

(c) Denial; written response; hearing.

(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 United States attorney. The court shall hold a hearing to determine any issues raised by the response which would except the person from increased punishment. The failure of the United States attorney 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 subsection (a)(1). The hearing shall be before the court without a jury and either party may introduce evidence. Except as otherwise provided in paragraph (2) of this subsection, the United States attorney 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 the Constitution of the United States shall set forth his claim, and the factual basis therefor, 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) Imposition of sentence.

(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 upon him as provided by this part [21 USCS Sections 841 et seq.].

(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 a matter of law, the court shall, at the request of the United States attorney, postpone sentence to allow an appeal from that determination. If no such request is made, the court shall impose sentence as provided by this part [21 USCS Sections 841 et seq.]. The person may appeal from an order postponing sentence as if sentence had been pronounced and a final judgment of conviction entered.

(e) Statute of limitations. No person who stands convicted of an offense under this part [21 USCS Sections 841 et seq.] may challenge the validity of any prior conviction alleged under this section which occurred more than five years before the date of the information alleging such prior conviction.

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TITLE 21. FOOD AND DRUGS

CHAPTER 13. DRUG ABUSE PREVENTION AND CONTROL

OFFENSES AND PENALTIES

21 USCS Section 852 (1996)

Section 852. Application of treaties and other international agreements

Nothing in the Single Convention on Narcotic Drugs, the Convention on Psychotropic Substances, or other treaties or international agreements shall be construed to limit the provision of treatment, education, or rehabilitation as alternatives to conviction or criminal penalty for offenses involving any drug or other substance subject to control under any such treaty or agreement.

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TITLE 21. FOOD AND DRUGS

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21 USCS Section 853 (1996)

Section 853. Criminal forfeitures

(a) Property subject to criminal forfeiture. Any person convicted of a violation of this title or title III punishable by imprisonment for more than one year shall forfeit to the United States, irrespective of any provision of State law--

- (1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;
- (2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and
- (3) in the case of a person convicted of engaging in a continuing criminal enterprise in violation of section 408 of this title (*21 U.S.C. 848*) [*21 USCS Section 848*], the person shall forfeit, in addition to any property described in paragraph (1) or (2), any of his interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise.

The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to this title or title III, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this part [21 USCS Sections 841 et seq.], a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) Meaning of term "property". Property subject to criminal forfeiture under this section includes--

- (1) real property, including things growing on, affixed to, and found in land; and
- (2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

(c) Third party transfers. All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (n) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(d) Rebuttable presumption. There is a rebuttable presumption at trial that any property of a person convicted of a felony under this title or title III is subject to forfeiture under this section if the United States establishes by a preponderance of the evidence that--

- (1) such property was acquired by such person during the period of the violation of this title or title III or within a reasonable time after such period; and
- (2) there was no likely source for such property other than the violation of this title or title III.

(e) Protective orders.

(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section--

(A) upon the filing of an indictment or information charging a violation of this title or title III for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that--

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than ten days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period.

A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence [20, USCS Appx, Federal Rules of Evidence].

(f) Warrant of seizure. The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (e) may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

(g) Execution. Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the United States or third parties.

(h) Disposition of property. Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the

property will result in irreparable injury, harm, or loss to him.

(i) Authority of the Attorney General. With respect to property ordered forfeited under this section, the Attorney General is authorized to--

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this title, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States, in accordance with the provisions of section 511(e) of this title (21 U.S.C. 881(e)) [21 USCS Section 881(e)], of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(j) Applicability of civil forfeiture provisions. Except to the extent that they are inconsistent with the provisions of this section, the provisions of section 511(d) of this title (21 U.S.C. 881(d)) [21 USCS Section 881(d)] shall apply to a criminal forfeiture under this section.

(k) Bar on intervention. Except as provided in subsection (n), no party claiming an interest in property subject to forfeiture under this section may--

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(l) Jurisdiction to enter orders. The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(m) Depositions. In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States, the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure [USCS Federal Rules of Criminal Procedure, Rule 15].

(n) Third party interests.

(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that--

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonable without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or

transferee.

(o) Liberal construction. The provisions of this section shall be liberally construed to effectuate its remedial purposes.

(p) Missing property or property diminished in value. If any of the property described in subsection (a), as a result of any act or omission of the defendant--

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third party;
- (3) has been placed beyond the jurisdiction of the court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

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21 USCS Section 853a (1996)

Section 853a. [Transferred]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

EXPLANATORY NOTES:

This section was redesignated and appears as *21 USCS Section 862*.

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21 USCS Section 854 (1996)

Section 854. Investment of illicit drug profits

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a violation of this title or title III punishable by imprisonment for more than one year in which such person has participated as a principal within the meaning of section 2 of title 18, United States Code [18 USCS Section 2], to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this section if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any violation of this title or title III after such purchase do not amount in the aggregate to 1 per centum of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) Whoever violates this section shall be fined not more than \$ 50,000 or imprisoned not more than ten years, or both.

(c) As used in this section, the term "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.

(d) The provisions of this section shall be liberally construed to effectuate its remedial purposes.

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21 USCS Section 855 (1996)

Section 855. Alternative fine

In lieu of a fine otherwise authorized by this part [21 USCS Sections 841 et seq.], a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

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21 USCS Section 856 (1996)

Section 856. Establishment of manufacturing operations

(a) Except as authorized by this title, it shall be unlawful to--

(1) knowingly open or maintain any place for the purpose of manufacturing, distributing, or using any controlled substance;

(2) manage or control any building, room, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, and knowingly and intentionally rent, lease, or make available for use, with or without compensation, the building, room, or enclosure for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.

(b) Any person who violates subsection (a) of this section shall be sentenced to a term of imprisonment of not more than 20 years or a fine of not more than \$ 500,000, or both, or a fine of \$ 2,000,000 for a person other than an individual.

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21 USCS Section 857 (1996)

Section 857. [Repealed]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Subsection (a) of this section (Act Oct. 27, 1986, P.L. 99-570, Title I, subtitle O, Section 1822, 100 Stat. 3207-51) was repealed by Act Nov. 29, 1990, P.L. 101-647, Title XXIV, Section 2401(d), 104 Stat. 4859, Subsecs. (b)-(f) of this section were transferred to *21 USCS Section 863* by Act Nov. 29, 1990. Subsec. (a) provided for offenses related to the sale, transportation, importation or exportation of drug paraphernalia.

OTHER PROVISIONS:

Repeal of effective date provisions. Act Oct. 27, 1986, P.L. 99-570, Title I, Subtitle O, Section 1823, 100 Stat. 3207-51, was repealed by Act Nov. 29, 1990, P.O. 101-647, Title XXIV, Section 2401(d), 104 Stat. 4859. Such section provided an effective date for this former section and 21 USCS Section 801 note.

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21 USCS Section 858 (1996)

Section 858. Endangering human life while illegally manufacturing a controlled substance

Whoever, while manufacturing a controlled substance in violation of this title, or attempting to do so, or transporting or causing to be transported materials, including chemicals, to do so, creates a substantial risk of harm to human life shall be fined in accordance with title 18, United States Code, or imprisoned not more than 10 years, or both.

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21 USCS Section 859(1996)

Section 859. Distribution to persons under age twenty-one

(a) First offense. Except as provided in section 419 [19 USCS Section 860], any person at least eighteen years of age who violates section 401(a)(1) [21 USCS Section 841(a)(1)] by distributing a controlled substance to a person under twenty-one years of age is (except as provided in subsection (b)) subject to (1) twice the maximum punishment authorized by section 401(b) [21 USCS Section 841(b)], and (2) at least twice any term of supervised release authorized by section 401(b) [21 USCS Section 841(b)], for a first offense involving the same controlled substance and schedule. Except to the extent a greater minimum sentence is otherwise provided by section 401(b) [21 USCS Section 841(b)], a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this subsection shall not apply to offenses involving 5 grams or less of marihuana.

(b) Second offense. Except as provided in section 419 [19 USCS Section 860], any person at least eighteen years of age who violates section 401(a)(1) [21 USCS Section 841(a)(1)] by distributing a controlled substance to a person under twenty-one years of age after a prior conviction under subsection (a) of this section (or under section 303(b)(2) of the Federal Food, Drug, and Cosmetic Act as in effect prior to the effective date of section 701(b) of this Act) has become final, is subject to (1) three times the maximum punishment authorized by section 401(b) [21 USCS Section 841(b)], and (2) at least three times any special parole term authorized by section 401(b) [21 USCS Section 841(b)], for a second or subsequent offense involving the same controlled substance and schedule. Except to the extent a greater minimum sentence is otherwise provided by section 401(b) [21 USCS Section 841(b)], a term of imprisonment under this subsection shall be not less than one year. Penalties for third and subsequent convictions shall be governed by section 401(b)(1)(A) [21 USCS Section 841(b)(1)(A)].

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21 USCS Section 860 (1996)

Section 860. Distribution in or near schools

(a) Any person who violates section 401(a)(1) or section 416 [21 USCS Section 841(a)(1) or 856] by distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority, or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility, is (except as provided in subsection (b)) subject to (1) twice the maximum punishment authorized by section 401(b) [21 USCS Section 841(b)], and (2) at least twice any term of supervised release authorized by section 401(b) [21 USCS Section 841(b)] for a first offense. A fine up to twice that authorized by section 401(b) [21 USCS Section 841(b)] may be imposed in addition to any term of imprisonment authorized by this subsection. Except to the extent a greater minimum sentence is otherwise provided by section 401(b) [21 USCS Section 841(b)], a person shall be sentenced under this subsection to a term of imprisonment of not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.

(b) Any person who violates section 401(a)(1) or section 416 [21 USCS Section 841(a)(1) or 856] by distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority, or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility, after a prior conviction under subsection (a) has become final is punishable (1) by the greater of (A) a term of imprisonment of not less than three years and not more than life imprisonment or (B) three times the maximum punishment authorized by section 401(b) [21 USCS Section 841(b)] for a first offense and (2) at least three times any term of supervised release authorized by section 401(b) of this title [21 USCS Section 841(b)] for a first offense. A fine up to three times that authorized by section 401(b) [21 USCS Section 841(b)] may be imposed in addition to any term of imprisonment authorized by this subsection. Except to the extent a greater minimum sentence is otherwise provided by section 401(b) [21 USCS Section 841(b)], a person shall be sentenced under this subsection to a term of imprisonment of not less than three years. Penalties for third and subsequent convictions shall be governed by section 401(b)(1)(A) [21 USCS Section 841(b)(1)(A)].

