

Model State Chemical Control Act

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Model State Chemical Control Act

Policy Statement

Domestic illegal laboratories are capable of producing enough stimulants, depressants, hallucinogens and narcotics to satisfy America's illegal drug demand. Long known as a nation of consumers, the United States has joined the list of producing countries.

These laboratories thrive where chemicals are readily available on the open market or easily diverted from legitimate commerce. Drug production is often a simple process, without need of complex technology, sophisticated education, or training. Illegal lab operators use a recipe mixing together various types of chemicals as the ingredients. Precursor chemicals are critical to the creation of a controlled substance and merge with the resulting drug. Easily obtainable "ingredients" provide ample opportunity to perpetuate and expand illegal production of methamphetamine, amphetamine, and other drugs.

To craft a legislative response to the problem of illegal chemical diversion, the American Prosecutors Research Institute (APRI) brought together investigators and prosecutors from Arizona, California, Oklahoma, Texas, Washington, Drug Enforcement Administration (DEA), and the U.S. Department of Justice¹. Through a series of drafting meetings and review of comments from the enforcement, chemical, and pharmaceutical communities, the group developed the Model State-Chemical Control Act. The Model Act creates a monitoring system which tracks a chemical from its source to its use. Unlike most other criminal laws, it is a preventive measure. It seeks to stop a drug offense before it happens by preventing diversion of precursor chemicals into illegal channels.

An important test of any statute is its ability to carefully balance valid, and sometimes competing, interests. While the enforcement purpose is critical, also important is the need to avoid unnecessary disruption of lawful commerce. The model regulatory structure accommodates business needs without sacrificing the ability to stop illicit chemical transfers.

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Highlights of the Model State Chemical Control Act

PREVENTING ILLEGAL DIVERSION

- Regulates transactions involving chemicals frequently used in the illicit production of controlled substances, e.g. ephedrine, methylamine, ethylamine, phenyl-2-propanone.
- Authorizes emergency regulation of chemicals on a temporary basis to avoid imminent hazards to public safety.

CONTROLLING ACCESS TO CHEMICALS

- Requires annual registration of persons who manufacture, provide, sell, furnish, transfer, or deliver regulated chemicals.
- Terminates registration upon registrant's death, cessation of legal existence, discontinuation of business or professional practice or a change in ownership.
- Precludes assignment or transfer of registration without written consent of appropriate state official.
- Requires a permit for each time a person seeks to possess a regulated chemical.
- Excludes from regulation agents, common carriers, law enforcement officers, medical practitioners and pharmacists who handle regulated chemicals in the lawful course of practice, business or employment.

PROTECTING LAWFUL USE AND FACILITATING IMPLEMENTATION

- Requires a permit applicant to submit detailed identification information, including notarized fingerprint cards (except in specified circumstances) and criminal history. Business applicants must provide information for each owner, manager, agent, or representative.
- Allows, upon application by a drug manufacturer,

the exemption of a specific drug product from regulation, e.g. Bronkaid, Tedral, Primatene.

- Exempts owners, partners, and corporate officers of publicly held corporations of 35 shareholders or more from permit application requirements to submit criminal history, fingerprint cards, and other identification information.
- Allows submission of retrospective monthly reports in lieu of a permit if the possessor is eligible to apply for a permit and either maintains a regular supply and purchase relationship with a distributor or has a record of lawful use.
- Provides permit applicants the right to appeal if the official fails to act on an application within 21 days after receipt of a completed application.
- Provides a show cause hearing for denial, suspension, or revocation of a registration or permit, or suspension or revocation of a monthly report, with right to appeal.
- Allows distributors and possessors to submit copies of reports submitted under federal law for transactions (involving threshold amounts).
- Allows appropriate state official to charge non-refundable application fees to cover processing and other administrative costs.

TRACKING THE FLOW OF CHEMICALS

- Requires regulated distributor to obtain identification of purchaser and any vehicle used in the transaction.
- Requires regulated distributor and possessor to prepare annual physical inventory and maintain readily accessible records for four years after the date of the transaction.
- Requires regulated distributor and possessor to

report theft or loss of chemicals, breakage of containers, and suspicious transactions, e.g. method of payment or delivery not in the usual course of business; potential violations of Act or EPA laws.

DETECTING UNAUTHORIZED ACTION AND PROTECTING THE ENVIRONMENT

- Imposes civil fines on corporations in addition to criminal penalties.
- Establishes civil assessments for cleanup of hazardous illegal laboratory sites and enforcement of Act.
- Authorizes forfeiture of chemicals and property pursuant to controlled substances acts.

