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1ST SESSION

H. R. 3216

IN THE SENATE OF THE UNITED STATES

NOVEMBER 22, 1993

Received

AN ACT

To amend the Comprehensive Drug Abuse Prevention and Control Act of 1970 to control the diversion of certain chemicals used in the illicit production of controlled substances such as methcathinone and methamphetamine, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Domestic Chemical Di-
5 version Control Act of 1993”.

6 **SEC. 2. DEFINITION AMENDMENTS.**

7 (a) DEFINITIONS.—Section 102 of the Controlled
8 Substances Act (21 U.S.C. 802) is amended—

9 (1) in paragraph (33), by striking “any listed
10 precursor chemical or listed essential chemical” and

1 inserting “any list I chemical or any list II chemi-
2 cal”;

3 (2) in paragraph (34)—

4 (A) by striking “listed precursor chemical”
5 and inserting “list I chemical”; and

6 (B) by striking “critical to the creation”
7 and inserting “important to the manufacture”;

8 (3) in paragraph (34) (A), (F), and (H), by in-
9 serting “, its esters,” before “and”;

10 (4) in paragraph (35)—

11 (A) by striking “listed essential chemical”
12 and inserting “list II chemical”;

13 (B) by inserting “(other than a list I
14 chemical)” before “specified”; and

15 (C) by striking “as a solvent, reagent, or
16 catalyst”; and

17 (5) in paragraph (38), by inserting “or who
18 acts as a broker or trader for an international trans-
19 action involving a listed chemical, a tableting ma-
20 chine, or an encapsulating machine” before the
21 period;

22 (6) in paragraph (39)(A)—

23 (A) by striking “importation or exportation
24 of” and inserting “importation, or exportation

1 of, or an international transaction involving
2 shipment of,”;

3 (B) in clause (iii) by inserting “or any cat-
4 egory of transaction for a specific listed chemi-
5 cal or chemicals” after “transaction”;

6 (C) by amending clause (iv) to read as fol-
7 lows:

8 “(iv) any transaction in a listed chemical
9 that is contained in a drug that may be mar-
10 keted or distributed lawfully in the United
11 States under the Federal Food, Drug, and Cos-
12 metic Act (21 U.S.C. 301 et seq.) unless—

13 “(I)(aa) the drug contains ephedrine
14 or its salts, optical isomers, or salts of op-
15 tical isomers as the only active medicinal
16 ingredient or contains ephedrine or its
17 salts, optical isomers, or salts of optical
18 isomers and therapeutically insignificant
19 quantities of another active medicinal in-
20 gredient; or

21 “(bb) the Attorney General has deter-
22 mined under section 204 that the drug or
23 group of drugs is being diverted to obtain
24 the listed chemical for use in the illicit pro-
25 duction of a controlled substance; and

1 “(II) the quantity of ephedrine or
2 other listed chemical contained in the drug
3 included in the transaction or multiple
4 transactions equals or exceeds the thresh-
5 old established for that chemical by the At-
6 torney General.”; and

7 (D) in clause (v), by striking the semicolon
8 and inserting “which the Attorney General has
9 by regulation designated as exempt from the
10 application of this title and title III based on a
11 finding that the mixture is formulated in such
12 a way that it cannot be easily used in the illicit
13 production of a controlled substance and that
14 the listed chemical or chemicals contained in
15 the mixture cannot be readily recovered;”;

16 (7) in paragraph (40), by striking “listed pre-
17 cursor chemical or a listed essential chemical” each
18 place it appears and inserting “list I chemical or a
19 list II chemical”; and

20 (8) by adding at the end the following new
21 paragraphs:

22 “(42) The term ‘international transaction’ means a
23 transaction involving the shipment of a listed chemical
24 across an international border (other than a United States

1 border) in which a broker or trader located in the United
2 States participates.

3 “(43) The terms ‘broker’ and ‘trader’ mean a person
4 that assists in arranging an international transaction in
5 a listed chemical by—

6 “(A) negotiating contracts;

7 “(B) serving as an agent or intermediary; or

8 “(C) bringing together a buyer and seller, a
9 buyer and transporter, or a seller and transporter.”.

