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Part 2

METHAMPHETAMINE EPIDEMIC ELIMINATION ACT

NOVEMBER 17, 2005.—Ordered to be printed

Mr. BARTON of Texas, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 3889]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3889) to further regulate and punish illicit conduct relating to methamphetamine, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

CONTENTS

AMENDMENT

The amendments are as follows:

Strike title I and insert the following (and conform the table of contents accordingly):

TITLE I—DOMESTIC REGULATION OF PRECURSOR CHEMICALS

SEC. 101. SCHEDULED LISTED CHEMICAL PRODUCTS; RESTRICTIONS ON SALES QUANTITY, BEHIND-THE-COUNTER ACCESS, AND OTHER SAFEGUARDS.

(a) SCHEDULED LISTED CHEMICAL PRODUCTS.—

(1) IN GENERAL.—Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

(A) by redesignating paragraph (46) as paragraph (49); and

(B) by inserting after paragraph (44) the following paragraphs:

"(45)(A) The term 'scheduled listed chemical product' means, subject to subparagraph (B), a product that—

"(i) contains ephedrine, pseudoephedrine, or phenylpropanolamine; and

"(ii) may be marketed or distributed lawfully in the United States under the Federal, Food, Drug, and Cosmetic Act as a nonprescription drug.

Each reference in clause (i) to ephedrine, pseudoephedrine, or phenylpropanolamine includes each of the salts, optical isomers, and salts of optical isomers of such chemical.

"(B) Such term does not include a product described in subparagraph (A) if the product contains a chemical specified in such subparagraph that the Attorney General has under section 201(a) added to any of the schedules under section 202(c). In the absence of such scheduling by the Attorney General, a chemical specified in such subparagraph may not be considered to be a controlled substance.

"(46) The term 'regulated seller' means a retail distributor (including a pharmacy or a mobile retail vendor), except that such term does not include an employee or agent of such distributor.

"(47) The term 'mobile retail vendor' means a person or entity that makes sales at retail from a stand that is intended to be temporary, or is capable of being moved from one location to another, whether the stand is located within or on the premises of a fixed facility (such as a kiosk at a shopping center or an airport) or whether the stand is located on unimproved real estate (such as a lot or field leased for retail purposes).

"(48) The term 'at retail', with respect to the sale or purchase of a scheduled listed chemical product, means a sale or purchase for personal use, respectively.".

(2) CONFORMING AMENDMENTS.—The Controlled Substances Act (21 U.S.C. 801 et seq.) is amended—

(A) in section 102, in paragraph (49) (as redesignated by paragraph (1)(A) of this subsection)—

(i) in subparagraph (A), by striking "pseudoephedrine or" and inserting "ephedrine, pseudoephedrine, or"; and

(ii) by striking subparagraph (B) and redesignating subparagraph (C) as subparagraph (B); and

(B) in section 310(b)(3)(D)(ii), by striking "102(46)" and inserting "102(49)".

(b) RESTRICTIONS ON SALES QUANTITY; BEHIND-THE-COUNTER ACCESS; LOGBOOK REQUIREMENT; TRAINING OF SALES PERSONNEL; PRIVACY PROTECTIONS.—

(1) IN GENERAL.—Section 310 of the Controlled Substances Act (21 U.S.C. 830) is amended by adding at the end the following subsections:

"(d) SCHEDULED LISTED CHEMICALS; RESTRICTIONS ON SALES QUANTITY; REQUIREMENTS REGARDING NONLIQUID FORMS.—With respect to ephedrine base, pseudoephedrine base, or phenylpropanolamine base in a scheduled listed chemical product—

"(1) the quantity of such base sold at retail in such a product by a regulated seller, or a distributor required to submit reports by subsection (b)(3) may not, for any purchaser, exceed a daily amount of 3.6 grams, without regard to the number of transactions; and

"(2) such a seller or distributor may not sell such a product in nonliquid form (including gell caps) at retail unless the product is packaged in blister packs, each blister containing not more than 2 dosage units, or where the use of blister packs is technically infeasible, the product is packaged in unit dose packets or pouches.

"(e) SCHEDULED LISTED CHEMICALS; BEHIND-THE-COUNTER ACCESS; LOGBOOK REQUIREMENT; TRAINING OF SALES PERSONNEL; PRIVACY PROTECTIONS.—

"(1) REQUIREMENTS REGARDING RETAIL TRANSACTIONS.—

"(A) IN GENERAL.—Each regulated seller shall ensure that, subject to subparagraph (F), sales by such seller of a scheduled listed chemical product at retail are made in accordance with the following:

"(i) In offering the product for sale, the seller places the product such that customers do not have direct access to the product before the sale is made (in this paragraph referred to as 'behind-the-counter' placement). For purposes of this paragraph, a behind-the-counter placement of a product includes circumstances in which the product is stored in a locked cabinet that is located in an area of the facility involved to which customers do have direct access.

"(ii) The seller delivers the product directly into the custody of the purchaser.

"(iii) The seller maintains, in accordance with criteria issued by the Attorney General, a written or electronic list of such sales that identifies the products by name, the quantity sold, the names and addresses of purchasers, and the dates and times of the sales (which list is referred to in this subsection as the 'logbook'), except that such requirement does not apply to any purchase by an individual of a single sales package if that package contains not more than 60 milligrams of pseudoephedrine.

"(iv) In the case of a sale to which the requirement of clause (iii) applies, the seller does not sell such a product unless—

"(I) the prospective purchaser—

"(aa) presents an identification card that provides a photograph and is issued by a State or the Federal Government, or a document that, with respect to identification, is considered acceptable for purposes of sections 274a.2(b)(1)(v)(A) and 274a.2(b)(1)(v)(B) of title 8, Code of Federal Regulations (as in effect on or after the date of the enactment of the Combat Methamphetamine Epidemic Act of 2005); and

"(bb) signs the logbook and enters in the logbook his or her name, address, and the date and time of the sale; and

"(II) the seller—

"(aa) determines that the name entered in the logbook corresponds to the name provided on such identification and that the date and time entered are correct; and

"(bb) enters in the logbook the name of the product and the quantity sold.

"(v) The logbook includes, in accordance with criteria of the Attorney General, a notice to purchasers that entering false statements or misrepresentations in the logbook may subject the purchasers to criminal penalties under section 1001 of title 18, United States Code, which notice specifies the maximum fine and term of imprisonment under such section.

"(vi) The seller maintains each entry in the logbook for not fewer than two years after the date on which the entry is made.

"(vii) In the case of individuals who are responsible for delivering such products into the custody of purchasers or who deal directly with purchasers by obtaining payments for the products, the seller has submitted to the Attorney General a self-certification that all such individuals have, in accordance with criteria under subparagraph (B)(ii), undergone training provided by the seller to ensure that the individuals understand the requirements that apply under this subsection and subsection (d).

"(viii) The seller maintains a copy of such certification and records demonstrating that individuals referred to in clause (vii) have undergone the training.

"(ix) If the seller is a mobile retail vendor:

"(I) The seller complies with clause (i) by placing the product in a locked cabinet.

"(II) The seller does not sell more than 7.5 grams of ephedrine base, pseudoephedrine base, or phenylpropanolamine base in such products per customer during a 30-day period.

"(B) ADDITIONAL PROVISIONS REGARDING CERTIFICATIONS AND TRAINING.—

"(i) IN GENERAL.—A regulated seller may not sell any scheduled listed chemical product at retail unless the seller has submitted to the Attorney General the self-certification referred to in subparagraph (A)(vii). The certification is not effective for purposes of the preceding sentence unless, in addition to provisions regarding the training of individuals referred to in such subparagraph, the certification includes a statement that the seller understands each of the requirements that apply under

this paragraph and under subsection (d) and agrees to comply with the requirements.

"(ii) ISSUANCE OF CRITERIA; SELF-CERTIFICATION.—The Attorney General shall by regulation establish criteria for certifications under this paragraph. The criteria shall—

"(I) provide that the certifications are self-certifications provided through the program under clause (iii);

"(II) provide that a separate certification is required for each place of business at which a regulated seller sells scheduled listed chemical products at retail; and

"(III) include criteria for training under subparagraph (A)(vii).

"(iii) PROGRAM FOR REGULATED SELLERS.—The Attorney General shall establish a program regarding such certifications and training in accordance with the following:

"(I) The program shall be carried out through an Internet site of the Department of Justice and such other means as the Attorney General determines to be appropriate.

"(II) The program shall inform regulated sellers that section 1001 of title 18, United States Code, applies to such certifications.

"(III) The program shall make available to such sellers an explanation of the criteria under clause (ii).

"(IV) The program shall be designed to permit the submission of the certifications through such Internet site.

"(V) The program shall be designed to automatically provide the explanation referred to in subclause (III), and an acknowledgement that the Department has received a certification, without requiring direct interactions of regulated sellers with staff of the Department (other than the provision of technical assistance, as appropriate).

"(iv) AVAILABILITY OF CERTIFICATION TO STATE AND LOCAL OFFICIALS.—Promptly after receiving a certification under subparagraph (A)(vii), the Attorney General shall make available a copy of the certification to the appropriate State and local officials.

"(C) PRIVACY PROTECTIONS.—In order to protect the privacy of individuals who purchase scheduled listed chemical products, the Attorney General shall by regulation establish restrictions on disclosure of information in logbooks under subparagraph (A)(iii). Such regulations shall—

"(i) provide for the disclosure of the information as appropriate to the Attorney General and to State and local law enforcement agencies; and

"(ii) prohibit accessing, using, or sharing information in the logbooks for any purpose other than to ensure compliance with this title or to facilitate a product recall to protect public health and safety.

"(D) FALSE STATEMENTS OR MISREPRESENTATIONS BY PURCHASERS.—For purposes of section 1001 of title 18, United States Code, entering information in the logbook under subparagraph (A)(iii) shall be considered a matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States.

"(E) GOOD FAITH PROTECTION.—A regulated seller who in good faith releases information in a logbook under subparagraph (A)(iii) to Federal, State, or local law enforcement authorities is immune from civil liability for such release unless the release constitutes gross negligence or intentional, wanton, or willful misconduct.

"(F) INAPPLICABILITY OF REQUIREMENTS TO CERTAIN SALES.—Subparagraph (A) does not apply to the sale at retail of a scheduled listed chemical product if a report on the sales transaction is required to be submitted to the Attorney General under subsection (b)(3).

"(G) CERTAIN MEASURES REGARDING THEFT AND DIVERSION.—A regulated seller may take reasonable measures to guard against employing individuals who may present a risk with respect to the theft and diversion of scheduled listed chemical products, which may include, notwithstanding State law, asking applicants for employment whether they have been convicted of any crime involving or related to such products or controlled substances.".

(2) EFFECTIVE DATES.—With respect to subsections (d) and (e)(1) of section 310 of the Controlled Substances Act, as added by paragraph (1) of this subsection:

(A) Such subsection (d) applies on and after the expiration of the 30-day period beginning on the date of the enactment of this Act.

(B) Such subsection (e)(1) applies on and after September 30, 2006.

(c) MAIL-ORDER REPORTING.—

(1) IN GENERAL.—Section 310(e) of the Controlled Substances Act, as added by subsection (b)(1) of this section, is amended by adding at the end the following:

"(2) MAIL-ORDER REPORTING; VERIFICATION OF IDENTITY OF PURCHASER; 30-DAY RESTRICTION ON QUANTITIES FOR INDIVIDUAL PURCHASERS.—Each regulated person who makes a sale at retail of a scheduled listed chemical product and is required under subsection (b)(3) to submit a report of the sales transaction to the Attorney General is subject to the following:

"(A) The person shall, prior to shipping the product, confirm the identity of the purchaser in accordance with procedures established by the Attorney General. The Attorney General shall by regulation establish such procedures.

"(B) The person may not sell more than 7.5 grams of ephedrine base, pseudoephedrine base, or phenylpropanolamine base in such products per customer during a 30-day period.".

(2) INAPPLICABILITY OF REPORTING EXEMPTION FOR RETAIL DISTRIBUTORS.—Section 310(b)(3)(D)(ii) of the Controlled Substances Act (21 U.S.C. 830(b)(3)(D)(ii)) is amended by inserting before the period the following: ", except that this clause does not apply to sales of scheduled listed chemical products at retail".

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) apply on and after the expiration of the 30-day period beginning on the date of the enactment of this Act.

