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TITLE IV

INTERNATIONAL FORFEITURE ENABLING ACT OF 1986

Sec. 1. This title, may be cited as the International Forfeiture Enabling Act of 1986.

Sec. 2. (a) Part E of the Controlled Substances Act is amended by adding after section 516 (21 U.S.C. 886) a new section 517 to read as follows:

Forfeiture Relating to Foreign Unlawful Drug Activities

"(a) the following property located within the jurisdiction of the United States relating to an unlawful drug activity committed within the jurisdiction of a foreign country shall be subject to forfeiture to the United States:

"(1) any property constituting, or derived from, any proceeds obtained, directly or indirectly, as a result of the unlawful drug activity; and

"(2) any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, the unlawful drug activity;

except that no property shall be forfeited under this section, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

"(b) Except to the extent that they are inconsistent with the provisions of this section, the provisions of section 881 of this title shall apply to forfeiture under this section.

"(c) Notwithstanding any other provision of law, whenever property is civilly or criminally forfeited under this subchapter, the Attorney General may equitably transfer any conveyance, currency, and any other type of personal property which the

Attorney General may designate by regulation for equitable transfer, or any amounts realized by the United States from the sale of any real or personal property forfeited under this subchapter to an appropriate foreign country to reflect generally the contribution of any such foreign country participating directly or indirectly in any acts which led to the seizure or forfeiture of such property. Such property when forfeited pursuant to subsection (a) of this section may also be transferred to a foreign country pursuant to an international agreement providing for the transfer of forfeited property to such foreign country. A decision by the Attorney General pursuant to this paragraph shall not be subject to review. The foreign country shall, in the event of a transfer of property or proceeds of sale of property under this subchapter, bear all expenses incurred by the United States in the seizure, maintenance, inventory, storage, forfeiture, and disposition of the property, and all transfer costs. The payment of all such expenses, and the transfer of assets pursuant to this paragraph, shall be upon such terms and conditions as the Attorney General may, in his discretion, set.

"(d) The provisions of this section shall not be construed as limiting or superseding any other authority of the United States to provide assistance to a foreign country in obtaining property related to a crime committed in the foreign country, including, but not limited to, property which is sought as evidence of a crime committed in the foreign country.

"(e) As used in this section--



"(1) the term 'property' includes real property, including things growing on, affixed to, or found in land, and tangible and intangible personal property, including rights, privileges, interests, claims, and securities; and

"(2) the term 'unlawful drug activity' means any act or activity constituting a drug offense under the laws of a foreign country within whose jurisdiction such act or activity occurred, punishable by death or imprisonment for a term exceeding one year, which would be punishable by this chapter by imprisonment for a term exceeding one year if such act or activity had occurred within the jurisdiction of the United States;

"(f) A certified order or judgment of forfeiture by a court of competent jurisdiction of a foreign country concerning property which is the subject of forfeiture under this section and was determined by such court to be the type of property described in subsection (a) of this section, and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of forfeiture, shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of forfeiture, when admitted into evidence, shall constitute probable cause that the property forfeited by such order or judgment of forfeiture is subject to forfeiture under this section and creates a rebuttable presumption of the forfeitability of such property under this section.

"(g) A certified order or judgment of conviction by a court of competent jurisdiction of a foreign country concerning an unlawful drug activity which gives rise to forfeiture under this section and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of conviction shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of conviction, when admitted into evidence, creates a rebuttable presumption that the unlawful drug activity giving rise to forfeiture under this section has occurred.

"(h) The provisions of subsections (f) and (g) of this section shall not be construed as limiting the admissibility of any evidence otherwise admissible, nor shall they limit the ability of the United States to establish probable cause that property is subject to forfeiture by any evidence otherwise admissible."

(b) the Table of Sections at the beginning of chapter 13 of title 21 is amended by adding at the end of the following new item:

"887. Forfeiture Relating to Unlawful Drug Activities."

#### Analysis

This title adds a new section to the Controlled Substances Act to implement the forfeiture provisions of the Treaty between the United States and the Italian Republic on Mutual Assistance in Criminal Matters. It was ratified by the Senate on June 28, 1984. Article 18 of the Treaty contemplates authority whereby



the United States could, for example, request that Italy seize moneys deposited in an Italian bank that were profits of an operation smuggling heroin into the United States, profits that would clearly be subject to forfeiture under our laws if they had remained in the United States. Italy could then forfeit these profits and transfer them to the United States. The United States would exercise similar authority where, for example, forfeitable profits of an Italian crime were deposited in a United States bank.

However, legislation is needed to implement the seizure and forfeiture article. Currently there are no statutory procedures for the seizure and forfeiture of assets found within our borders that represent the fruits or instrumentalities of drug crimes against foreign countries. Present forfeiture authority extends only to property which is used in, or is the product of, a violation of the laws of the United States.

This section is designed not only to meet our obligations under the treaty with Italy, but also to accommodate seizure and forfeiture of assets based on violations of other nations' drug laws. It provides that the United States may seize and civilly forfeit property located in the United States that was either derived from the commission of foreign drug laws or used or intended to be used in their commission. The offense must also be one which would be a felony drug violation under United States law had the offense occurred within our jurisdiction. It includes an "innocent owner" exception like that found in certain existing forfeiture statutes (see, e.g., 21 U.S.C. § 881(a)) to

assure that there can be no forfeiture of property owned by a person who did not consent to or have knowledge about the crime on which the forfeiture is based.