(c) Notwithstanding any other law, any person at least 21 years of age who knowingly and intentionally-

(1) employs, hires, uses, persuades, induces, entices, or coerces a person under 18 years of age to violate this section; or

(2) employs, hires, uses, persuades, induces, entices, or coerces a person under 18 years of age to assist in avoiding detection or apprehension for any offense under this section by any Federal, State, or local law enforcement official, is punishable by a term of imprisonment, a

fine, or both, up to triple those authorized by section 401 [21 USCS Section 841].

(d) In the case of any mandatory minimum sentence imposed under subsection (b) [this section], imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under this section shall not be eligible for parole until the individual has served the mandatory minimum term of imprisonment as provided by this section.

(e) For the purposes of this section--

(1) The term "playground" means any outdoor facility (including any parking lot appurtenant thereto) intended for recreation, open to the public, and with any portion thereof containing three or more separate apparatus intended for the recreation of children including, but not limited to, sliding boards, swingsets, and teeterboards.

(2) The term "youth center" means any recreational facility and/or gymnasium (including any parking lot appurtenant thereto), intended primarily for use by persons under 18 years of age, which regularly provides athletic, civic, or cultural activities.

(3) The term "video arcade facility" means any facility, legally accessible to persons under 18 years of age, intended primarily for the use of pinball and video machines for amusement containing a minimum of ten pinball and/or video machines.

(4) The term "swimming pool" includes any parking lot appurtenant thereto.

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21 USCS Section 861 (1996)

Section 861. Employment or use of persons under 18 years of age in drug operations

(a) It shall be unlawful for any person at least eighteen years of age to knowingly and intentionally--

(1) employ, hire, use, persuade, induce, entice, or coerce, a person under eighteen years of age to violate any provision of this title or title III;

(2) employ, hire, use, persuade, induce, entice, or coerce, a person under eighteen years of age to assist in avoiding detection or apprehension for any offense of this title or title III by

any Federal, State, or local law enforcement official; or

(3) receive a controlled substance from a person under 18 years of age, other than an immediate family member, in violation of this title or title III.

(b) Any person who violates subsection (a) is subject to twice the maximum punishment otherwise authorized and at least twice any term of supervised release otherwise authorized for a first offense. Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment under this subsection shall not be less than one year.

(c) Any person who violates subsection (a) after a prior conviction under subsection (a) of this section has become final, is subject to three times the maximum punishment otherwise authorized and at least three times any term of supervised release otherwise authorized for a first offense. Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment under this subsection shall not be less than one year. Penalties for third and subsequent convictions shall be governed by section 401(b)(1)(A) [21 USCS Section 841(b)(1)(A)].

(d) Any person who violates section 405B(a)(1) or (2)

(1) by knowingly providing or distributing a controlled substance or a controlled substance analogue to any person under eighteen years of age; or

(2) if the person employed, hired, or used is fourteen years of age or younger, shall be subject to a term of imprisonment for not more than five years or a fine of not more than \$ 50,000, or both, in addition to any other punishment authorized by this section.

(e) In any case of any sentence imposed under this section, imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under this section of an offense for which a mandatory minimum term of imprisonment is applicable shall not be eligible for parole under section 4202 of title 18, United States Code, until the individual has served the mandatory term of imprisonment as enhanced by this section.

(f) Except as authorized by this title, it shall be unlawful for any person to knowingly or intentionally provide or distribute any controlled substance to a pregnant individual in violation of any provision of this title. Any person who violates this subsection shall be subject to the provisions of subsections (b), (c), and (e).

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21 USCS Section 862 (1996)

Section 862. Denial of Federal benefits to drug traffickers and possessors

(a) Drug traffickers.

(1) Any individual who is convicted of any Federal or State offense consisting of the distribution of controlled substances shall--

(A) at the discretion of the court, upon the first conviction for such an offense be ineligible for any or all Federal benefits for up to 5 years after such conviction;

(B) at the discretion of the court, upon a second conviction for such an offense be ineligible for any or all Federal benefits for up to 10 years after such conviction; and

(C) upon a third or subsequent conviction for such an offense be permanently ineligible for all Federal benefits.

(2) The benefits which are denied under this subsection shall not include benefits relating to long-term drug treatment programs for addiction for any person who, if there is a reasonable body of evidence to substantiate such declaration, declares himself to be an addict and submits himself to a long-term treatment program for addiction, or is deemed to be rehabilitated pursuant to rules established by the Secretary of Health and Human Services.

(b) Drug possessors.

(1) Any individual who is convicted of any Federal or State offense involving the possession of a controlled substance (as such term is defined for purposes of the Controlled Substances Act) shall--

(A) upon the first conviction for such an offense and at the discretion of the court--

(i) be ineligible for any or all Federal benefits for up to one year;

(ii) be required to successfully complete an approved drug treatment program which includes periodic testing to insure that the individual remains drug free;

(iii) be required to perform appropriate community service; or

(iv) any combination of clauses (i), (ii), or (iii); and (B) upon a second or subsequent conviction for such an offense be ineligible for all Federal benefits for up to 5 years after such conviction as determined by the court. The court shall continue to have the discretion in subparagraph (A) above. In imposing penalties and conditions under subparagraph (A), the court may require that the completion of the conditions imposed by clause (ii) or (iii) be a requirement for the reinstatement of benefits under clause (i).

(2) The penalties and conditions which may be imposed under this subsection shall be waived in the case of a person who, if there is a reasonable body of evidence to substantiate

such declaration, declares himself to be an addict and submits himself to a long-term treatment program for addiction, or is deemed to be rehabilitated pursuant to rules established by the Secretary of Health and Human Services.

(c) Suspension of period of ineligibility. The period of ineligibility referred to in subsections (a) and (b) shall be suspended if the individual--

(A) completes a supervised drug rehabilitation program after becoming ineligible under this section;

(B) has otherwise been rehabilitated; or

(C) has made a good faith effort to gain admission to a supervised drug rehabilitation program, but is unable to do so because of inaccessibility or unavailability of such a program, or the inability of the individual to pay for such a program.

(d) Definitions. As used in this section--

(1) the term "Federal benefit"--

(A) means the issuance of any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

(B) does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility; and

(2) the term "veterans benefit" means all benefits provided to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States.

(e) Inapplicability of this section to government witnesses. The penalties provided by this section shall not apply to any individual who cooperates or testifies with the Government in the prosecution of a Federal or State offense or who is in a Government witness protection program.

(f) Indian provision. Nothing in this section shall be construed to affect the obligation of the United States to any Indian or Indian tribe arising out of any treaty, statute, Executive order, or the trust responsibility of the United States owing to such Indian or Indian tribe. Nothing in this subsection shall exempt any individual Indian from the sanctions provided for in this section, provided that no individual Indian shall be denied any benefit under Federal Indian programs comparable to those described in subsection (d)(1)(B) or (d)(2) above.

(g) Presidential report.

(1) On or before May 1, 1989, the President shall transmit to the Congress a report--

(A) delineating the role of State courts in implementing this section;

(B) describing the manner in which Federal agencies will implement and enforce the requirements of this section;

(C) detailing the means by which Federal and State agencies, courts, and law enforcement agencies will exchange and share the data and information necessary to implement and enforce the withholding of Federal benefits; and

(D) recommending any modifications to improve the administration of this section or otherwise achieve the goal of discouraging the trafficking and possession of controlled substances.

(2) No later than September 1, 1989, the Congress shall consider the report of the President and enact such changes as it deems appropriate to further the goals of this section.

(h) Effective date. The denial of Federal benefits set forth in this section shall take effect for convictions occurring after September 1, 1989.

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21 USCS Section 863 (1996)

Section 863. Drug paraphernalia

(a) It is unlawful for any person--

(1) to sell or offer for sale drug paraphernalia;

(2) to use the mails or any other facility of interstate commerce to transport drug paraphernalia; or

(3) to import or export drug paraphernalia.

(b) Anyone convicted of an offense under subsection (a) of this section shall be imprisoned for not more than three years and fined under title 18, United States Code.

(c) Any drug paraphernalia involved in any violation of subsection (a) of this section shall be subject to seizure and forfeiture upon the conviction of a person for such violation. Any such paraphernalia shall be delivered to the Administrator of General Services, General Services Administration, who may order such paraphernalia destroyed or may authorize its use for law enforcement or educational purposes by Federal, State, or local authorities.

(d) The term "drug paraphernalia" means any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under the Controlled Substances Act (title II of Public Law 91-513). It includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, or amphetamines into the human body, such as--

- (1) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- (2) water pipes;
- (3) carburetion tubes and devices;
- (4) smoking and carburetion masks;
- (5) roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
- (6) miniature spoons with level capacities of one-tenth cubic centimeter or less;
- (7) chamber pipes;
- (8) carburetor pipes;
- (9) electric pipes;
- (10) air-driven pipes;
- (11) chillums;
- (12) bongs;
- (13) ice pipes or chillers;
- (14) wired cigarette papers; or
- (15) cocaine freebase kits.

(e) In determining whether an item constitutes drug paraphernalia, in addition to all other logically relevant factors, the following may be considered:

- (1) instructions, oral or written, provided with the item concerning its use;
- (2) descriptive materials accompanying the item which explain or depict its use;
- (3) national and local advertising concerning its use;

- (4) the manner in which the item is displayed for sale;
- (5) whether the owner, or anyone in control of the item, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- (6) direct or circumstantial evidence of the ratio of sales of the item(s) to the total sales of the business enterprise;
- (7) the existence and scope of legitimate uses of the item in the community; and
- (8) expert testimony concerning its use.

(f) This section shall not apply to--

- (1) any person authorized by local, State, or Federal law to manufacture, possess, or distribute such items; or
- (2) any item that, in the normal lawful course of business, is imported, exported, transported, or sold through the mail or by any other means, and traditionally intended for use with tobacco products, including any pipe, paper, or accessory.

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21 USCS prec Section 871 (1996)

Preceding Section 871.

NOTES:

CROSS REFERENCES

This part is referred to in *21 USCS Section 965*.

