

TITLE VII--COMBAT METHAMPHETAMINE EPIDEMIC ACT OF 2005

SEC. 701. SHORT TITLE.

This title may be cited as the `Combat Methamphetamine Epidemic Act of 2005'.

Subtitle A--Domestic Regulation of Precursor Chemicals

SEC. 711. 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 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.

`(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 not 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) Restrictions on Quantity Purchased During 30-Day Period-

(1) IN GENERAL- Section 404(a) of the Controlled Substances Act (21 U.S.C. 844(a)) is amended by inserting after the second sentence the following: `It shall be unlawful for any person to knowingly or intentionally purchase at retail during a 30 day period more than 9 grams of ephedrine base, pseudoephedrine base, or phenylpropanolamine base in a scheduled listed chemical product, except that, of such 9 grams, not more than 7.5 grams may be imported by means of shipping through any private or commercial carrier or the Postal Service.'

(2) EFFECTIVE DATE- The amendment made by paragraph (1) applies on and after the expiration of the 30-day period beginning on the date of the enactment of this Act.

(f) 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.'.

(g) 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).