New South Wales

Drug Misuse and Trafficking Regulation 2011

under the

Drug Misuse and Trafficking Act 1985

[*The following enacting formula will be included if the Regulation is made:*]
Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Drug Misuse and Trafficking Act 1985*.

Attorney General

Explanatory note

The object of this Regulation is to remake, with minor changes, the *Drug Misuse and Trafficking Regulation 2006*, which is repealed on 1 September 2011 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision for the following matters:

(a) the substances that are precursors and the types of apparatus that are drug manufacture or production apparatus for the purposes of the *Drug Misuse and Trafficking Act 1985* (the ***Act***), and the sale and storage of those substances and types of apparatus,

(b) the custody and analysis of drug exhibits,

(c) exemptions from certain drug offences under the Act for certain police officers, people involved in needle exchange programs and pharmacists,

(d) the approval by the Director-General of the Department of Health of needle exchange programs,

(e) minor miscellaneous matters.

This Regulation is made under the *Drug Misuse and Trafficking Act 1985*, including sections 24A, 24B, 36K (2), 43 (6) (definition of ***analyst***) and 45 (the general regulation-making power).

Drug Misuse and Trafficking Regulation 2011

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under the

Drug Misuse and Trafficking Act 1985

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Drug Misuse and Trafficking Regulation 2011*.

2 Commencement

This Regulation commences on 1 September 2011 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Drug Misuse and Trafficking Regulation 2006* which is repealed on 1 September 2011 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

approved needle exchange program means a program approved by the Director-General of the Department of Health under clause 22.

the Act means the *Drug Misuse and Trafficking Act 1985*.

(2) Notes included in this Regulation do not form part of this Regulation.

Part 2 Precursors and drug manufacture or production apparatus

4 Precursors and drug manufacture and production apparatus

(1) The substances listed in Schedules 1 and 2 are specified as precursors for the purposes of section 24A of the Act.

(2) The types of apparatus listed in Schedule 3 are specified as drug manufacture apparatus for the purposes of section 24A of the Act.

(3) The substances listed in Column 1 of Schedule 4 are specified as precursors for the purposes of section 24B of the Act.

(4) The quantities specified in Column 2 of Schedule 4 in relation to the substances specified in Column 1 of that Schedule are prescribed for the purposes of section 24B of the Act.

(5) The substances listed in Schedules 1 and 2 are prescribed as precursors for the purposes of section 45 of the Act.

(6) The types of apparatus listed in Schedule 3 are prescribed for the purposes of section 45 of the Act.

Note. The term ***substance*** is defined in section 3 (1) of the Act as including preparation and admixture and all salts, isomers, esters or ethers of any substance and all salts of those isomers, esters and ethers.

5 Sales and storage of Schedule 1 precursors

(1) A person (***supplier***) must not supply any Schedule 1 precursor to a person (***receiver***) unless the receiver:

(a) has an account with the supplier and payment for the supply is made through the account, and

(b) has provided the supplier with an end user declaration, and

(c) has furnished the supplier with proof of the receiver's identity.

(2) A supplier of any Schedule 1 precursor must store the precursor in a manner that prevents any access to it by any person other than:

(a) the supplier, or

(b) a person authorised in writing by the supplier to have access to the precursor.

(3) A supplier who authorises in writing another person to have access to any Schedule 1 precursor must make that authorisation available for inspection on request by a police officer during business hours and keep a copy of the authorisation for at least 2 years after it ceases to have effect.

(4) A supplier must not supply any Schedule 1 precursor to a person unless the supplier has recorded:

(a) the name and quantity of the Schedule 1 precursor supplied, and

(b) the date of supply of the Schedule 1 precursor from the supplier's premises.

(5) Subclauses (1), (3) and (4) do not apply to the supply of Ephedrine, Phenylpropanolamine or Pseudoephedrine or a salt of Ephedrine, Phenylpropanolamine or Pseudoephedrine if:

(a) the substance is supplied for therapeutic use within the meaning of the relevant therapeutic goods laws, and

(b) the substance is packaged and labelled in accordance with the relevant therapeutic goods laws, and

(c) the supplier is authorised, by the relevant therapeutic goods laws, to supply the substance.