DETERMINING COMPLIANCE WITH THE ACT

- Provides state official investigatory powers to subpoena witnesses, compel testimony, and require production of documents.
- Requires confidentiality of information obtained through administrative investigation.
- Authorizes administrative inspections of premises where chemicals and records are required to be or are, in fact, kept.

Model State Chemical Control Act

Section 1. Short Title.

This [Act] shall be known and may be cited as the “Model State Chemical Control Act.”*

Section 2. Legislative Findings.

(a) Domestic clandestine laboratories are capable of providing enough stimulants, depressants, hallucinogens, and narcotics to satisfy America’s illegal drug demand.

(b) Federal and state law enforcement officials seized an increasing number of clandestine laboratories in the 1980s. The Drug Enforcement Administration (DEA) saw a steady rise in the numbers of seized laboratories: from 184 in 1981 to 810 in 1988. The Oklahoma Bureau of Narcotics (OBN) seized 28 laboratories in 1986, an almost 100% increase from the 16 laboratories seized in 1985. Another increase of over 100% occurred in 1988 when OBN seized 62 laboratories as compared to 30 laboratories the previous year. Texas narcotics officers seized 64 laboratories during 1988.

(c) Clandestine laboratories thrive where ever chemicals are readily available on the open market or easily diverted from legitimate commerce. Illegal drug production is a nomadic business. When chemicals are difficult to obtain, illegal lab operators move their operations to locations where chemical acquisition is simple. Effective regulation of chemical transactions dries up sources which supply illegal laboratories.

(d) Despite strict federal regulation of threshold amounts of chemicals since 1988, domestic opportunities for illegal chemical diversion still exist. Illicit operators restructure their actions to avoid federal regulations and focus their efforts in states without effective chemical controls. Only approximately 18 states have specific chemical tracking requirements.

(e) State by state enactment of detailed chemical controls are necessary to halt the existence and spread of clandestine laboratories across the country. The controls are designed to stop illegal drug production before it occurs by preventing illegal chemical diversion.

Section 3. Purpose.

The purpose of this [Act] is to prevent the illegal diversion of precursor chemicals by creating a monitoring system which traces a chemical from its distribution to its use while protecting the transfer of chemicals for legitimate commercial uses.

Definitions and Exemptions

Section 4. Definitions.

(a) The term “administer” means to apply a regulated chemical whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

- (1) a practitioner (or in the practitioner’s presence, by his authorized agent); or
- (2) the patient or research subject at the direction and in the presence of the practitioner.

(b) The term “agent or representative” means a person who is authorized to receive, possess, manufacture or distribute or in any other manner control or have access to a regulated chemical on behalf of another person.

(c) The term “broker” or “trader” means a person who assists in arranging a transaction of a regulated chemical by negotiating contracts, serving as an agent or intermediary, or bringing a buyer, seller and/or transporter together.

* The Commission has reformatted APRI’s Model State Chemical Control Act to be consistent with the Commission’s other recommended legislation. The Commission has also corrected typographical errors and made technical changes. APRI’s development of the Model Act was funded by the National Institute of Justice and the Bureau of Justice Assistance.

(d) The term “controlled premises” means:

(1) a place where regulated chemical distributors or regulated chemical possessors are required under this [Act] to, or in fact, keep or maintain records related to regulated chemical transactions; and

(2) a place, including a factory, warehouse, establishment and conveyance, in which regulated chemical distributors or regulated chemical possessors are permitted under this [Act] to, or in fact, possess, manufacture, compound, process, sell, deliver, or dispose of a regulated chemical;

(e) The term “delivers” or “delivery” means the actual, constructive, or attempted transfer of a regulated chemical from one person to another, whether or not there is an agency relationship.

(f) The term “dispense” means to deliver a regulated chemical to an ultimate user, patient, or research subject by, or pursuant to the lawful order of, a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the regulated chemical for that delivery.

(g) The term “distribute” means to deliver other than by administering or dispensing a regulated chemical.

(h) The term “manager” means one who represents the interest of any owner, partner or corporate officer in the operation of a business involved in the manufacture, distribution or possession of regulated chemicals whose duties include but are not limited to: (1) the making or changing of policy; (2) approving credit; (3) hiring or firing employees; or (4) generally exercising independent judgment in the operation of the business. Such person need not have a financial interest in the business.