The section is framed as a civil forfeiture statute, and the procedural aspects of seizures and forfeitures under this provision are to be governed by the procedures provided for civil forfeitures under the customs laws. This approach is now employed with respect to civil forfeitures under our drug laws (see 21 U.S.C. § 881(d)). Under current civil forfeiture laws, including those under the customs laws, a forfeitable asset may be seized on a probable cause basis prior to entry of the order of forfeiture.



TITLE V

REPEAL OF THE "MANSFIELD AMENDMENT"

Subsection 481(c) of the Foreign Assistance Act of 1981, as amended, (22 U.S.C. 2291(c)) is repealed.

Purpose. The purpose of this provision is to repeal the "Mansfield amendment" which prohibits officers or employees of the United States from participating in narcotics arrests in foreign countries, or from interrogating or being present at the interrogation of a United States person arrested in a foreign country with respect to narcotics control without the written consent of the person being interrogated. A 1985 amendment to the "Mansfield amendment" provides that it shall not prohibit federal officers from being present during direct police arrest actions with respect to narcotics control in a foreign country to the extent that the Secretary of State and the government of the foreign country agree to the exemption. Even as amended, the "Mansfield amendment" imposes unreasonable restrictions on participation by United States law enforcement officers in joint operations designed to attack drug trafficking involving the United States and another country and hampers our drug intelligence gathering efforts.

TITLE VI

JUVENILE DRUG TRAFFICKING ACT OF 1986

Sec. 1. This title may be cited as the Juvenile Drug Trafficking Act of 1986.

Sec. 2. Part D of the Controlled Substances Act is amended by adding after section 405A a new section as follows:

"Employment of minors in controlled substance trafficking"

"Sec. 405B. (a) Any person at least twenty-one years of age who violates section 401(a)(1) of this Act while acting in concert with a person under twenty-one years of age is punishable by a term of imprisonment, or a fine, or both, up to twice that authorized by section 401(b) of this Act, and at least twice any special parole term authorized by section 401(b) of this Act, for a first offense.

"(b) Any person at least twenty-one years of age who violates section 401(a)(1) of this Act while acting in concert with a person under twenty-one years of age, after a prior conviction or convictions under subsection (a) of this section have become final, is punishable by a term of imprisonment, or a fine, or both, up to three times that authorized by section 401(b) of this Act for a first offense under that section, and at least three times any special parole term authorized by section 401(b) of this Act for a first offense under that section."

"(c) In the case of any sentence imposed under this section, imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under this section of an offense for which a mandatory minimum term of imprisonment is set out in section 401(b) of this Act shall not be eligible for parole under section 4202 of Title



18 until the individual has served the mandatory term of imprisonment required by section 401(b) as enhanced by this section.

Sec. 3. Section 401(b) of the Controlled Substances Act (21 U.S.C. 841(b) is amended by deleting the phrase "or 405A" and inserting in lieu thereof ", 405A, or 405B".

Sec. 4. Section 401(c) of the Controlled Substances Act (21 U.S.C. 841(c)) is amended by striking out "405A" each place it appears and inserting in lieu thereof ", 405A, or 405B".

Sec. 5. The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting after the item relating to section 405A the following:  
"405B. Employment of minors in controlled substance trafficking."

Sec. 6. Section 405A of the Controlled Substances Act (21 U.S.C. 845a) is amended, in subsection (a), by adding after the word "distributing" the words "or manufacturing" and by striking the words "a public or private elementary or secondary school" and inserting in lieu thereof "a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university".

#### Analysis

Section two of this title provides for additional penalties for persons who make use of juveniles in drug trafficking. It provides that anyone over 21 who acts in concert with a person under 21 in violating 21 U.S.C. 841(a) is subject to an enhanced

fine and jail term. Such a person would be subject to double the fine and period of imprisonment authorized in 21 U.S.C. 841(b) for a first offense in which he acted in concert with a juvenile, and to triple the fine and period of imprisonment for a second or subsequent conviction. The phrase "acting in concert" was deliberately chosen to include not just the situation where the adult offender and the juvenile are in an employer-employee relationship, respectively. While it would certainly cover the situation where minors are used to distribute drugs, act as lookouts, couriers, or cashiers, or perform other duties related to drug trafficking, it would also cover relationships not so formal, as where the juvenile is more of an "independent contractor" distributing drugs on consignment. It would also cover the situation where a drug seller sold drugs to a person under 21 knowing, or having reason to know from the quantity or other circumstances, that the minor intended to resell them. Sections three, four, and five, make technical and conforming changes necessitated by section two.

Section six of this title amends section 405A of the Controlled Substances Act (21 U.S.C. 845a). Currently section 405A, which was added in 1984, prohibits the distribution of controlled substances within 1000 feet of a public or private elementary or secondary school. Persons violating this section are subject, for a first offense, to a prison term and fine twice that otherwise applicable, and for a subsequent offense, to life imprisonment. The amendment would strengthen this section by expanding the prohibited activity to include manufacturing as

well as distributing a controlled substance, thereby reaching such conduct as operating a "crack" house or PCP laboratory within the prohibited distance. This concept is included in a bill, S. 2562, introduced by Senator Chiles. The amendment would also expand the category of protected educational institutions to include vocational schools, colleges and universities, on the ground that drug trafficking in, on, or near such institutions poses an equivalent danger to the nation's young people and to the security and mission of the institutions themselves.