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21 USCS Section 871 (1996)

Section 871. Attorney General

- (a) Delegation of functions. The Attorney General may delegate any of his functions under this title to any officer or employee of the Department of Justice.
- (b) Rules and regulations. The Attorney General may promulgate and enforce any rules, regulations, and procedures which he may deem necessary and appropriate for the efficient execution of his functions under this title.
- (c) Acceptance of devises, bequests, gifts, and donations. The Attorney General may accept in the name of the Department of Justice any form of devise, bequest, gift, or donation where the donor intends to donate property for the purpose of preventing or controlling the abuse of controlled substances. He may take all appropriate steps to secure possession of such property and may sell, assign, transfer, or convey any such property other than moneys.

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21 USCS Section 872 (1996)

Section 872. Education and research programs of Attorney General

- (a) Authorization. The Attorney General is authorized to carry out educational and research programs directly related to enforcement of the laws under his jurisdiction concerning drugs or other substances which are or may be subject to control under this title. Such programs may include--

- (1) educational and training programs on drug abuse and controlled substances law enforcement for local, State, and Federal personnel;
- (2) studies or special projects designed to compare the deterrent effects of various enforcement strategies on drug use and abuse;
- (3) studies or special projects designed to assess and detect accurately the presence in the human body of drugs or other substances which are or may be subject to control under this title, including the development of rapid field identification methods which would enable agents to detect microquantities of such drugs or other substances;
- (4) studies or special projects designed to evaluate the nature and sources of the supply of illegal drugs throughout the country;
- (5) studies or special projects to develop more effective methods to prevent diversion of controlled substances into illegal channels; and
- (6) studies or special projects to develop information necessary to carry out his functions under section 201 of this title [21 USCS Section 811].

(b) Contracts. The Attorney General may enter into contracts for such educational and research activities without performance bonds and without regard to section 3709 of the Revised Statutes (41 U.S.C. 5) [41 USCS Section 5].

(c) Identification of research populations; authorization to withhold. The Attorney General may authorize persons engaged in research to withhold the names and other identifying characteristics of persons who are the subjects of such research. Persons who obtain this authorization may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceeding to identify the subjects of research for which such authorization was obtained.

(d) Affect of treaties and other international agreements on confidentiality. Nothing in the Single Convention on Narcotic Drugs, the Convention on Psychotropic Substances, or other treaties or international agreements shall be construed to limit, modify, or prevent the protection of the confidentiality of patient records or of the names and other identifying characteristics of research subjects as provided by any Federal, State, or local law or regulation.

(e) Use of controlled substances in research. The Attorney General, on his own motion or at the request of the Secretary, may authorize the possession, distribution, and dispensing of controlled substances by persons engaged in research. Persons who obtain this authorization shall be exempt from State or Federal prosecution for possession, distribution, and dispensing of controlled substances to the extent authorized by the Attorney General.

(f) The Attorney General shall maintain an active program, both domestic and international, to curtail the diversion of precursor chemicals and essential chemicals used in the illicit manufacture of controlled substances.

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21 USCS Section 873 (1996)

Section 873. Cooperative arrangements

(a) Cooperation of Attorney General with local, State, and Federal agencies. The Attorney General shall cooperate with local, State, and Federal agencies concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, he is authorized to--

(1) arrange for the exchange of information between governmental officials concerning the use and abuse of controlled substances;

(2) cooperate in the institution and prosecution of cases in the courts of the United States and before the licensing boards and courts of the several States;

(3) conduct training programs on controlled substance law enforcement for local, State, and Federal personnel;

(4) maintain in the Department of Justice a unit which will accept, catalog, file, and otherwise utilize all information and statistics, including records of controlled substance abusers and other controlled substance law offenders, which may be received from Federal, State, and local agencies, and make such information available for Federal, State, and local law enforcement purposes;

(5) conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted;

(6) assist State and local governments in suppressing the diversion of controlled substances from legitimate medical, scientific, and commercial channels by--

(A) making periodic assessments of the capabilities of State and local governments to adequately control the diversion of controlled substances;

(B) providing advice and counsel to State and local governments on the methods by which such governments may strengthen their controls against diversion; and

(C) establishing cooperative investigative efforts to control diversion; and

(7) notwithstanding any other provision of law, enter into contractual agreements with State and local law enforcement agencies to provide for cooperative enforcement and regulatory activities under this Act.

(b) Requests by Attorney General for assistance from Federal agencies or instrumentalities. When requested by the Attorney General, it shall be the duty of any agency or instrumentality of the Federal Government to furnish assistance, including technical advice, to him for carrying out his functions under this title; except that no such agency or instrumentality shall be required to furnish the name of, or other identifying information about, a patient or research subject whose identity it has undertaken to keep confidential.

(c) Descriptive and analytic reports by Attorney General to State agencies of distribution patterns of schedule II substances having highest rates of abuse. The Attorney General shall annually (1) select the controlled substance (or controlled substances) contained in schedule II which, in the Attorney General's discretion, is determined to have the highest rate of abuse, and (2) prepare and make available to regulatory, licensing, and law enforcement agencies of States descriptive and analytic reports on the actual distribution patterns in such States of each such controlled substance.

(d) Grants.

(1) The Attorney General may make grants, in accordance with paragraph (2), to State and local governments to assist in meeting the costs of--

(A) collecting and analyzing data on the diversion of controlled substances,

(B) conducting investigations and prosecutions of such diversions,

(C) improving regulatory controls and other authorities to control such diversions,

(D) programs to prevent such diversions,

(E) preventing and detecting forged prescriptions, and

(F) training law enforcement and regulatory personnel to improve the control of such diversions.

(2) No grant may be made under paragraph (1) unless an application therefor is submitted to the Attorney General in such form and manner as the Attorney General may prescribe. No grant may exceed 80 per centum of the costs for which the grant is made, and no grant may be made unless the recipient of the grant provides assurances satisfactory to the Attorney General that it will obligate funds to meet the remaining 20 per centum of such costs. The Attorney General shall review the activities carried out with grants under paragraph (1) and shall report annually to Congress on such activities.

(3) To carry out this subsection there is authorized to be appropriated \$ 6,000,000 for fiscal year 1985 and \$ 6,000,000 for fiscal year 1986.

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21 USCS Section 874 (1996)

Section 874. Advisory committees

The Attorney General may from time to time appoint committees to advise him with respect to preventing and controlling the abuse of controlled substances. Members of the committees may be entitled to receive compensation at the rate of \$ 100 for each day (including traveltime) during which they are engaged in the actual performance of duties. While traveling on official business in the performance of duties for the committees, members of the committees shall be allowed expenses of travel, including per diem instead of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code [5 USCS Sections 5701 et seq.].

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21 USCS Section 875 (1996)

Section 875. Administrative hearings

(a) Power of Attorney General. In carrying out his functions under this title, the Attorney General may hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, and receive evidence at any place in the United States.

(b) Procedures applicable. Except as otherwise provided in this title, notice shall be given and hearings shall be conducted under appropriate procedures of subchapter II of chapter 5, title 5, United States Code [5 USCS Sections 551 et seq.].

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21 USCS Section 876 (1996)

Section 876. Subpoenas

(a) Authorization of use by Attorney General. In any investigation relating to his functions under this title with respect to controlled substances, listed chemicals, tableting machines, or encapsulating machines, the Attorney General may subpoena witnesses, compel the attendance and testimony of witnesses, and require the production of any records (including books, papers, documents, and other tangible things which constitute or contain evidence) which the Attorney General finds relevant or material to the investigation. The attendance of witnesses and the production of records may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place of hearing; except that a witness shall not be required to appear at any hearing more than 500 miles distant from the place where he was served with a subpoena. Witnesses summoned under this section shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(b) Service. A subpoena issued under this section may be served by any person designated in the subpoena to serve it. Service upon a natural person may be made by personal delivery of the subpoena to him. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the subpoena to an officer, to a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpoena entered on a true copy thereof by the person serving it shall be proof of service.

(c) Enforcement. In the case of contumacy by or refusal to obey a subpoena issued to any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which the investigation is carried on or of which the subpoenaed person is an inhabitant, or in which he carries on business or may be found, to compel compliance with the subpoena. The court may issue an order requiring the subpoenaed person to appear before the Attorney General to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in any judicial district in which such person may be found.

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21 USCS Section 877 (1996)

Section 877. Judicial review

All final determinations, findings, and conclusions of the Attorney General under this title shall be final and conclusive decisions of the matters involved, except that any person aggrieved by a final decision of the Attorney General may obtain review of the decision in the United States Court of Appeals for the District of Columbia or for the circuit in which his principal place of business is located upon petition filed with the court and delivered to the Attorney General within thirty days after notice of the decision. Findings of fact by the Attorney General, if supported by substantial evidence, shall be conclusive.

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21 USCS Section 878 (1996)

Section 878. Powers of enforcement personnel

(a) Any officer or employee of the Drug Enforcement Administration or any State or local law enforcement officer designated by the Attorney General may--

- (1) carry firearms;
- (2) execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses issued under the authority of the United States;
- (3) make arrests without warrant (A) for any offense against the United States committed in his presence, or (B) for any felony, cognizable under the laws of the United States, if he has

probable cause to believe that the person to be arrested has committed or is committing a felony;

(4) make seizures of property pursuant to the provisions of this title; and

(5) perform such other law enforcement duties as the Attorney General may designate.

(b). State and local law enforcement officers performing functions under this section shall not be deemed Federal employees and shall not be subject to provisions of law relating to Federal employees, except that such officers shall be subject to section 3374(c) of title 5, United States Code.

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21 USCS Section 879 (1996)

Section 879. Search warrants

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

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21 USCS Section 880 (1996)

Section 880. Administrative inspections and warrants

(a) "Controlled premises" defined. As used in this section, the term "controlled premises" means--

(1) places where original or other records or documents required under this title are kept or required to be kept, and

(2) places, including factories, warehouses, and other establishments, and conveyances, where persons registered under section 303 (or exempt from registration under section 302 (d) [21 USCS Section 822(d)] or by regulation of the Attorney General) or regulated persons may lawfully hold, manufacture, distribute, dispense, administer, or otherwise dispose of controlled substances or listed chemicals or where records relating to those activities are maintained.

(b) Grant of authority; scope of inspection.

(1) For the purpose of inspecting, copying, and verifying the correctness of records, reports, or other documents required to be kept or made under this title and otherwise facilitating the carrying out of his functions under this title, the Attorney General is authorized, in accordance with this section, to enter controlled premises and to conduct administrative inspections thereof, and of the things specified in this section, relevant to those functions.