(6) A supplier must:

(a) make each end user declaration provided to the supplier by the receiver and each record made by the supplier under this clause available for inspection on request by a police officer during business hours, and

(b) keep each such declaration and record for at least 2 years.

(7) The only proof of identity that may be used for the purposes of this clause is:

(a) an Australian driver licence held by the receiver that displays a photograph of the receiver, or

(b) an Australian passport, or

(c) a Photo Card held by the receiver and issued under the *Photo Card Act 2005*.

(8) In this clause:

end user declaration means a document, completed by a proposed receiver of a Schedule 1 precursor, that specifies the following:

(a) the name and address of the receiver,

(b) details of the receiver's proof of identity furnished to the supplier concerned (for example, details of a driver licence or passport),

(c) the name and quantity of the Schedule 1 precursor to be supplied,

(d) the proposed date of supply of the Schedule 1 precursor from the supplier's premises,

(e) the intended use for the Schedule 1 precursor.

relevant therapeutic goods laws means:

(a) the *Poisons and Therapeutic Goods Act 1966*, and

(b) the regulations under that Act, and

(c) the Commonwealth therapeutic goods laws within the meaning of that Act as those laws apply as a law of this State.

Schedule 1 precursor means any of the following substances:

(a) a substance listed in Schedule 1 (other than a substance referred to in paragraph (b) or (c)),

(b) Ephedrine, Phenylpropanolamine or Pseudoephedrine or a salt of Ephedrine, Phenylpropanolamine or Pseudoephedrine,

(c) Phenylacetic acid or a salt or ester of Phenylacetic acid.

Note. The term ***substance*** in this clause does not include a preparation, admixture, salts, isomers, esters or ethers of any substance or a salt of those isomers, esters and ethers (see subclause (9)). Accordingly, the definition of ***Schedule 1 precursor*** does not include a preparation, admixture, salts, isomers, esters or ethers of any substance or a salt of those isomers, esters and ethers, except where specifically provided for.

(9) In this clause, a reference to a substance does not include a reference to a preparation, admixture, salt, isomer, ester or ether of a substance listed in Schedule 1 or a salt of such an isomer, ester or ether, unless otherwise specified.

Maximum penalty:

(a) in the case of a corporation—100 penalty units for a first offence or 150 penalty units for a second or subsequent offence, or

(b) in the case of an individual—30 penalty units for a first offence or 50 penalty units for a second or subsequent offence.

6 Sales of Schedule 2 precursors

(1) A person (***supplier***) must not supply any Schedule 2 precursor to a person (***receiver***) unless the receiver has furnished the supplier with proof of the receiver's identity and:

(a) payment for the supply is made through an account that the receiver has with the supplier, or

(b) the receiver has provided the supplier with an end user declaration.

(2) A supplier must not supply any Schedule 2 precursor to a person unless the supplier has recorded:

(a) the name and quantity of the Schedule 2 precursor supplied, and

(b) the date of supply of the Schedule 2 precursor from the supplier's premises.

(3) A supplier must:

(a) make each end user declaration provided to the supplier by the receiver and each record made by the supplier under this clause available for inspection on request by a police officer during business hours, and

(b) keep each such declaration and record for at least 2 years.

(4) The only proof of identity that may be used for the purposes of this clause is:

(a) an Australian driver licence held by the receiver that displays a photograph of the receiver, or

(b) an Australian passport, or

(c) a Photo Card held by the receiver and issued under the *Photo Card Act 2005*.

(5) In this clause:

end user declaration means a document, completed by a proposed receiver of a Schedule 2 precursor, that specifies the following:

(a) the name and address of the receiver,

(b) details of the receiver's proof of identity furnished to the supplier concerned (for example, details of a driver licence or passport),

(c) the name and quantity of the Schedule 2 precursor to be supplied,

(d) the intended use for the Schedule 2 precursor.