TITLE VII

CONTROLLED SUBSTANCES IMPORT AND EXPORT  
PENALTIES ENHANCEMENT ACT OF 1986



Sec. 1. This title may be cited as the Controlled Substances Import and Export Penalties Enhancement Act of 1986.

Sec. 2. Sections 1010(b)(1) and (2) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1) and (2)) are amended to read as follows:

"(1) In the case of a violation of subsection (a) of this section involving--

"(A) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

"(B) 500 grams or more of a mixture or substance containing a detectable amount of--

"(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(ii) cocaine, its salts, optical and geometric isomers, and salts or isomers;

"(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);

"(C) 25 grams or more of a mixture or substance described in subparagraph (B) which contains cocaine base;

"(D) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(E) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);  
or

"(F) 40 grams or more of a mixture or substance containing a detectable amount of fentanyl or 10 grams or more of a mixture or substance containing a detectable amount of any analog of fentanyl;

the person committing such violation shall be sentenced to a term of imprisonment of not less than 5 years and not more than 40 years and if death results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$2,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this title or title II or other law of a State, the United States, or a foreign country relating to narcotic drugs, marijuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not less than 10 years and not more than life imprisonment and if death results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$4,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an



individual, or both. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this paragraph nor shall the term of imprisonment imposed under this paragraph run concurrently with any other term of imprisonment under this paragraph or under any other provision of law. No person sentenced under this paragraph shall be eligible for parole during the term of imprisonment imposed therein.

"(2) In the case of a violation under subsection (a) of this section involving a controlled substance in schedule I or II, the person committing such violation shall, except as provided in paragraphs (1) and (3), be sentenced to a term of imprisonment of not more than 20 years and if death results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$1,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this title or title II or other law of a State, the United States or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death results from the use of such substance shall be sentenced to life imprisonment, a fine

not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$2,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment. Notwithstanding the prior sentence, and notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this paragraph which provide for a mandatory term of imprisonment if death results, nor shall such a term of imprisonment run concurrently with any other term of imprisonment under this paragraph or under any other provision of law, nor shall a person so sentenced be eligible for parole during the term of such a sentence."

Sec. 3. Section 1010(b)(3) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(3)) is amended--

(1) by striking out ",except as provided in paragraph (4)"; and

(2) by striking out the phrase "fined not more than \$50,000" and inserting in lieu thereof "fined not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual".



## Analysis

This title contains amendments of section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. §960(b)) to conform the penalties for import and export violations generally to those established by Title I of this bill for violations of the Controlled Substances Act (CSA). This title also conforms the specific quantities of controlled substances which trigger enhanced penalties to the quantities and substances listed in Title I of this proposal.

Section 2 of this title generally applies the penalties included in Title I of this bill under 21 U.S.C. §841(b)(1)(A) and (B) to the parallel import and export provisions of 21 U.S.C. §960(b)(1) and (2), concerning large quantities of specified drugs and any schedule I or II substance, respectively. Section 2 also includes for purposes of these import and export violations the amendment contained in Title I of this proposal providing for life imprisonment when death results from the use of a substance involved in a violation. Including this amendment in the Controlled Substances Import and Export Act for the most serious categories of offenses is consistent with the view that the result of death from the use of a substance involved in a violation justifies a severe penalty not only for the unlawful manufacture and distribution of controlled substances, but also for their unlawful importation.

Section 3 amends 21 U.S.C. §960(b)(3), concerning schedule III, IV, and V substances and small quantities of marihuana and hashish. It should be noted that, unlike the CSA, the

Controlled Substances Import and Export Act (21 U.S.C. §960(b)(3)) currently treats all schedule III, IV, and V substances alike for purposes of sentencing and subjects all these substances to the level of penalties imposed for schedule III substances under the CSA. This title preserves this scheme and increases the fines for schedule III, IV, and V substances, as well as for small quantities of marihuana and hashish, to the levels established in Title I of this bill for schedule III substances.

TITLE VIII

NARCOTIC TRAFFICKERS DEPORTATION ACT OF 1986

Sec.1. This title may be cited as the Narcotic Traffickers Deportation Act of 1986.

Sec.2. Subsection (a)(11) of Title II of Chapter 477 of the Act of June 27, 1952 (8 U.S.C. 1251), as amended, is further amended to delete all language which follows "has been convicted of a violation of" and to insert in its stead, "any provision of the Controlled Substances Act, the Controlled Substances Import and Export Act, the Act of September 15, 1980 (Pub.L. 96-350, 94 Stat. 1159-60), or any other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances."

Analysis The purpose of this title is to remove the unnecessary dichotomy that presently exists between offenses involving narcotic drugs, cocaine, or marihuana and other controlled substance offenses in Title 21, United States Code, for purposes of deportation under the immigration statutes (viz., 8 U.S.C. 1251(a)(4)). As presently in effect, 8 U.S.C. 1251(b) gives authority to the sentencing judge to make a binding recommendation to the Attorney General that aliens convicted of a variety of federal offenses not be deported. One exception to this authority involves aliens who have been convicted of drug offenses explicitly listed in subsection (a)(11):

A violation of, or a conspiracy to violate, any law or regulation relating to the illicit possession of or traffic in narcotic drugs or marihuana, or who has been convicted of a violation of, or a conspiracy to violate, any law or regulation governing or controlling the taxing, manufacture,



production, compounding, transportation, sales, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, and salt [,] derivative or preparation of opium or coca leaves or isonipecaine or any addiction-forming or addiction-sustaining opiate").