10 (b) REMOVAL OF EXEMPTION OF CERTAIN DRUGS.—

11 (1) PROCEDURE.—Part B of the Controlled
12 Substances Act (21 U.S.C. 811 et seq.) is amended
13 by adding at the end the following new section:

14 “REMOVAL OF EXEMPTION OF CERTAIN DRUGS

15 “SEC. 204. (a) REMOVAL OF EXEMPTION.—The At-
16 torney General shall by regulation remove from exemption
17 under section 102(39)(A)(iv) a drug or group of drugs
18 that the Attorney General finds is being diverted to obtain
19 a listed chemical for use in the illicit production of a con-
20 trolled substance.

21 “(b) FACTORS TO BE CONSIDERED.—In removing a
22 drug or group of drugs from exemption under subsection
23 (a), the Attorney General shall consider, with respect to
24 a drug or group of drugs that is proposed to be removed
25 from exemption—

1 “(1) the scope, duration, and significance of the
2 diversion;

3 “(2) whether the drug or group of drugs is for-
4 mulated in such a way that it cannot be easily used
5 in the illicit production of a controlled substance;
6 and

7 “(3) whether the listed chemical can be readily
8 recovered from the drug or group of drugs.

9 “(c) SPECIFICITY OF DESIGNATION.—The Attorney
10 General shall limit the designation of a drug or a group
11 of drugs removed from exemption under subsection (a) to
12 the most particularly identifiable type of drug or group
13 of drugs for which evidence of diversion exists unless there
14 is evidence, based on the pattern of diversion and other
15 relevant factors, that the diversion will not be limited to
16 that particular drug or group of drugs.

17 “(d) REINSTATEMENT OF EXEMPTION WITH RE-
18 SPECT TO PARTICULAR DRUG PRODUCTS.—

19 “(1) REINSTATEMENT.—On application by a
20 manufacturer of a particular drug product that has
21 been removed from exemption under subsection (a),
22 the Attorney General shall by regulation reinstate
23 the exemption with respect to that particular drug
24 product if the Attorney General determines that the

1 particular drug product is manufactured and distrib-
2 uted in a manner that prevents diversion.

3 “(2) FACTORS TO BE CONSIDERED.—In decid-
4 ing whether to reinstate the exemption with respect
5 to a particular drug product under paragraph (1),
6 the Attorney General shall consider—

7 “(A) the package sizes and manner of
8 packaging of the drug product;

9 “(B) the manner of distribution and adver-
10 tising of the drug product;

11 “(C) evidence of diversion of the drug
12 product;

13 “(D) any actions taken by the manufac-
14 turer to prevent diversion of the drug product;
15 and

16 “(E) such other factors as are relevant to
17 and consistent with the public health and safe-
18 ty, including the factors described in subsection
19 (b) as applied to the drug product.

20 “(3) STATUS PENDING APPLICATION FOR REIN-
21 STATEMENT.—A transaction involving a particular
22 drug product that is the subject of a bona fide pend-
23 ing application for reinstatement of exemption filed
24 with the Attorney General not later than 60 days
25 after a regulation removing the exemption is issued

1 pursuant to subsection (a) shall not be considered to
2 be a regulated transaction if the transaction occurs
3 during the pendency of the application and, if the
4 Attorney General denies the application, during the
5 period of 60 days following the date on which the
6 Attorney General denies the application, unless—

7 “(A) the Attorney General has evidence
8 that, applying the factors described in sub-
9 section (b) to the drug product, the drug prod-
10 uct is being diverted; and

11 “(B) the Attorney General so notifies the
12 applicant.

13 “(4) AMENDMENT AND MODIFICATION.—A reg-
14 ulation reinstating an exemption under paragraph
15 (1) may be modified or revoked with respect to a
16 particular drug product upon a finding that—

17 “(A) applying the factors described in sub-
18 section (b) to the drug product, the drug prod-
19 uct is being diverted; or

20 “(B) there is a significant change in the
21 data that led to the issuance of the regula-
22 tion.”.

23 (2) CLERICAL AMENDMENT.—The table of con-
24 tents of the Comprehensive Drug Abuse Prevention
25 and Control Act of 1970 (84 Stat. 1236) is amended

1 by adding at the end of that portion relating to part
2 B of title II the following new item:

“Sec. 204. Removal of exemption of certain drugs.”.