Schedule 2 precursor means any substance listed in Schedule 2, but does not include a preparation, admixture, salt, isomer, ester or ether of such a substance or a salt of such an isomer, ester or ether.

Maximum penalty:

(a) in the case of a corporation—100 penalty units for a first offence or 150 penalty units for a second or subsequent offence, or

(b) in the case of an individual—30 penalty units for a first offence or 50 penalty units for a second or subsequent offence.

7 Sales of Schedule 3 apparatus

(1) A person (***supplier***) must not supply any Schedule 3 apparatus to a person (***receiver***) unless the receiver has furnished the supplier with proof of the receiver's identity and:

(a) payment for the supply is made through an account that the receiver has with the supplier, or

(b) the receiver has provided the supplier with an end user declaration.

(2) A supplier must not supply any Schedule 3 apparatus to a person unless the supplier has recorded:

(a) the name and quantity of the Schedule 3 apparatus supplied, and

(b) the date of supply of the Schedule 3 apparatus from the supplier's premises.

(3) A supplier must:

(a) make each end user declaration provided to the supplier by the receiver and each record made by the supplier under this clause available for inspection on request by a police officer during business hours, and

(b) keep each such declaration and record for at least 2 years.

(4) The only proof of identity that may be used for the purposes of this clause is:

(a) an Australian driver licence held by the receiver that displays a photograph of the receiver, or

(b) an Australian passport, or

(c) a Photo Card held by the receiver and issued under the *Photo Card Act 2005*.

(5) In this clause:

end user declaration means a document, completed by a proposed receiver of any Schedule 3 apparatus, that specifies the following:

(a) the name and address of the receiver,

(b) details of the receiver's proof of identity furnished to the supplier concerned,

(c) the name and quantity of the Schedule 3 apparatus to be supplied,

(d) the intended use for the Schedule 3 apparatus.

Schedule 3 apparatus means any apparatus listed in Schedule 3.

Maximum penalty:

(a) in the case of a corporation—100 penalty units for a first offence or 150 penalty units for a second or subsequent offence, or

(b) in the case of an individual—30 penalty units for a first offence or 50 penalty units for a second or subsequent offence.

Part 3 Custody and analysis of drug exhibits

8 Interpretation

(1) In this Part, ***analyst*** has the same meaning as in section 43 of the Act.

(2) A reference in this Part to anything done by an analyst includes a reference to anything done by a person under the supervision of an analyst.

9 Application of Part

(1) This Part applies to a substance that a member of the NSW Police Force knows or suspects to be a prohibited drug and:

(a) that is in the custody of a member of the NSW Police Force, and

(b) the quantity of which is not less than the traffickable quantity for the prohibited drug concerned.

(2) It is immaterial whether a prohibited drug to which this Part applies is or has come into the custody of a member of the NSW Police Force through seizure or other means.

10 Delivery of substance for analysis

(1) As soon as practicable (but in no case later than 14 days) after a substance to which this Part applies comes into the custody of a member of the NSW Police Force, the whole of the substance must be given to an analyst for analysis.

(2) Immediately after a member of the NSW Police Force opens a package that has been sealed under this Part or becomes aware that a package sealed under this Part has been opened or tampered with, the whole of the contents of the package must be given to an analyst for analysis.

11 Order for destruction

(1) Immediately after an order is made under Part 3A of the Act for the destruction of a prohibited drug to which this Part applies, the person having the custody of the prohibited drug must arrange for an analyst to inspect the package or packages containing the prohibited drug to determine whether or not any package has been opened or tampered with since it was last sealed.

(2) The person having the custody of the prohibited drug must give the whole of the contents of a package that is found to have been opened or tampered with to the analyst for analysis.

12 Carrying out of analysis

(1) An analyst to whom a substance is given for analysis under this Part must carry out an analysis of the substance to determine whether it is a prohibited drug and, if it is, to determine:

(a) the identity of the prohibited drug, and

(b) the quantity or mass of the prohibited drug, and

(c) the purity of the prohibited drug.

(2) If the substance is cannabis leaf, the analyst, after identifying the substance, need only determine the quantity or mass of the cannabis leaf.

