BURKE

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Preface

"Crack, wicked as it is, cannot compare to the destructive power of **methamphetamine**," according to Dr. Michael Abrams, of the Broadlawn Medical Center in Des Moines, Iowa. The violence associated with methamphetamine is like that of few other addictive substances. The violence of methamphetamine is not limited to the traffickers' fierce efforts to protect their interests in the illicit marketplace; it is not limited to an addict's desperate craving in search of resources needed to purchase another fix. The violence of methamphetamine is chemically generated in the user -- hostile, uncontrollable, toxic rages that cannot be satisfied or sedated with another fix and that frequently result in harm against others in the home, immediate community, law enforcement and others. Dr. Abrams believes that there has never been an addiction so proficient in human destruction -- of the brain, the family and the community.

As never before, the law enforcement, medical, research and treatment communities are coming together to sound a warning and meet a critical threat. At the Attorney General's invitation, many have contributed to this threat assessment and proposed strategy: the Criminal Division of the Department of Justice, the Drug Enforcement Administration and our partners in State and local law enforcement -- the Attorneys General of California and New Hampshire and the California Bureau of Narcotics Enforcement. We are grateful for the contributions of S. Alex Stalcup, M.D. of San Francisco; Michael Abrams, M.D. of Des Moines; Andrew M. Mecca, Director of California Department of Alcohol and Drug Programs; and the following offices of the Justice Department: the Attorney General's Advisory Council of United States Attorneys, the Environment and Natural Resources Division; the Office of Policy Development, the National Institute of Justice and the Office of Justice Programs.

On February 13, 1996, over 200 representatives of Federal, State and local law enforcement nationwide met in Arlington, Virginia, for a three-day conference sponsored by DEA and developed along with the California Bureau of Narcotics Enforcement and the California Narcotics Officers Association. The conference assembled a broad representation of the law enforcement community to share information and experience in issues relating to methamphetamine. The content of the discussions and the recommendations of the conference working groups are incorporated in this strategy.

The first element of our strategy is to continue the spirit of generous cooperation that is manifest in the work that follows. Together, we have begun the process of developing a comprehensive strategy, not limited to law enforcement, but encompassing, as well, regulation of precursor chemicals; international initiatives; sentencing and legislative proposals; training of investigators and prosecutors; treatment and prevention; and public awareness.

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I. Methamphetamine abuse and trafficking patterns

Trafficking and abuse of a highly potent form of methamphetamine have been on the rise in the United States over the past few years, and this drug continues to devastate many communities. Although still more common in western areas of the country, methamphetamine trafficking and abuse are no longer confined to any one region: methamphetamine is spreading eastward. For example, in areas like New York, New Jersey and Delaware, methamphetamine use in the past had been confined to a small group of users typically associated with motorcycle gangs; in the past year, however, methamphetamine has become popular with college students, housewives and factory workers and has become a drug of choice at "raves" (all-night dance gatherings). Given the production and trafficking structures now in place, if unchecked, the nation as a whole is poised for a methamphetamine boom of pandemic proportions.

A. Production: Clandestine Laboratories

Historically, the suppliers of methamphetamine throughout the United States were outlaw motorcycle gangs and other independent trafficking groups. Although these groups continue to operate, Mexican polydrug trafficking organizations now dominate wholesale methamphetamine trafficking. Mexican organizations have revolutionized production by operating large-scale laboratories capable of producing unprecedented quantities of high-purity methamphetamine and have saturated the market in the Western United States with this product. Much of the clandestine laboratory activity remains centered in California, where the methamphetamine problem is most acute.

In the Midwest, there is an increase in the number of labs in Iowa, Kansas and Missouri, signalling eastward expansion. However, the Midwest laboratories are relatively small-scale in comparison to the laboratories operating in California. DEA believes that the rise in laboratory seizures in the Midwest states does not reflect a concerted effort by major traffickers to shift production from sites in California, as much as it reflects the increasing effort by local entrepreneurs, who operate on the periphery of the methamphetamine market, to exploit the expanding demand for the drug. Figure 1 illustrates the number of clandestine methamphetamine laboratories seized by DEA, in whole or in part, in each state over the last three calendar years (with partial data for FY95).[1]

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[1] Importantly, Figure 1 shows only seizures in which DEA played a role; it does not show seizure made solely by state and local law enforcement. This is significant when one considers that the California Bureau of Narcotics, for example, seized 419 clandestine labs in 1994 and 465 in 1995.

Clandestine methamphetamine laboratories in the United States are makeshift operations that usually operate on an intermittent and transient basis. After "cooking," a batch of finished product is often moved or stored and the lab is disassembled while additional chemicals are acquired. The laboratory may be relocated sometime later to "cook" another batch; relocation affords some protection against detection. Storage facilities often are used to house or safeguard chemicals, glassware and the finished product. It is not uncommon for operators to have multiple laboratory sites.

Methamphetamine laboratory operators often are well-armed, and their labs often are booby-trapped and equipped with scanning devices employed as security precautions. Weaponry, ranging from single firearms to arsenals of high-powered weapons and explosives, are commonly found at laboratory sites.

Laboratory operators, or "cooks," usually display little or no concern for public safety or the environment. Cooks vary from high school dropouts with no real chemistry education to professionals with graduate degrees in chemistry. Typically, however, they have little formal training, and learn from a handwritten recipe, underground publications, the computer information networks, apprenticeships or fellow inmates during periods of incarceration.

The clandestine nature of the manufacturing process and the presence of ignitable, corrosive, reactive and toxic chemicals at the sites have resulted in explosions, fires, toxic fumes and irreparable damage to human health and to the environment. Every year, fires or explosions at a number of clandestine laboratory sites lead to their discovery. Hazardous chemical wastes, the by-products of the clandestine drug manufacturing process, are disposed of by unsafe and illegal methods -- operators dump them on the ground or in nearby streams and lakes, pour them into local sewage systems or septic tanks, or bury them. The toxicity and flammability of methamphetamine laboratories pose a great danger to law enforcement. As a result, special training in health, safety and environmental protection measures and careful planning are prerequisites to any laboratory raid.

In addition to the manufacture of methamphetamine in the United States, it increasingly is being produced in Mexico and smuggled into the United States. Clandestine methamphetamine laboratories in Mexico appear to be operated in a similar manner to their counterparts in the United States. For example, temporary laborers are hired to perform the production process, laboratories often are located in remote areas (e. g., ranches),

and large-capacity laboratory apparatus are used. Seizures of large amounts of methamphetamine in Mexico are common.[2]

B. Distribution, Availability and Seizures

Domestic methamphetamine production and abuse, is concentrated in the Western and Southwestern United States. The hardest hit cities in these regions include Los Angeles, Phoenix, San Diego, San Francisco and, to a lesser degree, Dallas, Denver and Seattle. Methamphetamine also is available consistently in wholesale quantities in some cities in the Midwest and the South. Mexican drug trafficking organizations reportedly have supplanted Asian suppliers of the Hawaiian methamphetamine market. According to the DEA, areas of the Pacific Northwest, Midwest and some portions of the South and Southeast have experienced a dramatic increase in the availability of methamphetamine supplied by Mexican trafficking organizations.

Methamphetamine trafficking is a violent business. In June 1994, DEA Special Agent Richard Fass, acting in an undercover capacity, was attempting to make a purchase of methamphetamine in a Glendale, Arizona strip-mall. S/A Fass was ambushed, shot and killed by four methamphetamine traffickers whose sole intent was to rob him.

Seizure statistics indicate that methamphetamine availability is increasing. The growing frequency of large, high-purity methamphetamine seizures over the past few years provides strong evidence of significantly increased availability of the drug. The total weight and number of methamphetamine seizures submitted to DEA laboratories have increased over the past five years. The average purity of methamphetamine seizures submitted both in FY94 and FY95 was 87 percent, the highest average potency level in the last 11 years.

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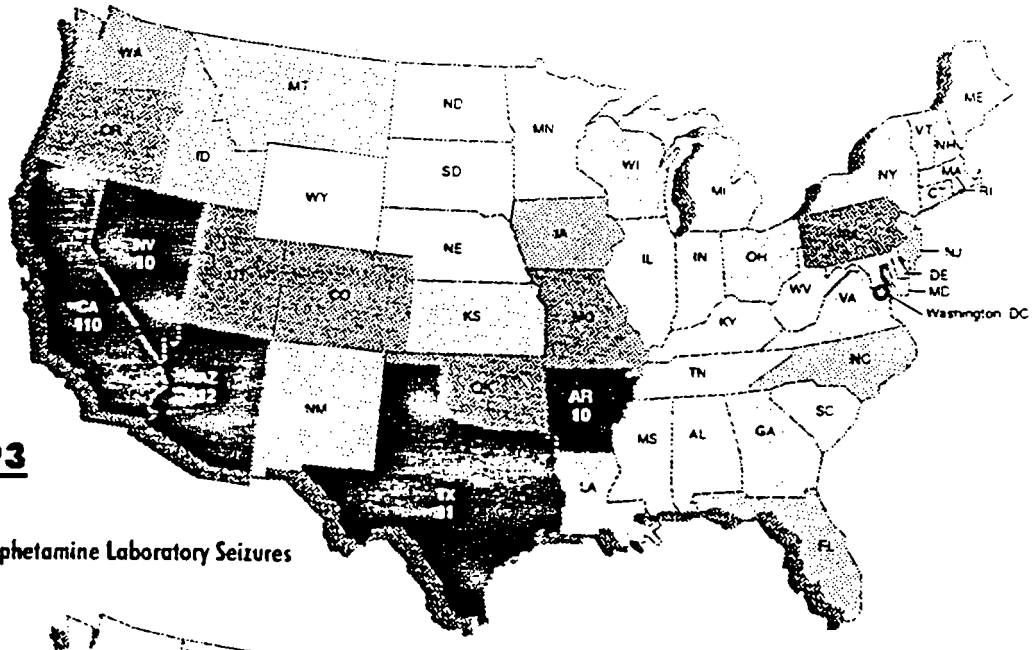
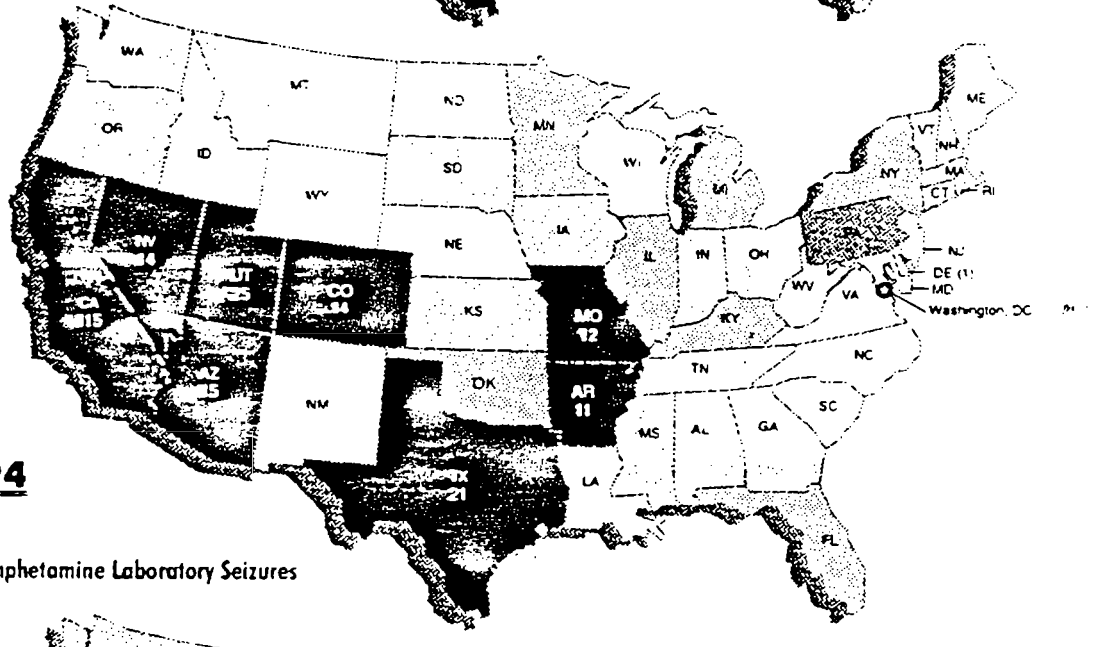
[2] Methamphetamine seizures in Mexico have increased from a negligible quantity in 1992 to 495 kilograms in 1995. Seizures of methamphetamine along the U.S.-Mexico border also increased from 6.5 kilograms in 1992 to 665 kilograms in 1995. Moreover, ephedrine seizures have increased steadily in Mexico, from 2,600 kilograms in 1992 to 6,400 kilograms in 1995.

Methamphetamine manufacturing is moving eastward.
The midwestern states, especially Missouri and Kansas are showing the fastest growth.