(d) EXEMPTIONS FOR CERTAIN PRODUCTS.—Section 310(e) of the Controlled Substances Act, as added and amended by subsections (b) and (c) of this section, respectively, is amended by adding at the end the following paragraph:

"(3) EXEMPTIONS FOR CERTAIN PRODUCTS.—Upon the application of a manufacturer of a scheduled listed chemical product, the Attorney General may by regulation provide that the product is exempt from the provisions of subsection (d) and paragraphs (1) and (2) of this subsection if the Attorney General determines that the product cannot be used in the illicit manufacture of methamphetamine.".

(e) ENFORCEMENT OF REQUIREMENTS FOR RETAIL SALES.—

(1) CIVIL AND CRIMINAL PENALTIES.—

(A) IN GENERAL.—Section 402(a) of the Controlled Substances Act (21 U.S.C. 842(a)) is amended—

(i) in paragraph (10), by striking "or" after the semicolon;

(ii) in paragraph (11), by striking the period at the end and inserting a semicolon; and

(iii) by inserting after paragraph (11) the following paragraphs:

"(12) who is a regulated seller, or a distributor required to submit reports under subsection (b)(3) of section 310—

"(A) to sell at retail a scheduled listed chemical product in violation of paragraph (1) of subsection (d) of such section, knowing at the time of the transaction involved (independent of consulting the logbook under subsection (e)(1)(A)(iii) of such section) that the transaction is a violation; or

"(B) to knowingly or recklessly sell at retail such a product in violation of paragraph (2) of such subsection (d);

"(13) who is a regulated seller to knowingly or recklessly sell at retail a scheduled listed chemical product in violation of subsection (e) of such section; or

"(14) who is a regulated seller or an employee or agent of such seller to disclose, in violation of regulations under subparagraph (C) of section 310(e)(1), information in logbooks under subparagraph (A)(iii) of such section, or to refuse to provide such a logbook to Federal, State, or local law enforcement authorities.".

(B) CONFORMING AMENDMENT.—Section 401(f)(1) of the Controlled Substances Act (21 U.S.C. 841(f)(1)) is amended by inserting after "shall" the following: ", except to the extent that paragraph (12), (13), or (14) of section 402(a) applies,".

(2) AUTHORITY TO PROHIBIT SALES BY VIOLATORS.—Section 402(c) of the Controlled Substances Act (21 U.S.C. 842(c)) is amended by adding at the end the following paragraph:

"(4)(A) If a regulated seller, or a distributor required to submit reports under section 310(b)(3), violates paragraph (12) of subsection (a) of this section, or if a regulated seller violates paragraph (13) of such subsection, the Attorney General may by order prohibit such seller or distributor (as the case may be) from selling any scheduled listed chemical product. Any sale of such a product in violation of such an order is subject to the same penalties as apply under paragraph (2).

"(B) An order under subparagraph (A) may be imposed only through the same procedures as apply under section 304(c) for an order to show cause.".

(f) PRESERVATION OF STATE AUTHORITY TO REGULATE SCHEDULED LISTED CHEMICALS.—This section and the amendments made by this section may not be construed as having any legal effect on section 708 of the Controlled Substances Act as applied to the regulation of scheduled listed chemicals (as defined in section 102(45) of such Act).

SEC. 102. REGULATED TRANSACTIONS.

(a) CONFORMING AMENDMENTS REGARDING SCHEDULED LISTED CHEMICALS.—The Controlled Substances Act (21 U.S.C. 801 et seq.) is amended—

(1) in section 102—

(A) in paragraph (39)(A)—

(i) by amending clause (iv) to read as follows:

"(iv) any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act, subject to clause (v), unless—

"(I) the Attorney General has determined under section 204 that the drug or group of drugs is being diverted to obtain the listed chemical for use in the illicit production of a controlled substance; and

"(II) the quantity of the listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical by the Attorney General;";

(ii) by redesignating clause (v) as clause (vi); and

(iii) by inserting after clause (iv) the following clause:

"(v) any transaction in a scheduled listed chemical product; or"; and

(B) by striking the paragraph (45) that relates to the term "ordinary over-the-counter pseudoephedrine or phenylpropanolamine product";

(2) in section 204, by striking subsection (e); and

(3) in section 303(h), in the second sentence, by striking "section 102(39)(A)(iv)" and inserting "clause (iv) or (v) of section 102(39)(A)".

(b) PUBLIC LAW 104–237.—Section 401 of the Comprehensive Methamphetamine Control Act of 1996 (21 U.S.C. 802 note) (Public Law 104–237) is amended by striking subsections (d), (e), and (f).

SEC. 103. AUTHORITY TO ESTABLISH PRODUCTION QUOTAS.

Section 306 of the Controlled Substances Act (21 U.S.C. 826) is amended—

(1) in subsection (a), by inserting "and for ephedrine, pseudoephedrine, and phenylpropanolamine" after "for each basic class of controlled substance in schedules I and II";

(2) in subsection (b), by inserting "or for ephedrine, pseudoephedrine, or phenylpropanolamine" after "for each basic class of controlled substance in schedule I or II";

(3) in subsection (c), in the first sentence, by inserting "and for ephedrine, pseudoephedrine, and phenylpropanolamine" after "for the basic classes of controlled substances in schedules I and II";

(4) in subsection (d), by inserting "or ephedrine, pseudoephedrine, or phenylpropanolamine" after "that basic class of controlled substance";

(5) in subsection (e), by inserting "or for ephedrine, pseudoephedrine, or phenylpropanolamine" after "for a basic class of controlled substance in schedule I or II";

(6) in subsection (f)—

(A) by inserting "or ephedrine, pseudoephedrine, or phenylpropanolamine" after "controlled substances in schedules I and II";

(B) by inserting "or of ephedrine, pseudoephedrine, or phenylpropanolamine" after "the manufacture of a controlled substance"; and

(C) by inserting "or chemicals" after "such incidentally produced substances"; and

(7) by adding at the end the following subsection:

"(g) Each reference in this section to ephedrine, pseudoephedrine, or phenylpropanolamine includes each of the salts, optical isomers, and salts of optical isomers of such chemical.".

SEC. 104. PENALTIES; AUTHORITY FOR MANUFACTURING; QUOTA.

Section 402(b) of the Controlled Substances Act (21 U.S.C. 842(b)) is amended by inserting after "manufacture a controlled substance in schedule I or II" the following: ", or ephedrine, pseudoephedrine, or phenylpropanolamine or any of the salts, optical isomers, or salts of optical isomers of such chemical,"

SEC. 105. RESTRICTIONS ON IMPORTATION; AUTHORITY TO PERMIT IMPORTS FOR MEDICAL, SCIENTIFIC, OR OTHER LEGITIMATE PURPOSES.

Section 1002 of the Controlled Substances Import and Export Act (21 U.S.C. 952) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by inserting "or ephedrine, pseudoephedrine, or phenylpropanolamine," after "schedule III, IV, or V of title II,"; and

(B) in paragraph (1), by inserting ", and of ephedrine, pseudoephedrine, and phenylpropanolamine, " after "coca leaves"; and

(2) by adding at the end the following subsections:

"(d)(1) With respect to a registrant under section 1008 who is authorized under subsection (a)(1) to import ephedrine, pseudoephedrine, or phenylpropanolamine, at any time during the year the registrant may apply for an increase in the amount of such chemical that the registrant is authorized to import, and the Attorney General may approve the application if the Attorney General determines that the approval is necessary to provide for medical, scientific, or other legitimate purposes regarding the chemical.

"(2) With respect to the application under paragraph (1):

"(A) Not later than 60 days after receiving the application, the Attorney General shall approve or deny the application.

"(B) In approving the application, the Attorney General shall specify the period of time for which the approval is in effect, or shall provide that the approval is effective until the registrant involved is notified in writing by the Attorney General that the approval is terminated.

"(C) If the Attorney General does not approve or deny the application before the expiration of the 60-day period under subparagraph (A), the application is deemed to be approved, and such approval remains in effect until the Attorney General notifies the registrant in writing that the approval is terminated.

"(e) Each reference in this section to ephedrine, pseudoephedrine, or phenylpropanolamine includes each of the salts, optical isomers, and salts of optical isomers of such chemical.".

SEC. 106. NOTICE OF IMPORTATION OR EXPORTATION; APPROVAL OF SALE OR TRANSFER BY IMPORTER OR EXPORTER.

(a) IN GENERAL.—Section 1018 of the Controlled Substances Import and Export Act (21 U.S.C. 971) is amended—

(1) in subsection (b)(1), in the first sentence, by striking "or to an importation by a regular importer" and inserting "or to a transaction that is an importation by a regular importer";

(2) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively;

(3) by inserting after subsection (c) the following subsection:

"(d)(1)(A) Information provided in a notice under subsection (a) or (b) shall include the name of the person to whom the importer or exporter involved intends to transfer the listed chemical involved, and the quantity of such chemical to be transferred.

"(B) In the case of a notice under subsection (b) submitted by a regular importer, if the transferee identified in the notice is not a regular customer, such importer may not transfer the listed chemical until after the expiration of the 15-day period beginning on the date on which the notice is submitted to the Attorney General.

"(C) After a notice under subsection (a) or (b) is submitted to the Attorney General, if circumstances change and the importer or exporter will not be transferring the listed chemical to the transferee identified in the notice, or will be transferring a greater quantity of the chemical than specified in the notice, the importer or exporter shall update the notice to identify the most recent prospective transferee or the most recent quantity or both (as the case may be) and may not transfer the listed chemical until after the expiration of the 15-day period beginning on the date on which the update is submitted to the Attorney General, except that such 15-day restriction does not apply if the prospective transferee identified in the update is a regular customer. The preceding sentence applies with respect to changing circumstances regarding a transferee or quantity identified in an update to the same extent and in the same manner as such sentence applies with respect to changing circumstances regarding a transferee or quantity identified in the original notice under subsection (a) or (b).

"(D) In the case of a transfer of a listed chemical that is subject to a 15-day restriction under subparagraph (B) or (C), the transferee involved shall, upon the expiration of the 15-day period, be considered to qualify as a regular customer, unless the Attorney General otherwise notifies the importer or exporter involved in writing.

"(2) With respect to a transfer of a listed chemical with which a notice or update referred to in paragraph (1) is concerned:

"(A) The Attorney General, in accordance with the same procedures as apply under subsection (c)(2)—

"(i) may order the suspension of the transfer of the listed chemical by the importer or exporter involved, except for a transfer to a regular customer, on the ground that the chemical may be diverted to the clandestine manufacture of a controlled substance (without regard to the form of the chemical that may be diverted, including the diversion of a finished drug product to be manufactured from bulk chemicals to be transferred), subject to the Attorney General ordering such suspension before the expiration of the 15-day period referred to in paragraph (1) with respect to the importation or exportation (in any case in which such a period applies); and

"(ii) may, for purposes of clause (i) and paragraph (1), disqualify a regular customer on such ground.

"(B) From and after the time when the Attorney General provides written notice of the order under subparagraph (A) (including a statement of the legal and factual basis for the order) to the importer or exporter, the importer or exporter may not carry out the transfer.

"(3) For purposes of this subsection:

"(A) The terms 'importer' and 'exporter' mean a regulated person who imports or exports a listed chemical, respectively.

"(B) The term 'transfer', with respect to a listed chemical, includes the sale of the chemical.

"(C) The term 'transferee' means a person to whom an importer or exporter transfers a listed chemical."; and

(4) by adding at the end the following subsection:

"(g) Within 30 days after a transaction covered by this section is completed, the importer or exporter shall send the Attorney General a return declaration containing particulars of the transaction, including the date, quantity, chemical, container, name of transferees, and such other information as the Attorney General may specify in regulations. For importers, a single return declaration may include the particulars of both the importation and distribution. If the importer has not distributed all chemicals imported by the end of the initial 30-day period, the importer shall file supplemental return declarations no later than 30 days from the date of any further distribution, until the distribution or other disposition of all chemicals imported pursuant to the import notification or any update are accounted for.".

(b) CONFORMING AMENDMENTS.—

(1) CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT.—The Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.) is amended—

(A) in section 1010(d)(5), by striking "section 1018(e)(2) or (3)" and inserting "paragraph (2) or (3) of section 1018(f)"; and

(B) in section 1018(c)(1), in the first sentence, by inserting before the period the following: "(without regard to the form of the chemical that may be diverted, including the diversion of a finished drug product to be manufactured from bulk chemicals to be transferred)".

(2) CONTROLLED SUBSTANCES ACT.—Section 310(b)(3)(D)(v) of the Controlled Substances Act (21 U.S.C. 830(b)(3)(D)(v)) is amended by striking "section 1018(e)(2)" and inserting "section 1018(f)(2)".

SEC. 107. ENFORCEMENT OF RESTRICTIONS ON IMPORTATION AND OF REQUIREMENT OF NOTICE OF TRANSFER.