(i) The term “manufacture” means to produce, prepare, propagate, compound, convert, or process a regulated chemical directly or indirectly, by extraction from substances of natural origin, chemical synthesis, or a combination of extraction and chemical synthesis, and may include packaging or repackaging of the substance or labeling or relabeling of its container. The term excludes the preparation, compounding, packaging, repackaging, labeling, or relabeling of a regulated chemical:

(1) by a practitioner as an incident to the practitioner’s administering or dispensing of a regulated chemical in the course of the practitioner’s professional practice; or

(2) by a practitioner, or by the practitioner’s authorized agent under the practitioner’s supervision, for the purpose of, or as an incident to research, teaching, or chemical analysis and not for sale;

(j) The term “person” means any individual or entity capable of holding a legal or beneficial interest in property.

(k) The term “practitioner” means a physician, dentist, veterinarian, scientific investigator, pharmacist, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by this state, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a regulated chemical in the course of professional practice or research.

(l) The term “regulated chemical” means a chemical that is used directly or indirectly to manufacture a controlled substance or other regulated chemical in violation of the [state controlled substances act or this Act]. The fact that a chemical may be used for a purpose other than the manufacturing of a controlled substance or regulated chemical does not exempt it from the provisions of this [Act]. The term includes:

- (1) Acetic Anhydride.
- (2) Anthranilic acid, its esters and its salts.
- (3) Benzaldehyde.
- (4) Benzyl chloride.
- (5) Benzyl cyanide.
- [(6) D-lysergic acid.]

(Drafters’ comment: Chemical (6) should be deleted if a state already schedules it under the state controlled substances act).

- (7) Diethylamine and its salts.
- (8) Ephedrine, its salts, optical isomers, and salts of optical isomers.
- (9) Ethylamine and its salts.
- (10) Ergotamine and its salts.
- (11) Ergonovine and its salts.
- (12) Hydriodic acid.
- (13) Isosafrole.
- (14) Malonic acid and its esters.
- (15) 3, 4 -methylenedioxyphenyl-2-propanone.
- (16) Methylamine and its salts.

- (17) Morpholine and its salts.
- (18) N-acetylanthranilic acid, its esters and salts.
- (19) N-ethylephedrine, its salts, optical isomers and sand salts of optical isomers.
- (20) N-ethylpseudoephedrine, its salts, optical isomers, and salts of optical isomers.
- (21) N-methylephedrine, its salts, optical isomers, and salts of optical isomers.
- (22) N-methylpseudoephedrine, its salts, optical isomers, and salts of optical isomers.
- (23) Nitroethane.
- (24) Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers.
- (25) 1-phenyl-1-chloro-2-methylaminopropane (chloroephedrine; chloropseudoephedrine), their salts, optical isomers, and salts of optical isomers.
- [(26) Phenyl-2-propanone.]

(Drafters' comment: Chemical (26) should be deleted if a state already schedules it under the state controlled substances act).

- (27) Phenylacetic acid, its esters and salts.
 - (28) Phenylpropanolamine its salts, optical isomers, and salts of optical isomers.
 - (29) Piperidine and its salts.
 - (30) Piperonal.
 - (31) Propionic anhydride.
 - (32) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers.
 - (33) Pyrrolidine and its salts.
 - (34) Safrole.
 - (35) Thionylchloride.
- (m) The term "regulated chemical distributor" means any person, whether or not the person is registered pursuant to the [Act], who manufactures or distributes a regulated chemical.
- (n) The term "regulated chemical possessor" means any person who possesses a regulated chemical.
- (o) The term "regulated chemical transaction" means the manufacture of a regulated chemical or the distribution of a regulated chemical within, into, or out of the state.

COMMENT

This section clarifies terminology or "terms of art" specific to this [Act]. Many of these terms are drawn from other model state statutes, federal acts, or state precursor legislation. Consistent use of definitions with well-established interpretations helps eliminate ambiguity and ensure uniformity of purpose and application. With this in mind, the definitions for "administer," "manufacture," and "practitioner" have been substantially taken from the Uniform Controlled Substances Act (UCSA). Necessary modifications ensure the applicability of these definitions to this [Act]. The phrase "regulated chemical" replaces, where appropriate, the phrase "controlled substance." The term "controlled premises" has been expanded to include locations where records and chemicals are in fact kept or maintained.

The complete definitions for the UCSA terms and phrases are included for two reasons. First, to allow full comprehension of the regulatory scheme contemplated by this Act. Second, to help provide a free-standing act which states can adopt separate and distinct from their controlled substances acts (CSAs). States which incorporate sections of this [Act] into their CSA may simply insert "or regulated chemical" and other necessary language into existing definitions.