1993
218
Methamphetamine Laboratory Seizures



1994
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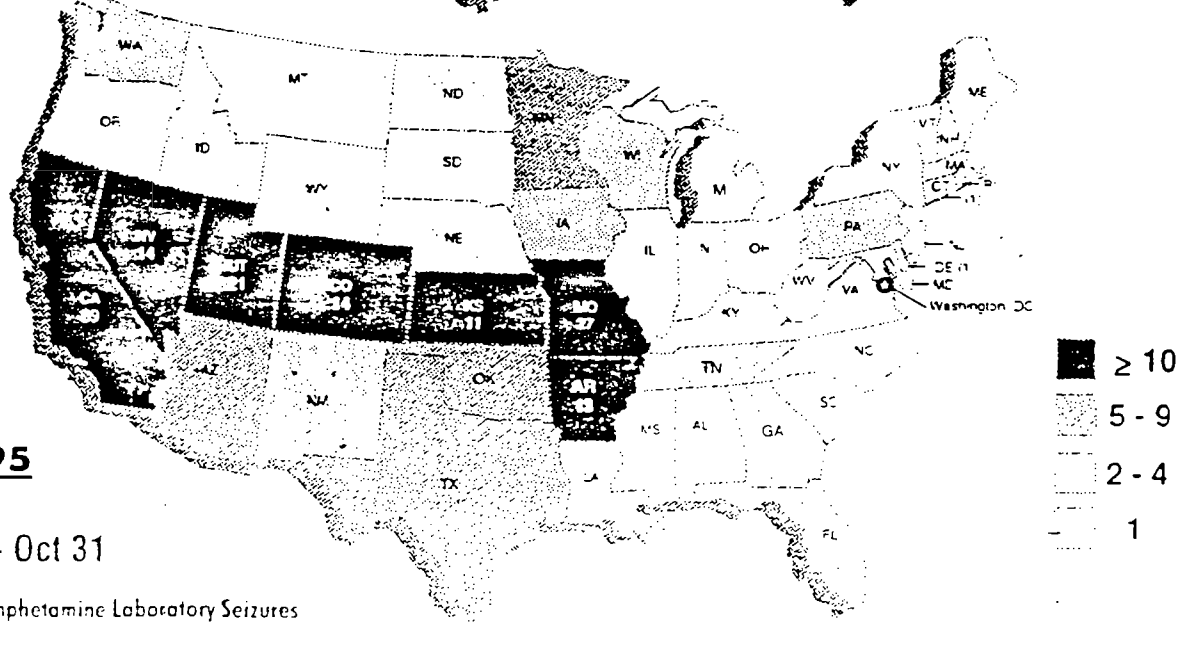
Methamphetamine Laboratory Seizures



1995
241
Jan - Oct 31
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Figure 2

Methamphetamine Submissions

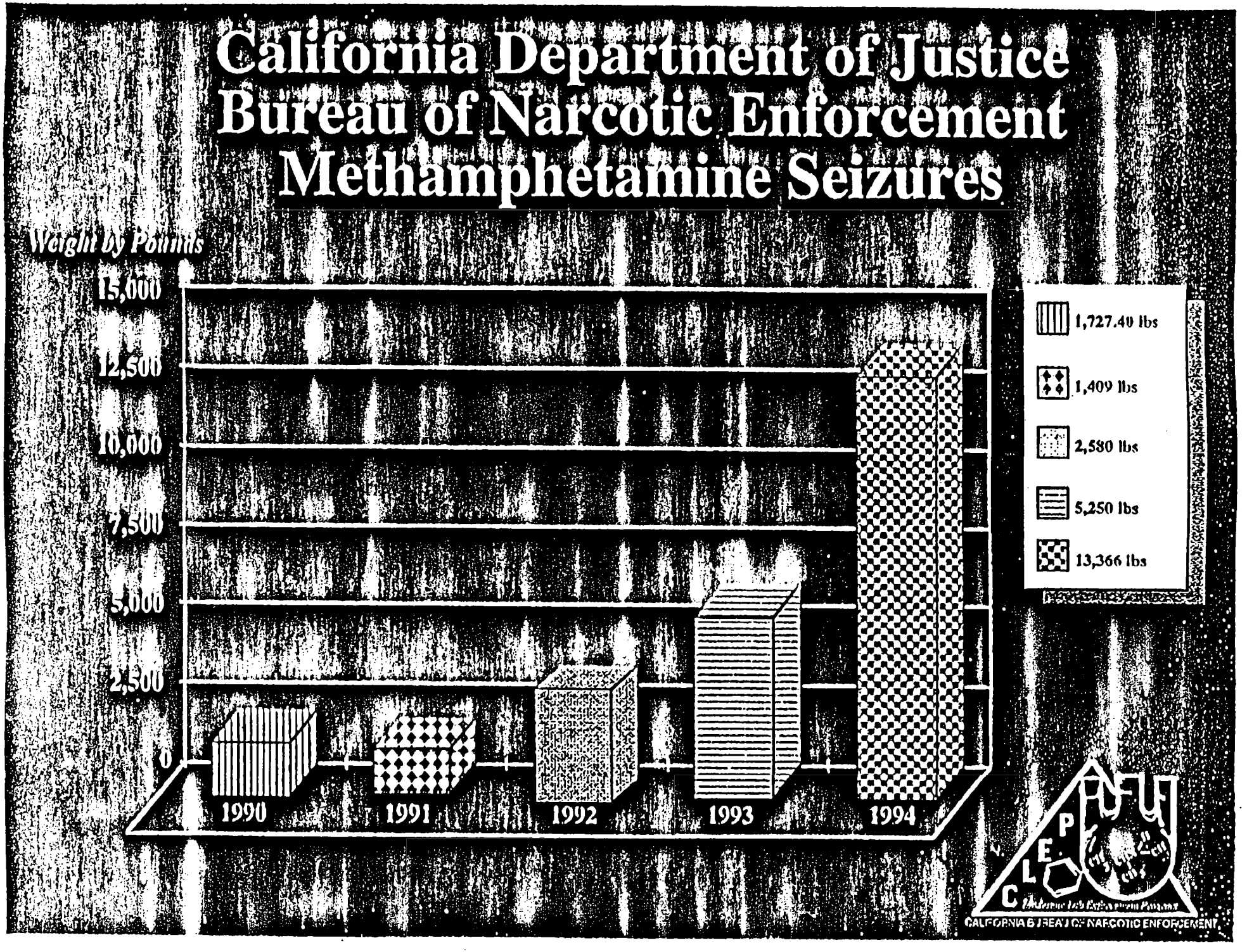
Fiscal Year	Total # of Seizures	% Change	Total net wt. (kilos)	% Change
1985	704	--	103.9	--
1986	785	+12%	229.1	+121%
1987	868	+11%	167.6	-27%
1988	1,122	+29%	576.3	+244%
1989	1,032	-8%	518.8	-10%
1990	941	-9%	751.6	+45%
1991	772	-18%	293.5	-61%
1992	841	+9%	357.9	+22%
1993	880	+5%	488.8	+37%
1994	1,145	+30%	704.8	+44%
1995*	1,470	+28%	950.3	+35%

* FY95 figures are preliminary and subject to updating.

Note that statistics on the quantities of drugs seized can be significantly affected by a small number of large seizures. For example, the increase in the FY95 figure was due in large part to a February 3, 1995 seizure of 306 kilograms of 97% pure methamphetamine in Las Cruces, New Mexico. Had this seizure not occurred, the percentage change in the quantity of methamphetamine seized during FY95 would have decreased by 8% instead of increasing, as it did, by 35%.

Also note that the above figures represent DEA seizures. Figure 3 summarizes seizures by the California Department of Justice Bureau of Narcotic Enforcement.

California Department of Justice
Bureau of Narcotic Enforcement
Methamphetamine Seizures



According to the El Paso Intelligence Center, the amount of methamphetamine seized in transit from Mexico to the United States increased dramatically beginning in 1993. This is clearly borne out by the following seizure statistics along the border:

Figure 4

Methamphetamine Seizures in Kilograms

	1992	1993	1994	1995 Jan-Oct
Southwest Border (EPIC)	6.5	306	682	616

DEA expects that increasingly strict chemical controls and enforcement efforts at the Federal and State levels, especially California, will result in a shift to increased production of methamphetamine in Mexico. In addition, Mexico does not have adequate laws in place to control the importation and diversion of ephedrine, a precursor chemical for methamphetamine production.

Interestingly, the trend in the number of methamphetamine laboratory seizures -- once heavily relied on by DEA as a gauge of the volume of methamphetamine trafficking -- does not reflect the increased volume of drugs seized. This is due to the greatly increased scale of manufacture by Mexican organizations, compared to the smaller scale laboratories found in previous years.

Figure 5

Methamphetamine Laboratory Seizures Reported to DEA[3]

1977	1978	1979	1980	1981	1982	1983	1984	1985	1986
46	69	136	126	89	132	119	185	266	412

1987	1988	1989	1990	1991	1992	1993	1994	1995
653	629	652	429	315	288	218	263	241

[3] As reported to DEA Headquarters by teletype, DEA-6 and Clandestine Laboratory Report, pursuant to DEA Agents Manual reporting requirements. DEA defines a clandestine laboratory as "an illicit operation consisting of a sufficient combination of apparatus and chemicals that either has been or could be used in the manufacture or synthesis of controlled substances." This definition does not include the seizure of chemicals, glassware or other equipment which by themselves may demonstrate the existence of a laboratory.

California Bureau of Narcotics Enforcement (BNE) seizures of methamphetamine and clandestine labs have increased dramatically. Methamphetamine seizures surged from 1,400 pounds in 1991 to over 18,000 pounds in 1995. Also, last year, BNE's lab seizures reached 465 -- one every 19 years. Figure 6 represents a comparison of the numbers of DEA clandestine laboratory seizures with those of the BNE. The figures reflect that the decline in DEA seizures since 1992 is matched by a sharp increase in seizures by BNE. Indeed, in recent years, BNE has effected a greater number of laboratory seizures statewide than DEA has effected nationwide.

The price of methamphetamine has remained within a fairly constant range over the past several years. The nationwide range of prices are estimated per pound ($6,500-$20,000), per ounce ($500-$2,700) and per gram ($50-$150). Methamphetamine prices are heavily influenced by the supply of the key precursors, ephedrine or pseudoephedrine. For example, through mid-1995, when ephedrine and pseudoephedrine supplies were readily available, a pound of methamphetamine sold for as low as $3,000 in Los Angeles and San Francisco. Lately, however, pound prices have increased, most likely as a result of recent efforts to curtail ephedrine and pseudoephedrine supplies. Currently, a pound of methamphetamine sells for $6,500 to $10,000 in both cities.

C. Use

The latest information from the Drug Abuse Warning Network (DAWN)[4] shows that the estimated number of nationwide emergency room drug abuse episodes involving methamphetamine has increased steadily since 1992, following significant decreases that had begun in 1990.

DAWN statistics confirm that the Western cities are hardest hit by methamphetamine abuse. In Phoenix, emergency room episodes involving methamphetamine nearly quadrupled from 1991 to 1994. In addition, methamphetamine-related deaths reported to DAWN by Phoenix medical examiners increased eleven-fold from 1991 (11 deaths) to 1994 (122 deaths).

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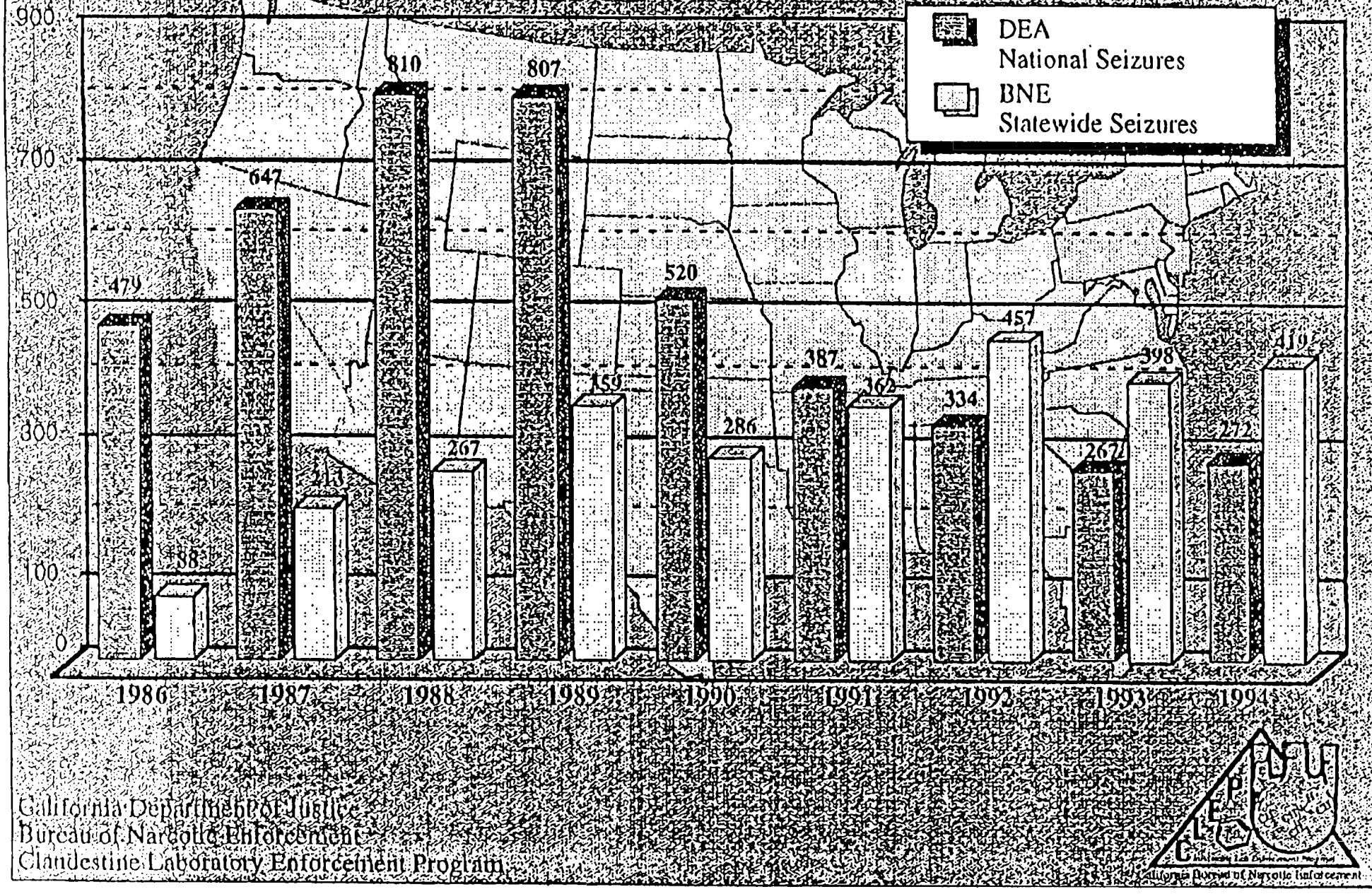
[4] The most recent available DAWN data is preliminary data for calendar year 1994.