(2) Such entries and inspections shall be carried out through officers or employees (hereinafter referred to as "inspectors") designated by the Attorney General. Any such inspector, upon stating his purpose and presenting to the owner, operator, or agent in charge of such premises (A) appropriate credentials and (B) a written notice of his inspection authority (which notice in the case of an inspection requiring, or in fact supported by, an administrative inspection warrant shall consist of such warrant), shall have the right to enter such premises and conduct such inspection at reasonable times.

(3) Except as may otherwise be indicated in an applicable inspection warrant, the inspector shall have the right--

(A) to inspect and copy records, reports, and other documents required to be kept or made under this title;

(B) to inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished drugs, listed chemicals, and other substances or materials, containers, and labeling found therein, and, except as provided in paragraph (4) of this subsection, all other things therein (including records, files, papers, processes, controls, and facilities) appropriate for verification of the records, reports, and documents referred to in clause (A) or otherwise bearing on the provisions of this title; and

(C) to inventory any stock of any controlled substance or listed chemical therein and obtain samples of any such substance or chemical.

(4) Except when the owner, operator, or agent in charge of the controlled premises so consents in writing, no inspection authorized by this section shall extend to--

(A) financial data;

(B) sales data other than shipment data; or

(C) pricing data.

(c) Situations not requiring warrants. A warrant under this section shall not be required for the inspection of books and records pursuant to an administrative subpoena issued in accordance with section 506 [21 USCS Section 876], nor for entries and administrative inspections (including seizures of property)--

(1) with the consent of the owner, operator, or agent in charge of the controlled premises;

(2) in situations presenting imminent danger to health or safety;

(3) in situations involving inspection of conveyances where there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(4) in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or

(5) in any other situations where a warrant is not constitutionally required.

(d) Administrative inspection warrants; issuance; execution; probable cause. Issuance and execution of administrative inspection warrants shall be as follows:

(1) Any judge of the United States or of a State court of record, or any United States magistrate, may, within his territorial jurisdiction, and upon proper oath or affirmation showing probable cause, issue warrants for the purpose of conducting administrative inspections authorized by this title or regulations thereunder, and seizures of property appropriate to such inspections. For the purposes of this section, the term "probable cause" means a valid public interest in the effective enforcement of this title or regulations thereunder sufficient to justify administrative inspections of the area, premises, building, or conveyance, or contents thereof, in the circumstances specified in the application for the warrant.

(2) A warrant shall issue only upon an affidavit of an officer or employee having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of such inspection, and, where appropriate, the type of property to be inspected, if any. The warrant shall identify the items or types of property to be seized, if any. The warrant shall be directed to a person authorized under subsection (b)(2) to execute it. The warrant shall state the grounds for its issuance and the name of the person or persons whose affidavit has been taken in support thereof. It shall command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified, and, where appropriate, shall direct the seizure of the property specified. The warrant shall direct that it be served during normal business hours. It shall designate the judge or magistrate to whom it shall be returned.

(3) A warrant issued pursuant to this section must be executed and returned within ten days

of its date unless, upon a showing by the United States of a need therefor, the judge or magistrate allows additional time in the warrant. If property is seized pursuant to a warrant, the person executing the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return of the warrant shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if they are present or in the presence of at least one credible person other than the person making such inventory, and shall be verified by the person executing the warrant. The judge or magistrate, upon request, shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(4) The judge or magistrate who has issued a warrant under this section shall attach to the warrant a copy of the return and all papers filed in connection therewith and shall file them with the clerk of the district court of the United States for the judicial district in which the inspection was made.

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21 USCS Section 881 (1996)

Section 881. Forfeitures

(a) Subject property. The following shall be subject to forfeiture to the United States and no property right shall exist in them:

- (1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this title.
- (2) 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 this title.
- (3) All property which is used, or intended for use, as a container for property described in paragraph (1), (2), or (9).

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1), (2), or (9), except that--

(A) 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 section 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 title or title III;

(B) 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 by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any State; and

(C) no conveyance shall be forfeited under this paragraph to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge, consent, or willful blindness of the owner.

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

(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 title, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this title, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

(7) All real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this title punishable by more than one year's imprisonment, except that no property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

(8) All controlled substances which have been possessed in violation of this title.

(9) All listed chemicals, all drug manufacturing equipment, all tableting machines, all encapsulating machines, and all gelatin capsules, which have been imported, exported, manufactured, possessed, distributed, or intended to be distributed, imported, or exported, in violation of a felony provision of this title or title III.

(10) Any drug paraphernalia (as defined in section 1822 of the Mail Order Drug Paraphernalia Control Act [21 USCS Section 857]).

(11) Any firearm (as defined in section 921 of title 18, United States Code) used or intended to be used to facilitate the transportation, sale, receipt, possession, or concealment of

property described in paragraph (1) or (2) and any proceeds traceable to such property.

(b) Seizure pursuant to Supplemental Rules for Certain Admiralty and Maritime Claims. Any property subject to civil forfeiture to the United States under this title may be seized by the Attorney General upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, 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 favor of the United States in a criminal injunction or forfeiture proceeding under this title;
- (3) the Attorney General has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or
- (4) the Attorney General has probable cause to believe that the property is subject to civil forfeiture under this title.

In the event of seizure pursuant to paragraph (3) or (4) of this subsection, proceedings under subsection (d) of this section shall be instituted promptly.

The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.

(c) Custody of Attorney General. Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under any of the provisions of this title, the Attorney General may--

- (1) place the property under seal;
- (2) remove the property to a place designated by him; or
- (3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

(d) Other laws and proceedings applicable. The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under any of the provisions of this title, insofar as applicable and not inconsistent with the provisions hereof; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this title by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.

(e) Disposition of forfeited property.

(1) Whenever property is civilly or criminally forfeited under this title the Attorney General may--

(A) retain the property for official use or, in the manner provided with respect to transfers under section 616 of the Tariff Act of 1930, transfer the property to any Federal agency or to any State or local law enforcement agency which participated directly in the seizure or forfeiture of the property;

(B) except as provided in paragraph (4), sell, by public sale or any other commercially feasible means, any forfeited property which is not required to be destroyed by law and which is not harmful to the public;

(C) require that the General Services Administration take custody of the property and dispose of it in accordance with law;

(D) forward it to the Bureau of Narcotics and Dangerous Drugs for disposition (including delivery for medical or scientific use to any Federal or State agency under regulations of the Attorney General); or

(E) transfer the forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer--

(i) has been agreed to by the Secretary of State;

(ii) is authorized in an international agreement between the United States and the foreign country; and

(iii) is made to a country which, if applicable, has been certified under section 490(b) of the Foreign Assistance Act of 1961 [22 *USCS Section 2291j(b)*].

(2)

(A) The proceeds from any sale under subparagraph (B) of paragraph (1) and any moneys forfeited under this title shall be used to pay--

(i) all property expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs; and

(ii) awards of up to \$ 100,000 to any individual who provides original information which leads to the arrest and conviction of a person who kills or kidnaps a Federal drug law enforcement agent. Any award paid for information concerning the killing or kidnapping of a Federal drug law enforcement agent, as provided in clause (ii), shall be paid at the discretion of the Attorney General.

(B) The Attorney General shall forward to the Treasurer of the United States for deposit in accordance with section 524(c) of title 28, United States Code, any amounts of such moneys and proceeds remaining after payment of the expenses provided in subparagraph (A), except

that, with respect to forfeitures conducted by the Postal Service, the Postal Service shall deposit in the Postal Service Fund, under section 2003(b)(7) of title 39, United States Code, such moneys and proceeds.

(3) The Attorney General shall assure that any property transferred to a State or local law enforcement agency under paragraph (1)(A)--

(A) has a value that bears a reasonable relationship to the degree of direct participation of the State or local agency in the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law enforcement effort with respect to the violation of law on which the forfeiture is based; and

(B) will serve to encourage further cooperation between the recipient State or local agency and Federal law enforcement agencies.

(4)

(A) With respect to real property described in subparagraph (B), if the chief executive officer of the State involved submits to the Attorney General a request for purposes of such subparagraph, the authority established in such subparagraph is in lieu of the authority established in paragraph (1)(B).

(B) In the case of property described in paragraph (1)(B) that is civilly or criminally forfeited under this title, if the property is real property that is appropriate for use as a public area reserved for recreational or historic purposes or for the preservation of natural conditions, the Attorney General, upon the request of the chief executive officer of the State in which the property is located, may transfer title to the property to the State, either without charge or for a nominal charge, through a legal instrument providing that--

(i) such use will be the principal use of the property; and

(ii) title to the property reverts to the United States in the event that the property is used otherwise.

(f) Forfeiture of schedule I or II substances.

(1) All controlled substances in schedule I or II that are possessed, transferred, sold, or offered for sale in violation of the provisions of this title; all dangerous, toxic, or hazardous raw materials or products subject to forfeiture under subsection (a)(2) of this section; and any equipment or container subject to forfeiture under subsection (a)(2) or (3) which cannot be separated safely from such raw materials or products shall be deemed contraband and seized and summarily forfeited to the United States. Similarly, all substances in schedule I or II, which are seized or come into the possession of the United States, the owners of which are unknown, shall be deemed contraband and summarily forfeited to the United States.

(2) The Attorney General may direct the destruction of all controlled substances in schedule I or II seized for violation of this title; all dangerous, toxic, or hazardous raw materials or products subject to forfeiture under subsection (a)(2) of this section; and any equipment or container subject to forfeiture under subsection (a)(2) or (3) which cannot be separated

safely from such raw materials or products under such circumstances as the Attorney General may deem necessary.

(g) Plants.

(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 title, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the United States.

(2) The failure, upon demand by the Attorney General or his duly authorized agent, 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.

(3) The Attorney General, or his duly authorized agent, shall have authority to enter upon any lands, or into any dwelling pursuant to a search warrant, to cut, harvest, carry off, or destroy such plants.

(h) Property title, etc. vested in United States. All right, title, and interest in property described in subsection (a) shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

(i) Stay of civil proceeding. The filing of an indictment or information alleging a violation of this title or title III, or a violation of State or local law that could have been charged under this title or title III, which is also related to a civil forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the civil forfeiture proceeding.