Other borrowed phrases include "agent or representative," "manager," and "person." The first and second are contributions of California's chemical regulations while the third comes from the federal Racketeer Influenced and Corrupt Organizations Act (RICO). These definitions help identify the type of individuals subject to the [Act's] responsibilities and penalties.

States vary significantly in the number of chemicals they regulate, from 35 in Colorado to 9 in Montana. The differences reflect each state's experience with diversion, abuse, and the potential illicit use of a chemical. The regulated chemicals list in this [Act] includes a comprehensive range of chemicals controlled by states and the federal government. This affords a historical perspective to states with no controls and helps them reach informed decisions about which chemicals they should consider for regulation.

One notable inclusion is ephedrine. Many people recognize ephedrine as an ingredient in their sinus medications. However, the public is often unaware that ephedrine is a primary precursor used illegally to produce methamphetamine. Fifty-three percent (53%) of

the clandestine methamphetamine labs seized by DEA in 1990 used the ephedrine reduction method.

State officials report a similar phenomenon. Illicit meth laboratories in the west and southwest began using ephedrine after state regulation of phenylacetic acid. In northern California 85% of these labs use single ingredient ephedrine tablets. Oregon officials discovered that over-the-counter ephedrine tablets sold in the Portland area became a source of ephedrine for northwest methamphetamine lab operators. Ephedrine reduction's increasing popularity is due to its simplicity and a resulting product with pronounced effect on the user. The regulation of ephedrine is an important step towards curbing the clandestine manufacture of methamphetamine. It provides controlled access to the chemical and helps prevent distribution into illegitimate channels.

Another important step is the regulation of transactions involving any amount of a regulated chemical. This permits state and local officials to supplement federal enforcement efforts. Individuals dealing in below-threshold quantities are exempt from federal record-keeping, reporting, and inspection requirements. They accumulate large amounts of chemicals for clandestine production by engaging in multiple transactions below the threshold limits. Federal officials under current law have no way of regulating this behavior or even obtaining information about the transactions. The [Act] allows state and local officials to address this diversion which would otherwise escape detection until after illegal use of chemicals.

Section 5. Exemptions.

The provisions of this [Act] shall not apply to:

- (a) a domestic lawful distribution in the usual course of business between agents or employees of a single regulated distributor or regulated chemical possessor;
- (b) a distribution of a regulated chemical to or by a common or contract carrier for carriage in the lawful and usual course of the business of the common or contract carrier, or to or by a warehouseman for storage in the lawful and usual course of the business of the warehouseman;
- (c) the administering or dispensing of a regulated chemical;
- (d) the receipt of a regulated chemical pursuant to the lawful order of a practitioner;

(e) the purchase, distribution or possession of a regulated chemical by a local, state, or federal law enforcement agency while in the discharge of official duties unless the [director of agency responsible for enforcement of the state controlled substances act] properly notifies the law enforcement agency relying on the exclusion that its investigatory activities are contrary to the public interest;

(f) the purchase, distribution, manufacture, administering, dispensing, or possession of a drug product containing a regulated chemical if the drug product has been granted an exemption pursuant to Section 6 of this [Act].

COMMENT

This section combines in one location for quick reference those transactions which are exempt from regulations under this [Act]. Subsections (a)-(d) are a restatement of the UCSA exemptions for common carriers, agents, pharmacists, physicians and other authorized practitioners. Subsection (e) is drawn from Texas' precursor regulations. In the normal course of their duties, drug enforcement officials often purchase, distribute, or possess regulated chemicals. This exemption allows them to continue their investigations without being subject to the requirements of this [Act]. Subsection (f) reiterates the exemption for specific drug products established in Subsection 6 (c)-(f).

Authority to Regulate

Section 6. Regulated Chemicals List.

- (a) The [appropriate state official] may, by rule or regulation adopted pursuant to [state administrative procedures act], add chemicals to or delete chemicals from the list of regulated chemicals in Section 4 (l). In determining whether to add or delete a chemical, the [appropriate state official] shall consider the following:
- (1) whether the chemical is already controlled under the [state controlled substances act];
 - (2) the availability of the chemical for potential illegal diversion;
 - (3) the historical, actual, or potential use of the chemical in the illegal production of a substance controlled under the [state controlled substances act], including the scope, duration and significance of use;

(4) the nature and extent of the legitimate uses of the chemical;

(5) the clandestine and legitimate importation, manufacture, or distribution of the chemical; and

(6) any other factors relevant to and consistent with public health and safety.