3 (c) REGULATION OF LISTED CHEMICALS.—Section
4 310 of the Controlled Substances Act (21 U.S.C. 830) is
5 amended—

6 (1) in subsection (a)(1)—

7 (A) by striking “precursor chemical” and
8 inserting “list I chemical”; and

9 (B) in subparagraph (B), by striking “an
10 essential chemical” and inserting “a list II
11 chemical”; and

12 (2) in subsection (c)(2)(D), by striking “precur-
13 sor chemical” and inserting “chemical control”.

14 **SEC. 3. REGISTRATION REQUIREMENTS.**

15 (a) RULES AND REGULATIONS.—Section 301 of the
16 Controlled Substances Act (21 U.S.C. 821) is amended
17 by striking the period and inserting “and to the registra-
18 tion and control of regulated persons and of regulated
19 transactions.”.

20 (b) PERSONS REQUIRED TO REGISTER UNDER SEC-
21 TION 302.—Section 302 of the Controlled Substances Act
22 (21 U.S.C. 822) is amended—

23 (1) in subsection (a)(1), by inserting “or list I
24 chemical” after “controlled substance” each place it
25 appears;

1 (2) in subsection (b)—

2 (A) by inserting “or list I chemicals” after
3 “controlled substances”; and

4 (B) by inserting “or chemicals” after
5 “such substances”;

6 (3) in subsection (c), by inserting “or list I
7 chemical” after “controlled substance” each place it
8 appears; and

9 (4) in subsection (e), by inserting “or list I
10 chemicals” after “controlled substances”.

11 (c) REGISTRATION REQUIREMENTS UNDER SECTION
12 303.—Section 303 of the Controlled Substances Act (21
13 U.S.C. 823) is amended by adding at the end the following
14 new subsection:

15 “(h) The Attorney General shall register an applicant
16 to distribute a list I chemical unless the Attorney General
17 determines that registration of the applicant is inconsis-
18 ent with the public interest. Registration under this sub-
19 section shall not be required for the distribution of a drug
20 product that is exempted under section 102(39)(A)(iv). In
21 determining the public interest for the purposes of this
22 subsection, the Attorney General shall consider—

23 “(1) maintenance by the applicant of effective
24 controls against diversion of listed chemicals into
25 other than legitimate channels;

1 “(2) compliance by the applicant with applica-
2 ble Federal, State, and local law;

3 “(3) any prior conviction record of the appli-
4 cant under Federal or State laws relating to con-
5 trolled substances or to chemicals controlled under
6 Federal or State law;

7 “(4) any past experience of the applicant in the
8 manufacture and distribution of chemicals; and

9 “(5) such other factors as are relevant to and
10 consistent with the public health and safety.”.

11 (d) DENIAL, REVOCATION, OR SUSPENSION OF REG-
12 ISTRATION.—Section 304 of the Controlled Substances
13 Act (21 U.S.C. 824) is amended—

14 (1) in subsection (a)—

15 (A) by inserting “or a list I chemical”
16 after “controlled substance” each place it ap-
17 pears; and

18 (B) by inserting “or list I chemicals” after
19 “controlled substances”;

20 (2) in subsection (b), by inserting “or list I
21 chemical” after “controlled substance”;

22 (3) in subsection (f), by inserting “or list I
23 chemicals” after “controlled substances” each place
24 it appears; and

25 (4) in subsection (g)—

1 (A) by inserting “or list I chemicals” after
2 “controlled substances” each place it appears;
3 and

4 (B) by inserting “or list I chemical” after
5 “controlled substance” each place it appears.

6 (e) PERSONS REQUIRED TO REGISTER UNDER SEC-
7 TION 1007.—Section 1007 of the Controlled Substances
8 Import and Export Act (21 U.S.C. 957) is amended—

9 (1) in subsection (a)—

10 (A) in paragraph (1), by inserting “or list
11 I chemical” after “controlled substance”; and

12 (B) in paragraph (2), by striking “in
13 schedule I, II, III, IV, or V,” and inserting “or
14 list I chemical,”; and

15 (2) in subsection (b)—

16 (A) in paragraph (1), by inserting “or list
17 I chemical” after “controlled substance” each
18 place it appears; and

19 (B) in paragraph (2), by inserting “or list
20 I chemicals” after “controlled substances”.