(j) Venue. In addition to the venue provided for in section 1395 of title 28, United States Code, or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

[(k)](l) Functions. The functions of the Attorney General under this section shall be carried out by the Postal Service pursuant to such agreement as may be entered into between the Attorney General and the Postal Service.

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21 USCS Section 881-1 (1996)

Section 881-1. [Transferred]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

EXPLANATORY NOTES:

This section was redesignated and appears as *21 USCS Section 888*.

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21 USCS Section 881a (1996)

Section 881a. [Transferred]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

EXPLANATORY NOTES:

This section was redesignated and appears as *21 USCS Section 889*.

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21 USCS Section 882 (1996)

Section 882. Injunctions

(a) Jurisdiction. The district courts of the United States and all courts exercising general jurisdiction in the territories and possessions of the United States shall have jurisdiction in proceedings in accordance with the Federal Rules of Civil Procedure to enjoin violations of this title.

(b) Jury trial. In case of an alleged violation of an injunction or restraining order issued under this section, trial shall, upon demand of the accused, be by a jury in accordance with the Federal Rules of Civil Procedure.

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21 USCS Section 883 (1996)

Section 883. Enforcement proceedings

Before any violation of this title is reported by the Administrator of the Drug Enforcement Administration to any United States attorney for institution of a criminal proceeding, the Administrator may require that the person against whom such proceeding is contemplated be given appropriate notice and an opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding.

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21 USCS Section 884 (1996)

Section 884. Immunity and privilege

(a) Refusal to testify. Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before a court or grand jury of the United States, involving a violation of this title, and the person presiding over the proceeding communicates to the witness an order issued under this section, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination. But no testimony or other information compelled under the order issued under subsection (b) of this section or any information obtained by the exploitation of such testimony or other information, may be used against the witness in any criminal case, including any criminal case brought in a court of a State, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

(b) Order of United States district court. In the case of any individual who has been or may be called to testify or provide other information at any proceeding before a court or grand jury of the United States, the United States district court for the judicial district in which the proceeding is or may be held shall issue, upon the request of the United States attorney for such district, an order requiring such individual to give any testimony or provide any other information which he refuses to give or provide on the basis of his privilege against self-incrimination.

(c) Request by United States attorney. A United States attorney may, with the approval of the Attorney General or the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General designated by the Attorney General, request an order under subsection (b) when in his judgment--

- (1) the testimony or other information from such individual may be necessary to the public interest; and
- (2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

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21 USCS Section 885 (1996)

Section 885. Burden of proof; liabilities

(a) Exemptions and exceptions; presumption in simple possession offenses.

(1) It shall not be necessary for the United States to negative any exemption or exception set forth in this title in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this title, and the burden of going forward with the evidence with respect to any such exemption or exception shall be upon the person claiming its benefit.

(2) In the case of a person charged under section 404(a) [21 USCS Section 844(a)] with the possession of a controlled substance, any label identifying such substance for purposes of section 503(b)(2) of the Federal Food, Drug, and Cosmetic Act [21 USCS Section 353(b)(2)] 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) Registration and order forms. In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this title, 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) Use of vehicles, vessels, and aircraft. 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 title shall be on the persons engaged in such use.

(d) Immunity of Federal, State, local and other officials. Except as provided in sections 2234 and 2235 of title 18; United States Code [18 USCS Sections 2234, 2235], no civil or criminal liability shall be imposed by virtue of this title upon any duly authorized Federal officer lawfully engaged in the enforcement of this title, or upon any duly authorized officer of any State, territory, political subdivision thereof, the District of Columbia, or any possession of the United States, who shall be lawfully engaged in the enforcement of any law or municipal ordinance relating to controlled substances.

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21 USCS Section 886 (1996)

Section 886. Payments and advances

- (a) Payment to informers. The Attorney General is authorized to pay any person, from funds appropriated for the Drug Enforcement Administration, for information concerning a violation of this title, such sum or sums of money as he may deem appropriate, without reference to any moiety or rewards to which such person may otherwise be entitled by law.
- (b) Reimbursement for purchase of controlled substances. Moneys expended from appropriations of the Drug Enforcement Administration for purchase of controlled substances and subsequently recovered shall be reimbursed to the current appropriation for the Bureau [Administration].
- (c) Advance of funds for enforcement purposes. The Attorney General is authorized to direct the advance of funds by the Treasury Department in connection with the enforcement of this title.
- (d) Drug Pollution Fund.
- (1) There is established in the Treasury a trust fund to be known as the "Drug Pollution Fund" (hereinafter referred to in this subsection as the "Fund"), consisting of amounts appropriated or credited to such Fund under section 401(b)(6) [21 USCS Section 841(b)(6)].
 - (2) There are hereby appropriated to the Fund amounts equivalent to the fines imposed under section 401(b)(6) [21 USCS Section 841(b)(6)].
 - (3) Amounts in the Fund shall be available, as provided in appropriations Acts, for the purpose of making payments in accordance with paragraph (4) for the clean up of certain pollution resulting from the actions referred to in section 401(b)(6) [21 USCS Section 841(b)(6)].
 - (4)
 - (A) The Secretary of the Treasury, after consultation with the Attorney General, shall make payments under paragraph (3), in such amounts as the Secretary determines appropriate, to the heads of executive agencies or departments that meet the requirements of subparagraph (B).
 - (B) In order to receive a payment under paragraph (3), the head of an executive agency or department shall submit an application in such form and containing such information as the Secretary of the Treasury shall by regulation require. Such application shall contain a description of the fine imposed under section 401(b)(6) [21 USCS Section 841(b)(6)]; the circumstances surrounding the imposition of such fine, and the type and severity of pollution that resulted from the actions to which such fine applies.
 - (5) For purposes of subchapter B of chapter 98 of the Internal Revenue Code of 1986 [26 USCS Sections 9601 et seq.], the Fund established under this paragraph shall be treated in the same manner as a trust fund established under subchapter A of such chapter [26 USCS Sections 9501 et seq.].

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21 USCS Section 886A (1996)

Section 886a. Diversion Control Fee Account

There is established in the general fund of the Treasury a separate account which shall be known as the Diversion Control Fee Account. For fiscal year 1993 and thereafter:

- (1) There shall be deposited as offsetting receipts into that account all fees collected by the Drug Enforcement Administration, in excess of \$ 15,000,000, for the operation of its diversion control program.
- (2) Such amounts as are deposited into the Diversion Control Fee Account shall remain available until expended and shall be refunded out of that account by the Secretary of the Treasury, at least on a quarterly basis, to reimburse the Drug Enforcement Administration for expenses incurred in the operation of the diversion control program.
- (3) Fees charged by the Drug Enforcement Administration under its diversion control program shall be set at a level that ensures the recovery of the full costs of operating the various aspects of that program.
- (4) The amount required to be refunded from the Diversion Control Fee Account for fiscal year 1994 and thereafter shall be refunded in accordance with estimates made in the budget request of the Attorney General for those fiscal years. Any proposed changes in the amounts designated in said budget requests shall only be made after notification to the Committees on Appropriations of the House of Representatives and the Senate fifteen days in advance.
- (5) The Attorney General shall prepare and submit annually to the Congress, statements of financial condition of the account, including the beginning balance, receipts, refunds to appropriations, transfers to the general fund, and the ending balance.

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21 USCS Section 887 (1996)

Section 887. Coordination and consolidation of post-seizure administration

The Attorney General and the Secretary of the Treasury shall take such action as may be necessary to develop and maintain a joint plan to coordinate and consolidate post-seizure administration of property seized under this title, title III, or provisions of the customs laws relating to controlled substances.

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21 USCS Section 888 (1996)

Section 888. Expedited procedures for seized conveyances

(a)

(1) The owner of a conveyance may petition the Attorney General for an expedited decision with respect to the conveyance, if the conveyance is seized for a drug-related offense and the owner has filed the requisite claim and cost bond in the manner provided in section 608 of the Tariff Act of 1930 [19 USCS Section 1608]. The Attorney General shall make a determination on a petition under this section expeditiously, including a determination of any rights or defenses available to the petitioner. If the Attorney General does not grant or deny a petition under this section within 20 days after the date on which the petition is filed, the conveyance shall be returned to the owner pending further forfeiture proceedings.

(2) With respect to a petition under this section, the Attorney General may--

- (A) deny the petition and retain possession of the conveyance;
 - (B) grant the petition, move to dismiss the forfeiture action, if filed, and promptly release the conveyance to the owner; or
 - (C) advise the petitioner that there is not adequate information available to determine the petition and promptly release the conveyance to the owner.
- (3) Release of a conveyance under subsection (a)(1) or (a)(2)(C) does not affect any forfeiture action with respect to the conveyance.
- (4) The Attorney General shall prescribe regulations to carry out this section.

(b) At the time of seizure, the officer making the seizure shall furnish to any person in possession of the conveyance a written notice specifying the procedures under this section. At the earliest practicable opportunity after determining ownership of the seized conveyance, the head of the department or agency that seizes the conveyance shall furnish a written notice to the owner and other interested parties (including lienholders) of the legal and factual basis of the seizure.

(c) Not later than 60 days after a claim and cost bond have been filed under section 608 of the Tariff Act of 1930 [19 USCS Section 1608] regarding a conveyance seized for a drug-related offense, the Attorney General shall file a complaint for forfeiture in the appropriate district court, except that the court may extend the period for filing for good cause shown or on agreement of the parties. If the Attorney General does not file a complaint as specified in the preceding sentence, the court shall order the return of the conveyance to the owner and the forfeiture may not take place.

(d) Any owner of a conveyance seized for a drug-related offense may obtain release of the conveyance by providing security in the form of a bond to the Attorney General in an amount equal to the value of the conveyance unless the Attorney General determines the conveyance should be retained (1) as contraband, (2) as evidence of a violation of law, or (3) because, by reason of design or other characteristic, the conveyance is particularly suited for use in illegal activities.

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21 USCS Section 889 (1996)

Section 889. Controlled substances production control

(a) As used in this section:

(1) The term "controlled substance" has the same meaning given such term in section 102 (6) of the Controlled Substances Act (*21 U.S.C. 801(6)*) [*21 USCS Section 801(6)*].

(2) The term "Secretary" means the Secretary of Agriculture.