Section 1010(d)(6) of the Controlled Substances Import and Export Act (21 U.S.C. 960(d)(6)) is amended to read as follows:

"(6) imports a listed chemical in violation of section 1002, imports or exports such a chemical in violation of section 1007 or 1018, or transfers such a chemical in violation of section 1018(d); or".

SEC. 108. COORDINATION WITH UNITED STATES TRADE REPRESENTATIVE.

In implementing sections 103 through 107 and section 201 of this Act, the Attorney General shall consult with the United States Trade Representative to ensure implementation complies with all applicable international treaties and obligations of the United States.

Strike title IV and insert the following (and conform the table of contents accordingly):

TITLE IV—ENHANCED ENVIRONMENTAL REGULATION OF METHAMPHETAMINE BY-PRODUCTS

SEC. 401. BIENNIAL REPORT TO CONGRESS ON AGENCY DESIGNATIONS OF BY-PRODUCTS OF METHAMPHETAMINE LABORATORIES AS HAZARDOUS MATERIALS.

Section 5103 of title 49, Unites States Code, is amended by adding at the end the following:

"(d) BIENNIAL REPORT.—The Secretary of Transportation shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Senate Committee on Commerce, Science, and Transportation a biennial report providing information on whether the Secretary has designated as hazardous materials for purposes of chapter 51 of such title all by-products of the methamphetamine-production process that are known by the Secretary to pose an unreasonable risk to health and safety or property when transported in commerce in a particular amount and form.".

SEC. 402. METHAMPHETAMINE PRODUCTION REPORT.

Section 3001 of the Solid Waste Disposal Act (42 U.S.C. 6921) is amended at the end by adding the following:

"(j) METHAMPHETAMINE PRODUCTION.—Not later than every 24 months, the Administrator shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate a report setting forth information collected by the Administrator from law enforcement agencies, States, and other relevant stakeholders that identifies the by-products of the methamphetamine production process and whether the Administrator considers each of the byproducts to be a hazardous waste pursuant to this section and relevant regulations.".

SEC. 403. CLEANUP COSTS.

(a) IN GENERAL.—Section 413(q) of the Controlled Substances Act (21 U.S.C. 853(q)) is amended—

(1) in the matter preceding paragraph (1), by inserting ", the possession, or the possession with intent to distribute, " after "manufacture"; and

(2) in paragraph (2), by inserting ", or on premises or in property that the defendant owns, resides, or does business in" after "by the defendant".

(b) SAVINGS CLAUSE.—Nothing in this section shall be interpreted or construed to amend, alter, or otherwise affect the obligations, liabilities and other responsibilities of any person under any Federal or State environmental laws.

PURPOSE AND SUMMARY

H.R. 3889 would enact retail restrictions on methamphetamine precursor chemicals to reduce drug manufacturers access to these chemicals, expand regulations of the wholesale methamphetamine precursor market, enhance criminal penalties for methamphetamine production and trafficking, and increase environmental regulation requirements for methamphetamine by-products.

BACKGROUND AND NEED FOR LEGISLATION

Methamphetamine is an addictive stimulant drug that strongly activates certain systems in the brain. The drug can be swallowed in pill form, snorted in powder form, smoked, or injected. Users may become addicted quickly, and will use the drug with increasing frequency and in increasing doses to produce the same effect.

Methamphetamine causes increased heart rate and blood pressure and can cause irreversible damage to blood vessels in the brain producing strokes. Other effects of methamphetamine include respiratory problems, irregular heartbeat, and extreme anorexia. Methamphetamine use can result in cardiovascular collapse and death. Chronic users and those exposed to methamphetamine production also commonly suffer paranoia.

In the past, methamphetamine had been considered a drug predominantly used in the Western part of the United States. However, nationwide use has been increasing. According to the 2003 National Survey on Drug Use and Health, 12.3 million Americans age 12 and older had tried methamphetamine at least once in their lifetimes. In many parts of the country the problem of methamphetamine use eclipses that of other illicit drugs. Since the late 1990s, methamphetamine abuse has spread to the South and Midwest, particularly in rural areas. In 2004, more lab incidents were reported in Illinois (926) than in California (673). In 2003, methamphetamine lab incidents reached new highs in Georgia, Minnesota, and Texas.

Roughly two-thirds of the methamphetamine consumed in this country comes from "super labs" that produce large quantities of the drug. The majority of these super labs are located in Mexico. However, the remaining portion is produced in "small toxic labs." These labs produced small amounts of the illegal drug, but create numerous health issues and leaves hazardous waste byproducts.

The proliferation of small toxic labs can be attributed to the relative ease of producing methamphetamine. An Internet search of "methamphetamine recipe" will produce numerous websites that provide step-by-step processes to manufacture the drug. In addition, the materials needed to produce methamphetamine are easily accessible. The primary ingredient of methamphetamine is pseudoephedrine. The pseudoephedrine is "cooked" by a heat source and using common products such as anhydrous ammonia, used in fertilizer, and batteries. These labs can be found in apartment buildings, basements, and even car trunks. These producers are often manufacturing limited quantities to supply their own habit and a small network of friends. Although the small toxic labs account for only a third of the methamphetamine consumed, these labs are stretching the resources of many local and state governments as well as law enforcement agencies.

A recent survey conducted by the National Association of Counties found 58 percent of county law enforcement agencies reported that methamphetamine is their largest drug problem, outpacing cocaine and marijuana.

Pseudoephedrine is also the active ingredient used in many over-the- counter cold medications that millions of Americans depend on during cold and allergy seasons. Legislation to address the methamphetamine problem should not unduly burden individuals who purchase pseudoephedrine products for legitimate medical needs.

The Congressional Research Service approximates that each pound of methamphetamine produces about six pounds of hazardous waste. Illicit methamphetamine "cooks" usually release this waste into sewers, streams, rivers, or the ground near the lab. Water used to extinguish lab fires also carries toxic chemicals into the environment. While health effects on a user from direct use of methamphetamine have been well studied, long-term health-effects research on exposures to substances associated with illicit methamphetamine production has just recently begun. Such health-effects research considers impacts on children, as well as on adults, who might be in the vicinity of a methamphetamine- making site.

While seven (7) states [Alaska, Arizona, Alabama, Colorado, Minnesota, Tennessee, and Washington] currently have feasibility-

based remediation standards specific to methamphetamine, there are no uniform, voluntary federal guidelines nor mandatory standards governing the clean-up or remediation of former methamphetamine sites, either for methamphetamine residues themselves, or for chemicals related to illicit methamphetamine production.

HEARINGS

The Subcommittee on Health and the Subcommittee on the Environment and Hazardous Materials held a joint hearing on "Comprehensively Combating Methamphetamines: Impacts on Health and Environment" on October 20, 2005. The Subcommittees received testimony from Peter Murtha, Director, Office of Criminal Enforcement, Forensics and Training, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency; Mr. Joseph T. Rannazzisi, Deputy Chief, Office of Enforcement Operations, U.S. Drug Enforcement Administration; Mrs. Stephanie Colston, Senior Advisor to the Administrator, Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services; The Honorable Eric Coleman, County Commissioner, Oakland County, Michigan, testifying on behalf of the National Association of Counties; Mrs. Mary Ann Wagner, Senior Vice President for Pharmacy, Policy and Regulatory Affairs, National Association of Chain Drug Stores; Mr. Gordon Knapp, President, PCH North America, Pfizer Inc.; Sheriff Ted G. Kamatchus, Marshall County, Iowa, testifying on behalf of the National Sheriffs' Association; and, Mr. Joseph R. Heerens, Senior Vice President for Government Affairs, Marsh Supermarkets, Inc., testifying on behalf of the Food Marketing Institute.

COMMITTEE CONSIDERATION

On Tuesday, November 15, 2005, the Committee on Energy and Commerce met in open markup session and ordered H.R. 3889 favorably reported to the House, amended, by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 3889 reported. A motion by Mr. Barton to order H.R. 3889 reported to the House, amended, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held an oversight hearing and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 3889 is to strengthen retail reporting requirements for regulated retail transactions of methamphetamine precursors, expand regulations of the wholesale methamphetamine precursor market, enhance criminal penalties for methamphet-

amine production and trafficking, and increase environmental regulation requirements for methamphetamine by-products.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 3889, Methamphetamine Epidemic Elimination Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

NOVEMBER 15, 2005.

Hon. JOE BARTON,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has completed the enclosed cost estimate for H.R. 3889, the Methamphetamine Epidemic Elimination Act.

The CBO staff contacts for this estimate are Mark Grabowicz (for federal costs), Melissa Merrell (for the impact on state and local governments), and Fatimot Ladipo (for the impact on the private sector).

Sincerely,

DONALD B. MARRON
(For Douglas Holtz-Eakin, Director).

Enclosure.

H.R. 3889—Methamphetamine Epidemic Elimination Act

Summary: H.R. 3889 would authorize the appropriation of $5 million for each of fiscal years 2006 and 2007 for the Department of State mostly to combat the smuggling of methamphetamine from Mexico to the United States. In addition, the bill would strengthen the regulation of pseudoephedrine, ephedrine, and phenylpropanolamine and would limit retail sales of products that contain those substances. Assuming appropriation of the authorized amounts, CBO estimates that implementing H.R. 3889 would cost $10 million over the 2006–2009 period. Enacting the bill also could affect direct spending and revenues, but CBO estimates that any effects would not be significant for any year.

H.R. 3889 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by preempting some state laws that regulate pharmaceutical sales. In addition, the bill would impose an intergovernmental mandate on

some publicly owned pharmacies by requiring tighter controls for selling and storing over-the-counter drugs containing pseudoephedrine, ephedrine, or phenylpropanolamine. CBO estimates that the costs, if any, for states, localities, and publicly owned pharmacies to comply with those mandates would be insignificant and well below the threshold established in UMRA ($62 million in 2005, adjusted annually for inflation).

H.R. 3889 would impose private-sector mandates, as defined in UMRA, on retail businesses and persons involved in the sale and distribution of certain medications containing ephedrine, pseudoephedrine, or phenylpropanolamine. CBO estimates that the aggregate direct costs of complying with those mandates would fall below the annual threshold established by UMRA for private-sector mandates ($123 million in 2005, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3889 is shown in the following table. The costs of this legislation fall within budget function 150 (international affairs).

	By fiscal year, in millions of dollars—				
	2006	2007	2008	2009	2010
CHANGES IN SPENDING SUBJECT TO APPROPRIATION [1]					
Authorization Level	5	5	0	0	0
Estimated Outlays	3	4	2	1	0

[1] In addition to the amounts shown above, enacting H.R. 3889 also could affect direct spending and revenues, but CBO estimates that any effects would not be significant in any year.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted by the end of calendar year 2005. CBO estimates that implementing H.R. 3889 would cost $10 million over the 2006–2009 period, assuming appropriation of the authorized amounts. Enacting the bill could affect direct spending and receipts, but we estimate that any effects would not be significant in any year.

Spending subject to appropriation

For this estimate, CBO assumes that the amounts authorized by the bill for the programs listed below will be appropriated near the start of each fiscal year and that spending will follow the historical spending patterns for those or similar activities.

For the Department of State, H.R. 3889 would authorize the appropriation of:

- $4 million for each of fiscal years 2006 and 2007 to prevent the smuggling of methamphetamine from Mexico to the United States; and
- $1 million for each of fiscal years 2006 and 2007 for analysis for reports on countries that export and import the most pseudoephedrine, ephedrine, and phenylpropanolamine and the cost of developing a plan to prevent the diversion of those chemicals to illegal uses.

In addition, H.R. 3889 would strengthen the regulation of pseudoephedrine, ephedrine, and phenylpropanolamine and would limit retail sales of products that contain those substances. CBO estimates that any resulting increase in administrative or investigative costs for the Drug Enforcement Administration would not be significant.

Direct spending and revenues

Enacting H.R. 3889 could increase collections of civil and criminal fines for violations of the bill's provisions relating to methamphetamine production and trafficking as well as those regarding the importation of precursor chemicals. CBO estimates that any additional collections would not be significant because of the relatively small number of additional cases likely to be affects. Civil fines are recorded as revenues. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and subsequently spent without further appropriation.

Estimated impact on state, local, and tribal governments: H.R. 3889 would impose an intergovernmental mandate, as defined in UMRA, by preempting state laws that place less-burdensome requirements than those established in this bill on pharmaceutical dispensers for selling and storing over-the-counter drugs containing pseudoephedrine, ephedrine, or phenylpropanolamine. In addition, the bill would impose an intergovernmental mandate on publicly owned pharmacies by requiring compliance with those sale and storage requirements. Because the preemption would not require states to take any action and because we expect that very few public pharmacies would be affected by the new requirements, CBO estimates that compliance costs would be insignificant and well below the threshold established in UMRA ($62 million in 2005, adjusted annually for inflation).