13 Procedure after analysis

(1) After removing a sample of a substance that is given to an analyst for analysis under this Part, the analyst must place the balance of the substance not required for analysis into one or more packages, securely seal each package and mark each package with an identifying mark.

(2) The analyst must then deliver each sealed package, or cause each sealed package to be delivered, to the Commissioner of Police or to a person, or to a person of a class of persons, specified by the Commissioner for the purpose.

14 Storage of sealed packages

(1) A person to whom a package is delivered under clause 13 (2) must store the package in a secure place determined by the Commissioner of Police.

(2) This clause has effect subject to any order made under Part 3A of the Act requiring destruction of the prohibited drug concerned and, accordingly, does not have effect to the extent that is necessary to secure compliance with the order.

15 Analyst's certificate

An analyst who, under this Part, analyses a substance that is a prohibited drug must prepare a certificate under section 43 (1) of the Act of the result of the analysis that includes the following:

(a) the identity of the prohibited drug,

(b) the quantity or mass of the prohibited drug,

(c) except in the case of cannabis leaf, the purity of the prohibited drug.

16 Significant variations in analysts' certificates

If a difference occurs between the findings recorded in two or more certificates of an analyst concerning the same drug exhibit and the analyst providing the later or latest certificate is of the opinion that the difference is significant, that analyst must immediately forward a copy of all certificates relating to the drug exhibit to the Director of Public Prosecutions.

Part 4 Exemptions from provisions of Act

17 Exemption for Scene of Crime Officers

A member of the NSW Police Force who has been designated by the Commissioner of Police as a Scene of Crime Officer is exempt from the provisions of sections 10, 23 (1) and (2) and 25 (1) and (2) of the Act in relation to every prohibited plant or prohibited drug to the extent necessary to enable the member to carry out his or her duties as such an officer.

18 Exemption for Police Integrity Commission officers

(1) An officer of the Police Integrity Commission is exempt from the provisions of sections 10, 23 (1) and (2) and 25 (1) and (2) of the Act in relation to every prohibited plant or prohibited drug to the extent necessary to enable the officer to carry out his or her duties as such an officer.

(2) In this clause, ***officer of the Police Integrity Commission*** means the Commissioner for the Police Integrity Commission or any member of staff of the Commission authorised by the Commissioner for the purposes of this clause.

19 Exemption for authorised persons participating in approved needle exchange program

(1) An authorised person is exempt from the provisions of sections 11, 19 and 20 of the Act, to the extent necessary to authorise the person:

(a) to have in his or her possession, and to distribute, hypodermic syringes and hypodermic needles, and any associated equipment, for use in the administration of a prohibited drug capable of being so administered, and

(b) to give out information concerning hygienic practices in the use of hypodermic syringes and hypodermic needles to prevent the spread of contagious disease.

(2) The exemption applies only for the purpose of enabling the authorised person to participate in an approved needle exchange program.

(3) In this clause, an ***authorised person*** means a person who is authorised by the Director-General of the Department of Health to participate in an approved needle exchange program.

20 Exemption for giving out information about approved needle exchange program

Any person is exempt from the provisions of sections 19 and 20 of the Act to the extent necessary to authorise the person to give out information about the location and hours of operation of an approved needle exchange program.

21 Exemption for pharmacists and staff

A pharmacist acting in the ordinary course of his or her profession, and any person acting under the supervision of the pharmacist, is exempt from the provisions of sections 11, 19 and 20 of the Act, to the extent necessary to authorise the pharmacist or person:

(a) to have in his or her possession, and to distribute, hypodermic syringes and hypodermic needles, and any associated equipment, for use in the administration of a prohibited drug capable of being so administered, and

(b) to give out information concerning hygienic practices in the use of hypodermic syringes and hypodermic needles to prevent the spread of contagious disease.