(3) The term "State" means each of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(b) Notwithstanding any other provision of law, following the date of enactment of this Act [enacted Dec. 23, 1985], any person who is convicted under Federal or State law of planting, cultivation, growing, producing, harvesting, or storing a controlled substance in any crop year shall be ineligible for--

(1) as to any commodity produced during that crop year, and the four succeeding crop years, by such person--

(A) any price support or payment made available under the Agricultural Act of 1949 (*7 U.S.C. 1421 et seq.*) [*7 USCS Sections 1421 et seq.*], the Commodity Credit Corporation Charter Act (*15 U.S.C. 714 et seq.*) [*15 USCS Sections 714 et seq.*], or any other Act;

(B) a farm storage facility loan made under section 4(h) of the Commodity Credit Corporation Charter Act (*15 U.S.C. 714b(h)*) [*15 USCS Section 714b(h)*];

(C) crop insurance under the Federal Crop Insurance Act (*7 U.S.C. 1501 et seq.*) [*7 USCS Sections 1501 et seq.*];

(D) a disaster payment made under the Agricultural Act of 1949 (*7 U.S.C. 1421 et seq.*) [*7 USCS Sections 1421 et seq.*]; or

(E) a loan made, insured or guaranteed under the Consolidated Farm and Rural Development Act (*7 U.S.C. 1921 et seq.*) [*7 USCS Sections 1921 et seq.*] or any other provision of law administered by the Farmers Home Administration; or

(2) a payment made under section 4 or 5 of the Commodity Credit Corporation Charter Act (*15 U.S.C. 714b or 714c*) [*15 USCS Sections 714b, 714c*] for the storage of an agricultural commodity that is--

(A) produced during that crop year, or any of the four succeeding crop years, by such person; and

(B) acquired by the Commodity Credit Corporation.

(c) Not later than 180 days after the date of enactment of this Act [enacted Dec. 23, 1985], the Secretary shall issue such regulations as the Secretary determines are necessary to carry out this section, including regulations that--

- (1) define the term "person";
 - (2) govern the determination of persons who shall be ineligible for program benefits under this section; and
 - (3) protect the interests of tenants and sharecroppers.
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21 USCS Section 901 (1996)

Section 901. Severability of provisions

If a provision of this Act is held invalid, all valid provisions that are severable shall remain in effect. If a provision of this Act is held invalid in one or more of its applications, the provision shall remain in effect in all its valid applications that are severable.

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21 USCS Section 902 (1996)

Section 902. Saving provisions

Nothing in this Act, except this part and, to the extent of any inconsistency, sections 307(e) and 309 of this title [21 USCS Sections 827(e), 829], shall be construed as in any way affecting, modifying, repealing, or superseding the provisions of the Federal Food, Drug, and Cosmetic Act [21 USCS Sections 301 et seq.].

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21 USCS Section 903 (1996)

Section 903. Application of State law

No provision of this title shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this title and that State law so that the two cannot consistently stand together.

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21 USCS Section 904 (1996)

Section 904. Payment of tort claims

Notwithstanding section 2680(k) of title 28, United States Code [28 USCS Section 2680(k)], the

Attorney General, in carrying out the functions of the Department of Justice under this title, is authorized to pay tort claims in the manner authorized by section 2672 of title 28, United States Code [28 USCS Section 2672], when such claims arise in a foreign country in connection with the operations of the Drug Enforcement Administration abroad.

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*** CURRENT THROUGH 104-115, 3/12/96, EXCEPT FOR PLs 104, 106, 114 ***

TITLE 21. FOOD AND DRUGS

CHAPTER 13. DRUG ABUSE PREVENTION AND CONTROL

OFFENSES AND PENALTIES

21 USCS Section 951 (1996)

Preceding Section 951.

HISTORY; ANCILLARY LAWS AND DIRECTIVES

EXPLANATORY NOTES:

This subchapter is composed of Part A of Title III of Act Oct. 27, 1970, P.L. 91-513, 84 Stat. 1285. Part B of such Title III of such Act amends, repeals and provides transitional matter generally classified elsewhere; for full classification, consult USCS Tables volumes.

NOTES:

CROSS REFERENCES

This subchapter is referred to in *10 USCS Section 374*; *21 USCS Sections 381, 824, 828, 830, 841--844, 848--850, 881*; *42 USCS Section 242*.

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21 USCS Section 951 (1996)

Section 951. Definitions

(a) For purposes of this part [21 USCS Sections 951 et seq.]--

(1) The term "import" means, with respect to any article, any bringing in or introduction of such article into any area (whether or not such bringing in or introduction constitutes an importation within the meaning of the tariff laws of the United States).

(2) The term "customs territory of the United States" has the meaning assigned to such term by general note 2 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(b) Each term defined in section 102 of title II [21 USCS Section 802] shall have the same meaning for purposes of this title as such term has for purposes of title II.

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21 USCS Section 952 (1996)

Section 952. Importation of controlled substances

(a) Controlled substances in schedule I or II and narcotic drugs in schedule III, IV, or V; exceptions. It shall be unlawful to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any controlled substance in schedule I or II of title II, or any narcotic drug in schedule III, IV, or V of title II, except that--

(1) such amounts of crude opium, poppy straw, concentrate of poppy straw, 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 in schedule I or II or any narcotic drug in

schedule III, IV, or V that the Attorney General finds to be necessary to provide for the medical, scientific, or other legitimate needs of the United States--

(A) during an emergency in which domestic supplies of such substance or drug are found by the Attorney General to be inadequate,

(B) 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 section 303 [21 USCS Section 823], or

(C) in any case in which the Attorney General finds that such controlled substance is in limited quantities exclusively for scientific, analytical, or research uses,

may be so imported under such regulations as the Attorney General shall prescribe. No crude opium may be so imported for the purpose of manufacturing heroin or smoking opium.

(b) Nonnarcotic controlled substances in schedule III, IV, or V. It shall be unlawful to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any nonnarcotic controlled substance in schedule III, IV, or V, unless such nonnarcotic controlled substance--

(1) is imported for medical, scientific, or other legitimate uses, and

(2) is imported pursuant to such notification, or declaration, or in the case of any nonnarcotic controlled substance in schedule III, such import permit, notification, or declaration, as the Attorney General may by regulation prescribe, except that if a nonnarcotic controlled substance in schedule IV or V is also listed in schedule I or II of the Convention on Psychotropic Substances it shall be imported pursuant to such import permit requirements, prescribed by regulation of the Attorney General, as are required by the Convention.

(c) Coca leaves. In addition to the amount of coca leaves authorized to be imported into the United States under subsection (a), 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.

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21 USCS Section 953 (1996)

Section 953. Exportation of controlled substances

(a) Narcotic drugs in schedule I, II, III, or IV. It shall be unlawful to export from the United States any narcotic drug in schedule I, II, III, or IV unless--

(1) it is exported to a country which is a party to--

(A) 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

(B) the Convention for Limiting 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 manufacture and regulating the distribution of narcotic drugs (as amended by the protocol signed at Lake Success on December 11, 1946), signed at Paris, November 19, 1948; or

(C) the Single Convention on Narcotic Drugs, 1961, signed at New York, March 30, 1961;

(2) such country has instituted and maintains, in conformity with the 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 (A) the narcotic drug is to be applied exclusively to medical or scientific uses within the country of import, and (B) 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) Exception for exportation for special scientific purposes. Notwithstanding subsection (a), the Attorney General may authorize any narcotic drug (including crude opium and coca leaves) in schedule I, II, III, or IV to be exported from the United States to a country which is a party to any of the international instruments mentioned in subsection (a) if the particular drug is to be 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) Nonnarcotic controlled substances in schedule I or II. It shall be unlawful to export from the United States any nonnarcotic controlled substance in schedule I or II unless--

- (1) it is exported to a country which has instituted and maintains a system which the Attorney General deems adequate for the control of imports of such substances;
- (2) the controlled substance is consigned to a holder of such permits or licenses as may be required under the laws of the country of import;
- (3) substantial evidence is furnished to the Attorney General that (A) the controlled substance is to be applied exclusively to medical, scientific, or other legitimate uses within the country to which exported, (B) it will not be exported from such country, and (C) there is an actual need for the controlled substance for medical, scientific, or other legitimate uses within the country; and
- (4) a permit to export the controlled substance in each instance has been issued by the Attorney General.

(d) Exception for exportation for special scientific purposes. Notwithstanding subsection (c), the Attorney General may authorize any nonnarcotic controlled substance in schedule I or II to be exported from the United States if the particular substance is to be 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.

(e) Nonnarcotic controlled substances in schedule III or IV; controlled substances in schedule V. It shall be unlawful to export from the United States to any other country any nonnarcotic controlled substance in schedule III or IV or any controlled substances in schedule V 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 for consumption for medical, scientific, or other legitimate purposes;
- (2) it is exported pursuant to such notification or declaration, or in the case of any nonnarcotic controlled substance in schedule III, such export permit, notification, or declaration as the Attorney General may by regulation prescribe; and
- (3) in the case of a nonnarcotic controlled substance in schedule IV or V which is also listed in schedule I or II of the Convention on Psychotropic Substances, it is exported pursuant to such export permit requirements, prescribed by regulation of the Attorney General, as are required by the Convention.

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21 USCS Section 954 (1996)

Section 954. Transshipment and in-transit shipment of controlled substances

Notwithstanding sections 1002, 1003, and 1007 [21 USCS Sections 952, 953, 957]--

(1) A controlled substance in schedule I may--

(A) be imported into the United States for transshipment to another country, or

(B) be transferred or transshipped from one vessel, vehicle, or aircraft to another vessel, vehicle, or aircraft within the United States 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 the Attorney General (which shall be granted or denied within 21 days of the request).

(2) A controlled substance in schedule II, III, or IV may be so imported, transferred, or transshipped if and only if advance notice is given to the Attorney General in accordance with regulations of the Attorney General.

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21 USCS Section 955 (1996)

Section 955. Possession on board vessels, etc., arriving in or departing from United States

It shall be unlawful for any person to bring or possess on board any vessel or aircraft, or on board any vehicle of a carrier, arriving in or departing from the United States or the customs territory of the United States, a controlled substance in schedule I or II or a narcotic drug in schedule III or IV, unless such substance or drug is a part of the cargo entered in the manifest or part of the official supplies of the vessel, aircraft, or vehicle.

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21 USCS Section 955a-955d (1996)

Sections 955a-955d. [Transferred]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

These sections (Act Sept. 15, 1980, P.L. 96-350, Sections 1--4[3], 94 Stat. 1159, 1160) were transferred and now appear as 46 USCS Appx. Sections 1901--1904.