The revised language would expand the exception contained in 1251(b) to allow deportation, without overriding judicial involvement, in all matters involving controlled substance offenses. The above change incorporates language similar to that contained in the Controlled Substances Act and the Controlled Substances Import and Export Act - both enacted in 1970 - and deletes from Section 1251(a)(11) outmoded concepts utilized in pre-CSA-related tax laws, etc., in referring to controlled substance offenses. The amendment would also incorporate drug violations of state and foreign law, as well as related federal offenses not contained in Title 21, for purposes of this exception, thereby making the exception similar in coverage to recent amendments to the recidivist provisions of the Controlled Substances Act and the Controlled Substances Import and Export Act.

TITLE IX

CRIMINAL RULES SENTENCING AMENDMENTS

Sec. 1. This title may be cited as the Criminal Rules Sentencing Amendments of 1986.

Sec. 2. Rule 35(b) of the Federal Rules of Criminal Procedure is amended by--

(a) striking out "subsequent,";

(b) inserting ", subsequent to indictment," after "assistance"; and

(c) striking out ", to the extent" and all that follows through the end and inserting the following in lieu thereof:

". The court's authority to lower a sentence under this subdivision includes the authority to lower such sentence to a level below that which is established by statute as a minimum sentence.".

Sec. 3. The amendment made by this title shall take effect on the date of the taking effect of Rule 35(b) of the Federal Rules of Criminal Procedure, as amended by section 215(b) of the Comprehensive Crime Control Act of 1984.

### Analysis

This title amends Rule 35(b) of the Federal Rules of Criminal Procedure, as amended by the Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, to provide explicit authority to the court to lower a sentence to a level below that which is established by a statutory minimum. Subdivision (b) of the Rule, as it will take effect on November 1, 1987, provides authority for the court, within one year after the imposition of a sentence, to lower a sentence to reflect the defendant's subsequent,



substantial assistance in the investigation or prosecution of another person, to the extent that such assistance is a factor in the applicable guidelines or policy statements of the Sentencing Commission.

Section 2(a) and (b) of this title amend subdivision (b) of the Rule to provide that a defendant's substantial assistance in the investigation or prosecution of another person should provide a basis for lowering the defendant's sentence if such assistance is rendered at any time subsequent to indictment. As currently drafted, the rule would provide the court with authority to lower a sentence only if the defendant's assistance comes about subsequent to sentencing. If, however, the defendant provides assistance during trial, for example, he would not be eligible for a sentence reduction under the rule. Moreover, his assistance would not be reflected in the offense charged by the prosecutor. Thus, the amendment broadens the court's authority to lower a sentence to take into account this situation.

Section 3(c) of this title amends subdivision (b) of Rule 35 to provide that the court need not be bound by Sentencing Commission guidelines or policy statements in carrying out a sentence reduction under the Rule. It also specifies that a sentence may be lowered to a level below that established as a statutory minimum. In order to obtain cooperation from defendants in the prosecution of accomplices and others, a broad grant of discretion to the courts to lower a sentence is necessary. Moreover, the ability of a court to sentence below a statutory minimum, such as that established by Title I for violations of the



Controlled Substances Act involving large quantities of controlled substances, is necessary since defendants would be extremely unlikely to provide information on accomplices if they knew that, despite their cooperation, they would be subject to substantial, mandatory prison terms. Without the assistance of defendants, the government's task of investigating and prosecuting the top levels of a drug ring, for example, would be practically impossible.

TITLE X

CHEMICAL DIVERSION AND TRAFFICKING ACT OF 1986

Sec. 1. This title may be cited as the "Chemical Diversion and Trafficking Act of 1986."

Sec. 2. Title II of the Comprehensive Drug Abuse Prevention and Control Act is amended by adding a new Section 311 (21 U.S.C. 831):

"Sec. 311.(a)(1) Except as provided under paragraph (3) of this subsection any person who manufactures, distributes, imports or exports a substance listed under subsection (d) shall maintain records and make reports as the Attorney General may by regulation require concerning the distribution, sale, importation or exportation of said listed substances. Such records shall be in a form such that they are readily retrievable from ordinary business records and shall be kept and made available, for at least 5 years, for inspection and copying by officers or employees of the United States authorized by the Attorney General. In establishing regulations concerning required records and reports, the Attorney General may establish a threshold quantity for recordkeeping and reporting requirements for each listed chemical. The Attorney General may include in the information required to be maintained or reported the following:

"(A) The quantity, form, and manner in which, and date on which, the substance was distributed, imported or exported.

"(B)(i) In the case of the distribution or exportation to an individual, the name, address, and age of the individual and the type of identification presented to confirm the identity of the individual.

"(ii) In the case of the distribution or exportation to an entity other than an individual, the name and address of the entity and the name, address, and title of the individual ordering or receiving the substance and the type of identification presented to confirm the identity of the individual and of the entity.

