

**COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES**

**Full Committee Mark Up of H.R. 3889, “The Methamphetamine Epidemic
Elimination Act of 2005”
Wednesday, November 7, 2005
10 a.m.**

The Committee on the Judiciary is scheduled to mark up **H.R. 3889, “The Methamphetamine Epidemic Elimination Act of 2005,”** on Wednesday, November 7, 2005, at 10 a.m. The Subcommittee on Crime, Terrorism, and Homeland Security held a legislative hearing on the bill on September 27, 2005. On November 3, 2005, the Subcommittee favorably reported the bill by a vote of 8 to 3.

1. PURPOSE

Chairman Sensenbrenner and Rep. Souder introduced this bill to address the national problem of methamphetamine abuse. On September 27, 2005, the Subcommittee conducted a legislative hearing on H.R. 3889, and on November 3, 2005, favorably reported the bill by a vote of 8 to 3.

2. RECENT NEGOTIATIONS WITH THE SENATE

Chairman Sensenbrenner intends to offer a Manager's Amendment which reflects recent negotiations with the Senate to resolve differences between H.R. 3889, and the Combat Meth Act, S.103, and which was passed by the Senate as part of CJS Appropriations. House and Senate negotiated over the last week to resolve differences between the two bills but were unable to reach a compromise.

3. MANAGER'S AMENDMENT

The Manager's Amendment makes a number of changes to H.R. 3889, many of which were agreed to by the Senate during the negotiations. The Manager's Amendment: (a) reclassifies pseudoephedrine, PPA and ephedrine as a schedule listed chemical; (b) imposes a flat 3.6 gram single transaction or daily multiple transaction limit on purchase of meth precursors (pseudoephedrine, PPA, and ephedrine); (c) restricts purchasers from obtaining more than 7.5 grams in a 30-day period; (d) requires regulated sellers to store precursors behind the counter, or in a locked storage box on the store floor, and maintain a written log so that purchasers have to show identification, state how much they have purchased, and sign for the product; (e) requires regulated sellers to submit a certification that it will comply with these requirements and train employees to ensure compliance; (f) restrict Internet and mobile vendor sales of precursors to these same limitations; (g) authorizes new import, export, and manufacturing regulations to help prevent diversion of pseudoephedrine and similar meth precursor chemicals; (h) requires reporting of the international production and export of precursor chemicals, and holds nations

accountable for their cooperation (or lack thereof) with United States drug enforcement; (h) strengthens criminal penalties for methamphetamine manufacturers and traffickers by: (1) imposing higher penalties for possession of precursors with intent to manufacture methamphetamine; (2) modifying existing kingpin statute to increase use of kingpin tool against international traffickers; (3) enhancing the penalty for meth manufacturers who do so in the presence of children; and (4) imposing an additional criminal penalty on those who smuggle methamphetamine into the United States using the fast-track lane between Mexico and the United States; (i) authorizes additional treatment program for children endangered by methamphetamine traffickers; (j) improves drug court program to require more accountability and drug testing of participants; and (k) authorizes the methamphetamine hot spot program for law enforcement efforts to investigate meth traffickers and clean up meth labs.

In contrast to the Manager's Amendment, the Combat Meth Act treats precursors as a Schedule V controlled substance, which restricts the sale of common OTC medicines to pharmacists and in some cases may force people who require these medicines for legitimate use to seek a prescription. By classifying pseudoephedrine and similar methamphetamine precursor chemicals as schedule V controlled substances, the government limits the nonprescription sale of products that contain these chemicals to pharmacies alone.¹ Schedule V classification effectively eliminates consumers' ability to get medicines that contain pseudoephedrine and similar precursor chemicals from their local convenience stores or grocery stores, if none have a pharmacy.

Additionally, should the consumer need medicines containing pseudoephedrine at unusual hours, their ability to get them would rely on their access to a 24 hour pharmacy. In as many as 14 states, federal classification of pseudoephedrine as a schedule V substance would trigger "by prescription only" requirements.² This would mean that a consumer would have to have a prescription to purchase a pseudoephedrine containing medicine. Medicines that were formerly available for as little as \$6, would now cost the consumer prohibitively more because of the added cost of having to visit doctor in order to obtain a prescription. The increase will be absorbed in higher medical insurance and Medicare costs due to an overall increase in physician visits.