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21 USCS Section 956 (1996)

Section 956. Exemption authority

(a) Individual possessing controlled substance. The Attorney General may by regulation exempt from sections 1002(a) and (b), 1003, 1004, and 1005 [21 USCS Sections 952(a), (b), 953--955] any individual who has a controlled substance (except a substance in schedule I) in his possession for his personal medical use, or for administration to any animal accompanying him, if he lawfully obtained such substance and he makes such declaration (or gives such other notification) as the Attorney General may by regulation require.

(b) Compound, mixture, or preparation. The Attorney General may by regulation except any compound, mixture, or preparation containing any depressant or stimulant substance listed in paragraph (a) or (b) of

schedule III or in schedule IV or V from the application of all or any part of this title if (1) the compound, mixture, or preparation contains one 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 potential for abuse of the substances which do have a depressant or stimulant effect on the central nervous system.

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21 USCS Section 957 (1996)

Section 957. Persons required to register

(a) Coverage. No person may--

(1) import into the customs territory of the United States from any place outside thereof (but within the United States), or import into the United States from any place outside thereof, any controlled substance or list I chemical, or

(2) export from the United States any controlled substance or list I chemical,

unless there is in effect with respect to such person a registration issued by the Attorney General under section 1008 [*21 USCS Section 958*], or unless such person is exempt from registration under subsection (b).

(b) Exemptions.

(1) The following persons shall not be required to register under the provisions of this section and may lawfully possess a controlled substance or list I chemical:

(A) An agent or an employee of any importer or exporter registered under section 1008 [*21 USCS Section 958*] if such agent or employee is acting in the usual course of his business or employment.

(B) A common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance or list I chemical is in the usual course of his business or employment.

(C) An ultimate user who possesses such substance for a purpose specified in section 102 (25) [21 USCS Section 802(25)] and in conformity with an exemption granted under section 1006(a) [21 USCS Section 956(a)].

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

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21 USCS Section 958 (1996)

Section 958. Registration requirements

(a) Applicants to import or export controlled substances in schedule I or II. The Attorney General shall register an applicant to import or export a controlled substance in schedule I or II if he 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) through (6) of section 303(a) [21 USCS Section 823(a)(1)--(6)] shall be considered.

(b) Activity limited to specified substances. Registration granted under this section shall not entitle a registrant to import or export controlled substances other than specified in the registration.

(c) Applicants to import controlled substances in schedule III, IV, or V or to export controlled substances in schedule III or IV.

(1) The Attorney General shall register an applicant to import a controlled substance in schedule III, IV, or V or to export a controlled substance in schedule III or IV, unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the factors enumerated in paragraphs (1) through (6) of section 303(d) [21 USCS Section 823(d)(1)--(6)] shall be considered.

(2)

(A) The Attorney General shall register an applicant to import or export a list I chemical

unless the Attorney General determines that registration of the applicant is inconsistent with the public interest. Registration under this subsection shall not be required for the import or export of a drug product that is exempted under section 102(39)(A)(iv) [21 USCS Section 802(39)(A)(iv)].

(B) In determining the public interest for the purposes of subparagraph (A), the Attorney General shall consider the factors specified in section 303(h) [21 USCS Section 823(h)].

(d) Denial of application; revocation or suspension of registration.

(1) The Attorney General may deny an application for registration under subsection (a) if he is unable to determine that such registration is consistent with the public interest (as defined in subsection (a)) and with the United States obligations under international treaties, conventions, or protocols in effect on the effective date of this part.

(2) The Attorney General may deny an application for registration under subsection (c), or revoke or suspend a registration under subsection (a) or (c), if he determines that such registration is inconsistent with the public interest (as defined in subsection (a) or (c)) or with the United States obligations under international treaties, conventions, or protocols in effect on the effective date of this part.

(3) The Attorney General may limit the revocation or suspension of a registration to the particular controlled substance, or substances, or list I chemical or chemicals, with respect to which grounds for revocation or suspension exist.

(4) Before taking action pursuant to this subsection, the Attorney General shall serve upon the applicant or registrant an order to show cause as to why the registration should not be denied, revoked, or suspended. The order to show cause shall contain a statement of the basis thereof and shall call upon the applicant or registrant to appear before the Attorney General, or his designee, at a time and place stated in the order, but in no event less than thirty days after the date of receipt of the order. Proceedings to deny, revoke, or suspend shall be conducted pursuant to this subsection in accordance with subchapter II of chapter 5 of title 5 of the United States Code [5 USCS Sections 551 et seq.]. Such proceedings shall be independent of, and not in lieu of, criminal prosecutions or other proceedings under this title or any other law of the United States.

(5) The Attorney General may, in his discretion, suspend any registration simultaneously with the institution of proceedings under this subsection, in cases where he finds that there is an imminent danger to the public health and safety. Such suspension shall continue in effect until the conclusion of such proceedings, including judicial review thereof, unless sooner withdrawn by the Attorney General or dissolved by a court of competent jurisdiction.

(6) In the event that the Attorney General suspends or revokes a registration granted under this section, all controlled substances or list I chemicals 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 Attorney General, be seized or placed under seal. No disposition may be made of any controlled substances or list I chemicals under seal until the time for taking an appeal has elapsed or until all appeals have been concluded, except that a court, upon application therefor, may at any time order

the sale of perishable controlled substances or list I chemicals. Any such order shall require the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled substances or list I chemicals (or proceeds of the sale thereof which have been deposited with the court) shall be forfeited to the United States; and the Attorney General shall dispose of such controlled substances or list I chemicals in accordance with section 511(e) of the Controlled Substances Act [21 USCS Section 881(e)].

(e) Registration period. No registration shall be issued under this part [21 USCS Sections 951 et seq.] for a period in excess of one year. Unless the regulations of the Attorney General otherwise provide, sections 302(f), 305, 307, and 310 [21 USCS Sections 822(f), 825, 827, and 830] shall apply to persons registered under this section to the same extent such sections apply to persons registered under section 303 [21 USCS Section 823].

(f) Rules and regulations. The Attorney General is authorized to promulgate rules and regulations and to charge reasonable fees relating to the registration of importers and exporters of controlled substances or list I chemicals under this section.

(g) Scope of authorized activity. Persons registered by the Attorney General under this section to import or export controlled substances or list I chemicals 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 title and title II.

(h) Separate registrations for each principal place of business. A separate registration shall be required at each principal place of business where the applicant imports or exports controlled substances or list I chemicals.

(i) Emergency situations. Except in emergency situations as described in section 1002(a)(2)(A) [21 USCS Section 952(a)(2)(A)], prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under section 1002(a) [21 USCS Section 952(a)] 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.

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21 USCS Section 959 (1996)

Section 959. Possession, manufacture or distribution for purposes of unlawful importation

(a) It shall be unlawful for any person to manufacture or distribute a controlled substance in schedule I or II--

(1) intending that such substance be unlawfully imported into the United States or into waters within a distance of 12 miles of the coast of the United States; or

(2) knowing that such substance will be unlawfully imported into the United States or into waters within a distance of 12 miles of the coast of the United States.

(b) It shall be unlawful for any United States citizen on board any aircraft, or any person on board an aircraft owned by a United States citizen or registered in the United States, to--

(1) manufacture or distribute a controlled substance; or

(2) possess a controlled substance with intent to distribute.

(c) This section is intended to reach acts of manufacture or distribution committed outside the territorial jurisdiction of the United States. Any person who violates this section shall be tried in the United States district court at the point of entry where such person enters the United States, or in the United States District Court for the District of Columbia.

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21 USCS Section 960 (1996)

Section 960. Prohibited acts A

(a) Unlawful acts. Any person who--

(1) contrary to section 1002, 1003, or 1007 [21 USCS Sections 952, 953, 957], knowingly or intentionally imports or exports a controlled substance,

(2) contrary to section 1005 [21 USCS Section 955], knowingly or intentionally brings or possesses on board a vessel, aircraft, or vehicle a controlled substance, or

(3) contrary to section 1009 [21 USCS Section 959], manufactures, possesses with intent to distribute, or distributes a controlled substance,

shall be punished as provided in subsection (b).

(b) Penalties.

(1) In the case of a violation of subsection (a) of this section involving--

(A) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

B) 5 kilograms or more of a mixture or substance containing a detectable amount of--

(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(ii) cocaine, its salts, optical and geometric isomers, and salts or isomers;

(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);

(C) 50 grams or more of a mixture or substance described in subparagraph (B) which contains cocaine base;

(D) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(E) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(F) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N- [1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N [1-(2-phenylethyl)-4-piperidinyl] propanamide;

(G) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana; or

(H) 100 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 1 kilogram or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

the person committing such violation shall be sentenced to a term of imprisonment of not less than 10 years and not more than life and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than 20 years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$ 4,000,000 if the defendant is an individual or \$ 10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug

offense has become final, such person shall be sentenced to a term of imprisonment of not less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$ 8,000,000 if the defendant is an individual or \$ 20,000,000 if the defendant is other than an individual, or both. Any sentence under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this paragraph. No person sentenced under this paragraph shall be eligible for parole during the term of imprisonment imposed therein.

(2) In the case of a violation of subsection (a) of this section involving--

(A) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

(B) 500 grams or more of a mixture or substance containing a detectable amount of--

(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(ii) cocaine, its salts, optical and geometric isomers, and salts or isomers;

(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);

(C) 5 grams or more of a mixture or substance described in subparagraph (B) which contains cocaine base;

(D) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(E) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(F) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N- [1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N- [1-(2-phenylethyl)-4-piperidinyl] propanamide;

(G) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana; or

(H) 10 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 100 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

the person committing such violation shall be sentenced to a term of imprisonment of not less than 5

years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$ 2,000,000 if the defendant is an individual or \$ 5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$ 4,000,000 if the defendant is an individual or \$ 10,000,000 if the defendant is other than an individual, or both. Any sentence imposed under this paragraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this paragraph. No person sentenced under this paragraph shall be eligible for parole during the term of imprisonment imposed therein.

(3) In the case of a violation under subsection (a) of this section involving a controlled substance in schedule I or II, the person committing such violation shall, except as provided in paragraphs (1), (2), and (4), be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$ 1,000,000 if the defendant is an individual or \$ 5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$ 2,000,000 if the defendant is an individual or \$ 10,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding the prior sentence, and notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this paragraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.