"(2) Except as provided under paragraph (3) of this subsection, no person may distribute or export a substance listed under subsection (d) unless the recipient or purchaser presents to the distributor a certification of lawful use and identification, to establish the identity of the recipient or purchaser (and any entity which the recipient or purchaser represents), of such a type as the Attorney General establishes by regulation.

"(3) It shall be unlawful to purchase a reportable amount of any chemical listed under subsection (d) in units small enough so that the making of records or filing of reports under this section is not required for the purpose of evading the recordkeeping reporting requirements created by this section and the regulations promulgated thereunder.



"(4) Under such conditions and to such extent as the Attorney General establishes, paragraphs (1), (2) and (3) shall not apply to--

"(A) the distribution of listed substances between agents or employees within a single facility (as defined by the Attorney General), if such agents or employees are acting in the lawful and usual course of their business or employment;

"(B) the delivery of listed substances to or by a common or contract carrier for carriage in the lawful and usual course of its business, or to or by a warehouseman for storage in the lawful and usual course of its business; but where such carriage or storage is in connection with the distribution or importation of substances to a third person, this subparagraph shall not relieve the distributor or importer from compliance with paragraph (1) or (2); or

"(C) any distribution or importation with respect to which the Attorney General determines that the reports or records required by paragraph (1) or the presentation of identification or certification required by paragraph (2) is not necessary for the enforcement of this subchapter.

"(b) It shall be unlawful:

"(1) To import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any substance listed under subsection (d) unless the substance is imported for commercial, scientific or other legitimate uses, and--

"(A) In the case of substances listed in subsection (d)(1), pursuant to a permit issued by the Attorney General, or

"(B) In the case of substances listed in subsection (d)(2), pursuant to such notification or declaration requirements as the Attorney General may by regulation prescribe.

"(2) It shall be unlawful to export from the United States to any other country a substance listed under subsection (d) unless there is furnished (before export) to the Attorney General documentary proof that importation is not contrary to the laws or regulations of the country of destination for consumption for medical, commercial, scientific, or other legitimate purposes and--

"(A) In the case of substances listed in subsection (d)(1), pursuant to a permit issued by the Attorney General, or

"(B) In the case of substances listed in subsection (d)(2), pursuant to such notification or declaration requirements as the Attorney General may by regulation prescribe.



"(c) The Attorney General may by rule:

"(1) Add substances to paragraph (d) if--

"(A) he finds that such substance is a precursor or essential chemical which can be used to manufacture a controlled substance, and

"(B) such substance is being used in the manufacture of controlled substances in violation of this title, and

"(C) he finds that the inclusion of such substance in subsection (d) is necessary to curtail the manufacture of controlled substances in violation of this title.

"(2) Delete a substance listed in subsection (d) if he finds that its listing no longer meets the criteria set forth in paragraph (1).

"(d) The provisions of this title shall apply to the following:

"(1) Precursor chemicals

- |                              |                     |
|------------------------------|---------------------|
| (A) N-Acetylanthranilic Acid | (F) Ephedrine       |
| (B) Anthranilic Acid         | (G) Pseudoephedrine |
| (C) Ergotamine tartrate      | (H) Benzyl cyanide  |
| (D) Ergonovine maleate       | (I) Benzyl chloride |
| (E) Phenylacetic acid        | (J) Piperidine      |

"(2) Essential chemicals

- (A) Potassium permanganate
- (B) Acetic anhydride
- (C) Acetone
- (D) Ethyl ether

"(e) Any information which is reported to or otherwise obtained by the Attorney General under this section and which is exempt from disclosure pursuant to subsection (a) of Section 552 of Title 5 by reason of subsection (b)(4) thereof shall be considered confidential and shall not be disclosed, except that such information may be disclosed to officers or employees of the United States concerned with carrying out this title or title III or when relevant in any proceeding for the enforcement of this title or title III or when necessary to meet U.S. treaty obligations.

"(f) For the purposes of this title:

"(1) The term "import" has the same meaning given such term in Section 1001 of title III (21 U.S.C. 951 (a)(1)).

"(2) The term "customs territory of the United States" has the same meaning given such term in section 1001 of title III (21 U.S.C. 951(a)(2)).

"(g) No person may distribute, sell, import, export, or otherwise transfer to another person any commercial tableting machine or encapsulating machine unless the purchaser, recipient, transferee, or his agent presents to the distributor or supplier a certification of lawful use and identification to confirm the identity of the recipient or purchaser (and any entity which the recipient or purchaser represents) of such a type as the Attorney General by regulation may establish.

"(h) Any person who distributes, sells, imports, exports or otherwise transfers to another person any commercial tableting machine or encapsulating machine shall report the transfer to the Attorney General in such a form as the Attorney General may by regulation require. The Attorney General may require such information as the date of sale or transfer, name and address of transferee, purpose for which equipment is intended, serial numbers and make/model of equipment."

Sec. 3. (a) Section 401(d)(1) (21 U.S.C. 841(d)(1)) of the Controlled Substances Act is amended by--

(1) deleting the word "piperidine" and replacing it with the words "precursor chemical or essential chemical listed under Section 311(d)"; and

(2) deleting the word "phencyclidine" and replacing it with the words "any controlled substance".