Estimated impact on the private sector: H.R. 3889 would impose private-sector mandates, as defined in UMRA, on retail businesses and persons involved in the sale and distribution of certain medications containing ephedrine, pseudoephedrine, or phenylpropanolamine. The bill would reclassify those drugs, which are found in many over-the-counter medications, as "scheduled listed chemical products"—a new category of chemicals under the Controlled Substances Act. The sale and distribution of products containing those substances would be regulated by the Controlled Substances Act as amended by this bill. Based on information from industry and government sources, CBO estimates that the aggregate direct costs of complying with those mandates would fall below the annual threshold established by UMRA for private-sector mandates ($123 million in 2005, adjusted annually for inflation).

Retail businesses

The bill would impose private-mandates on retail businesses and persons involved in the sale and distribution of certain medications by restricting access to ephedrine, pseudoephedrine, and phenylpropanolamine products and imposing limits on the amount of such products that can be sold per customer. Retail sellers would be required to verify the identification of individuals purchasing those products and maintain a written or electronic record of each sales transaction for not fewer than two years. Such requirement would not apply to any purchase by an individual of a single sales package if that package contains not more than 60 milligrams of pseudoephedrine. The bill also would require sellers to submit to the Attorney General certification that certain employees involved in the delivery and direct sales of those products to consumers have undergone specific training.

Under H.R. 3889, certain retail establishments would have to move the location of pharmaceutical products containing those substances behind the counter or store them in locked cabinets, train employees to alert them to the new regulations, and implement new sales and hiring practices. Retail businesses might also reprogram software to signal or block transactions exceeding the threshold, although this would not be explicitly required. Finally, the bill would require sellers who ship (mail order or Internet sales) such medications to confirm the identify of a purchaser prior to shipping in accordance with procedures to be established by the Attorney General.

According to government and industry sources, at least 13 states have already enacted laws that place restrictions on such medications and many large retailers have voluntarily complied with the restrictions in this bill. In addition, similar products that do not contain those substances are readily available to be sold as an alternative or substitute. According to those industry sources, the costs associated with relocating a product, logging the sale, certification, retraining, and implementing new sales and hiring practices would be small. Therefore CBO estimates that the direct cost to comply with those mandates would be small relative to UMRA's threshold for private-sector mandates.

Consumers

The bill would require individuals who purchase products containing ephedrine, pseudoephedrine, or phenylpropanolamine to provide photo identification and sign a written log of the transaction. CBO expects that the direct cost for individuals to comply with the mandate would be minimal.

Importers and Exporters

The bill also would impose a new mandate by expanding the current reporting requirements for certain importers and exporters of listed chemicals, such as ephedrine, pseudoephedrine, or phenylpropanolamine. Currently, certain importers and exporters (those that are not regular importers or exporters as determined by the Department of Justice) must file an initial advanced notice with the department 15 days before the shipment of such listed chemicals. Under the bill, if an original planned sale of such chemicals falls through, those importers and exporters must file a second advance notice with the department identifying the new purchaser 15 days prior to a new shipment. Finally, the bill would require importer to file a report with federal regulators listing complete information about the chain of distribution of imported chemicals. Based on information from government sources, CBO expects that the cost of complying with the mandate would be small.

Previous CBO estimates: On November 15, 2005, CBO transmitted a cost estimate for H.R. 3889 as ordered reported by the House Committee on the Judiciary on November 9, 2005. CBO estimated that implementing that version of the bill would cost $377 million over the 2006–1010 period, assuming appropriation of the authorized amounts.

On September 15, 2005, CBO transmitted a cost estimate for S. 103, the Combat Meth Act of 2005, as reported by the Senate Committee on the Judiciary on July 28, 2005. CBO estimated that im-

plementing S. 103 would cost about $90 million over the 2006–2010 period, assuming appropriations of the necessary amounts. Enacting that bill also could affect direct spending, but we estimated that any net affect direct spending, but we estimated that any net affects would not be significant in any year.

Both bills would impose similar mandates on individuals and person involved in the sale and distribution of certain medications containing pseudoephedrine or ephedrine S. 103 did not contain any mandates on the sale or distribution of phenylprapanolamine products or on importer or exporters. Both S. 103 and H.R. 3889, as ordered reported by the House Committee on the Judiciary, would impose a limit of 7.5 grams of such medications that consumers could purchase in any 30-day period. The aggregate direct cost of complying with the mandates in each bill would fall below the annual threshold established by UMRA for private-sector mandates.

Estimate prepared by: Federal Costs: DOJ—Mark Grabowicz; Department of State—Sam Papenfuss; Receipts—Emily Schlect; impact on sale, local, and tribal governments: Melissa Merrell; impact on the private sector: Fatimot Ladipo and Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 101. Schedule listed chemical products; restrictions on sales quantities, behind-the-counter access, and other safeguards

Subsection 101(a) amends Section 102 of the Controlled Substances Act by creating four new terms. First, "scheduled listed chemical (SLC) product" is defined as a product that contains ephedrine, pseudoephedrine, or phenylpropanolamine and can be marketed or distributed lawfully in the United States under the

Federal Food, Drug, and Cosmetic Act as a nonprescription drug. The Committee intends for regulations pertaining to scheduled listed chemical products to apply to over-the-counter drugs and not prescription drugs. The Committee believes increased regulatory requirements for these over-the-counter products are warranted, but the regulatory requirements of a Schedule V designation under the Controlled Substances Act are not appropriate for these products.

This subsection also creates the term "regulated seller" which is defined as a retail distributor of scheduled listed chemical products (including a pharmacy or retail vendor). The term does not apply to an employee or agent of such distributor.

The term "mobile retail vendor" means a person or entity that makes sales at retail from a stand that is intended to be temporary, or is capable of being moved from one location to another, whether the stand is located within or on the premises of a fixed facility (such as a kiosk at a shopping center or an airport) or whether the stand is located on unimproved real estate (such as a lot or field leased for retail purposes).

The term "at retail" with respect to the sale or purchase of a scheduled listed chemical product, means a sale or purchase for personal use.

Subsection 101(b) amends Section 310 of the Controlled Substances Act by adding a new subsection 310(d). New subsection 310(d) limits the amount of SLC product an individual can purchase in a day to 3.6 grams. The 3.6 grams limit is the base weight of the SLC contained in the product, not the weight of the total product. To help facilitate compliance with this provision the Committee encourages manufacturers to include on packages the total amount of SLC contained in the product package. This section also states a seller or distributor may not sell such a product in non-liquid form (including gel caps) at retail unless the product is packaged in blister packs, each blister containing not more than 2 dosage units, or where the use of blister packs is technically infeasible, the product is packaged in unit dose packets or pouches.

New subsection 310(e) states that a seller of a scheduled listed chemical product ensures that sales are made in accordance with certain conditions. The seller is required to store the SLC products behind the counter or in locked cabinet storage.

The seller is required to maintain a written or electronic log of each purchase. The log will identify the products by name, and list the quantity sold, the name and address of the purchaser, and the date and time of the sale. Entering such information into the written or electronic log is not required for those purchasing one single-dose package of SLC product. The single sales package cannot contain more than 60 milligrams of pseudoephedrine, two pills of regular strength pseudoephedrine product. The exemption does not apply when an individual purchases more than one single-dose package per transaction.

The seller cannot sell the product if the purchaser does not present an identification card that contains a photograph. The purchaser must enter into the logbook their name, address, and the date and time of sale. The seller must determine that the name entered into the logbook corresponds to the identification provided, and that the date and time entered into the logbook are correct.

The logbook must contain a notice that false statements or misrepresentations in the logbook may subject the purchaser to criminal penalties under Title 18 United States Code 1001. In the October 20th hearing, law enforcement witnesses testified that the existence of these logbooks is a critical tool to deter individuals from roaming from store to store purchasing small quantities of cold medications for the use of methamphetamine production.

The seller will be required to maintain each entry in the logbook for two years after the date on which the entry is made. Each regulated seller is required to provide to the Attorney General a certification that it is in compliance with the regulatory requirements for the sale of these products, and that its employees who deliver these products to purchasers have been trained to comply with these requirements. The seller must maintain a copy of the certification and records demonstrating that individuals providing SLC products directly to purchasers have undergone training. The Committee does not intend for the seller to have to provide to the Attorney General the specific name of each individual who has undergone training or update the Attorney General when a new employee has been trained. However, the seller is required to keep a list of names of employees that have undergone training to deliver these products.

The Attorney General must make available a copy of these certifications to state and local officials. A separate certification is required for each place of business at which the seller sells scheduled listed chemical products at retail. The Attorney General is charged with establishing a program regarding certification and training. The program shall be carried out through an Internet site of the Department of Justice and other means the Attorney General deems appropriate. The program shall inform sellers that Section 1001 of Title 18 of the United States Code applies to such certifications. The program shall be designed to permit the submissions of certifications through the Internet site. This program shall be designed so as not to require direct interaction between regulated sellers and the staff of the Department of Justice.

Mobile retail vendors must comply with all requirements of regulated sellers and, in addition, may not sell more than 7.5 grams of SLC base product to a customer in a 30-day period.

The Attorney General shall by regulation establish restrictions on disclosure of information in logbooks. The disclosure of this information is limited to the Attorney General and to state and local law enforcement authorities. Regulated sellers are prohibited from accessing, using, or sharing information in the logbooks for any purpose other than to ensure compliance with this title or to facilitate a product recall to protect public health and safety.

A regulated seller who in good faith releases information in a logbook to Federal, state, or local law enforcement authorities is immune from civil liability for such release unless the release constitutes gross negligence or intentional, wanton, or willful misconduct.

The theft of SLC products by retail employees is a significant barrier to preventing illegal diversion of these products. A regulated seller may take reasonable measures to guard against employing individuals who may present a risk with respect to the theft and diversion of scheduled listed chemical products, which

may include, notwithstanding state law, asking applicants for employment whether they have been convicted of any crime involving or related to such products or controlled substances.

The effective date for subsection 310(d) is 30-days after the date of enactment. The effective date for new subsection (e)(1) is September 30, 2006.

Subsection 101(c) amends Section 310(e) of the Controlled Substances Act imposing certain restrictions on mail order purchases. A person prior to shipping the product shall confirm the identification of the purchaser with procedures established by the Attorney General. A person may not sell through mail order more than 7.5 grams of SLC base in such products to a customer within a 30-day period.

Subsection 101(d) allows the Attorney General by regulation, upon application of the manufacturer of a scheduled listed chemical product, to exempt that product from the provisions of subsection (d) and paragraph (1) and (2) if the Attorney General determines that product cannot be used in the illicit production of methamphetamine.

Subsection 101(e) adds three new categories of unlawful activities with respect to controlled substances. These include (1) making it unlawful for a regulated seller or distributor to sell at retail a scheduled listed chemical product knowing at the time of the transaction that the transaction is a violation; (2) making it unlawful for a regulated seller to knowingly or recklessly sell at retail a scheduled listed chemical product in violation of subsection (e); and, (3) making it unlawful for a regulated seller to disclose, in violation of regulations under subparagraph (C) of section 310(e)(1), information in logbooks. Such a person may not refuse to provide such a logbook to Federal, state, or local law enforcement authorities.

If a regulated seller or distributor violates these new sections, the Attorney General may prohibit such seller or distributor from selling any scheduled listed chemical product. Any sale of such a product in violation of such an order is subject to penalties including imprisonment of not more than 1 year for a first offense and not more than 2 years for one or more prior convictions. A fine under Title 18 of the United States Code could also be applied.

Subsesection 101(f) preserves state authority to regulate scheduled listed chemical products. This section clarifies that this legislation will not pre-empt existing state laws.

Section 102. Regulated transactions

Section 102 makes conforming amendments to the Controlled Substances Act to ensure that Scheduled Listed Chemicals are treated similarly to Listed Chemicals and other changes are incorporated.

Section 103. Authority to establish production quotas

Section 103 extends the Attorney General's existing authority to set production quotas for certain controlled substances to pseudoephedrine, ephedrine, and phenylpropanolamine. Currently, domestic production of these chemicals is not very high, as most of our supply is imported. However, if Congress adopts the import quotas enacted by section 104 of the bill, the Attorney General would need to have corresponding authority within the U.S. if do-

mestic production were to increase. Current law (as amended) would allow manufacturers to apply for increases in their production quotas.

Section 104. Penalties; authority for manufacturing; quota

Section 104 expands the existing penalty for illegal production beyond established quotas to take into account the Attorney General's new authority to set quotas for methamphetamine precursors.

