyamphetamine,
(d) 4-bromo-2, 5 dimethoxyamphetamine (4-bromo-2, 5-DMA),
(e) 3, 4, 5-trimethoxyamphetamine,
(f) bufotenine,
(g) 4-methoxyamphetamine (PMA),
(h) diethyltryptamine,
(i) dimethyltryptamine,
(j) 4-methyl-2, 5-dimethoxylamphetamine,
(k) ibogaine,
(l) lysergic acid diethylamide,
(m) marihuana,
(n) mescaline,
(o) peyote,
(p) N-ethyl-3-piperidyl benzilate,
(q) N-methyl-3-piperidyl benzilate,
(r) psilocyn,
(s) psilocybin, and
(t) tetrahydrocannabinol.

Source: COM PL 5-110 § 259; TT Code 1980, 63 TTC 259.

Editor's note: Section 1119(1)(bb) contains a typographical error that has been corrected in this 1995 edition of this code. PL 5-110 shows "levophenacylmorphan"; the typographical error is in the 1982 code.

§ 1120. Schedule II—Criteria for classification.

The director in his recommendation shall place a substance in schedule II if he finds that:

(1) the substance has a high potential for abuse;

(2) the substance has currently accepted medical use with severe restrictions; and

(3) abuse of the substance may lead to severe psychic or physical dependence.

Source: COM PL 5-110 § 260; TT Code 1980, 63 TTC 260.

§ 1121. Schedule II—Designated.

The controlled substances listed in this section are included in schedule II:

(1) any of the following substances except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(a) opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(b) any salt, compound, isomers, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (a) of this subsection, but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw;

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not include cocaine or ecgonine.

(2) any of the following opiates, including their immediate isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(a) alphaprodine,

(b) anileridine,

(c) apomorphine,

(d) bezitramide,

(e) dihydrocodeine,

(f) diphenoxylate,

(g) fentanyl,

(h) isomethadone,

(i) levomethorphan,

(j) levorphanol,

(k) metazocine,

(l) methadone,

(m) methadone, intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane,

(n) methaqualone,

(o) moramide, intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid,

(p) pethidine,

(q) pethidine, intermediate, A, 4-cyano-1-methyl-4-phenylpiperidine,

(r) pethidine, intermediate, B, ethyl-4-phenylpiperidine; 4-carboxylate,
(s) pethidine, intermediate, C, 1-methyl-4-phenylpiperidine-4-carboxylic acid,
(t) phenazocine,
(u) piminodine,
(v) racemethorphan, and
(w) racemorphan;

(3) any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(a) amphetamine, its salts, optical isomers, and salts of its optical isomers;

(b) any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;

(c) any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(i) phenmetrazine and its salts;
(ii) methylphenidate.

Source: COM PL 5-110 § 261; TT Code 1980, 63 TTC 261.

§ 1122. Schedule III—Criteria for classification.

The director in his recommendation shall place a substance in schedule III if he finds that:

(1) the substance has a potential for abuse less than the substances listed 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.

Source: COM PL 5-110 § 262; TT Code 1980, 63 TTC 262.

§ 1123. Schedule III—Designated.

The controlled substances listed in this section are included in schedule III:

(1) unless listed in another schedule any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(a) any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules,
(b) benzphetamine,
(c) chlorhexadol,
(d) chlorphentermine,
(e) chlortermine,
(f) clutethimide,
(g) diethylpropion,
(h) lysergic acid,

(i) lysergic acid amide,
(j) mazindol,
(k) methyproylon,
(l) phencyclidine,
(m) phendimetrazine,
(n) phentermine,
(o) sulfondiethylmethane,
(p) sulfonethylmethane, and
(q) sulfonmethane;

(2) nalorphine;

(3) any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(a) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(b) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(c) not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(d) not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(e) not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(f) not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(g) 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 non-narcotic ingredients in recognized therapeutic amounts;

(h) not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

(4) The director may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections (2) and (3) of this section from the application of all or any part of this chapter 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 if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which do have a stimulant or depressant effect on the central nervous system.

Source: COM PL 5-110 § 263; TT Code 1980, 63 TTC 263.

§ 1124. Schedule IV—Criteria for classification.

The director in his recommendation shall place a substance in schedule IV if he finds that:

(1) the substance has a low potential for abuse relative to substances 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 the substances listed in schedule III.

Source: COM PL 5-110 § 264; TT Code 1980, 63 TTC 264.

§ 1125. Schedule IV—Designated.