While making it harder for legitimate use consumers to obtain pseudoephedrine medicines, schedule V classification of this substance leaves gaping holes through which meths cooks will be able to acquire necessary ingredients. Schedule V classification of pseudoephedrine does not address the "spot market" sales of scheduled chemicals. Continued inattention to the pseudoephedrine "spot market" problem, while at the same time restricting the general public's access to pseudoephedrine, will create large scale illicit market for methamphetamine precursor chemicals. The penalties for criminal diversion of DEA List 1 chemicals, the current classification of pseudoephedrine, are more substantial than the penalties of the diversion of schedule V. The effect of moving pseudoephedrine to schedule V would be to effectively weaken the current penalties and the effect of having the chemical listed under both schemes creates unwieldy and confusing statutory regulation. The import/export controls on List 1 chemicals are more comprehensive than those on schedule V substances.

4. NEED FOR LEGISLATION

The methamphetamine problem has grown at a dramatic rate, and is now considered the most significant drug abuse problem in the country, surpassing marijuana. The impact of this problem has hit local law enforcement and communities with dramatic direct and collateral consequences.

The National Association of Counties recently published a survey that shows that 60 percent of responding counties stated methamphetamine was their largest drug problem; 67 percent reported increases in meth related arrests.

Methamphetamine is most widely available throughout the Pacific, Southwest and West Central regions. It is becoming increasingly available in the Great Lakes and Southeast. According to the Department of Health and Human Services *Results From the 2002 National Survey on Drug Use and Health: National Findings*, more than 12 million people age 12 and older, or 5.3% of the population, reported that they had used methamphetamine at least once in their lifetime. Of those surveyed, 597,000 persons age 12 or older reported past month use of methamphetamine. In 2002, estimates of annual methamphetamine use by secondary school students ranged from 2.2% among 8th graders, to 3.9% among 10th graders, to 3.6% among 12th graders.

The highest percentage of adult male arrestees testing positive for methamphetamine were located in Honolulu (44.8%), Sacramento (33.5%), San Diego (31.7%), and Phoenix (31.2%). The highest percentage of adult female arrestees testing positive for methamphetamine were located in Honolulu (50%), San Jose (42.8%), Phoenix (41.7%), Salt Lake City (37.7%), and San Diego (36.8%).

Most of the methamphetamine found in the United States is produced by Mexico-based and California-based Mexican traffickers using "super labs." A "super lab" is defined as a laboratory capable of producing 10 pounds or more of methamphetamine within a production cycle, usually a 24-hour period. The rapid spread of methamphetamine is attributed to the proliferation of "small toxic laboratories" (STLs), which are increasingly found in rural areas, tribal and Federal lands, urban areas, and suburbs. Precursor chemicals usually include pseudoephedrine and ephedrine drug products. Some Mexican organizations use methylsulfonylmethane (MSM), a dietary supplement available in feed/livestock stores and health/nutrition stores, to "cut" the methamphetamine in the production cycle.

Methamphetamine is easily produced in clandestine laboratories or meth labs using a variety of ingredients available in stores. The manufacturing of methamphetamine is called "cooking." Cooking a batch of meth can be very dangerous due to the fact that the chemicals used are volatile and the by-products are very toxic. Meth labs present a danger to the meth cook, the community surrounding the lab, and the law enforcement personnel who discover the lab. A Center for Disease Control and Prevention study on hazardous substance-release events found that methamphetamine labs caused injury to 79 first responders (police officers, firefighters, EMTs, and hospital personnel) in 14 States

participating in the study. The most common injuries were respiratory and eye irritation; headache; dizziness; nausea and vomiting; and shortness of breath. In addition to the dangerous nature of methamphetamine production, the labs are often booby-trapped and workers are well armed.