Comparison of Drug Enforcement Administration and California Bureau of Narcotic Enforcement Clandestine Laboratory Seizures



California Department of Justice
Bureau of Narcotic Enforcement
Clandestine Laboratory Enforcement Program

Figure 6

Methamphetamine-Related Emergency Room Mentions in Selected Cities

City	1991	1992	1993	1994	% Change
Los Angeles	506	827	1,227	1,418	180%
Phoenix	164	281	481	770	370%
San Diego	516	931	930	967	87%
San Francisco	839	688	992	979	16%
FOUR CITIES	2,025	2,727	3,630	4,134	104%

Figure 7

Methamphetamine-Related[5] Deaths in Selected Cities

City	1991	1992	1993	1994	% Change
Los Angeles	99	68	198	219	121%
Phoenix	11	20	63	122	1009%
San Diego	60	97	110	172	187%
San Francisco	41	48	62	69	68%
FOUR CITIES	211	233	433	582	176%

User groups for methamphetamine have traditionally been white males between the ages of 19 and 40. This population remains most prominent in the DAWN data. However, reports from epidemiologist and treatment personnel reveal several possible modifications in the methamphetamine user profile. For example, methamphetamine use has increased among the Hispanic population in the United States, possibly as a result of the increasing involvement of Mexicans in the production and retail distribution of the drug. There also are reports that methamphetamine use is increasing among college students and young professionals involved in the club scene or participating in "rave" parties, where the drug has emerged among a battery of "party drugs" including LSD, marijuana, Ketamine and alcohol.

D. Pharmacology

Methamphetamine, like cocaine, is a potent central nervous system stimulant. It can be smoked, snorted, injected or taken orally. Snorting and smoking have increased as methods of administration, but injection still predominates among the largest user groups in San Francisco. Ingestion of

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[5] The DAWN data under-count the number of "methamphetamine-related" deaths in some measure. Many of the violence-related consequences of methamphetamine trafficking and use are not included in the DAWN statistics and/or are not widely understood, e.g., homicides, domestic violence, shaken-baby syndrome and HIV transmission.

methamphetamine increases heart rate, blood pressure, body temperature and rate of breathing; dilates the pupils; and produces euphoria, increased alertness, a sense of increased energy and tremors. High doses or chronic use have been associated with increased nervousness, irritability and paranoia, which in turn lead to hyperactive behavior and dramatic mood swings. Heavy users, who can inject up to 2.5 grams (2,500 milligrams) per day, exhibit extreme belligerence and paranoia. The behavior of a methamphetamine user is so violent and bizarre that public health officials often find it difficult to distinguish methamphetamine users from paranoid schizophrenics. Withdrawal from high doses produces severe depression.

As noted at the very beginning of this report, some experts believe that methamphetamine is even more destructive than crack cocaine. According to Dr. Michael Abrams, a physician at Broadlawn Medical Center of Des Moines, Iowa, the chemical structure of methamphetamine renders it more stimulating to the brain than any other drug and capable of far more destructive brain damage.

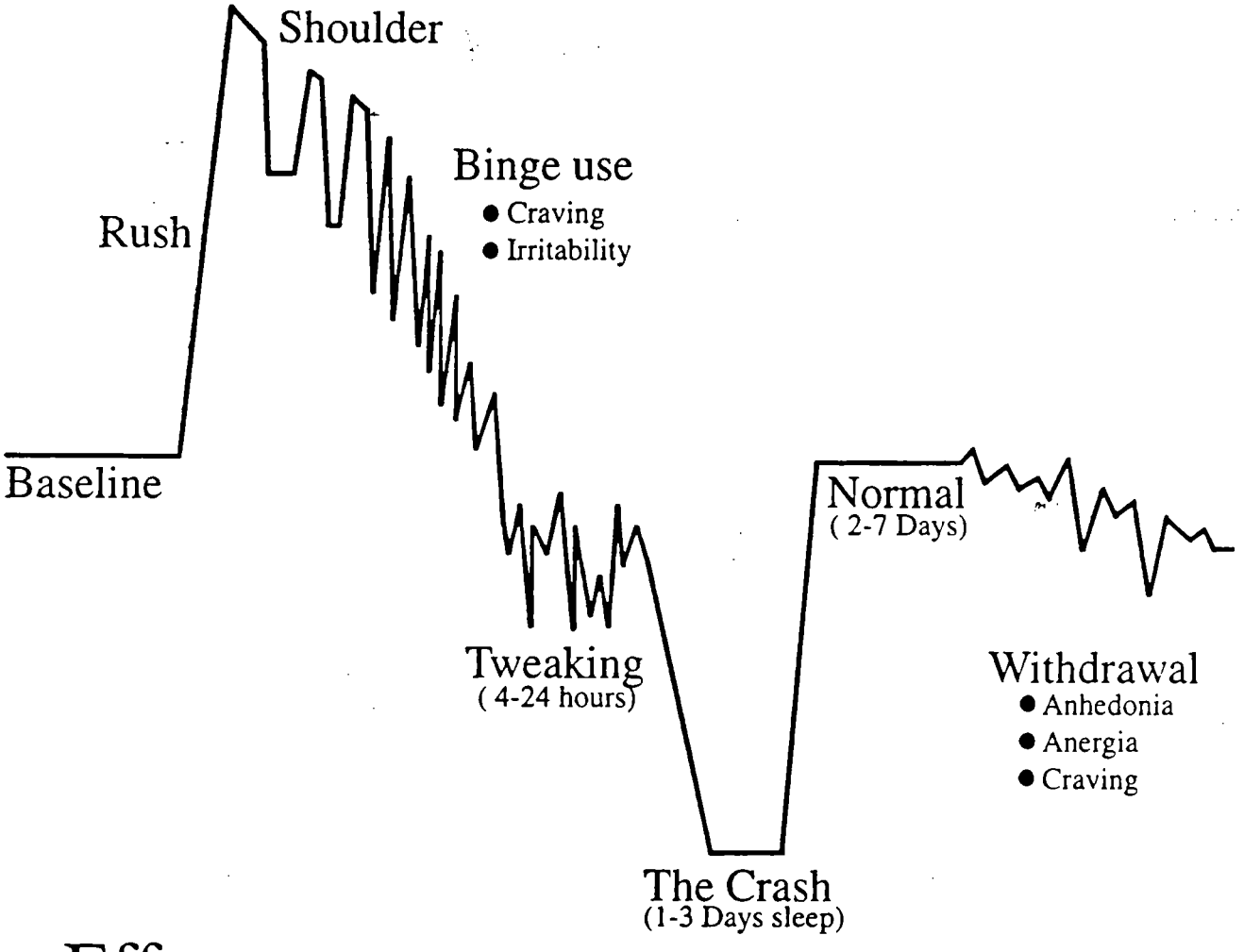
Dr. S. Alex Stalcup, a physician specializing in treatment of methamphetamine-addicted individuals in the San Francisco Bay area, defines three methamphetamine user groups: low-intensity, "binge" and high-intensity users. Low-intensity users take methamphetamine to lose weight and stay alert and awake; adolescents, housewives and shift workers are common among this group.

The pattern of "binge" users is depicted in Figure 8. According to Dr. Stalcup, the initial "rush" and "binge" to maintain the original "high" of methamphetamine are followed by 4-24 hours of "tweaking" -- the phase of the binge in which a user need not ingest any additional drug, but remains high and exhibits little control over his or her behavior. This "tweaking" phase -- a nearly intolerable state, according to Dr. Stalcup -- poses the greatest risk to family, friends, the public and police; the body's release of adrenaline can induce a violent rage manifest through aggression, violence, paranoia, anxiety, hallucinations and hyperactivity. It can also cause the user to have severe physical reaction -- heart attacks and stroke -- if the user is physically restrained using traditional law enforcement methods.

The tweaking phase is followed by the "crash," during which the user sleeps for one to three consecutive days. According to Dr. Stalcup, an average "binge" methamphetamine user can follow the crash with up to a week of normal behavior before withdrawal sets in, triggering the next binge cycle.

The third category, high-intensity methamphetamine users, varies from the binge users in that they follow the crash

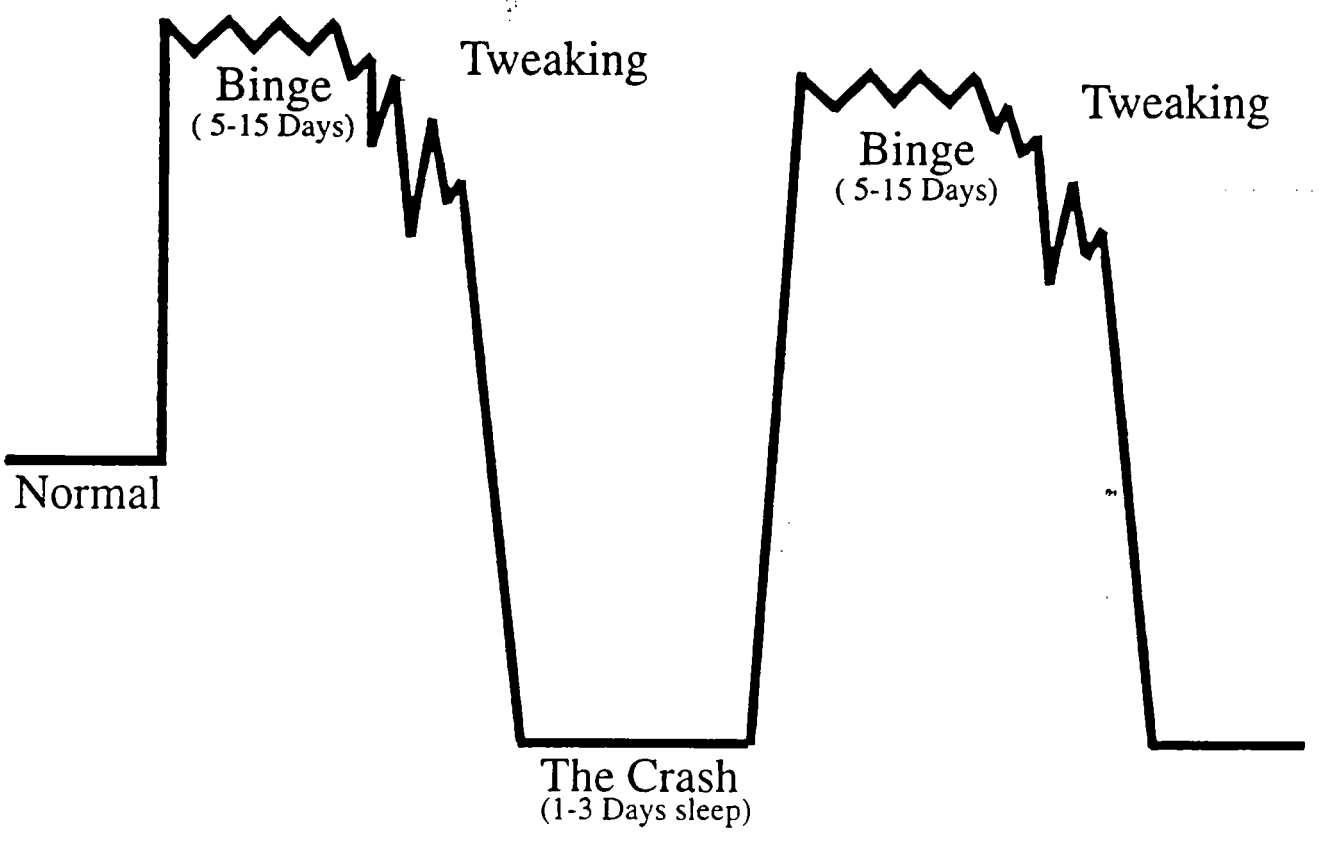
Binge Amphetamine Use



Effects:

- Aggression, violence
- Paranoia, anxiety, hallucinations
- Hyperactivity
- Weight loss

High Intensity Amphetamine Use



Effects:

- Extreme Weight Loss (50-100 pounds)
- Aggression, Violence, Belligerence
- Toxic Psychosis:
  Paranoia, Hallucinations, Hysteria
- Stroke, Heart failure

immediately by another 5-15 day binge, putting these users in an almost perpetual cycle of rushing, tweaking and crashing (see Figure 9). These users may experience extreme weight loss, aggression, toxic psychosis (including paranoia, hallucinations and hysteria), stroke and heart failure.

Binge and high-intensity methamphetamine use leave no time for the care of children; child neglect and abuse are inevitable consequences. According to Dr. Stalcup, neither the binge, tweaking nor crash phases yield time to tend to the needs of dependents. At the most violent, irritable and paranoid phases of the binge, children are at risk of physical abuse and/or "shaken baby" syndrome. In at least one highly publicized case, a New Mexico man, high on methamphetamine, beheaded his 14-year old son, believing him to be a demon, and tossed the dismembered head onto a public highway.

Also among the public health risks, Dr. Stalcup cites an increased incidence of HIV in female methamphetamine users, the result of increased promiscuous behavior in the "tweaking" phase and of trading sex for drugs to satisfy severe craving for additional drugs. Dr. Stalcup predicts that methamphetamine use is or soon will become the major cause of HIV transmission in the San Francisco Bay area.

Finally, the pharmacology of methamphetamine indicates severe and crippling depression in the extended, long-term withdrawal process -- a process that does not even begin until approximately 30 days after use (and often well after the term of availability of traditional treatment interventions). This fact must be addressed by the treatment community in developing methods to break the cycle of methamphetamine dependency.

II. ENFORCEMENT ACTIVITIES -- FEDERAL AND STATE

A. Current Enforcement Efforts

DEA field divisions have initiated specific programs to address methamphetamine trafficking and diversion of precursor and essential chemicals. In particular, efforts are underway to:

- Develop additional intelligence on clandestine methamphetamine production sites and target laboratory operators.

- Identify trafficking organizations that are transporting methamphetamine from sources of supply in Mexico and the Western United States. Gather intelligence on maritime, air and land transshipment methods and routes used by domestic and international drug trafficking groups.

