111TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 111–615
Part 1

COMBAT METHAMPHETAMINE ENHANCEMENT ACT OF 2009

SEPTEMBER 22, 2010.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. WAXMAN, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 2923]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2923) to enhance the ability to combat methamphetamine, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 2923, the "Combat Methamphetamine Enhancement Act of 2009", was introduced by Reps. Bart Gordon (D–TN) and James

Sensenbrenner (R–WI) on June 17, 2009, and was referred to the Committee on Energy and Commerce. In addition, the bill was also referred to the House Committee on the Judiciary.

The goal of H.R. 2923 is to increase the compliance of retailers and distributors of pseudoephedrine and ephedrine products (which are precursor chemicals for the production of methamphetamine) with the 2006 Combat Methamphetamine Epidemic Act.

To achieve this goal, H.R. 2923 includes the following provisions:

- Clarifies that all persons engaged in retail sales of pseudoephedrine or ephedrine products, including by mail order, must self-certify that they have trained their personnel and agree to comply with the Combat Methamphetamine Epidemic Act.
- Requires distributors of these products to sell only to retailers who are registered with the Drug Enforcement Agency (DEA).
- Requires the DEA to provide a downloadable database of all retailers which have filed self-certifications on their website so that distributors can check their customers against this database to ensure compliance.
- Clarifies that a retailer which negligently fails to file self-certifications as required can face civil fines.

BACKGROUND AND NEED FOR LEGISLATION

Methamphetamine is a highly addictive illegal drug with widespread use across the country, including among children as young as 12 years of age.[1] According to the National Institute on Drug Abuse at the National Institutes of Health, chronic methamphetamine users often face severe structural and functional brain damage in addition to other health effects, including increased heart rate, extreme weight loss, severe dental problems, and violent behavior.[2] According to a 2008 study of a National Survey on Drug Use and Health, the Department of Health and Human Services found that 314,000 people used methamphetamine in one 30-day period of the survey.[3]

Commonly used cold medications, such as Sudafed, contain ingredients known as pseudoephedrine or ephedrine that can be used to make methamphetamine. In 2006, Congress passed sweeping legislation, known as the "Combat Methamphetamine Epidemic Act", which required that the sale of cold medicines containing these ingredients occur only from behind the counter or from a locked cabinet.[4] The 2006 legislation limits the daily and monthly amount any individual can purchase, requires individuals to present photo identification in order to purchase such medications, and requires stores to keep personal information about these customers for at least two years after the purchase of these medicines.

In the years following the enactment of the 2006 law, DEA officials have found that thousands of retail establishments are not

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[1] National Institute on Drug Abuse, Drugs of Abuse Information (online at: *http://www.drugabuse.gov/DrugPages/Methamphetamine.html).*

[2] National Institute on Drug Abuse, "NIDA InfoFacts: Methamphetamine" (online at: *http://drugabuse.gov/infofacts/methamphetamine.html).*

[3] U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Office of Applied Studies, *Results from the 2008 National Survey on Drug Use and Health: National Findings,* September 2009. *http://www.oas.samhsa.gov/nsduh/2k8nsduh/2k8results.cfm#fig5-6*

[4] P.L. No: 109–177.

complying with the law, and that no penalty exists to prevent distributors from selling the medications to these retailers.[5]

The production, use, and availability of methamphetamine is an ongoing issue across the United States. The 2006 law was an important step in regulating the sale of these precursor chemicals. By increasing DEA's ability to enforce the 2006 law, H.R. 2923 will further help to address the methamphetamine epidemic by limiting the distribution and sale of products used to produce methamphetamine.

COMMITTEE CONSIDERATION

H.R. 2923 was referred to the Subcommittee on Health on June 18, 2009. The Subcommittee met in open markup session to consider H.R. 2923 on July 22, 2010. Following consideration, the Subcommittee forwarded H.R. 2923 favorably to the full Committee, without amendment, by a voice vote.

On July 28, 2010, the full Committee met in open markup session to consider H.R. 2923. The Committee ordered H.R. 2923 favorably reported to the House, without amendment, by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list each record vote on the motion to report legislation and amendments thereto. A motion by Mr. Waxman ordering H.R. 2923 reported to the House, without amendment, was approved by a voice vote. There were no record votes taken during consideration of this bill.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee are reflected in the descriptive portions of this report, including the finding that the Drug Enforcement Administration needs additional statutory tools to limit the distribution and sale of products used to produce methamphetamine.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Regarding compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the analysis of H.R. 2923 prepared by the Director of the Congressional Budget Office.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of the Committee are reflected in the descriptive portions of this report, including the goal to provide additional means for the Drug Enforcement Administration to limit the distribution and sale of products used to produce methamphetamine.

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[5] *http://www.justice.gov/dea/pubs/cngrtest/ct091807.html*

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 H.R. 2923 is provided under Article I, section 8, clauses 3 and 18 of the Constitution of the United States.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 2923 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI of the Rules of the House of Representatives.

FEDERAL ADVISORY COMMITTEE STATEMENT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., section 5(b) of the Federal Advisory Committee Act.

APPLICABILITY OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to terms and conditions of employment or access to public services and accommodations. H.R. 2923 contains no such provisions.

FEDERAL MANDATES STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act of 1974 (as amended by section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement on whether the provisions of the report include unfunded mandates. In compliance with this requirement the Committee adopts as its own the estimates of federal mandates prepared by the Director of the Congressional Budget Office.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the cost estimate of H.R. 2923 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2923 from the Director of Congressional Budget Office:

AUGUST 4, 2010.