Section 105. Restrictions on importation; authority to permit imports for medical, scientific, or other legitimate purposes

Section 105 extends the Attorney General's existing authority to set import quotas for controlled substances to pseudoephedrine, ephedrine, and phenylpropanolamine. This section contains a provision allowing registered importers to apply for temporary or permanent increases in a quota to meet legitimate needs, which would have to be acted on by the Attorney General within 60 days.

Section 106. Notice of importation or exportation; approval of sale or transfer by importer or exporter

Section 106 closes a regulatory loophole for imports and exports of precursor chemicals for methamphetamine and other synthetic drugs. Under current law, an importer or exporter who wishes to import pseudoephedrine or other precursor chemicals must either (1) notify the Department of Justice 15 days in advance of the import or export, or (2) be a regular importer or exporter (i.e., a company that the Department has previously allowed to import or export) and be planning to sell the chemicals to a regular customer (again, one that the Department has previously permitted to take delivery).

A problem can arise, however, when the sale on which the importer or exporter originally planned falls through. When this happens, the importer or exporter must quickly find a new buyer for the chemicals on what is called the "spot market"—a wholesale market. Sellers are often under pressure to find a buyer in a short amount of time, meaning that they may be tempted to entertain bids from companies without a strong record of preventing diversion. More importantly, the Department of Justice has no opportunity to review such transactions in advance and suspend them if there is a danger of diversion to illegal drug production.

This section extends the current reporting requirements—as well as the current exemption for regular importers, exporters, and customers—to post-import or export transactions. If an importer or exporter was required to file an initial advance notice with the Department of Justice 15 days before the shipment of chemicals, and the originally planned sale fell through, the importer or exporter would then have to file a second advance notice with the Department identifying the new proposed purchaser. The Department would then have 15 days to review the new transaction and decide whether it presents enough of a risk of diversion to warrant suspension. As is the case under existing law, a suspension can be appealed through an administrative process.

If, however, an importer or exporter is exempt from filing an initial advance notice because it qualifies as a "regular" importer or

exporter under existing law, that importer or exporter would not have to file the second advance notice, as long as the new proposed purchaser also qualifies as a "regular" customer under existing law.

Section 107. Enforcement of restrictions on importation and of requirement of notice of transfer

Section 107 makes a conforming amendment to current law to extend existing penalties for illegal imports or exports to the new regulatory requirements added by sections 105 and 106 of the bill.

Section 108. Coordination with United States Trade Representative

Since the new import regulations authorized by this title of the bill also apply to exports and domestically manufactured products, nothing in the bill should lead to violations of any international trade treaties or agreements. To ensure that no inadvertent violations should occur during implementation of the new regulations, this section requires the Attorney General to consult with the U.S. Trade Representative.

Section 201. Information on foreign chain of distribution; import restrictions regarding failure of distributors to cooperate

Section 201 amends the reporting requirements for importers of methamphetamine precursor chemicals, by requiring them to file with federal regulators complete information about the chain of distribution of imported chemicals (from the manufacturer to the shores of the U.S.). This will help U.S. law enforcement agencies to better track where methamphetamine precursors come from, and how they get to the U.S. At present, very little information exists about the international "chain of distribution" for these chemicals, hindering effective controls.

If the Attorney General determines that a foreign-chain distributor is refusing to cooperate with respect to obtaining this information, this section gives the Attorney General may issue an order prohibiting the importation of ephedrine, pseudoephedrine, or phenylpropanolamine in any case where such a distributor is part of the chain of distribution.

Section 202. Requirements relating to the largest exporting and importing countries of certain precursor chemicals

Section 202 mandates a separate section of the current State Department report on major drug producing and transit countries, identifying the 5 largest exporters of major methamphetamine precursor chemicals, and the 5 largest importers that also have the highest rate of methamphetamine production or diversion of these chemicals to the production of methamphetamine. If any of those countries were not fully cooperating with U.S. law enforcement in implementing their responsibilities under international drug control treaties, there would be consequences for their eligibility for U.S. aid, similar to those faced by the major drug trafficking nations under current law.

This section applies the "fully cooperates" standard (and not the lesser standard under another, separate provision of law). This standard would only have to apply with respect to the listed countries' cooperation with respect to methamphetamine precursor

chemicals; cooperation with respect to other drugs would continue to be evaluated under existing law.

Section 202 also includes authorization of $1 million for implementation. The House recently passed an amendment to the State Department's appropriations bill for FY 2006, adding $5 million for the Department to implement anti-methamphetamine measures; this $1 million could come out of that amount.

Section 203. Prevention of smuggling of methamphetamine into the United States from Mexico

Section 203 requires the State Department's Bureau for International Narcotics and Law Enforcement Affairs (INL) to provide assistance to Mexico to prevent the production of methamphetamine in that country, and to encourage Mexico to stop the illegal diversion of methamphetamine precursor chemicals. The amendment would authorize the use of $4 million of the $5 million recently approved by the House for these purposes.

Section 301. Enhanced penalties for methamphetamine production, possession, or trafficking

Section 301 would create a new criminal provision for possession with intent to manufacture a scheduled listed chemical and impose a maximum punishment of life imprisonment. This provision increases the currently applicable provision that imposes a maximum of 20 years imprisonment.

This section also lowers the amount of methamphetamine that constitutes a violation of the Controlled Substances Act and carries with it explicit prison terms and fines.

Section 302. Smuggling methamphetamine or methamphetamine precursor chemicals into the United States while using facilitated entry programs

Even as more methamphetamine is being smuggled across the border, increased legitimate international traffic has forced the Bureau of Customs and Border Protection (CBP) to rely on facilitated entry programs—so-called "fastpass" systems like SENTRI (for passenger traffic on the Southwest border), FAST (for commercial truck traffic), and NEXUS (for passenger traffic on the Northern border). These systems allow pre-screened individuals to use dedicated lanes at border crossings, subject only to occasional searches to test compliance with customs and immigration laws.

These programs can be a powerful tool for CBP to manage heavy traffic at major border crossings, but they can also create potential risks. If a drug trafficking organization were to hire someone cleared for a "fastpass" system, it could smuggle large amounts of drugs through only minimal security. The problem is compounded by the fact that computerized criminal background checks cannot be performed in Mexico, meaning that our ability to screen Mexican citizens who apply for a fastpass system is minimal at best.

Section 302 creates an added deterrent for anyone to misuse a facilitated entry program to smuggle methamphetamine or its precursor chemicals. An additional penalty of up to 15 years imprisonment would be added to the punishment for the base offense. If convicted, an individual would also be permanently barred from using a fastpass system again.

Section 303. Manufacturing controlled substances on Federal property

Section 303 clarifies that current penalties for cultivating illegal drugs on Federal property also apply to manufacturing synthetic drugs (such as methamphetamine). Methamphetamine cooks have frequently moved their operations to parks, national forests, and other public lands, causing serious environmental damage. This criminal penalty can help deter such destructive conduct.

Section 304. Increased punishment for methamphetamine kingpins

Section 304 allows for easier application of the enhanced penalties of the "continuing criminal enterprise" section of the Controlled Substances Act. That section (commonly referred to as the "kingpin" statute) imposes life imprisonment on a leader of a drug trafficking organization convicted of trafficking in very large quantities of a drug, and receiving very large profits from that activity. This section reduces the threshold amount of methamphetamine (from 300 to 100 times the threshold for base violations) and profits from methamphetamine (from $10 million to $1 million), while still applying the life imprisonment penalty only to true "kingpins"—the ringleaders of methamphetamine trafficking organizations.

Section 401. Biennial report to Congress on agency designations of by-products of methamphetamine laboratories as hazardous materials

Section 401 amends Section 5103 of Title 49—which addresses Department of Transportation rules concerning the transportation of hazardous materials—by creating a new subsection (d). This new subsection requires the Secretary of Transportation to submit, once every two years, to the House Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation information on whether the Department of Transportation has under Chapter 51 of Title 49 designated all by-products of the methamphetamine production process as hazardous materials that are known by the Secretary of Transportation to pose an unreasonable risk to health and safety or property when transported in commerce.

Section 402. Methamphetamine production report

Section 402 amends Section 3001 of the Solid Waste Disposal Act by adding a new subsection (j). This new subsection requires the Administrator of the Environmental Protection Agency to submit a report, at least once every two years, to the House Committee on Energy and Commerce and the Senate Committee on Environment and Public Works that details information, collected from law enforcement, states, and other relevant stakeholders, on the by-products of the methamphetamine production process and whether the Administrator considers each of these by-products to be a hazardous waste pursuant to Section C of the Solid Waste Disposal Act and other relevant regulations.

Section 403. Cleanup costs

Section 403(a) clarifies the obligation of restitution for environmental cleanup cost, under Section 413(q) of the Controlled Substances Act, on persons involved in methamphetamine production

and trafficking. Specifically, this provision ensures that any person convicted of a methamphetamine related offense can be held liable for cleanup costs for the methamphetamine production that took place on the defendant's own property, or in his or her place of business or residence. Section 403(b) states that nothing in this section should be interpreted or construed to amend, alter, or otherwise affect the obligations, liabilities, and other responsibilities of any person under any Federal or state environmental laws.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Pursuant to the terms of the referral of the bill to the Committee, the Committee adopted an amendment striking those provisions which were referred to the Committee and inserting new text.

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the provisions of the bill referred to the Committee, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CONTROLLED SUBSTANCES ACT

* * * * * * *

PART A—SHORT TITLE; FINDINGS AND DECLARATION; DEFINITIONS

* * * * * * *

DEFINITIONS

SEC. 102. As used in this title:

(1) * * *

* * * * * * *

(39) The term "regulated transaction" means—

(A) a distribution, receipt, sale, importation, or exportation of, or an international transaction involving shipment of, a listed chemical, or if the Attorney General establishes a threshold amount for a specific listed chemical, a threshold amount, including a cumulative threshold amount for multiple transactions (as determined by the Attorney General, in consultation with the chemical industry and taking into consideration the quantities normally used for lawful purposes), of a listed chemical, except that such term does not include—

(i) * * *

* * * * * * *

[(iv) any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) unless—

[(I)(aa) the drug contains ephedrine or its salts, optical isomers, or salts of optical isomers, pseudo-ephedrine or its salts, optical isomers, or salts of optical isomers, or phenylpropanolamine or its salts, optical isomers, or salts of optical isomers unless otherwise provided by regulation of the Attorney General issued

pursuant to section 204(e) of this title, except that any sale of ordinary over-the-counter pseudoephedrine or phenylpropanolamine products by retail distributors shall not be a regulated transaction (except as provided in section 401(d) of the Comprehensive Methamphetamine Control Act of 1996); or

[(bb) the Attorney General has determined under section 204 that the drug or group of drugs is being diverted to obtain the listed chemical for use in the illicit production of a controlled substance; and

[(II) the quantity of ephedrine, pseudoephedrine, phenylpropanolamine, or other listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical by the Attorney General, except that the threshold for any sale of products containing pseudoephedrine or phenylpropanolamine products by retail distributors or by distributors required to submit reports by section 310(b)(3) of this title shall be 9 grams of pseudoephedrine or 9 grams of phenylpropanolamine in a single transaction and sold in package sizes of not more than 3 grams of pseudoephedrine base or 3 grams of phenylpropanolamine base; or]

(iv) any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act, subject to clause (v), unless—

(I) the Attorney General has determined under section 204 that the drug or group of drugs is being diverted to obtain the listed chemical for use in the illicit production of a controlled substance; and

(II) the quantity of the listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical by the Attorney General;

(v) any transaction in a scheduled listed chemical product; or

[(v)] *(vi)* any transaction in a chemical mixture which the Attorney General has by regulation designated as exempt from the application of this title and title III based on a finding that the mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and that the listed chemical or chemicals contained in the mixture cannot be readily recovered; and

* * * * * * *

[(45) The term "ordinary over-the-counter pseudoephedrine or phenylpropanolamine product" means any product containing pseudoephedrine or phenylpropanolamine that is—

[(A) regulated pursuant to this title; and

[(B)(i) except for liquids, sold in package sizes of not more than 3.0 grams of pseudoephedrine base or 3.0 grams of phenylpropanolamine base, and that is packaged in blister packs, each blister containing not more than two dos-

age units, or where the use of blister packs is technically infeasible, that is packaged in unit dose packets or pouches; and

[(ii) for liquids, sold in package sizes of not more than 3.0 grams of pseudoephedrine base or 3.0 grams of phenylpropanolamine base.]