- Monitor shipments of methamphetamine precursors into the United States, which must be reported under the Controlled Substances Act.

- Maintain ongoing liaison efforts with chemical companies that import/export and/or distribute listed chemicals used to manufacture methamphetamine to garner the cooperation of legitimate firms. Specifically, work with chemical suppliers to identify suspicious orders of precursor and essential chemicals, glassware and other equipment and determine which chemical suppliers are, whether wittingly or unwittingly, responsible for precursor chemical diversion.

- Focus special emphasis on major violent methamphetamine trafficking organizations.

- Select high-level targets who are involved in significant money laundering and other organized criminal activities.

- Maintain liaison with federal, state and local law enforcement and regulatory personnel to ensure that there are no gaps in the law enforcement system. Rely on state law and regulatory controls where they are stronger than the federal law.

B. **Proposed Strategy; Implementation Items**

- Continue all elements of Section II.A, above, entitled "Current Enforcement Efforts."

- Form a commitment to information-sharing, including standardization of reporting (e.g., a uniform definition of "clandestine lab"); identify methods of connecting existing intelligence information databases; publish a list of databases, agencies, organizations, informational sources and points of contact that can be of assistance in methamphetamine investigations.

- Form or use existing task forces composed of federal, state and local law enforcement officials (e.g., OCDETF, Safe Streets Task Force) to investigate methamphetamine trafficking.

- Since the bulk of precursor chemicals and finished methamphetamine (perhaps 70% or more) reaches this country across the Southwest Border, enhance the focus of investigative and prosecutive resources of the Southwest Border Initiative on the methamphetamine production and chemical supply operations of the Mexican trafficking organizations targeted by the Initiative.

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- Regularly convene conferences among federal, state and local law enforcement officials to share operational intelligence and investigative and prosecutive strategies.

- Monitor publicly accessible electronic media (e.g., the Internet) to gain information on methods of production and trafficking, after ascertaining Privacy Act and constitutional limitations, if any.

- Utilize all available law enforcement techniques, including undercover operations, electronic surveillance -- with particular focus upon the command and control communications structures -- and grand jury investigations, to identify and pursue the larger production and trafficking organizations.

- Develop or maintain agreements and working relationships as necessary between federal, state and local law enforcement and environmental agencies to respond to clandestine methamphetamine laboratories identified in investigations in order to pool the expensive, specialized equipment, training and expertise needed to respond to clandestine laboratories, which are usually associated with highly flammable and hazardous chemicals.

- Build upon existing liaisons and develop new liaisons with security personnel at United States points of entry and with public and private mail services.

III. Regulatory Controls

A. Analysis of Current Situation

1. Methamphetamine

Methamphetamine is regulated under the Controlled Substances Act, 21 U.S.C. § 803 et seq., and implementing regulations as a Schedule II stimulant (see 21 C.F.R. § 1308.12(d)). As such, it is subject to the most stringent regulatory criteria of any drug with a currently accepted medical use. Currently accepted medical uses of the drug include the treatment of obesity and attention deficit disorder. See Physicians Desk Reference (50th ed. 1996, at 419).

As a Schedule II controlled substance, methamphetamine is subject to production quotas based on total estimated annual needs for medical, scientific, research and industrial purposes. 21 U.S.C. § 826. The 1995 production quota was 16 kilograms. The 1996 quota will increase to 44 kilograms. The nearly threefold increase is explained by depletion of methamphetamine inventories by existing manufacturers and distributors. Coupled with the penalties imposed for methamphetamine trafficking -- mandatory minimum penalties of 5 and 10 years for 10 and 100

grams, respectively -- regulatory controls on the drug itself are appropriately stringent. These statutory and regulatory measures have, in fact, largely curtailed the diversion and abuse of licitly produced methamphetamine from legitimate channels, as evidenced by the very small number of cases of methamphetamine diversion through such schemes as bogus prescriptions or "back door" sales from pharmacies.

2. Precursor Chemicals: Ephedrine and Pseudoephedrine

A more troublesome issue is the regulation of the precursor chemicals from which methamphetamine is manufactured. A brief history of the illicit manufacturing process is necessary to appreciate the current situation. The earliest clandestine methamphetamine labs used the chemical phenyl-2-propanone, also known as phenylacetone or P2P, to produce methamphetamine. In response to clandestine lab seizures throughout the 1970s, P2P was placed on Schedule II of the Controlled Substances Act under the provision which includes within the definition of a "controlled substance" any "immediate precursor." See 21 U.S.C. § 802(6). This action increased the difficulty and risk of obtaining P2P and led to a brief decline in clandestine lab seizures.

However, traffickers adjusted to the scheduling of P2P, first by switching to production of P2P from other uncontrolled chemicals, and then by shifting to the hydriodic acid/ephedrine reduction method of methamphetamine production, which does not require P2P, and which was first discovered by DEA in a 1987 lab seizure. Since then, the relatively simple, high yield ephedrine reduction method of production has outstripped the P2P method in seized labs by a factor of six to one. Ephedrine is used lawfully as a bronchodilator for asthma, while pseudoephedrine is a very widely used nasal decongestant.

The transition from production methods using P2P to those using ephedrine and pseudoephedrine as precursors has resulted in a far more potent drug. The P2P method produces an equal mixture of D- and L-methamphetamine; the ephedrine-based method produces only D-methamphetamine. As only D-methamphetamine enters the central nervous system, ephedrine-based methamphetamine is twice as potent as P2P-based methamphetamine.

The ephedrine reduction method is also more efficient than the P2P method in terms of production. The combination of P2P and methylamine yields only about 20% methamphetamine. In the clandestine laboratory setting, the ephedrine reduction method yields approximately 50-70% methamphetamine. Thus, although greater yields are possible, one kilogram of ephedrine usually converts to about 500-700 grams (0.50 to .70 kilograms) of methamphetamine.

In 1988, following a successful pilot project,[6] DEA obtained legislative authority to launch a program of controls on precursor and essential chemicals. The Chemical Diversion and Trafficking Act of 1988 (CDTA)[7] imposed domestic and import/export regulatory controls on a list of chemicals that includes ephedrine and pseudoephedrine. The CDTA effectively controlled only the bulk form of ephedrine and did not regulate lawfully manufactured drug products containing ephedrine. It is a simple matter to extract the ephedrine from these tablets. Clandestine manufacturers quickly seized on this exemption, facilitated by a gray market of mail order firms that developed to supply ephedrine tablets in bulk to methamphetamine producers, despite indicia of probable diversion that would have led legitimate businessmen not to make the sale.

Abuses of this "legal drug exemption" for ephedrine tablets were part of the impetus for the Domestic Chemical Diversion Control Act (DCDCA), passed by Congress in November 1993 and effective April 16, 1994. This law removes the exemption from record-keeping and reporting requirements for single entity ephedrine products and requires DEA registration for distributors of bulk ephedrine and other chemicals on "list I," which are mostly precursors. The Final Rule setting forth implementing regulations for the DCDCA was published on June 22, 1995.[8] With the burden now placed on prospective registrants to demonstrate that their registration is in the public interest, 21 U.S.C. § 823(h), DEA has found that only legitimate chemical firms are seeking registration;[9] the "rogue" chemical companies have eschewed the process.

Predictably, however, traffickers and rogue chemical firms have adjusted to the new regulatory environment by exploiting remaining opportunities. Traffickers are turning to over-the-counter pseudoephedrine, which is chemically similar to ephedrine, may be substituted in the production process, and yields the same quantity of methamphetamine. Laboratory operators also are turning to drug products containing ephedrine

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[6] The pilot program was embodied in a law that required reporting of sales of piperidine, a precursor to phencyclidine (PCP), enacted as Title II of the Psychotropic Substances Act of 1978, P.L. 95-633, 92 Stat. 3768-78.

[7] Title VI, Subtitle A, P.L. 100-690, the Anti-Drug Abuse Act of 1988.

[8] 60 Fed. Reg. 32,447 (22 June 1995).

[9] About 400 firms have applied for DEA registration to distribute list I chemicals, a smaller number than DEA anticipated.

in combination with other substances -- e.g., ephedrine with guaifenesin -- so that they remain exempt.

Law enforcement authorities have countered with two recent regulatory initiatives. First, effective November 10, 1994, DEA eliminated the regulatory quantity threshold for ephedrine, which had been one kilogram. See 59 Fed. Reg. 51,365. Now all single-entity ephedrine transactions are subject to reporting, record-keeping and notification requirements, regardless of the quantity involved.

Second, a DEA Proposed Rule published in the October 31, 1995 Federal Register would remove the regulatory exemption for certain pseudoephedrine products. Because pseudoephedrine is an ingredient in many legitimate over-the-counter drugs, the proposed rule generally regulates only products in which pseudoephedrine is the sole active ingredient, or is combined with other active ingredients such that pseudoephedrine can be readily recovered.[10] The threshold of 24 grams pseudoephedrine base corresponds to a 120-day supply at the maximum adult daily dosage established by the FDA. Significantly, a waiver ensures that the approximately 750,000 retail distributors of pseudoephedrine will remain exempt, unless they engage in sales of above-threshold quantities.[11]

On the international front, implementation of the CDTA and some successful prosecutions of domestic methamphetamine trafficking organizations gave rise to a fundamental change in the illicit methamphetamine trade. As noted in Part I, Mexican polydrug organizations replaced domestic outlaw motorcycle gangs as the primary methamphetamine producers, traffickers and distributors in the Western United States. In 1990, smuggling of precursors along the United States/Mexican border increased significantly. This practice exposed the Mexican traffickers to the much lower penalties for smuggling chemical precursors, avoiding the tougher penalties associated with smuggling the final product.[12] According to the DEA, Mexican chemists

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[10] 60 Fed. Reg. 55,348 (Oct. 31, 1995). The newly regulated combination products are tablets, capsules, and powder packets containing pseudoephedrine and antihistamines, guaifenesin or dextromethorphan. 60 Fed. Reg. at 55,350.

[11] "Retail distributor" is defined as one "selling only personal use quantities to walk-in customers" 21 CFR 309.02. Thus, the seller to a pharmacy is required to report, the pharmacy is not.

[12] This problem and possible solutions are discussed below in Part IV, "Sentencing and Legislative Initiatives."

operating on both sides of the border are now responsible for most methamphetamine production.

The scope of Mexican methamphetamine trafficking became apparent in March 1994, as a result of a chance Customs seizure of 3.4 metric tons of ephedrine at the Dallas/Ft. Worth Airport. Manufactured in India and brokered by a Swiss firm, the shipment was intercepted en route from Zurich to Mexico City. Four months later, a 2.3 metric ton ephedrine seizure was made at the same location. Further investigation revealed source countries as diverse as India, China and the Czech Republic; transit countries that included the United Arab Emirates, the Netherlands, Germany, Guatemala and other Latin American countries; brokers in Switzerland; and distribution points in Guatemala and Mexico.

As a policy matter, further regulatory controls on precursor chemicals will require balancing the competing interests of law enforcement and the legitimate needs of industry. Even as traffickers constantly shift to meet regulatory changes, each successive control measure places greater strain on the chemical and pharmaceutical industries, the vast majority of which are composed of legitimate firms conducting legitimate transactions. Either chemical may be obtained naturally from the ephedra plant or may be produced by purely synthetic methods. On balance, we think it is possible to increase regulatory controls and government powers in the limited manner suggested below in Section III.B.

B. <u>Strategy; Implementation Items</u>

- Current regulatory measures for methamphetamine are adequate. Schedule II controls are appropriately stringent, and have been effective in preventing diversion and abuse of licitly manufactured and lawfully prescribed methamphetamine.

- Taking into account reasonable public comments, follow through on the current proposed rule to impose regulatory controls on those products in which pseudoephedrine is the only active ingredient or can be readily recovered, so that the final rule is substantially similar to the proposed rule.

- Similar to the rule imposing greater regulation on pseudoephedrine, undertake regulation of appropriate ephedrine combination products, particularly ephedrine with guaifenesin and other products from which the ephedrine can be readily retrieved by clandestine methamphetamine "cooks."

- In an effort to anticipate the clandestine lab operators' next moves, the DEA should conduct a comprehensive review of other feasible methods by which methamphetamine can be

manufactured, taking into account historical methods, substitute chemicals and probable innovations.

- Amend the Controlled Substance Act to permit seizure of regulated chemicals where suspicious transactions or regulatory violations are detected. As interpreted by DEA, current law permits only criminal forfeiture, predicated on import, export, distribution, possession, etc. in violation of a felony provision of the CSA, under 21 U.S.C. § 881(a)(9). Although DEA has legal authority to seize and dispose of list I chemicals when a registration has expired or been revoked or suspended, pursuant to 21 U.S.C. § 824(f) and (g), that authority may not extend to registration denials.[13] This may become more of a problem in the future if, for example, a rogue chemical firm were to apply for and be denied registration with the DEA.

- Encourage prosecutors to make greater use of 21 U.S.C. § 843(a)(7), as revised, which makes it a crime to manufacture, distribute, import or export, inter alia, any equipment, product or chemical -- whether or not it is regulated under the CSA -- "knowing, intending, or having reasonable cause to believe that it will be used to manufacture a controlled substance or listed chemical in violation of [the CSA]." This could even reach chemicals not (yet) regulated by DEA.

  Note: Prosecutors would need to see the importance of such prosecutions beyond prison sentences, as the penalty range is 0-4 years, plus fine and injunction. Increased sentences are not being proposed because other provisions impose stiffer penalties for similar conduct with regulated chemicals. See 21 U.S.C. §§ 841(d)(1), (2), (g)(1), 960(d)(1), (2).