21 (f) REGISTRATION REQUIREMENTS UNDER SECTION
22 1008.—Section 1008 of the Controlled Substances Import
23 and Export Act (21 U.S.C. 958) is amended—

24 (1) in subsection (c)—

25 (A) by inserting “(1)” after “(c)”; and

1 (B) by adding at the end the following new
2 paragraph:

3 “(2)(A) The Attorney General shall register an appli-
4 cant to import or export a list I chemical unless the Attor-
5 ney General determines that registration of the applicant
6 is inconsistent with the public interest. Registration under
7 this subsection shall not be required for the import or ex-
8 port of a drug product that is exempted under section
9 102(39)(A)(iv).

10 “(B) In determining the public interest for the pur-
11 poses of subparagraph (A), the Attorney General shall
12 consider the factors specified in section 303(h).”;

13 (2) in subsection (d)—

14 (A) in paragraph (3), by inserting “or list
15 I chemical or chemicals,” after “substances,”;
16 and

17 (B) in paragraph (6), by inserting “or list
18 I chemicals” after “controlled substances” each
19 place it appears;

20 (3) in subsection (e), by striking “and 307”
21 and inserting “307, and 310”; and

22 (4) in subsections (f), (g), and (h), by inserting
23 “or list I chemicals” after “controlled substances”
24 each place it appears.

1 (g) PROHIBITED ACTS C.—Section 403(a) of the
2 Controlled Substances Act (21 U.S.C. 843(a)) is amend-
3 ed—

4 (1) by amending paragraphs (6) and (7) to
5 read as follows:

6 “(6) to possess any three-neck round-bottom
7 flask, tableting machine, encapsulating machine, or
8 gelatin capsule, or any equipment, chemical, prod-
9 uct, or material which may be used to manufacture
10 a controlled substance or listed chemical, knowing,
11 intending, or having reasonable cause to believe, that
12 it will be used to manufacture a controlled substance
13 or listed chemical in violation of this title or title III;

14 “(7) to manufacture, distribute, export, or im-
15 port any three-neck round-bottom flask, tableting
16 machine, encapsulating machine, or gelatin capsule,
17 or any equipment, chemical, product, or material
18 which may be used to manufacture a controlled sub-
19 stance or listed chemical, knowing, intending, or
20 having reasonable cause to believe, that it will be
21 used to manufacture a controlled substance or listed
22 chemical in violation of this title or title III or, in
23 the case of an exportation, in violation of this title
24 or title III or of the laws of the country to which
25 it is exported;”;

1 (2) by striking the period at the end of para-
2 graph (8) and inserting “; or”; and

3 (3) by adding at the end the following new
4 paragraph:

5 “(9) to distribute, import, or export a list I
6 chemical without the registration required by this
7 title or title III.”.

8 **SEC. 4. REPORTS BY BROKERS AND TRADERS; CRIMINAL**
9 **PENALTIES.**

10 (a) NOTIFICATION, SUSPENSION OF SHIPMENT, AND
11 PENALTIES WITH RESPECT TO IMPORTATION AND EX-
12 PORTATION OF LISTED CHEMICALS.—Section 1018 of the
13 Controlled Substances Import and Export Act (21 U.S.C.
14 971) is amended by adding at the end the following new
15 subsection:

16 “(d) A person located in the United States who is
17 a broker or trader for an international transaction in a
18 listed chemical that is a regulated transaction solely be-
19 cause of that person’s involvement as a broker or trader
20 shall, with respect to that transaction, be subject to all
21 of the notification, reporting, recordkeeping, and other re-
22 quirements placed upon exporters of listed chemicals by
23 this title and title II.”.