The methamphetamine trafficking situation has significantly changed within the last decade in the United States. Outlaw motorcycle gangs and other independent laboratory operators were once the primary traffickers of methamphetamine in the United States. However, Mexico-based trafficking groups entered the illicit methamphetamine market in 1994 and now dominate the trade leaving motorcycle gangs with a small share of the market. Mexico based trafficking groups dominate the market for many reasons, including their ability to obtain large quantities of the chemicals needed to produce the drug, their access to established smuggling and distribution networks, and their control over "super labs" (laboratories capable of producing in excess of 10 pounds of methamphetamine in one 24-hour production cycle).

Meth labs also have been linked to significant instances of child abuse. Children face specific dangers from inhalation, absorption or ingestion of toxic chemicals or contaminated food that may result in respiratory difficulties, chemical burns and death. Fires and explosions are significant risks when cooking meth in a lab. Meth abusing parents frequently abuse and neglect their children and endanger them by creating hazardous living conditions. Between 2000 and 2003 more than 10,000 children were affected by methamphetamine manufacturing. Approximately 1 in 10 children tested positive for methamphetamine and of those, the children ages 0-6 were twice as likely to test positive than children aged 7-14. These statistics probably underestimate the extent of the problem because many states do not keep records on children present at laboratory sites, nor do they medically evaluate children for the presence of drugs or chemicals.

In San Diego, for example, more than 400 children have been taken into protective custody in the past 12 months. More than 95% of these children came from homes where there was methamphetamine use and trafficking.

The meth problem has significant consequences for the environment. The production of one pound of methamphetamine releases poisonous gas into the atmosphere and creates 5 to 7 pounds of toxic waste. Many laboratory operators dump the toxic waste down household drains, in fields and yards, or on rural roads. DEA estimates that the average direct cost to clean up a meth lab is \$2,000 to \$3,000 per lab. In 2004, the DEA administered over 10,000 state and local clandestine laboratory cleanups at a cost of approximately \$17.8 million. Additional ancillary costs associated with meth cleanup include: property damage, reduced property value, salaries, overtime for law enforcement personnel, medical costs for suspects or innocent bystanders, and criminal justice costs associated with arrest and prosecution.

Between 1994 and 2003, the number of meth Federal offenders has risen from approximately 1,000 to 4,300, while the mean length of imprisonment has fluctuated for each year around 90 months per offenders. Approximately 71 percent of the meth offenders received a mandatory minimum sentence. 60 percent of the meth offenders are

white, 33 percent are Hispanic and only 2 percent are African-American.

Federal prosecutions of meth offenders have steadily risen over the last five years – approximately 2850 in fiscal year 1999 to 4450 for fiscal year 2003.

5. H.R. 3889 – THE METHAMPHETAMINE EPIDEMIC ELIMINATION ACT

Title I – Domestic Regulation of Precursor Chemicals

Sec. 101. Schedule Listed Chemical Products; Single Transaction and Monthly Restrictions on Quantities; Behind the Counter Access and Other Safeguards

This section reclassifies pseudoephedrine, PPA and ephedrine as Schedule Listed Chemicals; repeals the federal “blister pack” exemption, and reduces the federal per-transaction sales limit for SLCs from 9 grams to 3.6 grams of active pseudoephedrine (the amount recently proposed by the Administration); requires behind-the counter storage or locked cabinet storage of SLCs; requires that regulated sellers (retail distributor and pharmacies) maintain a written log of purchases; restricts monthly purchases to no more than 7.5 grams; imposes similar requirements on Internet sellers and mobile retail vendors; and requires that each regulated seller submit a certification that it is compliance with these requirements, that its employees have been trained as to these requirements, and that records relating to such training are maintained at the retailers location. Such certifications shall be transmitted from the Attorney General to State and local law enforcement.

When Congress first increased the regulation of meth precursor chemicals in the 1990’s, it created a special exemption for pseudoephedrine products contained in “blister packs” (the small plastic-and-foil packages that force a consumer to pop out cold pills one or two at a time). The theory was that these packages, being somewhat more difficult to open and empty *en masse* than bottles, would deter meth cooks from using them. It has not proven to be enough of a deterrent, however, and meth cooks have taken advantage of their ability under federal law to buy as many packages as they want.