- Create the authority to enjoin the sale of chemicals, whether or not they are regulated per se under the CSA, by making violation of 21 U.S.C. §§ 843(a)(7) enforceable by means of injunctive relief (subjecting a violator to potential imprisonment for contempt). This change could be made as part of a broader amendment to permit enforcement of all of §§ 842 and 843, which set forth the more minor and essentially regulatory violations of the CSA, through civil

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[13] DEA Office of Chief Counsel arrived at this conclusion after consultation with the Criminal Division, Narcotic and Dangerous Drug Section, which in turn consulted with the Deputy Director of what was then the Asset Forfeiture Office. It should be noted that unlike controlled substances, the mere possession of which violates 21 U.S.C. § 844, precursor chemicals are not readily shown to be contraband.

injunctive relief. The following draft legislative language, under the heading "Alternative civil and injunctive measures," is offered as a new subsection 21 U.S.C. § 843(f):

> In addition to or in lieu of the foregoing penalties, the Attorney General is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, where there is a reasonable basis to believe that a violation of this section or section 842 of this subtitle will occur. Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation.[14]

The greater flexibility and lower standard of proof to obtain a civil injunction could be a useful tool to prevent imminent suspicious transactions. As a practical matter, civil AUSAs in some districts may be more willing to seek such injunctions than their criminal counterparts.

- Establish a procedure, with appropriate due process safeguards, whereby DEA can instruct a firm not to engage in a particular chemical transaction with another firm. In other words, DEA should have the authority to suspend a sale of chemicals domestically parallel to its authority to interdict an import or export under 21 U.S.C. § 971(c). The following draft legislative language, under the heading "Suspension of suspicious chemical transactions," is offered for consideration as a new subsection 21 U.S.C. § 830(c):

> (1) The Attorney General may order the suspension of any transaction involving a listed chemical, where there is a reasonable basis to believe that the transaction will facilitate the unlawful manufacture of a listed chemical or controlled substance. From and after the time when the Attorney General provides written notice of the order to the regulated person (including the basis for the legal and factual basis for the order), the regulated person shall not carry out the transaction.
>
> (2) Upon written request to the Attorney General, a regulated person to whom an order applies under

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[14] Existing injunction provisions of the CSA require a conviction prior to their issuance. The suggested language is adapted from 33 U.S.C. § 1319(c), which provides for injunctive relief to enforce certain DEA compliance orders.

paragraph (1) is entitled to an agency hearing, on the record, in accordance with subchapter II of chapter 5 of Title 5. The hearing shall be held on an expedited basis and not later than 45 days after the request is made, except that the hearing may be held at a later time, if so requested by the regulated person.[15]

Note: Under current law, there are times when DEA develops information on suspicious domestic sales, e.g., to pharmacies that divert chemicals out the "back door," but cannot act on the information. The one district court to rule on DEA's application of current 21 U.S.C. § 830, which would on its face permit DEA to order a firm not to engage in a domestic chemical transaction, read the statute more narrowly, based on statutory construction and procedural due process concerns. Chemicals for Research and Industry v. Thornburgh, 762 F. Supp. 1394 (N.D. Cal. 1991).

IV. International Initiatives: Focus on Mexico

A. Analysis of Current Situation

As noted above, the production and trafficking of methamphetamine has a strong international dimension, so our international efforts -- including bilateral and multilateral agreements and cooperative arrangements -- are important. Cooperation with Mexico is especially crucial. The nearly 2,000-mile U.S.-Mexican border is the primary entry point for ephedrine into this country, and Mexican organized crime now controls much of the illicit manufacture, sale and distribution of methamphetamine in the United States. The polydrug trafficking organizations with a stake in the emerging methamphetamine trade include:

- The Juarez Cartel, led by Amado Carrillo Fuentes, operates from Hermisillo in the west across the border to Arizona and from Juarez into Texas. Carrillo Fuentes is believed to have controlled the 315 kg of methamphetamine that were seized in Las Cruces, New Mexico, in February 1995; he is also tied to a three metric ton shipment of ephedrine made to Nicaragua in concert with the Amezcua brothers.

- The Sonora Cartel, headed by Miguel Caro Quintero, operates from Hermosillo, Agua Prieta, Guadalajara and Culiacan, as

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[15] This amendment impels deletion, as obsolete, of the following language from 21 U.S.C. § 830(b)(1): "A regulated person may not complete a transaction with a person whose description or identifying characteristic is furnished to the regulated person under subparagraph (B), unless the transaction is approved by the Attorney General."

well as the Mexican states of San Luis Potosi, Sinaloa and Sonora. Its smuggling routes extend into California, Arizona, Texas and Nevada; the organization is believed to be responsible for trafficking hundred-pound quantities of methamphetamine through the Arizona ports of entry.

- The Arellano Felix brothers, Benjamin, Francisco, Eduardo and Ramon, operate from Tijuana into Arizona and southern California. The gang has connections to the methamphetamine trade in San Diego through direct contact with the Logan Heights Calle Trienta and other street gangs. The group is considered the most violent of the Mexican trafficking organizations. Through their sponsorship of San Diego methamphetamine trafficker Nico Marron, the group is alleged to have assisted in 26 drug-related murders.

- The Amezcua organization -- headed by Jesus Amezcua Contreras and his brothers Luis and Adan -- is perhaps the largest methamphetamine trafficking group in North America. It operates primarily out of Guadalajara but, through agreements with other Mexican gangs, the Amezcuas' reach extends all along the border. The Amezcuas control methamphetamine labs in Guadalajara and Tijuana; their associates across the border are heavily involved in methamphetamine distribution and ephedrine trafficking, especially in southern California.

While DEA has good working relationships with its Mexican counterparts at the operational level, Mexico still lacks adequate legislation to regulate precursor and essential chemicals and to punish chemical trafficking. Strong legislation proposed in 1993 resulted in only minor changes to the Mexican public health law, under which ephedrine and pseudoephedrine are loosely monitored.

An increase in penalties in the United States for trafficking in ephedrine and pseudoephedrine, as urged below in Part V of this Strategy, could have a collateral impact in Mexico. It would add to the existing pressure on traffickers -- resulting from a tougher U.S. law enforcement and regulatory environment -- to shift production from the United States to Mexico. This possibility makes an effective chemical control regime in Mexico all the more important.

B. <u>Strategy; Implementation Items</u>

- Continue to meet with, advise and train foreign counterparts -- particularly in Mexico -- at both policy and operational levels concerning the problem and consequences of chemical diversion and the legal, administrative and practical means to prevent and detect diversion.

-- In our bilateral relationship with Mexico, lay special emphasis on the need to curb trafficking in methamphetamine and its precursor chemicals, especially ephedrine and pseudoephedrine.

-- To promote a comprehensive approach and harmonization of laws to the extent possible, urge Mexico to use as a model for its legislation the OAS model chemical control regulations and Article 12 of the 1988 UN Vienna Convention.

Note: The OAS model laws include, among other measures, the power to suspend or cancel imports and exports on reasonable suspicion of diversion, and a requirement of shipment-specific notice to allow for investigation of intended use of chemical products.

- Augment the role of the Bilateral Working Group on Precursor Chemicals, which now serves as an ad hoc operational consultative body, by (a) making it a permanent, staffed unit based in Mexico City and (b) giving it a greater policy-making function.

- Augment more U.S. resources in Mexico, including at the Embassy, on tracking and investigating methamphetamine trafficking and precursor chemical smuggling and diversion.

- Encourage more investigation of importers and major distributors of methamphetamine and its major precursors by law enforcement authorities in Latin America, especially Mexico.

- Continue to cooperate with the United Nations International Narcotics Control Board (INCB) to foster and enhance its role as a central collection point for data regarding ephedrine and pseudoephedrine shipments, which it distributes via electronic mail.

- Continue to work with the INCB and other international bodies -- including regional organizations such as the OAS anti-drug commission (CICAD) -- and foreign counterparts to focus attention on the problem of chemical diversion and its quintessentially international dimensions.

V. Sentencing and Legislative Initiatives

A. Analysis of Current Situation

The current penalties for methamphetamine manufacture and trafficking appropriately reflect the societal harms and dangers wrought by these activities. There is a 10-year mandatory minimum penalty for trafficking in 100 grams or more of pure methamphetamine or 1,000 grams (one kilogram) or more of a mixture containing methamphetamine, and a 5-year mandatory minimum penalty for trafficking in 10 grams or more of pure methamphetamine, or 100 grams or more of a methamphetamine mixture. Even at the retail ounce and gram levels, most seizures of methamphetamine are in the purity range of 50-70%, so most cases involve determination of the quantity of "pure" methamphetamine for sentencing purposes. Although it is difficult to pinpoint an "average" dosage of methamphetamine -- as is clear from the discussion in section I.D on the pharmacology of the drug -- an average "binge" user ingests 500 milligrams per day. Assuming an average of 60% purity, this dose has about 300 milligrams of "pure" methamphetamine.

Methamphetamine is a central nervous system stimulant, similar to powder and crack cocaine in its euphoric effects. The comparison of sentencing consequences, by amount and dosage are as follows:

	Five-year Minimum	Ten-year Minimum
Methamphetamine	10 grams (pure) 33 days dosage	100 grams (pure) 333 days dosage
Powder Cocaine	500 grams 1,000-5,000 doses	5 kilograms 10,000-50,000 doses
Crack Cocaine	5 grams 10-50 doses	50 grams 100-500 doses

Given that the methamphetamine use pattern is similar to that of crack cocaine -- and that much of the potent methamphetamine available today produces a reaction far more severe than even crack -- threshold quantities for determining mandatory minimum penalties for trafficking methamphetamine should be set at or about the same levels established for crack. However, there are two issues that should be resolved: first, to the extent that we seek to balance crack and methamphetamine sentencing and to the extent that debate continues with respect to crack sentencing, we must resolve the crack issues. Second, in that there is considerable room for disagreement about the weight and dosage equivalencies between methamphetamine and crack cocaine, we must begin consultations among health and law

enforcement professionals aimed at determining the appropriate equivalencies.

In addition, we should consider additional enhancements for methamphetamine manufacture and trafficking. For example, clandestine laboratories pose a unique hazard to the environment and to public health -- and in particular the health of law enforcement personnel and others at the lab scene -- that should subject offenders to additional penalties in appropriate cases.[16] Draft legislative language for consideration appears below at subpart B of this Part.

Penalties for trafficking in the precursor chemicals ephedrine and pseudoephedrine, which are today by far the most common precursors in the clandestine manufacture of methamphetamine, are much lower than for trafficking in the finished product. The long drug sentences prescribed in USSG 2D1.1 apply only if the government can show that the offense involved manufacturing or attempted manufacturing of methamphetamine. See USSG 2D1.11(c). Otherwise, a penalty range of 0-10 years applies to possession, distribution or import/export of a listed chemical knowing, or having reasonable cause to believe, that it will be used in the illicit manufacture of a controlled substance. See 21 U.S.C. §§ 841(d) and 960(d). The highest sentencing guideline offense level for trafficking in ephedrine, pseudoephedrine or any listed chemical is level 28 (78-97 months for a first offense), which applies to offenses involving 20 kilograms or more. See USSG § 2D1.11.

While higher yields are theoretically possible, in practice clandestine lab operators are able to convert one kilogram (1,000 grams) of ephedrine or pseudoephedrine to about 0.50 to 0.70 kilograms (500-700 grams) of methamphetamine. The illicit sale of 200 grams of ephedrine, which could produce at least 100 grams of pure methamphetamine -- corresponding to a 10-year mandatory minimum penalty -- yields an offense level of 18 (27-33 months). The 20 grams of ephedrine needed to yield 10 grams of methamphetamine corresponds to a level 12 offense (10-16 months, with the possibility of a split sentence). On the other hand, the amount of ephedrine or pseudoephedrine necessary to reach level 26 -- i.e., the level equivalent to a 5-year mandatory

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[16] Senator Slade Gorton introduced a bill in 1991 that proposed increased sentences and fines for laboratory operators failing to comply with environmental laws to pay for cleanup and restoration of the laboratory sites. See the "Violent Crime and Law Enforcement Control Act of 1991," Sec. 1621. We also propose to include a criminal fine as part of the penalty; however, it is our observation that defendants in clandestine laboratory cases who are sentenced to lengthy prison terms are generally not in a position to pay the assessed fines.

minimum sentence -- is 6-20 kilograms. The 6 kilograms of ephedrine needed to trigger a 5-year mandatory penalty is 600 times greater than the 100 grams of methamphetamine that triggers the same penalty. Six kilograms of ephedrine can produce, with simple processing and not much skill or education, at least three kilograms of methamphetamine, the sale of which would yield an offense level of 34 (151-188 months for a first offense).

B. Strategy; Implementation Items

- Penalties for methamphetamine manufacture and trafficking must appropriately reflect the acute threat to the public and the seriousness of the offense.

- Statutory penalties and Guidelines sentences for trafficking in precursor chemicals should be significantly increased to better reflect their relative harm, based on the ease of conversion to controlled substances and the quantity ratio of controlled substances produced.

  The statutory maximum for trafficking in the precursor chemicals should be changed as follows: where the Government can prove that the trafficker knew or had reason to know that the chemicals were being used for the unlawful manufacture of methamphetamine (or other controlled substance), the penalty should be equal to that of trafficking in the quantity of methamphetamine (or other controlled substance) that could have been manufactured (where such corresponding quantity can be determined) from the quantity of chemicals proven. It is noted that prosecutors have the option, presently, to charge such trafficking as attempt to manufacture a controlled substance, under 21 U.S.C. §§ 841(a) and 846; however, the proposed legislative change would strengthen the alternative charging option set forth in § 841(d).

  Note: The much lower penalties for illegal importation of precursor chemicals than finished methamphetamine have caused Mexican polydrug organizations operating in the United States to minimize their risk by importing precursor chemicals from Mexico for processing into methamphetamine in the Western United States. While it is not proposed that penalties for ephedrine and pseudoephedrine be made equivalent to methamphetamine, it should be noted that increased penalties for precursor importation and distribution may lead the source organizations to produce incrementally more methamphetamine in Mexico, smuggling the finished product into the United States. A collateral effect would be to remove the serious dangers of explosions and environmental degradation from clandestine methamphetamine labs from the this country, but the same hazards would be transferred to Mexico.