1 (b) PROHIBITED ACTS A.—Section 1010(d) of the
2 Controlled Substances Import and Export Act (21 U.S.C.
3 960(d)) is amended to read as follows:

4 “(d) A person who knowingly or intentionally—

5 “(1) imports or exports a listed chemical with
6 intent to manufacture a controlled substance in vio-
7 lation of this title or title II;

8 “(2) exports a listed chemical in violation of the
9 laws of the country to which the chemical is ex-
10 ported or serves as a broker or trader for an inter-
11 national transaction involving a listed chemical, if
12 the transaction is in violation of the laws of the
13 country to which the chemical is exported;

14 “(3) imports or exports a listed chemical know-
15 ing, or having reasonable cause to believe, that the
16 chemical will be used to manufacture a controlled
17 substance in violation of this title or title II; or

18 “(4) exports a listed chemical, or serves as a
19 broker or trader for an international transaction in-
20 volving a listed chemical, knowing, or having reason-
21 able cause to believe, that the chemical will be used
22 to manufacture a controlled substance in violation of
23 the laws of the country to which the chemical is ex-
24 ported,

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

3 **SEC. 5. EXEMPTION AUTHORITY; ANTISMUGGLING PROVI-**
4 **SION.**

5 (a) NOTIFICATION REQUIREMENT.—Section 1018 of
6 the Controlled Substances Import and Export Act (21
7 U.S.C. 971), as amended by section 1505(a) of this Act,
8 is amended by adding at the end the following new sub-
9 section:

10 “(e)(1) The Attorney General may by regulation re-
11 quire that the 15-day notification requirement of sub-
12 section (a) apply to all exports of a listed chemical to a
13 specified country, regardless of the status of certain cus-
14 tomers in such country as regular customers, if the Attor-
15 ney General finds that such notification is necessary to
16 support effective chemical diversion control programs or
17 is required by treaty or other international agreement to
18 which the United States is a party.

19 “(2) The Attorney General may by regulation waive
20 the 15-day notification requirement for exports of a listed
21 chemical to a specified country if the Attorney General
22 determines that such notification is not required for effec-
23 tive chemical diversion control. If the notification require-
24 ment is waived, exporters of the listed chemical shall be
25 required to submit to the Attorney General reports of indi-

1 vidual exportations or periodic reports of such exportation
2 of the listed chemical, at such time or times and contain-
3 ing such information as the Attorney General shall estab-
4 lish by regulation.

5 “(3) The Attorney General may by regulation waive
6 the 15-day notification requirement for the importation of
7 a listed chemical if the Attorney General determines that
8 such notification is not necessary for effective chemical di-
9 version control. If the notification requirement is waived,
10 importers of the listed chemical shall be required to submit
11 to the Attorney General reports of individual importations
12 or periodic reports of the importation of the listed chemi-
13 cal, at such time or times and containing such information
14 as the Attorney General shall establish by regulation.”.

15 (b) PROHIBITED ACTS A.—Section 1010(d) of the
16 Controlled Substances Import and Export Act (21 U.S.C.
17 960(d)), as amended by section 4(b) of this Act, is amend-
18 ed—

19 (1) by striking “or” at the end of paragraph

20 (3);

21 (2) by striking the comma at the end of para-
22 graph (4) and inserting a semicolon; and

23 (3) by adding at the end the following new
24 paragraphs:

1 “(5) imports or exports a listed chemical, with
2 the intent to evade the reporting or recordkeeping
3 requirements of section 1018 applicable to such im-
4 portation or exportation by falsely representing to
5 the Attorney General that the importation or expor-
6 tation qualifies for a waiver of the 15-day notifica-
7 tion requirement granted pursuant to section
8 1018(e) (2) or (3) by misrepresenting the actual
9 country of final destination of the listed chemical or
10 the actual listed chemical being imported or ex-
11 ported; or

12 “(6) imports or exports a listed chemical in vio-
13 lation of section 1007 or 1018,”.

14 **SEC. 6. ADMINISTRATIVE INSPECTIONS AND AUTHORITY.**

15 Section 510 of the Controlled Substances Act (21
16 U.S.C. 880) is amended—

17 (1) by amending subsection (a)(2) to read as
18 follows:

19 “(2) places, including factories, warehouses,
20 and other establishments, and conveyances, where
21 persons registered under section 303 (or exempt
22 from registration under section 302(d) or by regula-
23 tion of the Attorney General) or regulated persons
24 may lawfully hold, manufacture, distribute, dispense,
25 administer, or otherwise dispose of controlled sub-

1 stances or listed chemicals or where records relating
2 to those activities are maintained.”; and

3 (2) in subsection (b)(3)—

4 (A) in subparagraph (B), by inserting “,
5 listed chemicals,” after “unfinished drugs”; and

6 (B) in subparagraph (C), by inserting “or
7 listed chemical” after “controlled substance”
8 and inserting “or chemical” after “such sub-
9 stance”.