(b) Section 401(d)(2) (21 U.S.C. 841(d)(2)) of the Controlled Substances Act is amended by--

(1) adding the words "or distributes" after the word "possesses";

(2) deleting the word "piperidine" the first place it appears and replacing it with the words "precursor chemical or essential chemical listed under Section 311(d)";

(3) deleting the word "piperidine" the second place it appears and replacing it with the words "precursor chemical or essential chemical"; and

(4) deleting the word "phencyclidine" and replacing it with "any controlled substance".

(c) Section 401(d) of the Controlled Substances Act (21 U.S.C. 841(d)) is amended by--(1) deleting "or" in paragraph (1); and (2) adding new paragraphs (3) and (4) after paragraph (2) as follows:

"(3) imports or exports a precursor or essential chemical listed under Section 311(d) except as provided for by this Act, or

"(4) possesses any precursor chemical or essential chemical listed under Section 311(d), with knowledge that the recordkeeping or reporting requirements of Section 311(a) of this title or regulations issued thereunder have not been adhered to".



Sec. 4. Section 402(a)(9) (21 U.S.C. 842(a)(9)) of the Controlled Substances Act is amended by--

"(1) deleting the word "piperidine" and replacing it with the words "a precursor chemical or essential chemical listed under Section 311(d)";

"(2) adding after the citation "section 310(a)(2)" "or section 311(a)(2)"; and

"(3) adding "or certification" after "identification".

Sec. 5. Section 403(a) (21 U.S.C. 843(a)) of the Controlled Substances Act is amended by--(1) in paragraph 4(B) deleting the word "piperidine" and replacing it with the words "a precursor chemical or essential chemical listed under Section 311(d)"; (2) in paragraph 4(B) adding after the citation "Section 310(a)" the phrase "or Section 311(a)"; (3) in paragraph 4(B) adding "or certificate" after "identification" where it appears; (4) in paragraph 4(B) striking out "or" after the semicolon; and (5) adding the following paragraphs after paragraph (5) as follows:

(6) possesses any drug manufacturing equipment, tableting or encapsulating machines, or gelatin capsules with intent to manufacture a controlled substance except as authorized by this subchapter;

(7) manufactures, distributes, sells, or imports any drug manufacturing equipment, tableting or encapsulating machines, or gelatin capsules knowing, or having reasonable cause to believe, that they will be used to manufacture a controlled substance except as authorized by this subchapter.

Sec. 6. Sec. 511(a) of the Controlled Substances Act (21 U.S.C. 881) is amended by adding a new subsection (9) as follows:

"(9) all chemicals listed under Section 311(d) which have been manufactured, possessed, distributed or intended to be distributed, imported, or exported in violation of this title as well as all conveyances and equipment, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any way facilitate the transportation, sale, receipt, possession, or concealment of precursor chemicals and essential chemicals in violation of this title, except as provided for under 4(A) and (B) above."

Sec. 7. The Attorney General shall maintain an active program, both domestic and international, to curtail the diversion of precursor chemicals and essential chemicals used in the illicit manufacture of controlled substances. This program shall include appropriate controls on the purchase, sale, import and export of these chemicals and development of cooperative efforts with foreign drug control authorities.

Sec. 8. Section 102 (21 U.S.C. 802) of the Controlled Substances Act is amended by--

(1) in paragraph 11, adding after the words "a controlled substance" the words "or a precursor chemical or essential chemical listed under Section 311(d)";

(2) adding a new paragraph (31) as follows:

"(31) The term "precursor chemical" means a substance that may be used in the chemical process of manufacturing controlled substances and which is incorporated into the final product and is therefore critical to its manufacture."; and

(3) adding a new paragraph (32) as follows:

"(32) The term "essential chemical" means a substance that may be used in the chemical process of manufacturing controlled substances as a solvent, reagent or catalyst."

Sec. 9. Section 310 (21 U.S.C. 830) of the Controlled Substances Act is amended by adding the words ", ephedrine, or phenylacetic acid" after each reference to piperidine in subsection (a).

Sec. 10. Section 506(a) (21 U.S.C. 876(a)) of the Controlled Substances Act is amended by adding after the words "with respect to controlled substances," the words "precursor chemicals or essential chemicals,".



## Background

Clandestine manufacture of major drugs of abuse has long been a major contributing factor to the availability of drugs in the illicit traffic. The clandestine manufacture of hallucinogenic drugs such as LSD has spanned three decades. The same is true for potent stimulant drugs such as the amphetamines and methamphetamine. The clandestine manufacture of PCP, one of the most dangerous drugs of abuse of our time, began in the 1970's and continues through today.

Recently, there has been a startling and dangerous development in the area of clandestine laboratories. The clandestine manufacture of analogs of potent narcotics which can be over one thousand times more potent than heroin has turned an already dangerous problem into one of potentially disastrous proportions. Potent narcotic analogs have been responsible for over 100 deaths in Southern California alone and there is a great potential for their spread to other parts of the Nation. In addition, analogs of stimulant/hallucinogenic drugs have fueled even greater drug use among the young professionals and college age students.

These new drugs of abuse have one thing in common. They are for the most part synthetic drugs and are produced by drug traffickers utilizing chemicals that are widely available in commercial channels. In addition to their use in the clandestine manufacture of synthetic drugs, many of these chemicals are used in the manufacture and processing of heroin and cocaine. For example, research disclosed that 95 percent of ether going into Colombia was used for illicit purposes. One-half of this came from the United States. Several South American countries such as Colombia, Brazil, Venezuela and Ecuador are enacting laws concerning this problem. Since virtually all the chemicals used by drug traffickers were at some point legally manufactured, all of them have at some point been diverted from their intended legitimate uses by drug traffickers. The diversion of these chemicals is facilitated by the fact that no controls over their distribution exist.