(45)(A) The term "scheduled listed chemical product" means, subject to subparagraph (B), a product that—

(i) contains ephedrine, pseudoephedrine, or phenylpropanolamine; and

(ii) may be marketed or distributed lawfully in the United States under the Federal, Food, Drug, and Cosmetic Act as a nonprescription drug.

Each reference in clause (i) to ephedrine, pseudoephedrine, or phenylpropanolamine includes each of the salts, optical isomers, and salts of optical isomers of such chemical.

(B) Such term does not include a product described in subparagraph (A) if the product contains a chemical specified in such subparagraph that the Attorney General has under section 201(a) added to any of the schedules under section 202(c). In the absence of such scheduling by the Attorney General, a chemical specified in such subparagraph may not be considered to be a controlled substance.

(46) The term "regulated seller" means a retail distributor (including a pharmacy or a mobile retail vendor), except that such term does not include an employee or agent of such distributor.

(47) The term "mobile retail vendor" means a person or entity that makes sales at retail from a stand that is intended to be temporary, or is capable of being moved from one location to another, whether the stand is located within or on the premises of a fixed facility (such as a kiosk at a shopping center or an airport) or whether the stand is located on unimproved real estate (such as a lot or field leased for retail purposes).

(48) The term "at retail", with respect to the sale or purchase of a scheduled listed chemical product, means a sale or purchase for personal use, respectively.

[(46)] *(49)*(A) The term "retail distributor" means a grocery store, general merchandise store, drug store, or other entity or person whose activities as a distributor relating to [pseudoephedrine or] *ephedrine, pseudoephedrine, or* phenylpropanolamine products are limited almost exclusively to sales for personal use, both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales.

[(B) For purposes of this paragraph, sale for personal use means the sale of below-threshold quantities in a single transaction to an individual for legitimate medical use.]

[(C)] *(B)* For purposes of this paragraph, entities are defined by reference to the Standard Industrial Classification (SIC) code, as follows:

(i) * * *

* * * * * * *

PART B—AUTHORITY TO CONTROL; STANDARDS AND SCHEDULES

* * * * * * *

REMOVAL OF EXEMPTION OF CERTAIN DRUGS

SEC. 204. (a) * * *

* * * * * * *

[(e) REINSTATEMENT OF EXEMPTION WITH RESPECT TO EPHEDRINE, PSEUDOEPHEDRINE, AND PHENYLPROPANOLAMINE DRUG PRODUCTS.—Pursuant to subsection (d)(1), the Attorney General shall by regulation reinstate the exemption with respect to a particular ephedrine, pseudoephedrine, or phenylpropanolamine drug product if the Attorney General determines that the drug product is manufactured and distributed in a manner that prevents diversion. In making this determination the Attorney General shall consider the factors listed in subsection (d)(2). Any regulation issued pursuant to this subsection may be amended or revoked based on the factors listed in subsection (d)(4).]

PART C—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES; PIPERIDINE REPORTING

* * * * * * *

REGISTRATION REQUIREMENTS

SEC. 303. (a) * * *

* * * * * * *

(h) The Attorney General shall register an applicant to distribute 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 distribution of a drug product that is exempted under [section 102(39)(A)(iv)] *clause (iv) or (v) of section 102(39)(A)*. In determining the public interest for the purposes of this subsection, the Attorney General shall consider—

(1) * * *

* * * * * * *

QUOTAS APPLICABLE TO CERTAIN SUBSTANCES

SEC. 306. (a) The Attorney General shall determine the total quantity and establish production quotas for each basic class of controlled substance in schedules I and II *and for ephedrine, pseudoephedrine, and phenylpropanolamine* to be manufactured each calendar year to provide for the estimated medical, scientific, research, and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks. Production quotas shall be established in terms of quantities of each basic class of controlled substance and not in terms of individual pharmaceutical dosage forms prepared from or containing such a controlled substance.

(b) The Attorney General shall limit or reduce individual production quotas to the extent necessary to prevent the aggregate of individual quotas from exceeding the amount determined necessary each year by the Attorney General under subsection (a). The quota

of each registered manufacturer for each basic class of controlled substance in schedule I or II *or for ephedrine, pseudoephedrine, or phenylpropanolamine* shall be revised in the same proportion as the limitation or reduction of the aggregate of the quotas. However, if any registrant, before the issuance of a limitation or reduction in quota, has manufactured in excess of his revised quota, the amount of the excess shall be subtracted from his quota for the following year.

(c) On or before October 1 of each year, upon application therefor by a registered manufacturer, the Attorney General shall fix a manufacturing quota for the basic classes of controlled substances in schedules I and II *and for ephedrine, pseudoephedrine, and phenylpropanolamine* that the manufacturer seeks to produce. The quota shall be subject to the provisions of subsections (a) and (b) of this section. In fixing such quotas, the Attorney General shall determine the manufacturer's estimated disposal, inventory, and other requirements for the calendar year; and, in making his determination, the Attorney General shall consider the manufacturer's current rate of disposal, the trend of the national disposal rate during the preceding calendar year, the manufacturer's production cycle and inventory position, the economic availability of raw materials, yield and stability problems, emergencies such as strikes and fires, and other factors.

(d) The Attorney General shall, upon application and subject to the provisions of subsections (a) and (b) of this section, fix a quota for a basic class of controlled substance in schedule I or II for any registrant who has not manufactured that basic class of controlled substance *or ephedrine, pseudoephedrine, or phenylpropanolamine* during one or more preceding calendar years. In fixing such quota, the Attorney General shall take into account the registrant's reasonably anticipated requirements for the current year; and, in making his determination of such requirements, he shall consider such factors specified in subsection (c) of this section as may be relevant.

(e) At any time during the year any registrant who has applied for or received a manufacturing quota for a basic class of controlled substance in schedule I or II *or for ephedrine, pseudoephedrine, or phenylpropanolamine* may apply for an increase in that quota to meet his estimated disposal, inventory, and other requirements during the remainder of that year. In passing upon the application the Attorney General shall take into consideration any occurrences since the filing of the registrant's initial quota application that may require an increased manufacturing rate by the registrant during the balance of the year. In passing upon the application the Attorney General may also take into account the amount, if any, by which the determination of the Attorney General under subsection (a) of this section exceeds the aggregate of the quotas of all registrants under this section.

(f) Notwithstanding any other provisions of this title, no registration or quota may be required for the manufacture of such quantities of controlled substances in schedules I and II *or ephedrine, pseudoephedrine, or phenylpropanolamine* as incidentally and necessarily result from the manufacturing process used for the manufacture of a controlled substance *or of ephedrine, pseudoephedrine, or phenylpropanolamine* with respect to which its manufacturer is duly registered under this title. The Attorney General may, by reg-

ulation, prescribe restrictions on the retention and disposal of such incidentally produced substances *or chemicals*.

(g) Each reference in this section to ephedrine, pseudoephedrine, or phenylpropanolamine includes each of the salts, optical isomers, and salts of optical isomers of such chemical.

* * * * * * *

REGULATION OF LISTED CHEMICALS AND CERTAIN MACHINES

SEC. 310. (a) * * *
(b)(1) * * *

* * * * * * *

(3) MAIL ORDER REPORTING.—
(A) * * *

* * * * * * *

(D) Except as provided in subparagraph (E), the following distributions to a nonregulated person, and the following export transactions, shall not be subject to the reporting requirement in subparagraph (B):

(i) * * *

(ii) Distributions of drug products by retail distributors that may not include face-to-face transactions to the extent that such distributions are consistent with the activities authorized for a retail distributor as specified in section ⟦102(46)⟧ *102(49), except that this clause does not apply to sales of scheduled listed chemical products at retail*.

* * * * * * *

(v) Exports which have been reported to the Attorney General pursuant to section 1004 or 1018 or which are subject to a waiver granted under ⟦section 1018(e)(2)⟧ *section 1018(f)(2)*.

* * * * * * *

(d) SCHEDULED LISTED CHEMICALS; RESTRICTIONS ON SALES QUANTITY; REQUIREMENTS REGARDING NONLIQUID FORMS.—With respect to ephedrine base, pseudoephedrine base, or phenylpropanolamine base in a scheduled listed chemical product—

(1) the quantity of such base sold at retail in such a product by a regulated seller, or a distributor required to submit reports by subsection (b)(3) may not, for any purchaser, exceed a daily amount of 3.6 grams, without regard to the number of transactions; and

(2) such a seller or distributor may not sell such a product in nonliquid form (including gell caps) at retail unless the product is packaged in blister packs, each blister containing not more than 2 dosage units, or where the use of blister packs is technically infeasible, the product is packaged in unit dose packets or pouches.

(e) SCHEDULED LISTED CHEMICALS; BEHIND-THE-COUNTER ACCESS; LOGBOOK REQUIREMENT; TRAINING OF SALES PERSONNEL; PRIVACY PROTECTIONS.—

(1) REQUIREMENTS REGARDING RETAIL TRANSACTIONS.—

(A) IN GENERAL.—Each regulated seller shall ensure that, subject to subparagraph (F), sales by such seller of a sched-

uled listed chemical product at retail are made in accordance with the following:

(i) In offering the product for sale, the seller places the product such that customers do not have direct access to the product before the sale is made (in this paragraph referred to as "behind-the-counter" placement). For purposes of this paragraph, a behind-the-counter placement of a product includes circumstances in which the product is stored in a locked cabinet that is located in an area of the facility involved to which customers do have direct access.

(ii) The seller delivers the product directly into the custody of the purchaser.

(iii) The seller maintains, in accordance with criteria issued by the Attorney General, a written or electronic list of such sales that identifies the products by name, the quantity sold, the names and addresses of purchasers, and the dates and times of the sales (which list is referred to in this subsection as the "logbook"), except that such requirement does not apply to any purchase by an individual of a single sales package if that package contains not more than 60 milligrams of pseudoephedrine.

(iv) In the case of a sale to which the requirement of clause (iii) applies, the seller does not sell such a product unless—

(I) the prospective purchaser—

(aa) presents an identification card that provides a photograph and is issued by a State or the Federal Government, or a document that, with respect to identification, is considered acceptable for purposes of sections 274a.2(b)(1)(v)(A) and 274a.2(b)(1)(v)(B) of title 8, Code of Federal Regulations (as in effect on or after the date of the enactment of the Combat Methamphetamine Epidemic Act of 2005); and

(bb) signs the logbook and enters in the logbook his or her name, address, and the date and time of the sale; and

(II) the seller—

(aa) determines that the name entered in the logbook corresponds to the name provided on such identification and that the date and time entered are correct; and

(bb) enters in the logbook the name of the product and the quantity sold.

(v) The logbook includes, in accordance with criteria of the Attorney General, a notice to purchasers that entering false statements or misrepresentations in the logbook may subject the purchasers to criminal penalties under section 1001 of title 18, United States Code, which notice specifies the maximum fine and term of imprisonment under such section.

(vi) The seller maintains each entry in the logbook for not fewer than two years after the date on which the entry is made.

(vii) In the case of individuals who are responsible for delivering such products into the custody of purchasers or who deal directly with purchasers by obtaining payments for the products, the seller has submitted to the Attorney General a self-certification that all such individuals have, in accordance with criteria under subparagraph (B)(ii), undergone training provided by the seller to ensure that the individuals understand the requirements that apply under this subsection and subsection (d).

(viii) The seller maintains a copy of such certification and records demonstrating that individuals referred to in clause (vii) have undergone the training.

(ix) If the seller is a mobile retail vendor:

(I) The seller complies with clause (i) by placing the product in a locked cabinet.

(II) The seller does not sell more than 7.5 grams of ephedrine base, pseudoephedrine base, or phenylpropanolamine base in such products per customer during a 30-day period.

(B) ADDITIONAL PROVISIONS REGARDING CERTIFICATIONS AND TRAINING.—

(i) IN GENERAL.—A regulated seller may not sell any scheduled listed chemical product at retail unless the seller has submitted to the Attorney General the self-certification referred to in subparagraph (A)(vii). The certification is not effective for purposes of the preceding sentence unless, in addition to provisions regarding the training of individuals referred to in such subparagraph, the certification includes a statement that the seller understands each of the requirements that apply under this paragraph and under subsection (d) and agrees to comply with the requirements.

(ii) ISSUANCE OF CRITERIA; SELF-CERTIFICATION.—The Attorney General shall by regulation establish criteria for certifications under this paragraph. The criteria shall—

(I) provide that the certifications are self-certifications provided through the program under clause (iii);

(II) provide that a separate certification is required for each place of business at which a regulated seller sells scheduled listed chemical products at retail; and

(III) include criteria for training under subparagraph (A)(vii).