Part 5 Miscellaneous

22 Approval by Director-General of Department of Health of needle exchange programs

(1) The Director-General of the Department of Health may authorise a specified person or a specified class of persons to participate in a program approved by the Director-General to facilitate:

(a) the supply to intravenous drug users of sterile hypodermic syringes and sterile hypodermic needles, and any associated equipment, to prevent the spread of contagious disease and minimise health risks associated with intravenous drug use, and

(b) the giving out of information concerning hygienic practices in the use of hypodermic syringes and hypodermic needles to prevent the spread of contagious disease.

(2) An authorisation under this clause is to be granted, and may be revoked, in the same manner as an authorisation under the Act.

23 Prescribed service activity level for licensed injecting centre

For the purposes of section 36K (2) of the Act, the prescribed service activity level for the licensed injecting centre is an average of at least 208 client visits per day in each month.

24 Certificate evidence from interstate analysts

For the purposes of the definition of ***analyst*** in section 43 (6) of the Act, the following persons are prescribed:

(a) an analyst within the meaning of the *Drugs of Dependence Act 1989* of the Australian Capital Territory,

(b) an authorised analyst within the meaning of section 137 of the *Medicines, Poisons and Therapeutic Goods Act 2008* of the Australian Capital Territory,

(c) an analyst within the meaning of the *Misuse of Drugs Act* of the Northern Territory,

(d) an analyst within the meaning of the *Drugs Misuse Act 1986* of Queensland,

(e) an analyst within the meaning of the *Controlled Substances Act 1984* of South Australia,

(f) an analyst within the meaning of the *Poisons Act 1971* of Tasmania,

(g) an analyst within the meaning of section 120 of the *Drugs, Poisons and Controlled Substances Act 1981* of Victoria,

(h) an analyst within the meaning of the *Misuse of Drugs Act 1981* of Western Australia.

25 Savings

Any act, matter or thing that, immediately before the repeal of the *Drug Misuse and Trafficking Regulation 2006*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Precursors—section 24A and clause 5

(Clauses 4 and 5)

Acetic anhydride

4-Amino butanoic acid (also known as Piperidinic acid)

Anethole

Boron tribromide

Bromo safrole

Bromobenzene

1,4-Butanediol (also known as Tetramethyelene glycol, hydroxybutanol or 1,4BD)

1-Chloro-1-phenyl-2-aminopropane

Ephedrine

Ephedrone

Ethyl phenyl acetate

Gamma butyrolactone (also known as 4-hydroxybutanoic acid lactone or gBL)

Gamma hydroxybutanoic acid (including salts) (also known as Gamma hydroxybutyric acid)

Hydriodic acid

4-Hydroxybutanal (also known as 4-Hydroxybutyraldehyde)

4-Hydroxy-butanoic acid nitrile (also known as 4-Hydroxybutyronitrile)

4-Hydroxy-pentanoic acid (also known as Gamma valerolactone)

2-Hydroxytetrahydrofuran (also known as Tetrahydro-2-furanol)

Hypophosphite salts

Hypophosphorous acid

3,4-Methylenedioxyphenylpropan-2-one (also known as 3,4-Methylenedioxy-phenyl-2-propanone)

N-Methylephedrine

Methyl phenylacetate

N-Methylpseudoephedrine

Norpseudoephedrine

Phenylacetamide

Phenylacetic acid
Phenylacetonitrile
Phenylacetyl chloride
Phenylpropanolamine
1-Phenyl-2-chloropropane
1-Phenyl-2-nitropropene
1-Phenyl-2-propanol
1-Phenyl-1-propanone (also known as Phenylethylketone, Propiophenone)
1-Phenyl-2-propanone
1-Phenyl-2-propanone oxime
Phosphorus (red or white)
Phosphorous acid (also known as Phosphonic acid)
Piperonal (also known as 3,4-Methylenedioxy-benzaldehyde or Heliotopine)
Pseudoephedrine
Pyridine
2-Pyrrolidone (also known as Gamma butyrolactam)
Safrole (also known as 5-(2-Propenyl)-1,3-Benzodioxide)
Sassafras oil

Schedule 2 Precursors—section 24A and clause 6

(Clauses 4 and 6)

N-Acetylanthranilic acid (also known as 2-Acetamidobenzoic acid)