This section would preserve the incentive to keep cold pills in blister packs, while subjecting them to the new sales limit. If pseudoephedrine, ephedrine, or phenylpropanolamine products are sold in pill form, they must be in blister packs to be sold over the counter; otherwise, they must be in liquid form. All forms of these products would now be subject to the 3.6 grams per transaction limit, without exception.

Sec. 102. Regulated Transactions

This section makes conforming amendments to the Controlled Substances Act to ensure that Schedule Listed Chemicals are treated similar to Listed Chemicals and other changes are incorporated.

Sec. 103. Authority To Establish Production Quotas

This section extends the Attorney General's existing authority to set production quotas for certain controlled substances (see 21 USC 826) to pseudoephedrine, ephedrine, and phenylpropanolamine. Currently, domestic production of these chemicals is not very high, as most of our supply is imported. If Congress adopts the import quotas enacted by Section 104 of the bill (see below), however, the Attorney General would need to have corresponding authority within the U.S. if domestic production were to increase. Current law (as amended) would allow manufacturers to apply for increases in their production quotas (see 21 USC 826(e)).

Sec. 104. Penalties; Authority for Manufacturing; Quota

This section would expand the existing penalty for illegal production beyond established quotas (see 21 USC 842(b)) to take into account the Attorney General's new authority to set quotas for meth precursors.

Sec. 105. Restrictions on Importation; Authority To Permit Imports for Medical, Scientific, or Other Legitimate Purposes

This section would extend the Attorney General's existing authority to set import quotas for controlled substances (see 21 USC 952) to pseudoephedrine, ephedrine, and phenylpropanolamine. This section contains 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 within 60 days.

Sec. 106. Notice of Importation or Exportation; Approval of Sale or Transfer by Importer or Exporter

This section would fix a hole in the current regulatory system 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 planning to sell the chemicals to a regular customer (again, one that the Department has previously permitted to take delivery). (See 21 USC 971(a) and (b).)

A problem can arise, however, when the sale that the importer or exporter originally planned on 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 would extend 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. (See 21 USC 971(c)(2).)

If, however, an importer or exporter was exempted 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. (Note that under current law, the Department does receive a record of these transactions after the fact, see 21 USC 971(b)(1).)

Sec. 107. Enforcement of Restrictions on Importation and of Requirement of Notice of Transfer

This section 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.

Sec. 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 (in particular, the new import quotas for pseudoephedrine and other precursors), this section requires the Attorney General to consult with the U.S. Trade Representative.

Title II – International Regulation of Precursor Chemicals

Sec. 201. Information On Foreign Chain Of Distribution; Import Restrictions Regarding Failure Of Distributors To Cooperate.

This provision (originally introduced by Rep. Darlene Hooley) would further amend the reporting requirements for importers of meth 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 meth 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.

Sec. 202. Requirements Relating To The Largest Exporting And Importing Countries Of Certain Precursor Chemicals.

This provision (originally introduced by Rep. Mark Kennedy) was adopted by the House as part of the State Department reauthorization legislation for FY 2006-07 (H.R. 2601). It would mandate a separate section of the current State Department report on major drug producing and transit countries (see 22 USC 2291h), identifying the 5 largest exporters of major methamphetamine precursor chemicals, and the 5 largest importers that also have the highest rate of meth production or diversion of these chemicals to the production of meth. 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.

We have added a provision clarifying the original intent of this amendment, to apply the “fully cooperates” standard (and not the lesser standard under another, separate provision of law). This standard would only have to applied with respect to the listed countries’ cooperation with respect to meth precursor chemicals; cooperation with respect to other drugs would continue to be evaluated under existing law.

The provision also includes authorization of \$1 million for implementation. The House recently passed an amendment to the State Department’s appropriations bill for FY ’06, adding \$5 million for the Department to implement anti-meth measures; this \$1 million could come out of that amount.

Sec. 203. Prevention Of Smuggling Of Methamphetamine Into The United States From Mexico.