10 **SEC. 7. THRESHOLD AMOUNTS.**

11 Section 102(39)(A) of the Controlled Substances Act
12 (21 U.S.C. 802(39)(A)), as amended by section 2, is
13 amended by inserting “a listed chemical, or if the Attorney
14 General establishes a threshold amount for a specific listed
15 chemical,” before “a threshold amount, including a cumu-
16 lative threshold amount for multiple transactions”.

17 **SEC. 8. AMENDMENTS TO LIST I.**

18 Section 102(34) of the Controlled Substances Act (21
19 U.S.C. 802(34)) is amended—

20 (1) by striking subparagraphs (O), (U), and
21 (W);

22 (2) by redesignating subparagraphs (P) through
23 (T) as (O) through (S), subparagraph (V) as (T),
24 and subparagraphs (X) and (Y) as (U) and (X), re-
25 spectively;

1 (3) in subparagraph (X), as redesignated by
2 paragraph (2), by striking “(X)” and inserting
3 “(U)”;

4 (4) by inserting after subparagraph (U), as re-
5 designated by paragraph (2), the following new sub-
6 paragraphs:

7 “(V) benzaldehyde.

8 “(W) nitroethane.”

9 **SEC. 9. ELIMINATION OF REGULAR SUPPLIER STATUS AND**
10 **CREATION OF REGULAR IMPORTER STATUS.**

11 (a) DEFINITION.—Section 102(37) of the Controlled
12 Substances Act (21 U.S.C. 802(37)) is amended to read
13 as follows:

14 “(37) The term ‘regular importer’ means, with re-
15 spect to a listed chemical, a person that has an established
16 record as an importer of that listed chemical that is re-
17 ported to the Attorney General.”

18 (b) NOTIFICATION.—Section 1018 of the Controlled
19 Substances Act (21 U.S.C. 971) is amended—

20 (1) in subsection (b)—

21 (A) in paragraph (1) by striking “regular
22 supplier of the regulated person” and inserting
23 “to an importation by a regular importer”; and

24 (B) in paragraph (2)—

1 (i) by striking “a customer or supplier
2 of a regulated person” and inserting “a
3 customer of a regulated person or to an
4 importer”; and

5 (ii) by striking “regular supplier” and
6 inserting “the importer as a regular im-
7 porter”; and

8 (2) in subsection (c)(1) by striking “regular
9 supplier” and inserting “regular importer”.

10 **SEC. 10. REPORTING OF LISTED CHEMICAL MANUFACTUR-**
11 **ING.**

12 Section 310(b) of the Controlled Substances Act (21
13 U.S.C. 830(b)) is amended—

14 (1) by inserting “(1)” after “(b)”;

15 (2) by redesignating paragraphs (1), (2), (3),
16 and (4) as subparagraphs (A), (B), (C), and (D), re-
17 spectively;

18 (3) by striking “paragraph (1)” each place it
19 appears and inserting “subparagraph (A)”;

20 (4) by striking “paragraph (2)” and inserting
21 “subparagraph (B)”;

22 (5) by striking “paragraph (3)” and inserting
23 “subparagraph (C)”;

24 (6) by adding at the end the following new
25 paragraph:

1 “(2) A regulated person that manufactures a
2 listed chemical shall report annually to the Attorney
3 General, in such form and manner and containing
4 such specific data as the Attorney General shall pre-
5 scribe by regulation, information concerning listed
6 chemicals manufactured by the person. The require-
7 ment of the preceding sentence shall not apply to the
8 manufacture of a drug product that is exempted
9 under section 102(39)(A)(iv).”.

10 **SEC. 11. EFFECTIVE DATE.**

11 This Act and the amendments made by this Act shall
12 take effect on the date that is 120 days after the date
13 of enactment of this Act.

 Passed the House of Representatives November 21,
1993.

Attest: DONNALD K. ANDERSON,
Clerk.

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