- Additional consecutive penalties for improper storage, release, disposal, transport or other handling of toxic, ignitable, explosive and hazardous chemicals used to manufacture methamphetamine in clandestine settings should be imposed to appropriately reflect the unique public health hazards -- including danger to law enforcement officers and others at the scene -- and environmental degradation wrought by this form of drug crime.

  We suggest for consideration the following provision, which could be a new 21 U.S.C. § 864, which makes it unlawful to generate, transport, treat, store, dispose of, use, possess, distribute, import or export a precursor chemical or its waste. A proposed statute is attached as Appendix A.

- The Attorney General's authority to suspend domestic shipments of regulated chemicals and to seek injunctions to prevent shipments of all chemicals (whether or not regulated) should be expanded. See Section III.B, above.

- The Attorney General can issue regulations narrowing the exemptions for drug products containing ephedrine and pseudoephedrine. While legislation to narrow these regulatory "loopholes" is also an option, the use of regulations permits greater flexibility.

VI. Training of Investigators and Prosecutors

A. Analysis of Current Situation

Clandestine laboratory and methamphetamine investigations and prosecutions pose some unique issues from the perspective of hazardous situations at clandestine lab sites, the violent proclivities of methamphetamine users and proof problems at trial of offenders. In particular, investigators face significant dangers due to the toxicity and flammability of the chemicals used in the process. Similar problems complicate seizure and forfeiture of property. Real property may be contaminated to the extent that its cleanup costs exceed its value.

The primary toxic gases generated during the manufacture of methamphetamine are hydriodic acid vapors and phosphine gas. Prolonged exposure can cause internal chemical burns and permanent respiratory damage. Lab sites such as hotels or apartment buildings can use centralized air ventilation systems, endangering innocent individuals should poisonous vapors, gases or smoke from chemical fires travel freely from room to room.

At the DEA conference held in February 1995, 83% of law enforcement personnel responding to a survey expressed the view that training is needed to alert officers to the dangers of clandestine laboratories. DEA reports that while 60% of those

surveyed claimed their agencies are having difficulty meeting federally mandated training requirements, 71% indicated that officers in their jurisdictions have experienced health problems arising from exposure to hazardous chemicals found at seized methamphetamine labs. Other dangers await the officers responding to clandestine labs: 78% said firearms are typically present at these sites and 45% said booby traps have been encountered.

Discarded liquid waste -- primarily sodium hydroxide -- contaminates soil and ground water, posing an environmental threat for years. Abandoned dump sites continue to hold red phosphorous, which remains highly combustible. Even the attempts to unearth or clean up the site can create enough friction to ignite the red phosphorous, causing chemical fires. Each of these environmental issues requires training, for the protection of the public, the environment and the physical safety of law enforcement officers.

While Federal law enforcement agencies are fully capable of searching and seizing these laboratory sites and arresting those responsible, they have limited chemical/environmental decontamination capabilities. Accordingly, Federal law enforcement agencies have requested the assistance of the Department of Defense in chemically decontaminating ever-increasing numbers of these sites to ensure the public's health and safety, as well as environmental resources. DOJ has requested a $20 million appropriation in support of this effort.

Additional personal safety issues are posed by violent users, to the public and law enforcement community, but also to the user in situations where law enforcement employs traditional methods of restraint. Dr. Michael Abrams, of the Broadlawn Medical Center in Des Moines, Iowa, provides treatment in hospital and prison settings. He reports danger of heart attack and stroke in prisoners controlled by handcuffs and leg restraints, while in a methamphetamine chemically-induced rage. He urges the law enforcement and medical communities to research together appropriate methods for protection of officers and prisoners.

For prosecutors, methamphetamine cases sometimes involve unique proof problems. For example, where a lab is raided before "cooking" has begun -- or more likely between cooking episodes, but after the last batch has been removed -- there may be no methamphetamine seized to introduce as evidence. Prosecutors should be aware of the federal and applicable state regulatory controls on precursor and essential chemicals, and may wish to include chemical trafficking counts along with conspiracy to manufacture methamphetamine counts in the indictment. They also should be aware of applicable environmental laws and regulations. Reference also should be made to the analogous body of

prosecutions involving clandestine cocaine laboratories, particularly in the Southern District of Florida, which posed similar investigative and prosecutive issues.

B. Strategy: Implementation Items

- The law enforcement training academies will develop curricula addressing the physical dangers posed by the chemicals encountered at clandestine laboratories and chemical dump sites, including the use of protective clothing and equipment. Proposed safety training programs should include the 40-hour initial training program required by OSHA, the 8-hour refresher training, baseline and annual medical examinations, acquisition of protective equipment, record keeping, and on-the-job training. Specialized training should include the identification and dismantling of trap devices found at clandestine lab sites.

- The training academies will also develop instructional materials on statutory and regulatory requirements and responsibilities associated with the cleanup and remediation of chemical disposal sites.

- Educational material (pamphlets and videos) should be prepared to alert field personnel, management and administrators to actual and possible hazards of clandestine labs. Topics should include federal regulations concerning safety clothing, equipment and medical evaluations, as well as civil liability and the obligations of supervisors and administrators.

- The law enforcement and corrections communities will combine with the medical/mental health/addiction communities to exchange information regarding safety issues associated with the violent behavior of methamphetamine users and addicts.

- DEA, EOUSA and DOJ/NDDS, California BNE and other State and local law enforcement agencies will identify as participants in a training team the most knowledgeable and experienced analysts, investigators and prosecutors. We will draw from the list in our training and regularly will update the list and make it available to other jurisdictions upon request.

- DEA, EOUSA and DOJ, California BNE and other State and local law enforcement agencies will collaborate to develop a practical, case-oriented training curriculum and materials.

- DEA, USCS, EOUSA and DOJ/NDDS, California BNE and other State and local law enforcement agencies will identify the regions where training is most needed, and the training team will make presentations in those regions.

- Formulation of training schedules, course materials, presenters and identifications of first tier training locations were discussed at the February 1996 meeting of prosecutors and investigators in Washington D.C.

VII. Treatment, prevention and education

As the Attorney General stressed in Miami in early December, the young people of this nation must be convinced that drug use is not attractive or cool or safe, but illegal and unwise and dangerous. Methamphetamine is not a benign substance -- it is physically and psychologically destructive. The treatment community must begin to study deficiencies in traditional drug treatment over the longterm. Methamphetamine users show markedly different behavior after 30 days of abstinence (severe, crippling depression) than do individuals treated for the abuse of other substances. Indeed, withdrawal as such may not even set in until 30 days after use. Thus, it is anticipated that the treatment community will have to recognize and/or develop regimens of long-term treatment specific to methamphetamine dependency.

The Office of Justice Programs (OJP) and DEA have very strong treatment and educational structures. For example, in FY95, five grants were awarded for the implementation of new drug courts and eight grants were awarded for the improvement and enhancement of established drug courts. Drug court implementation awards were given to localities to serve juveniles, women with children, as well as adult males. Enhancement awards will enable on-going programs to improve their effectiveness through the use of automated information systems, vocational/educational services and upgraded treatment and sanction systems.

Drug courts contribute to reduction of the demand for illicit drugs, including methamphetamine, by mandating treatment for drug-addicted offenders. The link between drug use and criminal activity has been well-documented, and drug treatment has been shown to reduce both the drug use and the criminal activity of drug-involved offenders.

In addition, the corrections programs authorized by the Violent Crime Control and Law Enforcement Act (Crime Act) of 1994 address Goal 2 in the 1995 National Drug Control Strategy, which is to:

> Expand treatment capacity and services and increase treatment effectiveness so that those who need treatment can receive it. Target intensive treatment services for hardcore drug-using populations and special populations, including adults and adolescents in custody or under the supervision of the criminal justice system, pregnant women and women with dependent children.

The Crime Act establishes programs that provide funds to State and local governments, all or part of which may be used to provide substance abuse treatment to inmates under correctional supervision.

In FY95, the Office of Justice Programs (OJP) implemented the Corrections Boot Camp Initiative under the $24.5 million Violent Offender Incarceration Program appropriation, which was limited to use for the planning, construction and renovation of boot camps. OJP funded 44 boot camp projects that will be implemented at the State and local levels. All of these boot camps will include drug treatment and intensive, coordinated aftercare components.

In the State systems, the Residential Substance Abuse Treatment for State Prisoners Program provides formula grants to states to develop and implement residential substance abuse treatment programs within state and local correctional and detention facilities in which inmates are incarcerated for a period of time sufficient to permit substance abuse treatment.

OJP has engaged in extensive planning to facilitate the immediate and effective implementation of the Residential Substance Abuse Program and treatment components of the other correctional programs as soon as the FY96 appropriation is enacted. OJP is developing program guidelines and an extensive technical assistance program to dispel commonly held beliefs among many policy-makers that treatment does not work for offenders and to assist State and local governments in implementing effective treatment programs which reduce drug use and criminal behavior. The guidelines and technical assistance are being developed in conjunction with and are based on recent research conducted by the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the National Institute on Drug Abuse and others. Technical assistance will be provided through national and regional workshops, as well as on-site assistance to address site specific needs.

Through the technical assistance program, OJP encourages state and local policy-makers to reassess the importance of substance abuse treatment for offenders and to develop and implement comprehensive treatment programs, including intensive aftercare components. A consortium of federal agencies -- led by the Office of the Director of National Drug Control Policy and including the National Institute of Justice (NIJ), the Bureau of Justice Assistance (BJA), the National Institute of Drug Abuse (NIDA), the Center for Substance Abuse Treatment (CSAT) and the Drug Courts Program Office of the Office of Justice Programs -- is developing a multi-year demonstration program to test the effectiveness of a system-wide criminal justice intervention with drug addicted offenders.

This demonstration project is called Breaking the Cycle (BTC). The major objectives are reduced recidivism/criminal behavior and reduced substance abuse among adult offenders who abuse drugs; improved social function indicators in the subject population; and improved resource utilization, particularly detention capacity, throughout the criminal justice system. Intermediate objectives include increasing the population's exposure to drug treatment; improving the match between the type of treatment and user needs; and increasing delivery of social services to the population.

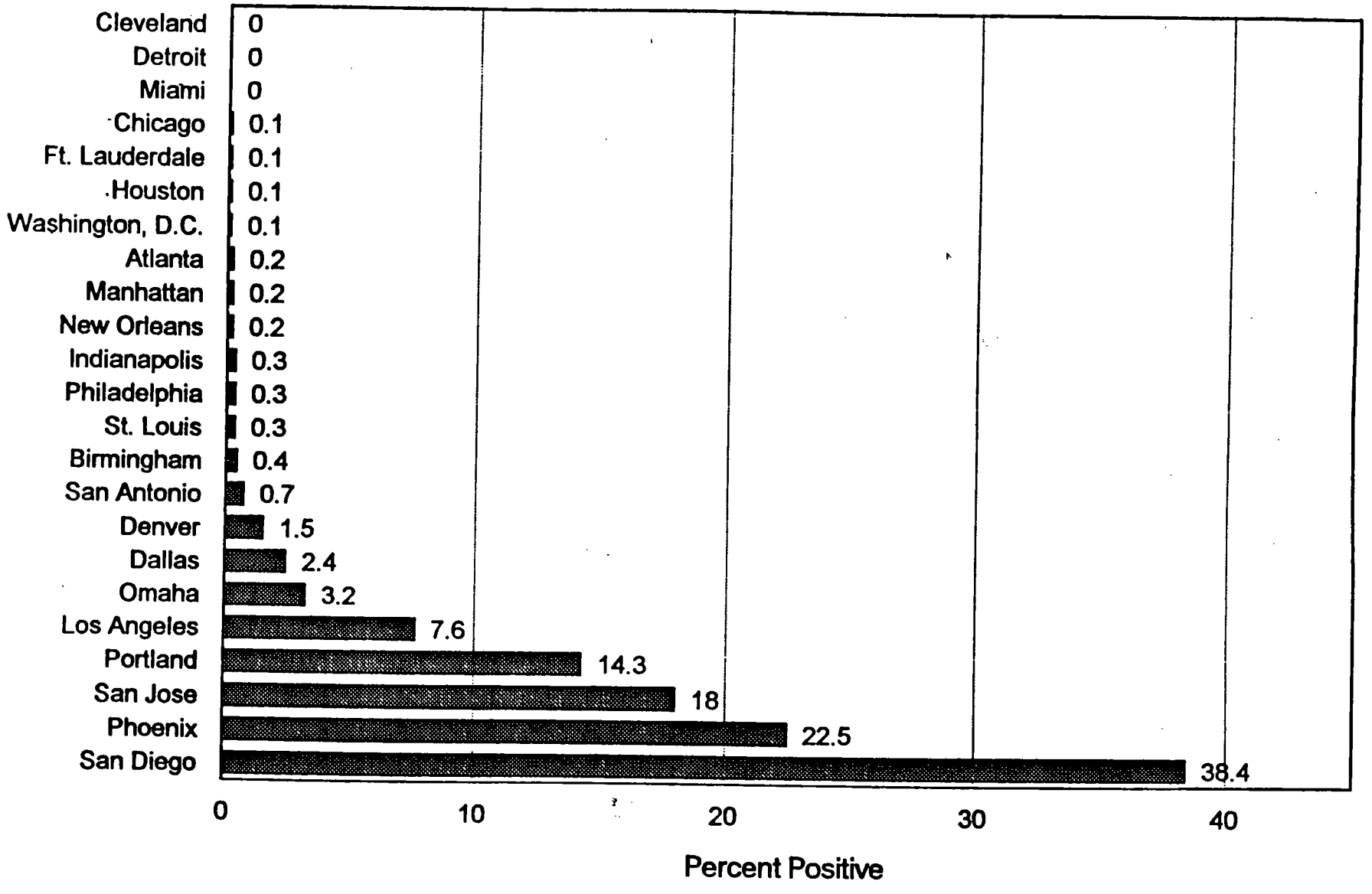
Drug Testing: On December 18, 1995, President Clinton issued a directive to the Attorney General to develop a plan for universal drug testing for all federal arrestees prior to their first appearance before a Magistrate Judge. Pilot projects have been conducted for the past seven years, in selected cities, through the Drug Use Forecasting (DUF) program. Accordingly, the National Institute of Justice reports that it is assessing the importance of testing for methamphetamine use, even though historically, the use of methamphetamine rates have been low in many DUF cities. Figure 11 depicts the 1994 results of urinalysis of arrestees across the United States, in the selected DUF cities.