The controlled substances listed in this section are included in schedule IV:

(1) any material, compound, mixture, or preparation which contains any quantity of the following substances or salts thereof having a potential for abuse associated with a depressant effect on the central nervous system:

(a) barbital,
(b) chloral betaine,
(c) chloral hydrate,
(d) diethylpropion,
(e) ethchlorvynol,
(f) ethinamate,
(g) fenfluramine,
(h) methohexital,
(i) meprobamate,
(j) methylphenobarbital,
(k) paraldehyde,
(l) petrichloral, and
(m) phenobarbital;

(2) The director may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection (1) of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

Source: COM PL 5-110 § 265; TT Code 1980, 63 TTC 265.

§ 1126. Schedule V—Criteria for classification.

The director in his recommendation shall place a substance in schedule V if he finds that:

(1) the substance has a low potential for abuse relative to the controlled substances listed in schedule IV;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) the substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in schedule IV.

Source: COM PL 5-110 § 266; TT Code 1980, 63 TTC 266.

§ 1127. Schedule V—Designated.

The controlled substances listed in this section are included in schedule V:

(1) any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which shall include one or more non-narcotic 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:

(a) not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams,

(b) not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams,

(c) not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams,

(d) not more than 2.5 milligrams of dephenoxylate, and not less than 25 micrograms of atropine sulfate per dosage unit,

(e) not more than 100 milligrams of opium per 100 milliliters or per 100 grams, or not more than five milligrams per dosage unit.

Source: COM PL 5-110 § 267; TT Code 1980, 63 TTC 267.

§ 1128. Annual revision and republication of schedules.

The director shall revise and republish the schedules annually and make them available to any registrant, law enforcement agency, or any member of the public desiring such list.

Source: COM PL 5-110 § 268; TT Code 1980, 63 TTC 268.

SUBCHAPTER III
Manufacture, Distribution, and Dispensing

§ 1131. Authority of director to promulgate rules and regulations.

The director is authorized to promulgate rules in accordance with chapter 2 of title 17 of this code and charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within the Trust Territory.

Source: COM PL 5-110 § 271; TT Code 1980, 63 TTC 271.

Editor's note: PL 5-34 repealed chapter 2 (Trust Territory Administrative Procedure) of title 17 of this code in its entirety. Chapter 1 of title 17 of this code is on Administrative Procedures of the FSM. See 17 F.S.M.C. 102.

§ 1132. Registration—Required; Exceptions.

(1) Every person who manufactures, distributes, or dispenses any controlled substance within the Trust Territory or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within the Trust Territory shall obtain annually a registration issued by the director in accordance with the rules made by him.

(2) Persons registered by the director under this chapter to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this subchapter.

(3) The following persons need not register and may lawfully possess controlled substances under the provision of this chapter:

(a) 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;

(b) an ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a schedule V substance.

(4) The director may, by rule, waive the requirement for registration of certain manufacturers, distributors, or dispensers if he finds it consistent with the public health and safety.

(5) A separate registration shall be required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

(6) The director or his designee may inspect the establishment of a registrant or applicant for registration in accordance with the rules promulgated by him.

Source: COM PL 5-110 § 272; TT Code 1980, 63 TTC 272.

§ 1133. Registration—Criteria for granting; Effect; Compliance with federal law.

(1) The director shall register an applicant to manufacture or distribute controlled substances included in schedules I through V of subchapter II of this chapter unless he determines that the issuance of that registration is inconsistent with the public interest. In determining the public interest, the director shall consider the following factors:

(a) maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

(b) compliance with applicable law;

(c) prior conviction record of applicant under Federal, State and local laws relating to controlled substances;

(d) past experience in the manufacture or distribution of controlled substances, and the existence in the establishment of effective controls against diversion;

(e) furnishing by the applicant of false or fraudulent material in any application filed under this chapter;

(f) suspension or revocation of the applicant's Federal registration to manufacture, distribute, or dispense controlled substances as authorized by Federal law; and

(g) any other factors relevant to and consistent with the public health and safety.

(2) Registration granted under subsection (1) of this section shall not entitle a registrant to manufacture and distribute controlled substances in schedule I or II other than those specified in the registration.

(3) Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in schedules II through V if they are authorized to dispense or conduct research under the law of the Trust Territory. The director need not require separate registration under this subchapter for practitioners engaging in research with non-narcotic controlled substances in schedules II through V where the registrant is already registered under this subchapter in another capacity. Practitioners registered under Federal law to conduct research with schedule I substances may

conduct research with schedule I substances within the Trust Territory upon furnishing evidence of that Federal registration.

(4) Compliance by manufacturers and distributors with the provisions of the Federal law respecting registration (excluding fees) shall be deemed compliance with this section.

Source: COM PL 5-110 § 273; TT Code 1980, 63 TTC 273.

§ 1134. Registration—Revocation or suspension—Grounds; Limitation of effect; Sealing of substances; Notice to bureau.