Hon. HENRY A. WAXMAN,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2923, the Combat Methamphetamine Enhancement Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 2923—Combat Methamphetamine Enhancement Act of 2009

H.R. 2923 would require retail businesses that sell certain pharmaceuticals through the mail to submit a self-certification document to the Drug Enforcement Administration (DEA). The bill also would prohibit distributors of certain pharmaceuticals from selling products to persons who have not registered or self-certified with DEA. Based on information from the DEA, CBO estimates that implementing the bill would have no significant cost to the federal government.

Violators of the bill's provisions would be subject to civil and criminal fines. Civil fines are recorded as revenues and deposited in the U.S. Treasury. Criminal fines are recorded as revenues, then deposited in the Crime Victims Fund, and later spent. Because, enacting H.R. 2923 could increase revenues and direct spending, pay-as-you-go procedures apply. However, CBO estimates that any net budget impact would not be significant in any year.

H.R. 2923 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

H.R. 2923 would impose private-sector mandates, as defined in UMRA, on distributors and retailers of certain pharmaceuticals. Distributors and retailers who sell such products by mail would be required to submit self-certification documents, including a statement acknowledging that they understand the law and will comply with the legal guidelines associated with the sale of those drugs. The bill also would prohibit anyone from supplying those products to a retailer unless the retailer has completed either the necessary self-certification or has otherwise registered with the DEA. Because the current self-certification list is available online and based on information from the DEA about compliance costs for that program, CBO estimates that the cost to the private sector would be small and well below the annual threshold established in UMRA ($141 million for private-sector mandates in 2010, adjusted annually for inflation).

On March 25, 2009, CBO transmitted a cost estimate for S. 256, the Combat Methamphetamine Enhancement Act of 2009, as ordered reported by the Senate Committee on the Judiciary on March 5, 2009. The two pieces of legislation are identical, as are the cost estimates.

The CBO staff contacts for this estimate are Mark Grabowicz (for federal costs) and Marin Randall (for the private-sector impact).

The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 designates the short title of the Act as the "Combat Methamphetamine Enhancement Act of 2009".

Section 2. Requirement of self-certification by all regulated persons selling scheduled listed chemicals

Section 2 amends the Controlled Substances Act to clarify that all regulated persons engaged in retail sales of ephedrine or pseudoephedrine products, including by mail order, must self-certify to the Attorney General that they have trained their personnel and agree to comply with requirements governing the sale of these products under the Controlled Substances Act.

Section 3. Publication of self-certified regulated sellers and regulated persons lists

Section 3 requires the Attorney General to develop and make available a list of all self-certified individuals and make such list publicly available on the website of the Drug Enforcement Administration.

Section 4. Requirement that distributors of listed chemicals sell only to self-certified regulated sellers and regulated persons

Section 4 prohibits distributors of listed chemical products from selling such products to individuals not currently registered with the Drug Enforcement Administration.

Section 5. Negligent failure to self-certify as required

Section 5 imposes civil penalties for the negligent failure to self-certify as required by the Controlled Substances Act.

Section 6. Effective date and regulations

Section 6 establishes the effective date of the legislation as 180 days after the date of enactment of the Combat Methamphetamine Enhancement Act of 2009. Section 6 also specifies that, in promulgating regulations authorized by section 2 of the Act, the Attorney General may issue interim regulations to ensure its implementation by the effective date.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, 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

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TITLE II—CONTROL AND ENFORCEMENT

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

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REGULATION OF LISTED CHEMICALS AND CERTAIN MACHINES

SEC. 310. (a) * * *

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

(1) REQUIREMENTS REGARDING RETAIL TRANSACTIONS.—

(A) * * *

(B) ADDITIONAL PROVISIONS REGARDING CERTIFICATIONS AND TRAINING.—

(i) * * *

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(v) PUBLICATION OF LIST OF SELF-CERTIFIED PERSONS.—The Attorney General shall develop and make available a list of all persons who are currently self-certified in accordance with this section. This list shall be made publicly available on the website of the Drug Enforcement Administration in an electronically downloadable format.

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(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) * * *

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(C) 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 may not sell any scheduled listed chemical product at retail unless such regulated person has submitted to the Attorney General a self-certification including 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. The Attorney General shall by regulation establish criteria for certifications of mail-order distributors that are consistent with the criteria established for the certifications of regulated sellers under paragraph (1)(B).

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PART D—OFFENSES AND PENALTIES

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PROHIBITED ACTS B—PENALTIES

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

(1) * * *

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(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**[**.**]***; or*

(15) to distribute a scheduled listed chemical product to a regulated seller, or to a regulated person referred to in section 310(b)(3)(B), unless such regulated seller or regulated person is, at the time of such distribution, currently registered with the Drug Enforcement Administration, or on the list of persons referred to under section 310(e)(1)(B)(v).

As used in paragraph (11), the term "laboratory supply" means a listed chemical or any chemical, substance, or item on a special surveillance list published by the Attorney General, which contains chemicals, products, materials, or equipment used in the manufacture of controlled substances and listed chemicals. For purposes of paragraph (11), there is a rebuttable presumption of reckless disregard at trial if the Attorney General notifies a firm in writing that a laboratory supply sold by the firm, or any other person or firm, has been used by a customer of the notified firm, or distributed further by that customer, for the unlawful production of controlled substances or listed chemicals a firm distributes and 2 weeks or more after the notification the notified firm distributes a laboratory supply to the customer. *For purposes of paragraph (15), if the distributor is temporarily unable to access the list of persons referred to under section 310(e)(1)(B)(v), the distributor may rely on a written, faxed, or electronic copy of a certificate of self-certification submitted by the regulated seller or regulated person, provided the distributor confirms within 7 business days of the distribution that such regulated seller or regulated person is on the list referred to under section 310(e)(1)(B)(v).*

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