Public Awareness: National surveys show alcohol and drug use on the rise, especially among young people. The trend may reflect, in part, a decline in the promulgation of the anti-drug message in homes, schools and the media. Currently, pro-drug information, be it the din of the drug legalization debate or the glamorization of drug use by popular culture, is getting an increased airing. We must increase public awareness of the dangers of methamphetamine.

A national media campaign should be developed, targeting young people, adults, parents, employers and educators. Possible topics include the dangers of methamphetamine abuse, violence and the environmental harm caused by clandestine laboratories. Through our State and local counterparts, we should encourage community groups to schedule local events that bring together experts from a full range of disciplines to discuss and educate the community on the dangers of methamphetamine. We are also working with the Office of National Drug Control Policy to ensure that methamphetamine is given increased emphasis in this year's National Drug Control Strategy.

ATTACHMENT

1994 Methamphetamine Positives by DUF Site



Appendix A

§ 864. Dangerous Handling of Listed Chemicals

(a) **Offense.** It is unlawful for a person --

(1) to generate, transport, treat, store, dispose of, use, possess, distribute, import or export a listed chemical, or the waste from the use of such chemical,

(2) in the manufacture or attempted manufacture of a controlled substance, or with the knowledge or intent that such listed chemical will be used in the illegal manufacture of a controlled substance, including but not limited to the clandestine laboratory setting,

(3)(A) in violation of --

(i) 42 U.S.C. § 6928(d) or (e) (handling hazardous wastes in a manner inconsistent with federal or applicable state law) or 42 U.S.C. § 6928(e);

(ii) 42 U.S.C. § 9603(b) (failure to notify the National Response Center established under the Federal Water Pollution Control Act [33 U.S.C. § 1251 et seq.], of a reportable release, other than a federally permitted release, of a hazardous substance from a facility or vessel);

(iii) 33 U.S.C. § 1319(c)(2) and (3) (discharge of pollutants in violation of the Federal Water Pollution Control Act [33 U.S.C. § 1251 et seq.]; or

(iv) 49 U.S.C. § 5124 (knowing or willful violations of laws and regulations enforced by the Department of Transportation with respect to transportation of hazardous material); or

(B) in any manner posing an imminent danger to the health and safety of another person, including any law enforcement official lawfully present at the site.

(b) **Penalties.** (1) A person who violates this section shall subject to a fine up to $250,000 and shall be sentenced to the greater of:

(A) imprisonment for two to four years; or

(B) in the case of knowing endangerment, as set forth under 42 U.S.C. § 6928(e) and 33 U.S.C. § 1319(c)(3), imprisonment for five to fifteen years; or

(C) if death or serious bodily injury results from the person's handling of listed chemicals in violation of this section, imprisonment for ten to fifteen years; or

(D) if after a prior conviction for a felony drug offense, including an offense under this section, twice the penalty otherwise applicable in (1)(A), (B) or (C) of this subsection.

(2) Notwithstanding any other provision of law, the court shall not suspend the sentence of any person convicted of a violation of this section, nor shall the term of imprisonment imposed under this section run concurrently with any other term of imprisonment, including that imposed for the manufacture or attempted manufacture of controlled substances for which listed chemicals were used in violation of this section.

(3) This section is not intended to preclude prosecution under the environmental and transportation provisions cited herein, or under any other law.

U. S. Department of Justice

Washington, D.C. 20530

FACSIMILE COVER SHEET

TO: DENNIS BURKE
456-7028

FROM: Nicholas M. Gess
Director
Public Liaison and Intergovernmental Affairs
TELEPHONE: (202) 514-3465
FACSIMILE: (202) 514-2504

DATE: January 31, 1996

SUBJECT: METHAMPHETAMINE

PAGES: (Including this cover sheet) 2

REMARKS: See attached

U.S. Department of Justice
Public Liaison and Intergovernmental Affairs

Office of the Director
Washington, D.C. 20530

January 31, 1996

MEMORANDUM

TO: Rahm Emanuel
Dennis Burke

FROM: Nicholas Gess

SUBJECT: **METHAMPHETAMINE**

The Attorney General is doing the following upcoming methamphetamine events which may be of interest:

1. February 13, 1996

   DEA Law Enforcement Conference
   Arlington, VA

2. February 20, 1996

   LECC Clandestine Methamphetamine Labs
   Lexington, KY

NDAA Drug Testing Resolution

– do it; w/ AG

—

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

LRM NO: 4117

FILE NO: 2177

4/17/96

LEGISLATIVE REFERRAL MEMORANDUM

Total Page(s): 18

TO: Legislative Liaison Officer - See Distribution below:

FROM: James JUKES (for) Assistant Director for Legislative Reference

OMB CONTACT: Ronald JONES / 395-3386 Legislative Assistant's line (for simple responses): 395-3454
C=US, A=TELEMAIL, P=GOV+EOP, O=OMB, OU1=LRD, S=JONES, G=RONALD, I=E
jones_re@a1.eop.gov

SUBJECT: JUSTICE Proposed Draft Bill: Methamphetamine Abuse Strategy

DEADLINE: 4:00 PM Thursday, April 18,1996

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: DOJ has asked for expedited clearance of this package of amendments to Titles 18 and 21. DOJ staff report these proposals have been cleared at the staff level in HHS, Education, Treasury, ONDCP, EPA, NSC, and State. The names of the staff who reviewed these proposals appear on the last page of this package.

LEGISLATIVE REFERRAL MEMORANDUM
Distribution List

LRM NO: 4117
FILE NO: 2177

SUBJECT: JUSTICE Proposed Draft Bill: Methamphetamine Abuse Strategy

AGENCIES:

30-EDUCATION - Jack Kristy - 2024018313
33-Environmental Protection Agency - Chris Hoff - 2022605414
52-HHS - Sondra S. Wallace - 2026907760
83-National Security Council - Andrew D. Sens - 2024569221
114-STATE - Julia C. Norton - 2026474463
89-Office of National Drug Control Policy - John Carnevale - 2023956736
118-TREASURY - Richard S. Carro - 2026221146
61-JUSTICE - FOIS

EOP:

Dennis Burke
Brcue Reed
Elena Kagan
John Carnevale
Janet Murguia
Tracey Thronton
Chuck Konigsberg
Alice Shuffield
Lisa Kountoupes
Bob Damus
Steve Aitken
Peter Boynton
Jim Murr
David Haun
Julie Haas
Harry Meyers
Mark Schwartz
Tony Chavez
Rob Fairweather
Richard Turman
Lisa Fairhall
Ed Rea
Ellen Balis

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

LRM NO: 4117
FILE NO: 2177

If your response to this request for views is simple (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.
If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter.
Please include the LRM number shown above, and the subject shown below.

TO: Ronald JONES 395-3386
Office of Management and Budget
Fax Number: 395-3109
Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

SUBJECT: JUSTICE Proposed Draft Bill: Methamphetamine Abuse Strategy

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of ____ pages, attached to this response sheet

LEGISLATIVE AND REGULATORY PROPOSALS

I. Civil Penalties:

Commentary: Civil penalties are imposed on persons and firms which, with actual knowledge or after being put on notice by DEA within the previous two years, continue to supply chemicals and other materials to clandestine drug and chemical laboratories without exercising reasonable care to assure that the chemicals are not diverted to illicit channels. The proposed language broadly implements elements of Senator Feinstein's proposal for a "civil three strikes" provision: "strike 1" (warning) is implicit as one prerequisite for the violation, but alternatively, the government could attempt to show that the person or firm actually knew that chemicals it supplied were going to clandestine labs; "strike 2" is the significant fine of $100,000 per violation for individuals, $250,000 for firms (higher than the $25,000 civil penalty for other violations of this section); "strike 3" (shutdown of the business) would be achieved through the injunction process provided for in legislation proposed elsewhere in this Strategy.

The fines collected would be directed to Federal, State and local agencies, as appropriate, for cleanup of clandestine laboratories and chemical storage sites.

Criminal penalties are explicitly excluded for violations of this provision because: (1) the "knowingly" element of § 842(c)(2)(A) is implicit in the required prior notification of the violator by the Attorney General (in practice the DEA); and (2) prosecution of similar conduct is provided for elsewhere in Title 21, including, inter alia, at 21 U.S.C. §§ 843(a)(6), (7), (8), and (9), 841(d) and (g), and 960(d).

* * * * *

Amend 21 U.S.C. § 842 by adding a new § 842(a)(11) making it unlawful for any person:

"to sell or otherwise distribute a laboratory supply to a person who uses or attempts to use the laboratory supply to manufacture a controlled substance or listed chemical in violation of this subchapter or subchapter II of this chapter, without exercising reasonable care to assure that the laboratory supply will be used for an illicit purpose; provided, that the person or firm has been notified by the Attorney General, or otherwise had actual knowledge, that within the previous two years, a laboratory supply sold or otherwise distributed by the person has been found at a clandestine laboratory for the unlawful production of a

controlled substance or listed chemical, or has been found in the possession of a person who intends to use or furnish the laboratory supply to such a clandestine laboratory. As used in this paragraph, the term "laboratory supply" means a listed chemical or substance on a special surveillance list published by the Attorney General, which list contains chemicals, products, materials, or equipment used in the manufacture of controlled substances and listed chemicals.

Add a civil penalty at § 842(c)(2)(C):

"In addition to the penalties set forth elsewhere in this subchapter or subchapter II of this chapter, any person who violates paragraph (11) of subsection (a) of this section shall, with respect to any such violation, be subject to a civil penalty of not more than 100,000 if the violator is an individual, and not more than $250,000 if the violator is other than an individual, but shall not be subject to criminal penalties for such act under this section."

Direct the funds collected to cleanup, by providing at new § 842(c)(4):

"All amounts received from the enforcement of the civil penalties under subparagraph (c)(2)(C) shall be directed for use by Federal, State and local agencies for the environmental cleanup of clandestine laboratories and chemical storage sites used, or intended or attempted to be used, to manufacture methamphetamine or other clandestinely produced drug."

11. **Injunctive power to enjoin the sale of chemicals:**

Commentary: The Attorney General may enjoin the sale of chemicals, whether or not they are regulated per se under the CSA, and a violator is subject to contempt. The greater flexibility and lower standard of proof assists in preventing imminent suspicious transactions. In the alternative, this change could be made as part of a broader amendment to permit enforcement of all of §§ 842 and 843, which set forth the more minor and essentially regulatory violations of the CSA, through civil injunctive relief.

* * * * *

Offered as a new subsection 21 U.S.C. § 843(f):

"In addition to or in lieu of the foregoing penalties, the Attorney General is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, where there is a reasonable basis to believe that a violation of this section or section 842 of this subtitle will occur. Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation."[21]

---

[21] Existing injunction provisions of the CSA require a conviction prior to their issuance. The suggested language is adapted from 33 U.S.C. § 1319(c), which provides for injunctive relief to enforce certain DEA compliance orders.

III. Suspension of suspicious (domestic) chemical transactions:

Commentary: This amendment would permit the Attorney General, through the DEA, to exercise graduated, shipment-specific controls on domestic shipments of listed chemicals. First, it permits the DEA to require regulated persons to provide pre-shipment notification to persons identified as suspicious. This could be for the purpose of monitoring shipments to that person or firm, effecting a controlled delivery or stopping the shipment. Second, subject to appropriate due process safeguards, it permits DEA to instruct a person or firm not to engage in a particular chemical transaction with another person or firm. This would give DEA the power to suspend a sale of chemicals domestically parallel to its authority to interdict an import or export under 21 U.S.C. § 971(c). With this amendment, DEA could more take more effective action when it develops information on suspicious domestic sales, e.g., to pharmacies that divert chemicals out the "back door."

* * * * *

Notification and suspension of suspicious chemical transactions

Title 21, U.S.C., § 830 is amended as follows:

(1) by striking the penultimate sentence of subsection (b), beginning "A regulated person may not complete a transaction";

(2) by redesignating current subsection (c) of 21 U.S.C. § 830 as subsection (d); and

(3) by inserting the following new text as subsection (c):

"(1) If the Attorney General furnishes to a regulated person the name or other identifying characteristic of a person suspected of handling listed chemicals in an unlawful manner, then before completing a transaction with the identified person, the regulated person shall notify the Attorney General of the transaction in the time and manner directed by the Attorney General.

(2) The Attorney General may order the suspension of any transaction involving a listed chemical, where there is a reasonable basis to believe that the transaction will facilitate the unlawful manufacture of a listed chemical or controlled substance. From and after the time when the Attorney General provides written notice of the order to the regulated person (including the legal and factual basis for the order),

the regulated person shall not carry out the transaction.

(3) Upon written request to the Attorney General, a regulated person to whom an order applies under paragraph (2) is entitled to an agency hearing, on the record, in accordance with subchapter II of chapter 5 of Title 5. The hearing shall be held on an expedited basis and not later than 45 days after the request is made, except that the hearing may be held at a later time, if so requested by the regulated person."

Note: Under current law, there are times when DEA develops information on suspicious domestic sales, e.g., to pharmacies that divert chemicals out the "back door," but cannot act on the information. The one district court to rule on DEA's application of current 21 U.S.C. § 830, which would on its face permit DEA to order a firm not to engage in a domestic chemical transaction, read the statute more narrowly, based on statutory construction and procedural due process concerns. Chemicals for Research and Industry v. Thornburgh, 762 F. Supp. 1394 (N.D. Cal. 1991). This amendment would replace the language construed in that case with new 21 U.S.C. 830(e)(1).