These chemicals fall into two major types -- precursor chemicals and essential chemicals. Precursor chemicals are chemicals which are used in the chemical process of manufacturing the drug and which are incorporated into the final product. Examples of these are piperidine, used in the manufacture of PCP, anthranilic acid used in the manufacture of methaqualone, and phenylacetic acid, a P2P precursor, used in the manufacture of methamphetamine. An essential chemical is a substance that may be used in the manufacturing process as a solvent, reagent or catalyst. Examples of these are ethyl ether, used to process cocaine, and acetic anhydride, used to process heroin.

DEA has maintained an active voluntary precursor control program since the early 1970s. This program has been successful over the years in providing investigative leads that have resulted in the disruption of numerous clandestine laboratory operations. However, while the voluntary reporting system has been successful in producing investigative leads, the level of clandestine laboratory operations and the level of drug deaths and injuries attributable to clandestinely produced drugs clearly demonstrate



that this voluntary system has not significantly reduced availability of these chemicals.

One of the most significant advancements in the effort against clandestine laboratory operations was the passage of the piperidine reporting and purchaser identification provisions of the "Psychotropic Substances Act of 1978." This legislation provided for mandatory reporting of piperidine transactions and required identification for piperidine purchasers. The mandatory controls over piperidine were the first imposed on a precursor chemical and established the fact that limited controls can be placed on the chemicals used in clandestine labs without unduly burdening the chemical industry.

The "Chemical Diversion and Trafficking Act of 1986" establishes an entirely new system of controls over certain sales of selected precursor and essential chemicals. The Act establishes a new framework of record-keeping, reporting and proper identification designed to keep the key precursors and essential chemicals out of the hands of drug traffickers and identify suspicious purchasers of these chemicals.

#### Approach of the Bill

The "CHEMICAL DIVERSION AND TRAFFICKING ACT OF 1986" establishes a system of recordkeeping and identification requirements that are designed to keep precursor and essential chemicals out of the hands of drug traffickers and identify suspicious purchasers of these chemicals. The key to the success of such a system is to achieve these objectives without placing an undue burden on those who legitimately distribute, sell or utilize these substances. The CHEMICAL DIVERSION ACT accomplishes this by avoiding the type of licensing and control system that exist for those who handle the controlled drugs that can be produced from these chemicals. Instead, the Act builds on the basic records that already exist in some form in the business community.

Under the provisions of the Act, any person who manufactures, distributes, sells, imports and exports any of the chemicals listed in the Act would be required to maintain records concerning what chemicals were sold, to whom they were sold, etc. This information would ordinarily be kept in the business records of any company. The additional requirement of the Act is that these records be maintained for at least five years, that they be readily retrievable and that they be subject to inspection. Additionally, the purchaser of the listed chemical would be required to provide identification and this information would also be required to be maintained by the seller. Failure to keep records or make reports would be punishable offenses as would providing false identification. To avoid unnecessary paperwork, the Attorney General may establish minimum quantitative criteria for required records for each substance. Therefore, small quantity sales would not require records and reports. The Act also provides for routine exemptions for common carriers, warehousemen, etc.

Unlike existing piperidine legislation, routine reporting of transactions would not be required. The Attorney General does, however, have the authority to establish additional reporting requirements by regulation should they be deemed necessary. The piperidine reporting requirement



will be maintained under Section 310 (21 U.S.C. 830) and two additional precursor chemicals, ephedrine and phenylacetic acid, are added to this required reporting statute.

The extensive international traffic in precursor and essential chemicals and the impact of this traffic on the availability of clandestinely manufactured drugs in the United States, dictates that greater control be exercised over import and export. Therefore, the Act establishes a system whereby listed precursor chemicals can only be imported and exported pursuant to a permit issued, in advance, by the Attorney General. Listed essential chemicals could only be imported and exported pursuant to an advance declaration. This is similar to the system currently in use for controlled drugs.

The Act also establishes penalties for trafficking in listed precursor and essential chemicals as well as civil penalties for violations of the recordkeeping and reporting requirements. An additional area that is addressed in the Act is the trafficking in the manufacturing equipment used to produce drugs in violation of the Controlled Substances Act. The Act establishes criminal penalties for knowing and intentional trafficking in drug manufacturing equipment and also establishes a requirement for the reporting of sales or other transfer of commercial tableting and encapsulating machines.

#### Section-by-Section Analysis

##### Sec. 1 - Title

Sec. 2 - This is the section that provides the basic framework of the control mechanisms of the "Chemical Diversion and Trafficking Act of 1986" by adding to the Controlled Substances Act a new Section 311 (21 U.S.C. 831) which provides for the following:

Paragraph 311(a)(1) makes mandatory the maintenance of records and the making of reports by any person who distributes, imports or exports a listed precursor or essential chemical. It also requires that the records be kept separately, be readily retrievable and available for inspection for five years. The Attorney General is authorized to designate by regulation the required records and reports, including establishing a minimum threshold for each substance under which records and reports need not be made. Failure to make required reports or keep required records would be punishable under 21 U.S.C. 842 or 843.

