

**Memorandum of Understanding
between the
Texas Department of Public Safety
and the
Texas Higher Education Coordinating Board**

Pursuant to Texas Health and Safety Code, Section 481.0621 (b), the Texas Department of Public Safety (DPS) and the Texas Higher Education Coordinating Board (THECB) enter into this memorandum of understanding in order to establish the responsibilities of the DPS, the THECB, and the public or private institutions of higher education for implementing and maintaining a program for reporting information concerning controlled substances, controlled substance analogues, chemical precursors, and chemical laboratory apparatus used in education or research activities of institutions of higher education.

1 - DEFINITIONS

- (a) Agent – any peace officer or other person who is authorized by law to enforce or administer state or federal drug laws.
- (b) Central Location – location within an institution of higher education where records are maintained.
- (c) 21 CFR, Part 1301 – 21 Code of Federal Regulations, Part 1301 to End, providing for the Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances and any amendments to these regulations hereafter adopted.
- (d) Client – any person or entity to which DPS has issued a permit authorizing the purchase, sale, transfer or furnishing of a controlled item.
- (e) Controlled Glassware – condensers; distilling apparatus; vacuum dryers; single, two-and three-necked flasks; distilling flasks; Florence flasks; filter funnels; Buchner funnels; separatory funnels; Erlenmeyer flasks; round-bottom flasks; thermometer flasks; filtering flasks; Soxhlet extractors; and adapter tubes made of glass.
- (f) Controlled Item – precursor chemicals and laboratory apparatus listed in Texas Health and Safety Code Section 481.002 (51) and 481.002 (53) and as named by rule by the Director of the Department of Public Safety pursuant to the Texas Health and Safety Code Section 481.077(b) and 481.080(c).

The table below lists the controlled items as of September 1, 2005.

| Precursor Chemicals | Laboratory Apparatus |
|---|--|
| <ol style="list-style-type: none"> 1. Methylamine 2. Ethylamine 3. D-lysergic acid 4. Ergotamine tartrate 5. Diethyl malonate 6. Malonic acid 7. Ethyl malonate 8. Barbituric acid 9. Piperidine 10. N-acetylanthranilic acid 11. Pyrrolidine 12. Phenylacetic acid 13. Anthranilic acid 14. Hypophosphorus acid 15. Ephedrine 16. Pseudoephedrine 17. Norpseudoephedrine 18. Phenylpropanolamine 19. Red phosphorus | <ol style="list-style-type: none"> A. Condensers B. Distilling apparatus C. Vacuum dryers D. Three-necked flasks E. Distilling flasks F. Tableting machines G. Encapsulating machines H. Filter funnels, buchner funnels, and separatory funnels I. Erlenmyer flasks, two-necked flasks, single neck flasks, round-bottom flasks, Florence flasks, thermometer flasks, and filtering flasks J. Soxhlet extractors K. Transformers L. Flask heaters M. Heating mantles N. Adapter tubes |

- (g) Controlled Substance – a substance, including a drug, an adulterant and a dilutant as defined by the Health and Safety Code, Chapter 481, the Texas Controlled Substances Act.
- (h) Controlled Substance Analogue – (1) a substance with a chemical structure substantially similar to the chemical structure of a controlled substance in Schedule I or II or Penalty Group 1, 1-A, or 2 of the Texas Health and Safety Code, Chapter 481, Texas Controlled Substances Act; and (2) a substance specifically designed to produce an effect substantially similar to, or greater than, the effect of a controlled substance in Schedule I or II or Penalty Group 1, 1-A, or 2 of the Texas Health and Safety Code, Chapter 481, Texas Controlled Substances Act.
- (i) DPS – Department of Public Safety Narcotics Service Regulatory Program that is charged with the regulation of controlled substances and items listed in this MOU.
- (j) Institution of Higher Education or Institution – this term includes an institution of higher education, as defined in Texas Education Code, Section 61.003(8), a private or independent institution of higher education, as defined in Texas Education Code, Section 61.003(15), and a private postsecondary educational institution, as defined in Texas Education Code, Section 61.302(2).
- (k) MOU – memorandum of understanding as required by the Texas Health and Safety Code, Section 481.0621(b).
- (l) Nar-22 – form prepared and issued by DPS Narcotics Service to clients to report sale, transfer, or furnishing of a controlled substance or item.

- (m) Site – a specific location at an institution where controlled items are utilized and/or stored.
- (n) THECB – Texas Higher Education Coordinating Board.
- (o) Unacceptable Discrepancy – any difference in the amount on hand and the amount documented that cannot reasonably be explained by accidental or normal loss.

2 - PROCEDURES

Institutions of higher education in Texas shall adopt procedures in compliance with this MOU. When requested, the DPS shall provide technical advice to the institution or site, and educational materials or presentations if funds and personnel are available.