(1) A registration pursuant to section 1133 of this chapter to manufacture, distribute, or dispense a controlled substance, may be suspended or revoked by the director upon a finding that the registrant:

(a) has materially falsified any application filed pursuant to this chapter or required by this chapter;

(b) has been convicted of any violation under this chapter or any law of the United States, or of any state or territory, relating to any substance defined herein as a controlled substance; or

(c) has had his Federal registration suspended or revoked by competent Federal authority and is no longer authorized by Federal law to engage in the manufacture, distribution, or dispensing of controlled substances; or

(d) has violated any regulation promulgated by the director relating to subchapter III of this chapter;

(e) will abuse or unlawfully transfer such substances or that the registrant will fail to safeguard adequately his supply of such substances against diversion into other than legitimate channels of distribution.

(2) The director may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exists.

(3) In the event the director suspends or revokes a registration granted under section 1133 of this chapter, controlled substances owned or possessed by the registrant pursuant to such registration at the time of suspension or the effective date of the revocation order, as the case may be, may in the discretion of the director be placed under seal. 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 therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled substances shall be forfeited.

(4) The bureau shall promptly be notified of all orders suspending or revoking registration and all forfeitures of controlled substances.

Source: COM PL 5-110 § 274; TT Code 1980, 63 TTC 274.

§ 1135. Registration—Revocation or suspension—Notice and hearing.

(1) Before denying, suspending or revoking a registration, or refusing a renewal of registration, the director shall serve upon the applicant or registrant in accordance with chapter 2 of title 17 of this code notice to show cause why registration should not be denied, revoked, or suspended, or why the renewal should not be refused. The notice to show cause shall contain a statement of the basis

therefor and shall call upon the applicant or registrant to appear before the director at a time and place not less than thirty days after the date of service of the notice, but in the case of a denial or renewal of registration the show cause notice shall be served not later than thirty days before the expiration of the registration. These proceedings shall be conducted in accordance with chapter 2 of title 17 of this code without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(2) The director may suspend, without a notice to show cause, any registration simultaneously with the institution of proceedings under section 1134 of this chapter, or where renewal of registration is refused, if he finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the director or dissolved by a court of competent jurisdiction.

Source: COM PL 5-110 § 275; TT Code 1980, 63 TTC 275.

Editor's note: PL 5-34 repealed chapter 2 (Trust Territory Administrative Procedure) of title 17 of this code in its entirety. Chapter 1 of title 17 of this code is on Administrative Procedures of the FSM. See 17 F.S.M.C. 102.

§ 1136. Registration—Records.

Persons registered to manufacture, distribute, or dispense controlled substances under this chapter shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of Federal law and in accordance with any rules or regulations adopted by the director pursuant to the provisions of this chapter.

Source: COM PL 5-110 § 276; TT Code 1980, 63 TTC 276.

§ 1137. Order forms for substances on schedules I or II.

Controlled substances in schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of Federal law respecting order forms shall be deemed compliance with this section.

Source: COM PL 5-110 § 277; TT Code 1980, 63 TTC 276.

§ 1138. Prescriptions.

(1) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the director, schedule II drugs may be dispensed upon oral prescription of a practitioner reduced promptly to writing and filled by the pharmacy. Prescriptions shall be retained in conformity with the requirements of section 1136 of this chapter. No prescription for a schedule II substance may be refilled.

(3) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedules III or IV which is a prescription drug, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or

refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(4) A controlled substance included in schedule V shall not be distributed or dispensed other than for a medical purpose.

(5) No prescription for a controlled substance shall be filled or refilled with more than a 30-day supply, based upon the dosage units contained in the prescription.

Source: COM PL 5-110 § 278; TT Code 1980, 63 TTC 278.

SUBCHAPTER IV
Offenses and Penalties

§ 1141. Trafficking.

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

(a) to manufacture, deliver, or possess with intent to manufacture, deliver, or dispense, a controlled substance; or

(b) to create, distribute, or possess with intent to deliver, a counterfeit controlled substance.

(2) Any person who violates subsection (1) of this section with respect to:

(a) a substance classified in schedules I or II which is a narcotic drug shall be sentenced to a term of imprisonment for not more than ten years, a fine of not more than $10,000, or both;

(b) any other controlled substance classified in schedules I, II or III shall be sentenced to a term of imprisonment of not more than five years, a fine of not more than $5,000, or both;

(c) a substance classified in schedule IV shall be sentenced to a term of imprisonment for not more than two years, a fine of not more than $1,000, or both;

(d) a substance classified in schedule V shall be sentenced to a term of imprisonment for not more than one year, a fine of not more than $1,000, or both.

(3) Notwithstanding subsection (2)(b) of this section, any person who violates subsection (1)(a) of this section by distributing not more than one ounce of marihuana for no remuneration shall be treated as provided in subsection (3)(a) of section 1142 of this chapter.

Source: COM PL 5-110 § 291; TT Code 1980, 63 TTC 291.