"(1) The Attorney General may order the suspension of any transaction involving a listed chemical, where there is a reasonable basis to believe that the transaction will facilitate the unlawful manufacture of a listed chemical or controlled substance. From and after the time when the Attorney General provides written notice of the order to the regulated person (including the basis for the legal and factual basis for the order), the regulated person shall not carry out the transaction.

(2) Upon written request to the Attorney General, a regulated person to whom an order applies under paragraph (1) is entitled to an agency hearing, on the record, in accordance with subchapter II of chapter 5 of Title 5. The hearing shall be held on an expedited basis and not later than 45 days after the request is made, except that the hearing may be held at a later time, if so requested by the regulated person."[22]

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[22] This amendment requires deletion, as obsolete, of the following language from 21 U.S.C. § 830(b)(1): "A regulated person may not complete a transaction with a person whose description or identifying characteristic is furnished to the regulated person under subparagraph (B), unless the transaction is approved by the Attorney General."

IV. Controls on pseudoephedrine products:

Commentary: This DEA Proposed Rule has been published in the October 31, 1995 Federal Register. It would remove the regulatory exemption for certain pseudoephedrine products. Because pseudoephedrine is an ingredient in many legitimate over-the-counter drugs, the proposed rule generally regulates only products in which pseudoephedrine is the sole active ingredient, or is combined with other active ingredients such that pseudoephedrine can be readily recovered.[23] The threshold of 24 grams pseudoephedrine base corresponds to a 120-day supply at the maximum adult daily dosage established by the FDA. Significantly, a waiver ensures that the approximately 750,000 retail distributors of pseudoephedrine will remain exempt, unless they engage in sales of above-threshold quantities.[24]

* * * * *

Proposed Rule:

"Due to the large scale utilization of over-the-counter (OTC) pseudoephedrine products for the clandestine manufacture of controlled substances, the DEA has determined that certain products should be subject to recordkeeping, reporting, registration and notification requirements of the CSA to prevent their diversion. Such products include OTC tablets, capsules and powder packets containing pseudoephedrine alone or in combination with antihistamines, guaifenesin or dextromethorphan. This action also proposes that the threshold for pseudoephedrine be reduced to 24.0 grams pseudoephedrine base. Such a threshold is sufficient to permit the purchase of up to a 120 day supply of pseudoephedrine without the application of regulatory requirements.

To further ensure the availability of pseudoephedrine products to legitimate consumers at the retail level, this action also proposes to waive the registration requirement for retail distributors of regulated pseudoephedrine products." 60 Fed. Reg. 55,348 (Oct. 31, 1995).

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[23] 60 Fed. Reg. 55,348 (Oct. 31, 1995). The newly regulated combination products are tablets, capsules, and powder packets containing pseudoephedrine and antihistamines, guaifenesin or dextromethorphan. 60 Fed. Reg. at 55,350.

[24] "Retail distributor" is defined as one "selling only personal use quantities to walk-in customers" 21 CFR 309.02. Thus, the seller to a pharmacy is required to report, the pharmacy is not.

V. Consideration of a regulatory change to impose greater control over appropriate ephedrine combination products, particularly ephedrine with guaifenesin and other products from which the ephedrine can be readily retrieved by clandestine methamphetamine lab operators.

Commentary: *Further consideration of such extended regulatory control will benefit from consultations with the pharmaceutical industry and business associations, as well as the law enforcement and diversion specialist.*

VI. Diversion of "combination" drug products including the precursor chemicals ephedrine, pseudoephedrine phenylpropanolamine:

Commentary: This partially reverses the current legislative presumption that lawfully manufactured drug products are exempt unless the DEA finds a need to control them because of their diversion. The law would now presume that such drug products, if they contain ephedrine, pseudoephedrine, or phenylpropanolamine, are subject to diversion unless specifically exempted. There is ample evidence that ephedrine and pseudoephedrine products are being diverted; newer evidence points up a trend by clandestine manufacturers to use phenylpropanolamine products to make amphetamine.

* * * * *

DEFINITION. Section 102(39)(A) of the Controlled Substances Act (21 U.S.C. 802(39)(A) is amended in paragraph (iv)(I)(aa) --

(a) by striking from "as" to the semicolon at the end; and

(b) by inserting in its place ", pseudoephedrine or its salts, optical isomers, or salts of optical isomers, or phenylpropanolamine or its salts, optical isomers, or salts of optical isomers unless otherwise provided by regulation of the Attorney General issued pursuant to section 204(e) of this title;".

EXEMPTIONS. Section 204 of the Controlled Substances Act (21 U.S.C. 814) is amended by adding at the end the following new subsection --

(e) The Attorney General may by regulation reinstate the exemption with respect to a particular ephedrine, pseudoephedrine or phenylpropanolamine drug product if the Attorney General determines that the drug product is manufactured and distributed in a manner that prevents diversion. In making this determination the Attorney General shall consider the factors listed in subsection (d)(2) above. Any regulation issued pursuant to this subsection may be amended or revoked based on the factors listed in subsection (d)(4) above.

VII. Seizure and forfeiture of regulated chemicals:

Commentary: This clarifies DEA's legal authority to seize and forfeit precursor chemicals. By making possession of the chemicals illegal under certain circumstances, this amendment provides a technical "fix" to the problem.

* * * * *

(a) SIMPLE POSSESSION AMENDMENT. Section 404 of the Controlled Substances Act (21 U.S.C. 844) is amended --

(1) in paragraph (a)--

(A) by inserting the following text after "of this chapter" in the first sentence: "or to possess any list I chemical obtained pursuant to or under authority of a registration issued to that person under section 303 of this title or section 1008 of title III if that registration has been revoked or suspended, if that registration has expired or if the registrant has ceased to do business in the manner contemplated by his registration"; and

(B) by inserting "or chemical" after "drug or narcotic"; and

(2) in paragraph (c) --

(A) by inserting "or chemical" after "drug or narcotic"; and

(B) by inserting "or which is a listed chemical or a chemical controlled under state law" after "this subchapter".

(b) FORFEITURE AMENDMENT. -- Section 511(a) of the Controlled Substances Act (21 U.S.C. 881(a)) is amended --

(1) in paragraph (2) by inserting "or listed chemical" after "controlled substance";

(2) in paragraph (6) by inserting "or listed chemical" after "controlled substance"; and

(3) in paragraph (9) by deleting "a felony provision of".

(c) SEIZURE AMENDMENT. -- Section 607 of the Tariff Act of 1930 (19 U.S.C. 1607) is amended by --

(1) in paragraph (a)(3), inserting "or listed chemical" after "controlled substance"; and

(2) by amending paragraph (b) to read as follows:

-x-

"(b) As used in this section, the terms "controlled substance" and "listed chemical" have the meaning given these terms in section 102 of the Controlled Substances Act (21 U.S.C. 802).".

VIII. Long-arm jurisdiction -- activities outside the U.S.

(a) Section 1009(a) of the Controlled Substances Import and Export Act (21 U.S.C. 959(a)) is amended --

(1) by inserting "or listed chemical" after "schedule I or II"; and

(2) by inserting "or chemical" after "substance" in subparagraphs (1) and (2).

(b) Section 1010(d) of the Controlled Substances Import and Export Act (21 U.S.C. 960(d)) is amended --

(1) by deleting "or" at the end of paragraph (5);

(2) by inserting "or" at the end of paragraph (6); and

(3) by adding a new paragraph (7) as follows:

"(7) contrary to section 1009 of this title, manufactures, possesses with intent to distribute, or distributes a listed chemical;".

IX. Dangerous handling of listed chemicals

Commentary: Clandestine methamphetamine "cooks" use little care in storing, using or disposing of the ignitable, corrosive, reactive and toxic chemicals they use to manufacture methamphetamine. Fires and explosions at clandestine laboratory sites often lead to their discovery. A special law should separately punish lab operators who flaunt environmental laws and create unsafe conditions, thus posing a great danger to the environment and the health and safety of law enforcement officers.

§ 864. Dangerous Handling of Listed Chemicals

(a) **Offense.** It is unlawful for a person --

(1) to generate, transport, treat, store, dispose of, use, possess, distribute, import or export a listed chemical, as defined in this Subchapter, or the waste from the use of such chemical,

(2) in the manufacture or attempted manufacture of a controlled substance, or with the knowledge or intent that such listed chemical will be used in the illegal manufacture of a controlled substance, including but not limited to the clandestine laboratory setting,

(3)(A) in violation of --

(i) 42 U.S.C. § 6928(d) or (e) (handling hazardous wastes in a manner inconsistent with federal or applicable state law);

(ii) 42 U.S.C. § 9603(b) (failure to notify of a the release of a reportable quantity of a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act).

(iii) 33 U.S.C. §§ 1311(a), 1317(d), 1319(c)(2) and (3), and 1321(b)(3) (unlawful discharge of pollutants or hazardous substances; operation of a source in violation of a pretreatment standard); or

(iv) 49 U.S.C. § 5124 (violations of laws and regulations enforced by the Department of Transportation with respect to transportation or hazardous material); or

(B) in any manner posing an imminent danger to the health and safety of another person, including any federal, state or local law enforcement official lawfully present at the site.

(b) **Penalties.** (1) A person who violates this section shall be subject to a fine up to $250,000 and shall be sentenced to the greater of:

(A) imprisonment for two to four years; or

(B) in the case of knowing endangerment, as set forth under 42 U.S.C. § 6928(e) and 33 U.S.C. § 1319(c)(3), imprisonment for five to fifteen years and up to twice the fine; or

(C) if death or serious bodily injury[1] results from the person's handling of listed chemicals in violation of this section, imprisonment for ten to fifteen years and up to twice the fine; or

(D) if after a prior conviction for a felony drug offense, including an offense under this section, twice the penalty otherwise applicable in (1)(A), (B) or (C) of this subsection.

(2) Notwithstanding any other provision of law, the court shall not suspend the sentence of any person convicted of a violation of this section, nor shall the term of imprisonment imposed under this section run concurrently with any other term of imprisonment, including that imposed for the manufacture or attempted manufacture of controlled substances for which listed chemicals were used in violation of this section.

(3) This section is not intended to preclude prosecution under the environmental and transportation provisions cited herein, or under any other law.

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[1] Definitions of various terms can be found in other environmental protection statutes. For example, "serious bodily injury" is used in used in both 21 U.S.C. § 802(25) and 42 U.S.C. § 6928(f)(6) and 33 U.S.C. § 1319(c)(3)(B)(iv), and "imminent danger" is used in and interpreted in the case law of the Federal Mine Safety and Health Act. See 30 U.S.C. § 802(j); United States v. Protex Industries, 874 F.2d 740 (10th Cir. 1989).

X. Mandatory minimum sentencing

Methamphetamine Penalty Amendments

(a) Section 401(b)(1)(A)(viii) of the Controlled Substances Act (21 U.S.C. § 841(b)(1)(A)(viii)) is amended by striking "100 grams or more of methamphetamine," and inserting in its place "50 grams or more of methamphetamine," and by striking "1 kilogram or more of a substance containing a detectable amount of methamphetamine" and inserting "500 grams or more of a mixture or substance containing a detectable amount of methamphetamine".

(b) Section 401(b)(1)(B)(viii) of the Controlled Substances Act (21 U.S.C. § 841(b)(1)(B)(viii)) is amended by striking "10 grams or more of methamphetamine," and inserting in its place "5 grams or more of methamphetamine," and by striking "100 grams or more of a substance containing a detectable amount of methamphetamine" and inserting "50 grams or more of a mixture or substance containing a detectable amount of methamphetamine".

(c) Section 1010(b)(1)(H) of the Controlled Substances Import and Export Act (21 U.S.C. § 960(b)(1)(H)) is amended by striking "100 grams or more of methamphetamine," and inserting in its place "50 grams or more of methamphetamine," and by striking "1 kilogram or more of a mixture or substance containing a detectable amount of methamphetamine" and inserting "500 grams or more of a mixture or substance containing a detectable amount of methamphetamine".

(d) Section 1010(b)(2)(H) of the Controlled Substances Import and Export Act (21 U.S.C. § 960(b)(2)(H)) is amended by striking "10 grams or more of methamphetamine," and inserting in its place "5 grams or more of methamphetamine," and by striking "100 grams or more of a mixture or substance containing a detectable amount of methamphetamine" and inserting "50 grams or more of a mixture or substance containing a detectable amount of methamphetamine".

XI. Increased penalties for trafficking in regulated chemicals:

Commentary: *The current 10-year maximum penalty for sale or possession of precursor chemicals, knowing or having reason to know that the chemicals are being used for the unlawful manufacture of methamphetamine or other controlled substance, should be changed to allow for a greater penalty where the Government can and does prove that the chemicals possessed or distributed by the offender would have yielded a certain quantity of drugs. While prosecutors now have the option to charge attempt to manufacture a controlled substance, under 21 U.S.C. §§ 841(a) and 846. the proposed legislative change would strengthen the alternative charging and proof options under the more chemical-specific provisions of 21 U.S.C. §§ 841(d) and 960(d).*

* * * * *

Amend Section 401(d) of the Controlled Substances Act (21 U.S.C. § 841(d)):

(1) by striking the period after "both" and replacing it with a comma, and

(2) by inserting the following text after "both,":

"or, with respect to a violation of paragraph (1) or (2) of this subsection involving a list I chemical, where the government proves the quantity of controlled substance that could reasonably have been manufactured in a clandestine setting using the quantity of list I chemicals possessed or distributed, the penalty corresponding to the quantity of controlled substance that could have been produced under Section 401(b) of the Controlled Substances Act (21 U.S.C. § 841(b))."

Amend Section 1010(d) of the Controlled Substance Import and Export Act (21 U.S.C. § 960(d)):

(1) by striking the period after "both" and replacing it with a comma, and

(2) inserting the following text after "both,":

"or, with respect to an importation violation of paragraph (1) or (3) of this subsection involving a list I chemical, where the government proves the quantity of controlled substance that could reasonably have been manufactured in a clandestine setting using the quantity of list I chemicals imported, the penalty corresponding to the quantity of controlled substance that could have been produced under subchapter I of this chapter."

The staffers that have cleared are:

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