(iii) PROGRAM FOR REGULATED SELLERS.—The Attorney General shall establish a program regarding such certifications and training in accordance with the following:

(I) The program shall be carried out through an Internet site of the Department of Justice and such

other means as the Attorney General determines to be appropriate.

(II) The program shall inform regulated sellers that section 1001 of title 18, United States Code, applies to such certifications.

(III) The program shall make available to such sellers an explanation of the criteria under clause (ii).

(IV) The program shall be designed to permit the submission of the certifications through such Internet site.

(V) The program shall be designed to automatically provide the explanation referred to in subclause (III), and an acknowledgement that the Department has received a certification, without requiring direct interactions of regulated sellers with staff of the Department (other than the provision of technical assistance, as appropriate).

(iv) AVAILABILITY OF CERTIFICATION TO STATE AND LOCAL OFFICIALS.—Promptly after receiving a certification under subparagraph (A)(vii), the Attorney General shall make available a copy of the certification to the appropriate State and local officials.

(C) PRIVACY PROTECTIONS.—In order to protect the privacy of individuals who purchase scheduled listed chemical products, the Attorney General shall by regulation establish restrictions on disclosure of information in logbooks under subparagraph (A)(iii). Such regulations shall—

(i) provide for the disclosure of the information as appropriate to the Attorney General and to State and local law enforcement agencies; and

(ii) prohibit accessing, using, or sharing information in the logbooks for any purpose other than to ensure compliance with this title or to facilitate a product recall to protect public health and safety.

(D) FALSE STATEMENTS OR MISREPRESENTATIONS BY PURCHASERS.—For purposes of section 1001 of title 18, United States Code, entering information in the logbook under subparagraph (A)(iii) shall be considered a matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States.

(E) GOOD FAITH PROTECTION.—A regulated seller who in good faith releases information in a logbook under subparagraph (A)(iii) to Federal, State, or local law enforcement authorities is immune from civil liability for such release unless the release constitutes gross negligence or intentional, wanton, or willful misconduct.

(F) INAPPLICABILITY OF REQUIREMENTS TO CERTAIN SALES.—Subparagraph (A) does not apply to the sale at retail of a scheduled listed chemical product if a report on the sales transaction is required to be submitted to the Attorney General under subsection (b)(3).

(G) CERTAIN MEASURES REGARDING THEFT AND DIVERSION.—A regulated seller may take reasonable measures to guard against employing individuals who may present a

risk with respect to the theft and diversion of scheduled listed chemical products, which may include, notwithstanding State law, asking applicants for employment whether they have been convicted of any crime involving or related to such products or controlled substances.

(2) MAIL-ORDER REPORTING; VERIFICATION OF IDENTITY OF PURCHASER; 30-DAY RESTRICTION ON QUANTITIES FOR INDIVIDUAL PURCHASERS.—Each regulated person who makes a sale at retail of a scheduled listed chemical product and is required under subsection (b)(3) to submit a report of the sales transaction to the Attorney General is subject to the following:

(A) The person shall, prior to shipping the product, confirm the identity of the purchaser in accordance with procedures established by the Attorney General. The Attorney General shall by regulation establish such procedures.

(B) The person may not sell more than 7.5 grams of ephedrine base, pseudoephedrine base, or phenylpropanolamine base in such products per customer during a 30-day period.

(3) EXEMPTIONS FOR CERTAIN PRODUCTS.—Upon the application of a manufacturer of a scheduled listed chemical product, the Attorney General may by regulation provide that the product is exempt from the provisions of subsection (d) and paragraphs (1) and (2) of this subsection if the Attorney General determines that the product cannot be used in the illicit manufacture of methamphetamine.

* * * * * * *

PART D—OFFENSES AND PENALTIES

PROHIBITED ACTS A—PENALTIES

SEC. 401. (a) * * *

* * * * * * *

(f)(1) Whoever knowingly distributes a listed chemical in violation of this title (other than in violation of a recordkeeping or reporting requirement of section 310) shall*, except to the extent that paragraph (12), (13), or (14) of section 402(a) applies,* be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

* * * * * * *

PROHIBITED ACTS B—PENALTIES

SEC. 402. (a) It shall be unlawful for any person—

(1) * * *

* * * * * * *

(10) negligently to fail to keep a record or make a report under section 310; **[**or**]**

(11) to distribute a laboratory supply to a person who uses, or attempts to use, that laboratory supply to manufacture a controlled substance or a listed chemical, in violation of this title or title III, with reckless disregard for the illegal uses to which such a laboratory supply will be put**[**.**]***;*

(12) who is a regulated seller, or a distributor required to submit reports under subsection (b)(3) of section 310—

(A) to sell at retail a scheduled listed chemical product in violation of paragraph (1) of subsection (d) of such section, knowing at the time of the transaction involved (independent of consulting the logbook under subsection (e)(1)(A)(iii) of such section) that the transaction is a violation; or

(B) to knowingly or recklessly sell at retail such a product in violation of paragraph (2) of such subsection (d);

(13) who is a regulated seller to knowingly or recklessly sell at retail a scheduled listed chemical product in violation of subsection (e) of such section; or

(14) who is a regulated seller or an employee or agent of such seller to disclose, in violation of regulations under subparagraph (C) of section 310(e)(1), information in logbooks under subparagraph (A)(iii) of such section, or to refuse to provide such a logbook to Federal, State, or local law enforcement authorities.

* * * * * * *

(b) It shall be unlawful for any person who is a registrant to manufacture a controlled substance in schedule I or II*, or ephedrine, pseudoephedrine, or phenylpropanolamine or any of the salts, optical isomers, or salts of optical isomers of such chemical,* which is—

(1) * * *

* * * * * * *

(c)(1) * * *

* * * * * * *

(4)(A) If a regulated seller, or a distributor required to submit reports under section 310(b)(3), violates paragraph (12) of subsection (a) of this section, or if a regulated seller violates paragraph (13) of such subsection, the Attorney General may by order prohibit such seller or distributor (as the case may be) from selling any scheduled listed chemical product. Any sale of such a product in violation of such an order is subject to the same penalties as apply under paragraph (2).

(B) An order under subparagraph (A) may be imposed only through the same procedures as apply under section 304(c) for an order to show cause.

* * * * * * *

CRIMINAL FORFEITURES

PROPERTY SUBJECT TO CRIMINAL FORFEITURE

SEC. 413. (a) * * *

* * * * * * *

(q) The court, when sentencing a defendant convicted of an offense under this title or title III involving the manufacture*, the possession, or the possession with intent to distribute,* of amphetamine or methamphetamine, shall—

(1) * * *

(2) order the defendant to reimburse the United States, the State or local government concerned, or both the United States and the State or local government concerned for the costs incurred by the United States or the State or local government concerned, as the case may be, for the cleanup associated with the manufacture of amphetamine or methamphetamine by the defendant*, or on premises or in property that the defendant owns, resides, or does business in*; and

* * * * * * *

SECTION 401 OF THE COMPREHENSIVE METHAMPHETAMINE CONTROL ACT OF 1996

SEC. 401. DIVERSION OF CERTAIN PRECURSOR CHEMICALS.

(a) * * *

* * * * * * *

[(d) REGULATION OF RETAIL SALES.—

[(1) PSEUDOEPHEDRINE.—

[(A) LIMIT.—

[(i) IN GENERAL.—Not sooner than the effective date of this section and subject to the requirements of clause (ii), the Attorney General may establish by regulation a single-transaction limit of 24 grams of pseudoephedrine base for retail distributors. Notwithstanding any other provision of law, the single-transaction threshold quantity for pseudoephedrine-containing compounds may not be lowered beyond that established in this paragraph.

[(ii) CONDITIONS.—In order to establish a single-transaction limit of 24 grams of pseudoephedrine base, the Attorney General shall establish, following notice, comment, and an informal hearing that since the date of enactment of this Act there are a significant number of instances where ordinary over-the-counter pseudoephedrine products as established in paragraph (45) of section 102 of the Controlled Substances Act (21 U.S.C. 802(45)), as added by this Act, sold by retail distributors as established in paragraph (46) in section 102 of the Controlled Substances Act (21 U.S.C. 802(46)), are being widely used as a significant source of precursor chemicals for illegal manufacture of a controlled substance for distribution or sale.

[(B) VIOLATION.—Any individual or business that violates the thresholds established in this paragraph shall, with respect to the first such violation, receive a warning letter from the Attorney General and, if a business, the business shall be required to conduct mandatory education of the sales employees of the firm with regard to the legal sales of pseudoephedrine. For a second violation occurring within 2 years of the first violation, the business or individual shall be subject to a civil penalty of not more than $5,000. For any subsequent violation occurring within 2 years of the previous violation, the business or individual

shall be subject to a civil penalty not to exceed the amount of the previous civil penalty plus $5,000.

[(2) PHENYLPROPANOLAMINE.—

[(A) LIMIT.—

[(i) IN GENERAL.—Not sooner than the effective date of this section and subject to the requirements of clause (ii), the Attorney General may establish by regulation a single-transaction limit of 24 grams of phenylpropanolamine base for retail distributors. Notwithstanding any other provision of law, the single-transaction threshold quantity for phenylpropanolamine-containing compounds may not be lowered beyond that established in this paragraph.

[(ii) CONDITIONS.—In order to establish a single-transaction limit of 24 grams of phenylpropanolamine base, the Attorney General shall establish, following notice, comment, and an informal hearing, that since the date of enactment of this Act there are a significant number of instances where ordinary over-the-counter phenylpropanolamine products as established in paragraph (45) of section 102 of the Controlled Substances Act (21 U.S.C. 802(45)), as added by this Act, sold by retail distributors as established in paragraph (46) in section 102 of the Controlled Substances Act (21 U.S.C. 802(46)), are being used as a significant source of precursor chemicals for illegal manufacture of a controlled substance in bulk.

[(B) VIOLATION.—Any individual or business that violates the thresholds established in this paragraph shall, with respect to the first such violation, receive a warning letter from the Attorney General and, if a business, the business shall be required to conduct mandatory education of the sales employees of the firm with regard to the legal sales of pseudoephedrine. For a second violation occurring within 2 years of the first violation, the business or individual shall be subject to a civil penalty of not more than $5,000. For any subsequent violation occurring within 2 years of the previous violation, the business or individual shall be subject to a civil penalty not to exceed the amount of the previous civil penalty plus $5,000.

[(3) SIGNIFICANT NUMBER OF INSTANCES.—

[(A) IN GENERAL.—For purposes of this subsection, isolated or infrequent use, or use in insubstantial quantities, of ordinary over-the-counter pseudoephedrine or phenylpropanolamine, as defined in section 102(45) of the Controlled Substances Act, as added by section 401(b) of this Act, and sold at the retail level for the illicit manufacture of methamphetamine or amphetamine may not be used by the Attorney General as the basis for establishing the conditions under paragraph (1)(A)(ii) of this subsection, with respect to pseudoephedrine, and paragraph (2)(A)(ii) of this subsection, with respect to phenylpropanolamine.

[(B) CONSIDERATIONS AND REPORT.—The Attorney General shall—

[(i) in establishing a finding under paragraph (1)(A)(ii) or (2)(A)(ii) of this subsection, consult with the Secretary of Health and Human Services in order to consider the effects on public health that would occur from the establishment of new single transaction limits as provided in such paragraph; and

[(ii) upon establishing a finding, transmit a report to the Committees on the Judiciary in both, respectively, the House of Representatives and the Senate in which the Attorney General will provide the factual basis for establishing the new single transaction limits.

[(4) DEFINITION OF BUSINESS.—For purposes of this subsection, the term "business" means the entity that makes the direct sale and does not include the parent company of a business not involved in a direct sale regulated by this subsection.

[(5) JUDICIAL REVIEW.—Any regulation promulgated by the Attorney General under this section shall be subject to judicial review pursuant to section 507 of the Controlled Substances Act (21 U.S.C. 877).

[(e) EFFECT ON THRESHOLDS.—Nothing in the amendments made by subsection (b) or the provisions of subsection (d) shall affect the authority of the Attorney General to modify thresholds (including cumulative thresholds) for retail distributors for products other than ordinary over-the-counter pseudoephedrine or phenylpropanolamine products (as defined in section 102(45) of the Controlled Substances Act, as added by this section) or for non-retail distributors, importers, or exporters.