(4) In the case of a violation under subsection (a) with respect to less than 50 kilograms of marihuana, except in the case of 10 or more marihuana plants regardless of weight, less than 10 kilograms of hashish, less than one kilogram of hashish oil, or any quantity of a controlled substance in schedule III, IV, or V, the person committing such violation shall be imprisoned not more than five years, or be fined not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$ 250,000 if the defendant is an individual or \$ 1,000,000 if the defendant is other than an individual, or both. If a sentence under this paragraph provides for imprisonment, the sentence shall, in addition to such term of imprisonment, include (A) a term of supervised release of not less than two years if such controlled substance is in schedule I, II, III, or (B) a special parole term of not less than one year if such controlled substance is in schedule IV.

(c) [Repealed]

(d) Penalty for importation or exportation. A person who knowingly or intentionally--

(1) imports or exports a listed chemical with intent to manufacture a controlled substance in violation of this title or title II;

(2) exports a listed chemical in violation of the laws of the country to which the chemical is exported or serves as a broker or trader for an international transaction involving a listed chemical, if the transaction is in violation of the laws of the country to which the chemical is exported;

(3) imports or exports a listed chemical knowing, or having reasonable cause to believe, that the chemical will be used to manufacture a controlled substance in violation of this title or title II;

(4) exports a listed chemical, or serves as a broker or trader for an international transaction involving a listed chemical, knowing, or having reasonable cause to believe, that the chemical will be used to manufacture a controlled substance in violation of the laws of the country to which the chemical is exported;

(5) imports or exports a listed chemical, with the intent to evade the reporting or recordkeeping requirements of section 1018 [21 USCS Section 971] applicable to such importation or exportation by falsely representing to the Attorney General that the importation or exportation qualifies for a waiver of the 15-day notification requirement granted pursuant to section 1018(e) (2) or (3) [21 USCS Section 971(e)(2) or (3)] by misrepresenting the actual country of final destination of the listed chemical or the actual listed chemical being imported or exported; or

(6) imports or exports a listed chemical in violation of section 1007 or 1018 [21 USCS Section 957 or 971],

shall be fined in accordance with title 18, imprisoned not more than 10 years, or both.

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TITLE 21. FOOD AND DRUGS

CHAPTER 13. DRUG ABUSE PREVENTION AND CONTROL

OFFENSES AND PENALTIES

21 USCS Section 961 (1996)

Section 961. Prohibited acts B

Any person who violated section 1004 [21 USCS Section 954] or fails to notify the Attorney General of an importation or exportation under section 1018 [21 USCS Section 971] shall be subject to the following penalties:

- (1) Except as provided in paragraph (2), any such person shall, with respect to any such violation, be subject to a civil penalty of not more than \$ 25,000. Sections 402(c)(1) and (c)(3) [21 USCS Section 842 (c)(1), (3)] shall apply to any civil penalty assessed under this paragraph.
- (2) If such a violation is prosecuted by an information or indictment which alleges that the violation was committed knowingly or intentionally and the trier of fact specifically finds that the violation was so committed, such person shall be sentenced to imprisonment for not more than one year or a fine of not more than \$ 25,000 or both.

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21 USCS Section 962 (1996)

Section 962. Second or subsequent offenses

(a) Term of imprisonment and fine. Any person convicted of any offense under this part [21 USCS Sections 951 et seq.] is, if the offense is a second or subsequent offense, punishable by a term of imprisonment twice that otherwise authorized, by twice the fine otherwise authorized, or by both. If the conviction is for an offense punishable under section 1010(b) [21 USCS Section 960(b)], and if it is the offender's second or subsequent offense, the court shall impose, in addition to any term of imprisonment and fine, twice the term of supervised release otherwise authorized.

(b) Determination of status. 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, one or more prior convictions of such person for a felony drug offense have become final.

(c) Procedures applicable. Section 411 [21 USCS Section 851] shall apply with respect to any proceeding to sentence a person under this section.

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21 USCS Section 963 (1996)

Section 963. Attempt and conspiracy

Any person who attempts or conspires to commit any offense defined in this title shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

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21 USCS Section 964 (1996)

Section 964. Additional penalties

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

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21 USCS Section 965 (1996)

Section 965. Applicability of Sections 871 et seq.

Part E of title II [21 USCS Sections 871 et seq.] shall apply with respect to functions of the Attorney General (and of officers and employees of the Bureau of Narcotics and Dangerous Drugs) under this title, to administrative and judicial proceedings under this title, and to violations of this title, to the same extent that such part [21 USCS Sections 871 et seq.] applies to functions of the Attorney General (and such officers and employees) under title II, to such proceedings under title II, and to violations of title II. For purposes of the application of this section to section 510 or 511 [21 USCS Sections 880, 881], any reference in such section 510 or 511 [21 USCS Sections 880, 881] to "this title" shall be deemed to be a reference to title III, any reference to section 303 [21 USCS Section 823] shall be deemed to be a reference to section 1008 [21 USCS Section 958], and any reference to section 302(d) [21 USCS Section 822(d)] shall be deemed to be a reference to section 1007(b)(2) [21 USCS Section 957(b)(2)].

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21 USCS Section 966 (1996)

Section 966. Authority of Secretary of Treasury

Nothing in this Act shall derogate from the authority of the Secretary of the Treasury under the customs and related laws.

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21 USCS Section 967 (1996)

Section 967. Smuggling of controlled substances; investigations; oaths; subpoenas; witnesses; evidence; production of records; territorial limits; fees and mileage of witnesses

For the purpose of any investigation which, in the opinion of the Secretary of the Treasury, is necessary and proper to the enforcement of section 545 of title 18 of the United States Code [*18 USCS Section 545*] (relating to smuggling goods into the United States) with respect to any controlled substance (as defined in section 102 of the Controlled Substances Act [*21 USCS Section 802*]), the Secretary of the Treasury may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of records (including books, papers, documents, and tangible things which constitute or contain evidence) relevant or material to the investigation. The attendance of witnesses and the production of records may be required from any place within the customs territory of the United States, except that a witness shall not be required to appear at any hearing distant more than 100 miles from the place where he was served with subpoena. Witnesses summoned by the Secretary shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Oaths and affirmations may be made at any place subject to the jurisdiction of the United States.

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21 USCS Section 968 (1996)

Section 968. Service of subpoena; proof of service

A subpoena of the Secretary of the Treasury may be served by any person designated in the subpoena to serve it. Service upon a natural person may be made by personal delivery of the subpoena to him. Service may be made upon a domestic or foreign corporation or upon a partnership or other

unincorporated association which is subject to suit under a common name, by delivering the subpoena to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpoena entered on a true copy thereof by the person serving it shall be proof of service.

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21 USCS Section 969 (1996)

Section 969. Contempt proceedings

In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Secretary of the Treasury may invoke the aid of any court of the United States within the jurisdiction of which the investigation is carried on or of which the subpoenaed person is an inhabitant, carries on business or may be found, to compel compliance with the subpoena of the Secretary of the Treasury. The court may issue an order requiring the subpoenaed person to appear before the Secretary of the Treasury there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district whereof the subpoenaed person is an inhabitant or wherever he may be found.

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21 USCS Section 970 (1996)

Section 970. Criminal forfeitures

Section 413 of title II [19 USCS Section 853], relating to criminal forfeitures, shall apply in every respect to a violation of this title punishable by imprisonment for more than one year.

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21 USCS Section 971 (1996)

Section 971. Notification, suspension of shipment, and penalties with respect to importation and exportation of listed chemicals

(a) Each regulated person who imports or exports a listed chemical shall notify the Attorney General of the importation or exportation not later than 15 days before the transaction is to take place.

(b)

(1) The Attorney General shall provide by regulation for circumstances in which the requirement of subsection (a) does not apply to a transaction between a regulated person and a regular customer or to an importation by a regular importer. At the time of any importation or exportation constituting a transaction referred to in the preceding sentence, the regulated person shall notify the Attorney General of the transaction.

(2) The regulations under this subsection shall provide that the initial notification under subsection (a) with respect to a customer of a regulated person or to an importer shall, upon the expiration of the 15-day period, qualify the customer as a regular customer or the importer as a regular importer, unless the Attorney General otherwise notifies the regulated person in writing.

(c)

(1) The Attorney General may order the suspension of any importation or exportation of a listed chemical (other than a regulated transaction to which the requirement of subsection (a) does not apply by reason of subsection (b)) or may disqualify any regular customer or regular importer on the ground that the chemical may be diverted to the clandestine manufacture of a controlled substance. From and after the time when the Attorney General provides written notice of the order (including a statement of the legal and factual basis for

the order) to the regulated person, the regulated person may not carry out the transaction.

(2) Upon written request to the Attorney General, a regulated person to whom an order applies under paragraph (1) is entitled to an agency hearing on the record in accordance with subchapter II of chapter 5 of title 5, United States Code [5 USCS Sections 551 et seq.]. The hearing shall be held on an expedited basis and not later than 45 days after the request is made, except that the hearing may be held at a later time, if so requested by the regulated person.

(d) A person located in the United States who is a broker or trader for an international transaction in a listed chemical that is a regulated transaction solely because of that person's involvement as a broker or trader shall, with respect to that transaction, be subject to all of the notification, reporting, recordkeeping, and other requirements placed upon exporters of listed chemicals by this title and title II.

(e)

(1) The Attorney General may by regulation require that the 15-day notification requirement of subsection (a) apply to all exports of a listed chemical to a specified country, regardless of the status of certain customers in such country as regular customers, if the Attorney General finds that such notification is necessary to support effective chemical diversion control programs or is required by treaty or other international agreement to which the United States is a party.

(2) The Attorney General may by regulation waive the 15-day notification requirement for exports of a listed chemical to a specified country if the Attorney General determines that such notification is not required for effective chemical diversion control. If the notification requirement is waived, exporters of the listed chemical shall be required to submit to the Attorney General reports of individual exportations or periodic reports of such exportation of the listed chemical, at such time or times and containing such information as the Attorney General shall establish by regulation.

(3) The Attorney General may by regulation waive the 15-day notification requirement for the importation of a listed chemical if the Attorney General determines that such notification is not necessary for effective chemical diversion control. If the notification requirement is waived, importers of the listed chemical shall be required to submit to the Attorney General reports of individual importations or periodic reports of the importation of the listed chemical, at such time or times and containing such information as the Attorney General shall establish by regulation.

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