This amendment would require 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 meth precursor chemicals. The amendment would authorize the use of \$4 million of the \$5 million recently approved by the House for these purposes. (The remaining funds would be available to help the State Department implement Sec. 202, described above.)

Title III – Enhanced Criminal Penalties for Methamphetamine Production and Tracking

Sec. 301. Enhanced Penalties for Methamphetamine Production, Possession, or Trafficking

This section would create a new criminal provision for possession with intent to manufacture a schedule listed chemical and impose a maximum punishment of life

imprisonment. This provision would increase the currently applicable provision (21 U.S.C. Section 841(c) which imposes a maximum of 20 years imprisonment).

Sec. 302. Smuggling Methamphetamine or Methamphetamine Precursor Chemicals into the United States While Using Facilitated Entry Programs.

Even as more meth 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.

This section (originally proposed by Rep. Mark Kennedy) would create 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 year’s 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.

Sec. 303. Manufacturing Controlled Substances on Federal Property.

This provision (originally proposed by Rep. Mark Kennedy) would clarify that current penalties for cultivating illegal drugs on federal property also apply to manufacturing synthetic drugs (such as meth). Meth 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.

Sec. 304. Increased Punishment for Methamphetamine Kingpins.

This provision (recommended by the staff of the Judiciary Committee) would allow for easier application of the enhanced penalties of the “continuing criminal enterprise” section of the Controlled Substances Act (21 U.S.C. 848). 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 new provision would reduce the threshold amount of meth (from 300 to 200 times the threshold for base violations) and profits from meth (from \$10 million to \$5 million), while still applying the life imprisonment penalty only to true “kingpins” – the ringleaders of meth trafficking

organizations.

Sec. 305. New Child Protection Criminal Enhancement

This provision would punish an offender who manufactures methamphetamine at a location where a child resides or is present, and would impose a consecutive sentence of 0 to 20 years.

Sec. 306. Amendments to Certain Sentencing Court Reporting Requirements

This provision authorizes the United States Sentencing Commission to establish a form to be used by United States District Judges when imposing criminal sentences in order to facilitate data gathering and reporting by the Sentencing Commission.

Sec. 307. DEA Reporting Requirements

This section requires DEA, Customs and the FBI to submit a report to Congress every 6 months outlining how it is allocating its resources to increase prosecution of large meth traffickers, meth lab operators, and meth traffickers who endanger children.

Title IV—Enhanced Environmental Regulation of Methamphetamine By-Products

Sec. 401. Biennial Report to Congress on Designations of By-Products of Methamphetamine Laboratories as Hazardous Materials

This provision requires the Transportation Department and the Environmental Protection Agency (EPA) to report to Congress every two years whether then existing statutes and regulations cover methamphetamine by-products as hazardous materials.

Sec. 402. Cleanup Costs

This provision (originally proposed by Rep. John Peterson) would clarify existing law imposing the obligation of restitution for environmental cleanup costs on persons involved in meth production and trafficking. The recent decision of the Eighth Circuit Court of Appeals in *United States v. Lachowski* (405 F.3d 696) (8th Cir. 2005) has undermined the ability of the federal government to seek cleanup costs from meth traffickers who are convicted only of meth possession – even when the meth lab in question was on the defendant’s own property. This provision would ensure that any person convicted of a meth-related offense can be held liable for clean-up costs for meth production that took place on the defendant’s own property, or in his or her place of business or residence.

Title V -- Additional Programs and Activities

Sec. 501. Improvements to Department of Justice Drug Courts Program

This section revises the Drug Court program statute to clarify the requirement for periodic testing, graduated sanctions when an offender tests positive, and a list of potential sanctions when a positive test occurs.

Sec. 502. Grants to Hot Spot Areas to Reduce Availability of Methamphetamine

This section authorizes at \$99 million for fiscal years 2006 to 2010 for grants to State and local law enforcement agencies to assist in the investigation of meth traffickers and to reimburse the DEA for assistance in cleaning up meth labs.

Sec. 503. Grants for Programs for Drug-Endangered Children

This section authorizes grants to States to assist in treatment of children who have been endangered by living at a residence where methamphetamine has been manufactured or distributed.