[(f) COMBINATION EPHEDRINE PRODUCTS.—

[(1) IN GENERAL.—For the purposes of this section, combination ephedrine products shall be treated the same as pseudoephedrine products, except that—

[(A) a single transaction limit of 24 grams shall be effective as of the date of enactment of this Act and shall apply to sales of all combination ephedrine products, notwithstanding the form in which those products are packaged, made by retail distributors or distributors required to submit a report under section 310(b)(3) of the Controlled Substances Act (as added by section 402 of this Act);

[(B) for regulated transactions for combination ephedrine products other than sales described in subparagraph (A), the transaction limit shall be—

[(i) 1 kilogram of ephedrine base, effective on the date of enactment of this Act; or

[(ii) a threshold other than the threshold described in clause (i), if established by the Attorney General not earlier than 1 year after the date of enactment of this Act; and

[(C) the penalties provided in subsection (d)(1)(B) of this section shall take effect on the date of enactment of this Act for any individual or business that violates the single transaction limit of 24 grams for combination ephedrine products.

[(2) DEFINITION.—For the purposes of this section, the term "combination ephedrine product" means a drug product con-

taining ephedrine or its salts, optical isomers, or salts of optical isomers and therapeutically significant quantities of another active medicinal ingredient.]

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CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT

TITLE III—IMPORTATION AND EXPORTATION; AMENDMENTS AND REPEALS OF REVENUE LAWS

SHORT TITLE

SEC. 1000. This title may be cited as the "Controlled Substances Import and Export Act".

PART A—IMPORTATION AND EXPORTATION

IMPORTATION OF CONTROLLED SUBSTANCES

SEC. 1002. (a) 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, *or ephedrine, pseudoephedrine, or phenylpropanolamine,* except that—

(1) such amounts of crude opium poppy straw, concentrate of poppy straw, and coca leaves*, and of ephedrine, pseudoephedrine, and phenylpropanolamine,* as the Attorney General finds to be necessary to provide for medical, scientific, or other legitimate purposes, and

* * * * * * *

(d)(1) With respect to a registrant under section 1008 who is authorized under subsection (a)(1) to import ephedrine, pseudoephedrine, or phenylpropanolamine, at any time during the year the registrant may apply for an increase in the amount of such chemical that the registrant is authorized to import, and the Attorney General may approve the application if the Attorney General determines that the approval is necessary to provide for medical, scientific, or other legitimate purposes regarding the chemical.

(2) With respect to the application under paragraph (1):

(A) Not later than 60 days after receiving the application, the Attorney General shall approve or deny the application.

(B) In approving the application, the Attorney General shall specify the period of time for which the approval is in effect, or shall provide that the approval is effective until the registrant involved is notified in writing by the Attorney General that the approval is terminated.

(C) If the Attorney General does not approve or deny the application before the expiration of the 60-day period under subparagraph (A), the application is deemed to be approved, and such approval remains in effect until the Attorney General notifies the registrant in writing that the approval is terminated.

(e) Each reference in this section to ephedrine, pseudoephedrine, or phenylpropanolamine includes each of the salts, optical isomers, and salts of optical isomers of such chemical.

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PROHIBITED ACTS A—PENALTIES

SEC. 1010. (a) * * *

* * * * * * *

(d) A person who knowingly or intentionally—

(1) * * *

* * * * * * *

(5) imports or exports a listed chemical, with the intent to evade the reporting or recordkeeping requirements of section 1018 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)] *paragraph (2) or (3) of section 1018(f)* by misrepresenting the actual country of final destination of the listed chemical or the actual listed chemical being imported or exported;

[(6) imports or exports a listed chemical in violation of section 1007 or 1018; or]

(6) imports a listed chemical in violation of section 1002, imports or exports such a chemical in violation of section 1007 or 1018, or transfers such a chemical in violation of section 1018(d); or

* * * * * * *

NOTIFICATION, SUSPENSION OF SHIPMENT, AND PENALTIES WITH RESPECT TO IMPORTATION AND EXPORTATION OF LISTED CHEMICALS

SEC. 1018. (a) * * *

(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] *or to a transaction that is 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.

* * * * * * *

(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 *(without regard to the form of the chemical that may be diverted, including the diversion of a finished drug product to be manufactured from bulk chemicals to be transferred)*. 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.

* * * * * * *

(d)(1)(A) Information provided in a notice under subsection (a) or (b) shall include the name of the person to whom the importer or exporter involved intends to transfer the listed chemical involved, and the quantity of such chemical to be transferred.

(B) In the case of a notice under subsection (b) submitted by a regular importer, if the transferee identified in the notice is not a regular customer, such importer may not transfer the listed chemical until after the expiration of the 15-day period beginning on the date on which the notice is submitted to the Attorney General.

(C) After a notice under subsection (a) or (b) is submitted to the Attorney General, if circumstances change and the importer or exporter will not be transferring the listed chemical to the transferee identified in the notice, or will be transferring a greater quantity of the chemical than specified in the notice, the importer or exporter shall update the notice to identify the most recent prospective transferee or the most recent quantity or both (as the case may be) and may not transfer the listed chemical until after the expiration of the 15-day period beginning on the date on which the update is submitted to the Attorney General, except that such 15-day restriction does not apply if the prospective transferee identified in the update is a regular customer. The preceding sentence applies with respect to changing circumstances regarding a transferee or quantity identified in an update to the same extent and in the same manner as such sentence applies with respect to changing circumstances regarding a transferee or quantity identified in the original notice under subsection (a) or (b).

(D) In the case of a transfer of a listed chemical that is subject to a 15-day restriction under subparagraph (B) or (C), the transferee involved shall, upon the expiration of the 15-day period, be considered to qualify as a regular customer, unless the Attorney General otherwise notifies the importer or exporter involved in writing.

(2) With respect to a transfer of a listed chemical with which a notice or update referred to in paragraph (1) is concerned:

(A) The Attorney General, in accordance with the same procedures as apply under subsection (c)(2)—

(i) may order the suspension of the transfer of the listed chemical by the importer or exporter involved, except for a transfer to a regular customer, on the ground that the chemical may be diverted to the clandestine manufacture of a controlled substance (without regard to the form of the chemical that may be diverted, including the diversion of a finished drug product to be manufactured from bulk chemicals to be transferred), subject to the Attorney General ordering such suspension before the expiration of the 15-day period referred to in paragraph (1) with respect to the importation or exportation (in any case in which such a period applies); and

(ii) may, for purposes of clause (i) and paragraph (1), disqualify a regular customer on such ground.

(B) From and after the time when the Attorney General provides written notice of the order under subparagraph (A) (including a statement of the legal and factual basis for the order)

to the importer or exporter, the importer or exporter may not carry out the transfer.

(3) For purposes of this subsection:

(A) The terms "importer" and "exporter" mean a regulated person who imports or exports a listed chemical, respectively.

(B) The term "transfer", with respect to a listed chemical, includes the sale of the chemical.

(C) The term "transferee" means a person to whom an importer or exporter transfers a listed chemical.

[(d)**]** *(e)* 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)**]** *(f)*(1) * * *

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(g) Within 30 days after a transaction covered by this section is completed, the importer or exporter shall send the Attorney General a return declaration containing particulars of the transaction, including the date, quantity, chemical, container, name of transferees, and such other information as the Attorney General may specify in regulations. For importers, a single return declaration may include the particulars of both the importation and distribution. If the importer has not distributed all chemicals imported by the end of the initial 30-day period, the importer shall file supplemental return declarations no later than 30 days from the date of any further distribution, until the distribution or other disposition of all chemicals imported pursuant to the import notification or any update are accounted for.

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SECTION 5103 OF TITLE 49, UNITED STATES CODE

§ 5103. General regulatory authority

(a) * * *

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(d) BIENNIAL REPORT.—The Secretary of Transportation shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Senate Committee on Commerce, Science, and Transportation a biennial report providing information on whether the Secretary has designated as hazardous materials for purposes of chapter 51 of such title all by-products of the methamphetamine-production process that are known by the Secretary to pose an unreasonable risk to health and safety or property when transported in commerce in a particular amount and form.

SECTION 3001 OF THE SOLID WASTE DISPOSAL ACT

IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

SEC. 3001. (a) * * *

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(j) METHAMPHETAMINE PRODUCTION.—Not later than every 24 months, the Administrator shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate a report setting forth information collected by the Administrator from law enforcement agencies, States, and other relevant stakeholders that identifies the byproducts of the methamphetamine production process and whether the Administrator considers each of the byproducts to be a hazardous waste pursuant to this section and relevant regulations.

EXCHANGE OF COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC, November 15, 2005.

Hon. JOE BARTON,
Chairman, Committee on Energy and Commerce,
Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to you concerning H.R. 3889, the "Methamphetamine Epidemic Elimination Act." This bill was referred by the Speaker to your Committee along with orders, including the Judiciary Committee and this Committee. The bill contains language relating to the importing and exporting of certain chemicals which are precursors used in the manufacturing of methamphetamines, which falls within the Rule X jurisdiction of this Committee.

Specifically, the language in section 202 of the bill concerning requirements relating to the largest exporting and importing countries of certain precursor chemicals, and the language of section 203 relating to prevention of smuggling of methamphetamine into the United States from Mexico, deal with matters over which this Committee has had a long-term jurisdictional and subject matter interest. This Committee has worked closely with the Committee on the Judiciary, which also has long-term jurisdictional and subject matter interest in the problem of precursor chemicals. As a result of this collaboration, we have crafted language in sections 202 and 203 which is acceptable to both committees.

In light of your Committee's desire to proceed to floor consideration of this bill, I am willing to waive further consideration of the bill. I do so with the understanding that by waiving consideration of the bill, the Committee on International Relations does not waive any future jurisdictional claim over these or similar measures. In addition, in the event of a conference with the Senate on this matter, this Committee reserves the right to seek the appointment of conferees.

Please place this letter into the Committee's report on H.R. 3889 or the Congressional Record during consideration of the measure on the House floor. Thank you for the cooperative spirit in which

you have worked regarding this matter and others between our respective committees.

Sincerely,

HENRY J. HYDE,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, November 15, 2005.

Hon. HENRY J. HYDE,
Chairman, Committee on International Relations,
House of Representatives, Washington, DC.

DEAR CHAIRMAN HYDE: Thank you for your letter concerning H.R. 3889 "Methamphetamine Epidemic Elimination Act." I concur with your statements that the bill contains language relating to the importing and exporting of certain chemicals which are precursors used in the manufacturing of methamphetamines which falls within the Rule X jurisdiction of the International Relations Committee. Section 202 of the bill concerning requirements relating to the largest exporting and importing countries of certain precursor chemicals and the language of section 203 relating to prevention of smuggling of methamphetamine into the United States from Mexico both deal with matters over which your Committee has subject matter jurisdiction.

I appreciate your willingness to waive further consideration of the bill by your Committee. By waiving the opportunity to markup the bill I concur that the Committee on International Relations does not waive any future jurisdictional claim over these or similar measures. In addition, in the event of a conference with the Senate on this matter I will recommend that your Committee have the right to seek the appointment of conferees.

As you have requested, I will enter this exchange of letters into the Committee's report on H.R. 3889 or the Congressional Record during the debate on this bill.

Sincerely,

JOE BARTON,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC, November 15, 2005.

Hon. JOE BARTON,
Chairman, Committee on Energy and Commerce,
Rayburn Building, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to you concerning the jurisdictional interest of the Transportation and Infrastructure Committee in matters being considered in H.R. 3889, the Methamphetamine Epidemic Elimination Act. As you know, this Committee received a referral of the bill.

Our Committee recognizes the importance of H.R. 3889 and the need for the legislation to move expeditiously to the House Floor this week. Therefore, I am willing to have the Transportation Committee discharged from consideration of the bill.

The Committee on Transportation and Infrastructure also asks that you support our request to be conferees on the provisions over which we have jurisdiction during any House-Senate conference. I would appreciate it if you would include a copy of this letter and your response in the Congressional Record.

Thank you for your cooperation in this matter.

Sincerely,

DON YOUNG,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, November 16, 2005.

Hon. DON YOUNG,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.

DEAR CHAIRMAN YOUNG: Thank you for your letter in regards to H.R. 3889, the Methamphetamine Epidemic Elimination Act, which the Committee on Energy and Commerce ordered reported on November 15, 2005.

As the Committee on Transportation and Infrastructure was named as an additional Committee of jurisdiction upon the bill's introduction, I acknowledge and appreciate your willingness not to exercise your full referral on the bill. In doing so, I agree that your decision to forgo further action on the bill will not prejudice the Committee on Transportation and Infrastructure with respect to its jurisdictional prerogatives on this legislation or similar legislation. Further, I recognize your right to request conferees on those provisions within the Committee on Transportation and Infrastructure's jurisdiction should they be the subject of a House-Senate conference on this or similar legislation.

I will include your letter and this response in the Committee's report on H.R. 3889 or in the Congressional Record during consideration on the House floor.

Sincerely,

JOE BARTON,
Chairman.

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