3 - RECORDS AND REPORTS

a. The site shall maintain all purchase order records, in accordance with the minimum retention requirements established by the Texas State Library and Archives Commission, of the incoming controlled substances, controlled substance analogues, precursor chemicals and laboratory apparatus (including controlled glassware) covered in this MOU that have been purchased or received by the site or central location.

b. An institution or site that discovers a readily unacceptable discrepancy, loss, pilferage or theft of a controlled substance, controlled substance analogue, precursor chemical or laboratory apparatus (including controlled glassware) shall submit a written report of the incident to the appropriate law enforcement agency no later than 5 business days after the date of discovery of the discrepancy, loss, pilferage or theft. The institution shall forward the report to DPS within 5 additional business days after the report is submitted to the appropriate law enforcement agency.

c. Upon request, the DPS shall assist the law enforcement agency conducting an investigation regarding the pilferage or theft of the controlled substance, precursor chemical, or laboratory apparatus named in this MOU.

d. The DPS may request that an institution or site provide a duplicate of any record(s) covered by this MOU and the institution or site shall provide such record(s) within 10 business days of the request. The record(s) may be provided in electronic or hard copy form.

4 - SALE, TRANSFER OR FURNISHING OF CONTROLLED ITEMS

a. The institution or site shall prohibit the sale, furnishings, or transfer of controlled items, including glassware, covered by this MOU to any person or entity not holding a DPS permit, unless the recipient is specifically exempted by law or rule.

b. The institution shall report to the DPS on a Nar-22 form or any form mutually agreed upon by all parties, every sale, furnishing or transfer of a controlled item leaving the institution. The site shall submit these reports to the DPS within 30 days of the furnishing or transfer of the

controlled items. This report shall include the name, address, telephone number, permit number (if applicable), driver license number, and date of birth of the client receiving the controlled items.

5 - CONTROLLED SUBSTANCES AND CONTROLLED SUBSTANCE ANALOGUES

a. The institution or site is responsible for complying with the established procedures as required in 21 CFR, Part 1301 to End and as required by any amendments to 21 CFR Part 1301.

b. Upon request, the DPS shall provide technical advice to the institution or site regarding the inventories required in 21 CFR, Part 1301 to End.

c. Upon request, the DPS shall assist the law enforcement agency conducting any investigation regarding any significant loss, pilferage or theft of the controlled substances or controlled items contained in this MOU.

6 - AUDITS AND INSPECTIONS

The institution or site shall permit any DPS agent to conduct audits and inspections of all records made in accordance with the MOU at any reasonable time and shall not interfere with the discharge of the agent's duties.

7 - SECURITY AND STORAGE

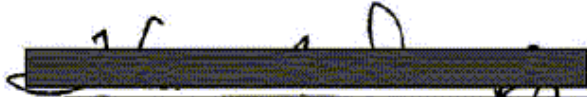
The institution or site shall ensure the security of the controlled items by cost-effective means that afford a reasonable sense of safety and accountability, such as electronic records keeping and physical security. In addition, the institution or site shall require that the controlled substances and precursor chemicals are stored in accordance with recommendations of the manufacturer, the Texas Commission on Environmental Quality and the Federal Environmental Protection Agency.

8 - CONTACT PERSON(S)

Each institution or site shall appoint one or more individuals, as needed, to be responsible for implementing the security measures established by the institution or site. The institution shall annually provide a list of these individuals to the DPS and shall ensure that these individuals serve as the contact between the institution and the DPS. The initial list of contact persons shall be provided within ninety (90) days after the effective date of this Memorandum of Understanding.

The general provisions of this Memorandum of Understanding shall be effective on the date of signature by representatives of both parties. This agreement, upon review of both parties, may be amended by written agreement whenever such action is necessary.

Date: 6-13-06



Thomas A. Davis, Jr.
Director
Texas Department of Public Safety

Date: 5/24/06



Teri Flack
Deputy Commissioner
Texas Higher Education Coordinating Board

Suggestions for Implementing MOU Procedures

1. Notify all personnel involved with environmental and safety issues about the MOU.
2. Notify all science and health laboratory personnel about the MOU.
3. Provide information to appropriate personnel regarding the potential problem of diversion of laboratory chemicals and apparatus to illegal drug operations.
4. Notify the Department of Public Safety (DPS) of the person designated to act as the liaison between the institution and the DPS.
5. Notify all personnel involved in the sale or transfer of surplus equipment that none of the precursor chemicals or laboratory apparatus, including glassware, listed as controlled items in the MOU should be sold or otherwise transferred to anyone who does not have the proper permit or the specific authority to purchase or accept the controlled items. Personnel involved in the transfer or sale of these items should be provided with copies of the Nar-22 form, which should be used to report the sale, transfer, or furnishing of the listed precursor chemicals or laboratory apparatus. Any party involved in an auction of surplus equipment should be informed of the MOU.
6. Establish procedures to assure an appropriate level of security for controlled items in educational and research laboratories and storerooms. Designate an individual to be responsible for establishing security measures.
7. Encourage all personnel to be alert and attentive to the disappearance of any of the controlled items and to report losses to the institution's contact person for controlled substances.