Subparagraphs 311(a)(1)(A) and (B) provide details as to the extent of the information the Attorney General may require. This primarily involves names, addresses, dates, type of chemical, quantity and other relevant information concerning distribution, import or export.

Paragraph 311(a)(2) establishes an identification requirement similar to the existing piperidine legislation. However, there is an additional requirement of certification by the purchaser that the purchase is not for unlawful purposes. The exact form of the certification would be established by regulation. But, it is expected that it will include, at a



minimum, that the purchase is not for unlawful purposes and that the purchaser has not made purchases from other sources in order to avoid record and reporting requirements.

Paragraph (a)(3) makes it unlawful purchase reportable amounts of any listed chemicals in units small enough to avoid the recordkeeping and reporting requirements of this section for purposes of evading these requirements.

Paragraph 311(a)(4) provides an exemption for agents, employees, common carriers, and those exempted by the Attorney General. This, again, is the same as currently exists for piperidine and, in some cases, controlled drugs.

Subsection 311(b) establishes a import/export permit requirement for listed precursors and a declaration requirement for essential chemicals. It also sets the grounds that can be used to deny permits or declarations.

Subsection 311(c) establishes a mechanism and criteria for adding or deleting chemicals from the lists.

Subsection 311(d) establishes two lists. One list is for precursors and the other for essential chemicals.

Subsection 311(e) establishes confidentiality of information and exemption from release under FOI except for enforcement purposes.

Subsection 311(f) defines "customs territory" and "import." Other definitions are included elsewhere in the CSA.

Subsection (g) provides for required identification for tableting and encapsulating machines, as well as for certification of lawful use by the purchaser.

Subsection (h) establishes a reporting requirement for the distribution, sale, import or export of tableting or encapsulating machines.

Sec. 3 - This section has three primary purposes. Sec. 3(a) amends Sec. 401(d)(1) (21 U.S.C. 841 (d)(1)) of the CSA to expand criminal penalties for possession with intent to illicitly manufacture to all listed chemicals.

Section 3(b) amends Sec. 401(d)(2) (21 U.S.C. 841(d)(2)) of the CSA to expand criminal penalties for possession or distribution with knowledge that it will be used in illicit manufacture to all listed chemicals.

Section 3(c) provides for an import/export violation and an illegal possession violation when chemicals are possessed with knowledge that the recordkeeping and reporting requirements have not been adhered to.

Sec. 4 - This section amends Sec. 402(a)(9) (21 U.S.C. 842(a)(9)) of the CSA to expand to all listed chemicals the civil penalty for distribution or sale a violation of identification requirements.

Sec. 5 - This section establishes a prohibited act under 403(a) (21 U.S.C. 843(a)) for manufacture, distribution, sale, import or export of drug manufacturing equipment tableting or encapsulating machines, or gelatin capsules with intent to violate the CSA.

Sec. 6 - Authority to seize and forfeit chemicals under Sec. 511 (21 U.S.C. 881).

Sec. 7 - Establishes intent of Congress that the Attorney General will maintain an active program against the diversion and trafficking of chemicals both domestically and worldwide.

Sec. 8 - Amends the definition of distribute to include delivery of a listed precursor or essential chemical. Also establishes definitions for "precursor chemicals" and "essential chemicals."

Sec. 9 - Amends Section 310 (21 U.S.C. 830) by adding ephedrine and phenylacetic acid to those chemicals for which reporting is required as distinguished from the recordkeeping and other requirements under the proposed section 311 (21 U.S.C. 831). This establishes piperidine-type reporting for ephedrine and phenylacetic acid.

Sec. 10 - Amends Section 506(a) (21 U.S.C. 876(a)) authorizing the Attorney General to issue subpoenas with respect to "precursor chemicals" and "essential chemicals."

TITLE XI

ASSETS FORFEITURE FUND AMENDMENTS



Sec. 1. This title may be cited as the Assets Forfeiture Fund Amendments of 1986.

Sec. 2. Subsection 524(c) of Title 28, United States Code, is amended by designating the existing subparagraph (1)(A) as part "(1)(A)(i)" and by inserting at the end thereof the following new part:

"(ii) the payment, pursuant to regulations promulgated by the Attorney General, of necessary program-related expenses; such payments may include those necessary for expenses involved in the purchase or lease of automatic data processing equipment, training, printing, contracting for services related to the processing of and accounting for forfeitures, and the storage, protection and destruction of controlled substances.

Sec. 3. Subsection 524(c) of Title 28, United States Code, is amended by striking out the words "For fiscal years 1984, 1985, 1986 and 1987" where they appear in subparagraph (c)(7) and by inserting in lieu thereof the following: "Through fiscal year 1991".

Sec. 4. H.R. 5161, an Act making appropriations for the Department of Commerce, Justice, and State, the Judiciary and related agencies for the fiscal year ending September 30, 1987, and for other purposes, is amended at page 15 by striking all after the word "necessary" in lines 4 through 8, and by inserting in lieu thereof the following:

" , Provided, That in the aggregate, not to exceed \$20,000,000 shall be available for expenses authorized by subsections (c)(1)(B), (c)(1)(E), and (c)(1)(F) of that section."

Analysis

This title would expand permissible uses of the Forfeiture Fund to include forfeiture program related expenses; extend the life of the fund through FY 1991; and increase the cap on extraordinary expenses from the fund from \$10 million to \$20 million.