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108TH CONGRESS
2D SESSION

H. R. 5347

To eliminate the safe-harbor exception for certain packaged pseudoephedrine products used in the manufacture of methamphetamine, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 8, 2004

Mr. SOUDER (for himself, Mr. WAMP, Mr. CALVERT, and Mr. OSE) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To eliminate the safe-harbor exception for certain packaged pseudoephedrine products used in the manufacture of methamphetamine, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Methamphetamine Abuse Prevention Act of 2004''.

SEC. 2. FINDINGS.

Congress finds that—

(1) methamphetamine is a dangerous drug distributed throughout the United States;

(2) the manufacture, distribution, and use of methamphetamine results in increased crime, damage to the environment, hazardous waste that endangers the public, expensive cleanup costs often borne by Federal, State, and local government agencies, and broken families;

(3) Congress has acted many times to limit the availability of chemicals and equipment used in the manufacturing of methamphetamine;

(4) pseudoephedrine is one of the basic precursor chemicals used in the manufacture of methamphetamine;

(5) the United States Drug Enforcement Administration has indicated that methamphetamine manufacturers often obtain pseudoephedrine from retail and wholesale distributors, in both bottles and ''blister packs'', and that the use of pseudoephedrine tablets in blister packs is pervasive in the illicit production of methamphetamine in both small and large clandestine methamphetamine laboratories;

(6) while current law establishes a retail sales limit of 9 grams for most pseudoephedrine products, including common cold medicine, there is no such

limit on the sale of blister-packed pseudoephedrine products;

(7) the 9 gram limit on bottled pseudoephedrine allows an individual to purchase approximately 366 thirty-milligram tablets per transaction, which is significantly more than a typical consumer would need for legitimate purposes;

(8) reducing the current 9 gram threshold to 6 grams would allow consumers to continue purchasing sufficient medication for legitimate purposes and would assist efforts to reduce illegal use of the pseudoephedrine products;

(9) the United States Drug Enforcement Administration recommended in March 2002 that retail distribution of pseudoephedrine tablets in blister packages should not be exempt from the general retail sales limit; and

(10) in recommending legislation to correct the current disparity in the law between bottled and blister-packed pseudoephedrine tablets, the United States Drug Enforcement Administration stated that ''The removal of this difference would significantly prevent illicit access to this methamphetamine precursor and would be easier for both the govern-

ment and the industry to monitor and would increase compliance by retailers''.

SEC. 3. REDUCTION OF RETAIL SALES THRESHOLD TO 6 GRAMS.

Section 102(39)(A)(iv)(II) of the Controlled Substances Act (21 U.S.C. 802(39)(A)(iv)(II)) is amended—

(1) by striking ''9 grams'' each place such term appears and inserting ''6 grams''; and

(2) by striking ''and sold in package sizes of not more than 3 grams of pseudoephedrine base or 3 grams of phenylpropanolamine base; or'' and inserting the following: ''and sold in, with respect to nonliquids, package sizes of not more than 3.0 grams of pseudoephedrine base or 3.0 grams of phenylpropanolamine base, and packaged in blister packs, each blister containing not more than 2 dosage units, or where the use of blister packs is technically infeasible, packaged in unit dose packets or pouches and, with respect to liquids, sold in package sizes of not more than 3.0 grams of pseudoephedrine base or 3.0 grams of phenylpropanolamine base; or''.

SEC. 4. ELIMINATION OF BLISTER PACK EXEMPTION.

(a) REGULATED TRANSACTION.—Section 102(39)(A)(iv)(I)(aa) of the Controlled Substances Act

(21 U.S.C. 802(39)(A)(iv)(I)(aa)) is amended by striking '', except that'' and all that follows through ''1996)''.

(b) DEFINITION.—Section 102 of the Controlled substances Act (21 U.S.C. 802) is amended—

(1) by striking paragraph (45); and

(2) by redesignating paragraph (46) as paragraph (45).

(c) RULE OF LAW.—To the extent that there exists a conflict between the amendment made by subsection (a) and section 401(d) of the Comprehensive Methamphetamine Control Act of 1996 (21 U.S.C. 802 note), the amendment shall control.

SEC. 5. NATIONAL UNIFORMITY FOR RESTRICTIONS ON THE SALE OF PSEUDOEPHEDRINE PRODUCTS.

Section 708 of the Controlled Substances Act (21 U.S.C. 903) is amended—

(1) by striking ''No'' and inserting the following:

''(a) IN GENERAL.—Except as provided in subsection (b), no''; and

(2) by adding at the end the following:

''(b) PSEUDOEPHEDRINE DRUG PRODUCT.—

''(1) STATE AND LOCAL REQUIREMENTS.—

"(A) IN GENERAL.—No State or political subdivision of a State or State authorized entity may establish with respect to the retail sales of any pseudoephedrine drug product any requirement or restriction that is different from, or in addition to, or that is otherwise not identical with, the requirements and restrictions that apply to pseudoephedrine drug products under this Act.

"(B) STATE PENALTIES.—Nothing in subparagraph (A) shall be construed as preventing a State or political subdivision of a State from adopting penalties that are different from, or in addition to, or that are otherwise not identical with, the penalties that apply under this Act.

"(C) GRANDFATHER CLAUSE.—Subparagraph (A) shall not apply to any requirement or restriction regarding the retail sale of pseudoephedrine drug products established by a State or political subdivision of a State or State authorized entity enacted prior to January 1, 2005, other than a requirement or restriction allowing any individual to purchase more than 6 grams of pseudoephedrine base in any single retail transaction.

''(2) EXEMPTIONS.—

''(A) IN GENERAL.—Upon application of a State or political subdivision thereof, the Attorney General, not later than 30 days after receiving the application, may exempt from paragraph (1)(A), under such conditions as the Attorney General may prescribe, a State or political subdivision requirement upon a determination by the Attorney General that—

''(i) pseudoephedrine drug products obtained in that State or political subdivision are being used as a significant source of precursor chemicals for illegal manufacture of a controlled substance for distribution or sale;

''(ii) the requirement is likely to substantially decrease the use of pseudoephedrine drug products as a source of precursor chemicals for illegal manufacture of a controlled substance for distribution or sale; and

''(iii) the requirement will not unduly burden interstate commerce.

''(B) JUDICIAL REVIEW.—

"(i) REVIEW IN COURT OF APPEALS.—Within 10 days after a determination by the Attorney General under subparagraph (A), the State or political subdivision involved, or an individual affected by the determination, may file a petition for judicial review of such determination in the United States Court of Appeals for the District of Columbia Circuit, which shall have exclusive jurisdiction over any such petitions.

"(ii) DETERMINATION BY COURT.—

"(I) IN GENERAL.—Within 20 days after a petition under clause (i) is filed with the court, the court shall enter final judgement on the petition.

"(II) SERVICE REGARDING PETITION.—With respect to a petition under clause (i), if the court determines that proper service was not made on the Attorney General within 5 days after the date on which the petition was filed with the court, the running of the 20-day period under subclause (I) shall not begin before

the day on which proper service was made on the Attorney General.

''(iii) FINALITY OF DETERMINATION.—Any determination made by the court under this subparagraph shall be final and conclusive and shall not be reviewed by any other court.

''(C) COMPUTATION OF DAYS.—For purposes of this paragraph, Saturday, Sunday, or a legal holiday in the District of Columbia shall not be counted as the last day of any period.

''(3) DEFINITIONS.—As used in this subsection, the term 'pseudoephedrine drug product' means a product containing pseudoephedrine that may be marketed or distributed lawfully in the United States as a drug under the Federal Food, Drug, and Cosmetic Act.''.

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