Allybenzene (also known as 3-Phenyl-1-propene or 2-Propenyl-benzene)

Ammonium formate

Anthranilic acid (also known as 2-Aminobenzoic acid)

Benzaldehyde

Benzyl bromide (also known as a-Bromotoluene)

Benzyl chloride (also known as a-Chlorotoluene)

Calcium

Chromic acid (including salts)

Chromium trioxide (also known as Chromium (VI) oxide)

Ergometrine (also known as Ergonovine)

Ergotamine

Ethanamine (also known as Monoethylamine)

N-Ethylephedrine

N-Ethylpseudoephedrine

Formamide

Hydrobromic acid (also known as Hydrogen bromide solution)

Iodine (including iodine salts)

Isosafrole (also known as 5-(1 Propenyl)-1,3-benzodioxile)

Lithium

Lysergic acid

Magnesium

Mercuric chloride (also known as Mercury (II) chloride or Mercury bichloride)

Methylamine (gas) (also known as Aminomethane or Monomethylamine)

Methylammonium salts

N-Methylformamide

Nitroethane

Nitromethane
Palladium (including salts)
Phenylalanine
Piperidine
Potassium
Propionic anhydryde
Raney nickel
Sodium
Sodium borohydride
Thionyl chloride
Thorium (including salts)

Schedule 3 Drug manufacture or production apparatus—section 24A and clause 7

(Clauses 4 and 7)

Hydrogen sulfide gas cylinder

Hydrogen chloride gas cylinder

Hydrogen gas cylinder

Ammonia gas cylinder

Methylamine gas cylinder

Round bottom reaction flask (capacity 500ml or greater)

Condenser (joint size B19 or greater)

Splash head

Distillation head

Heating mantle (capacity 500ml or greater)

Pill or tablet press (whether manual or mechanical)

Rotary evaporator

Schedule 4 Precursors—section 24B

(Clause 4)

Column 1	Column 2
Substance	**Quantity**
Acetic anhydride	1.0L
4-Amino butanoic acid (also known as Piperidinic acid)	1.5kg
Anethole	0.1L
Boron tribromide	0.25L
Bromobenzene	0.5L
Bromo safrole	0.05L
1-Chloro-1-phenyl-2-aminopropane	0.25kg
Ethyl phenyl acetate	0.5kg
Gamma hydroxybutanoic acid (including salts) (also known as Gamma hydroxybutyric acid)	1.5L
Hydriodic acid	1.0L
4-Hydroxybutanal (also known as 4-Hydroxybutyraldehyde)	1.5L
4-Hydroxy-butanoic acid nitrile (also known as 4-Hydroxybutyronitrile)	1.5L
4-Hydroxy-pentanoic acid (also known as Gamma valerolactone)	1.5L
2-Hydroxytetrahydrofuran (also known as Tetrahydro-2-furanol)	1.5L
Hypophosphite salts	0.25kg
Hypophosphorous acid	0.25L
3,4-Methylenedioxyphenylpropan-2-one (also known as 3,4-Methylenedioxy-phenyl-2-propanone)	0.05kg
N-Methylephedrine	0.25kg
Methyl phenylacetate	0.5kg
N-Methylpseudoephedrine	0.25kg
Norpseudoephedrine	0.25kg
Phenylacetamide	0.5kg
Phenylacetic acid	0.5kg
Phenylacetonitrile	0.5L

Column 1	Column 2
Substance	**Quantity**
Phenylacetyl chloride	0.5L
1-Phenyl-1-propanone (also known as Phenylethylketone, Propiophenone)	0.25L
Phosphorus (red or white)	0.1kg
Phosphorous acid (also known as Phosphonic acid)	0.25L
Piperonal (also known as 3,4-Methylenedioxy-benzaldehyde or Heliotopine)	0.1kg
Pyridine	1.0L
2-Pyrrolidone (also known as Gamma butyrolactam)	1.5L
Safrole (also known as 5-(2-Propenyl)-1,3-Benzodioxide)	0.1L
Sassafras oil	0.1L