Case annotations: A trial court may properly infer from the quantity of marijuana possessed that the requisite intent existed to support a conviction of trafficking. *Kallop v. FSM*, 4 FSM R. 170, 177 (App. 1989).

§ 1142. Possession.

(1) 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 this chapter.

(2) Any person who violates subsection (1) of this section with respect to any controlled substance except marihuana shall be sentenced to a term of imprisonment for not more than one year, a fine of not more than $1,000, or both.

(3) Any person who violates subsection (1) of this section with respect to marihuana shall be penalized as follows:

(a) any person who possesses one ounce or less shall be fined not more than $50;

(b) any person possessing more than one ounce but less than two and two-tenths pounds shall be sentenced to a term of imprisonment of not more than three months, a fine of not more than $500, or both;

(c) any person possessing two and two-tenths pounds or more of marihuana shall be sentenced to a term of not more than one year, a fine of not more than $1,000, or both. The possession of two and two-tenths pounds or more of marihuana by any person shall constitute a rebuttable presumption of the crime of trafficking under subsection (2)(b) of section 1141 of this chapter.

Source: COM PL 5-110 § 292; TT Code 1980, 63 TTC 292.

§ 1143. Commercial offenses.

(1) It shall be unlawful for any person who is subject to the requirements of subchapter III of this chapter:

(a) to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

(b) to manufacture, distribute, or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

(c) to refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice or information required under this chapter;

(d) to refuse an entry into any premises for any inspection authorized by this chapter; or

(e) to knowingly keep or maintain any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any other structure or place whatever, which is resorted to by persons using controlled substances, or which is used for the keeping or selling of the same in violation of this chapter.

(2) Any person who violates this section is punishable by imprisonment for not more than five years, or a fine of not more than $1,000, or both.

Source: COM PL 5-110 § 293; TT Code 1980, 63 TTC 293.

§ 1144. Fraudulent practices.

(1) It shall be unlawful for any person knowingly or intentionally:

(a) to distribute a controlled substance classified in schedules I or II, in the course of his legitimate business, if that person is a registrant, except pursuant to an order form as required by section 1137 of this chapter;

(b) to use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended or issued to another person;

(c) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

(d) to furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter;

(e) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container of labeling thereof so as to render such drug a counterfeit controlled substance.

(2) Any person who violates this section is punishable by imprisonment for not more than five years, a fine of not more than $1,000, or both.

Source: COM PL 5-110 § 294; TT Code 1980, 63 TTC 294.

§ 1145. Attempts and conspiracies.

Any person who attempts, endeavors or conspires to commit any offense defined in this chapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt, endeavor or conspiracy.

Source: COM PL 5-110 § 295; TT Code 1980, 63 TTC 295.

§ 1146. Penalties for violation of chapter to be in addition to civil or administrative penalties.

Any penalty imposed for violation of this chapter shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

Source: COM PL 5-110 § 296; TT Code 1980, 63 TTC 296.

§ 1147. Distribution to persons under eighteen.

Any person who is at least 18 years of age who violates subsection (1)(a) of section 1141 of this chapter by distributing a substance listed in schedules I and II which is a narcotic drug to a person under 18 years of age who is at least three years his junior is punishable by a term of imprisonment of up to twice that authorized by subsection (1)(a) of section 1141 of this chapter, by the fine authorized by subsection (1)(a) of section 1141 of this chapter, or both. Any person who is at least 18 years of age who violates subsection (1)(a) of section 1141 of this chapter by distributing any other controlled substance listed in schedules I, II, III and IV to a person under 18 years of age who is at least three years his junior is punishable by a term of imprisonment up to twice that authorized in subsections (2)(b) or (c) of section 1141 of this chapter, by the fine authorized by subsection (2)(b) or (c) of section 1141 of this chapter, or both.

Source: COM PL 5-110 § 297; TT Code 1980, 63 TTC 297.

§ 1148. Conditional discharge for first offense possession.

(1) Whenever any person who has not previously been convicted of any offense under this chapter or under any statute of the United States or of any state or territory relating to narcotic drugs,

marihuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under subsection (1) of section 1142 of this chapter 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 guilt 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 including the additional penalties imposed for second or subsequent convictions under section 1149 of this chapter. Discharge and dismissal under this section may occur only once with respect to any person.

(2) Upon the dismissal of such person and discharge of the proceedings against him under subsection (1) of this section, 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 purpose 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 hereafter under any provisions of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

Source: COM PL 5-110 § 298; TT Code 1980, 63 TTC 298.

§ 1149. Conviction by another jurisdiction not bar to prosecution.

If a violation of this chapter is a violation of a Federal law or the law of another State, a conviction or acquittal under Federal law or the law of another State for the same act is not a bar to prosecution in the Trust Territory.

Source: COM PL 5-110 § 299; TT Code 1980, 63 TTC 299.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.