(b) Notwithstanding the requirements in subsection (a), the [appropriate state official] may by rule or regulation add a chemical to the list of regulated chemicals in Section 4 (l) on a temporary basis to avoid an imminent hazard to the public health and safety. With respect to the finding of an imminent hazard, the [appropriate state official] shall consider:

(1) the recent history and current pattern of abuse;

(2) the imminent risk to the public health; and

(3) available information on factors set forth in subsection (a).

An emergency rule may not be adopted until the [appropriate state official] initiates a rulemaking or other regulatory proceeding under subsection (a) with respect to the chemical. Unless the [state administrative procedure act] provides otherwise, an emergency rule will expire on the later of:

(1) one year after its adoption; or

(2) the effective date of the final rule or other conclusion of the rulemaking proceeding initiated under subsection (a).

(c) A manufacturer may apply to the [appropriate state official] for an exemption of a drug product containing a regulated chemical from the provisions of this [Act] on a form which the [official] shall furnish upon request. The [appropriate state official] shall grant the exemption upon finding that the applicant has shown by a preponderance of the evidence that the drug product is manufactured and distributed in a manner which prevents its illegal diversion. In making the finding, the [appropriate state official] shall consider:

(1) evidence of illegal diversion of the drug product, including the scope, duration and significance of the diversion;

(2) whether the drug product is formulated in such a way that it cannot be easily used in the illegal production of a drug;

(3) whether the regulated chemical can be readily recovered from the drug product;

(4) the manner of packaging the drug product, including the package sizes;

(5) the manner of distribution and advertising of the drug product by the manufacturer and others;

(6) any specific actions taken by the manufacturer to prevent illegal diversion of the drug product; and

(7) any other factors which are relevant to and consistent with public health and safety.

The [appropriate state official] shall grant or deny an exemption by rule or regulation in accordance with the [state administrative procedure act].

(d) (1) A drug product that is lawfully marketed in this state on the effective date of this [Act] and which is the subject of a request made under subsection (c) shall be deemed in compliance with this [Act]:

(A) during the pendency of the request; and

(B) for the [60] days after denial of the exemption, unless the denial was based on a finding that the drug product is being illegally diverted.

(2) The manufacturer shall file a request under this subsection no later than [60] days from the effective date of this [Act].

(e) Applications pursuant to subsection (c) that involve a drug product for which an exemption was previously denied may be made only if there is a significant change in the data which led to the denial.

(f) The [appropriate state official] may, by rule or regulation adopted pursuant to [state administrative procedure act], modify or remove an exemption upon finding:

(1) that the drug product is being illegally diverted; or

(2) that there is a significant change in the data which led to the granting of the exemption.

In making a finding, the [appropriate state official] shall consider the factors listed in subsection (c).

(g) If any chemical is designated or deleted as a listed chemical under the provisions of the Federal Controlled Substances Act, the [appropriate state official] may by rule or regulation similarly add or delete a chemical as a regulated chemical without making the determination required under subsection (a).

COMMENT

Section 6 establishes a procedure for modifying the regulated chemicals list which is based on the UCSA scheduling authority for controlled substances. Subsection (a) authorizes the appropriate state official to add or delete chemicals from the list after consideration of illegal diversion and use factors.

Subsection (b) permits the officials to list a chemical on an emergency basis prior to completion of rulemaking activity. Emergency regulation is sometimes necessary to prevent an imminent hazard to public health and safety. Some chemicals have flammable or toxic properties. Their uncontrolled use can lead to explosions, environmental damage, and illness. However, precautionary measures have been included to ensure appropriate use of the authority. The official must initiate general regulatory proceedings under subsection (a) before adoption of an emergency rule which has a defined expiration date.

Subsections (c)-(f) are specially tailored to facilitate the continued use of regulated chemicals for medical purposes. The special exemption ensures manufacturers maintain access to a legal marketing process for legitimate drug products, such as Bronkaid and Primatene. An exemption finding requires consideration of a product's manufacture, packaging, advertising, distribution, and actual or potential illegal diversion. The exemption concept and determination factors are drawn from draft federal (Chemical Diversion and Trafficking Act) amendments negotiated between the DEA and chemical and drug manufacturers. Subsection (e) has been added to prevent abuse of the process through the bad faith filing of repeated applications.

Regulation of Manufacture, Delivery and Possession of Regulated Chemicals

Section 7. Registration of Regulated Distributors.

(a) Except as provided in Section 9, each regulated chemical distributor shall apply annually for a registration from the [appropriate state official] and engage in a regulated chemical transaction only to the extent authorized by the registration and in conformity with this [Act].

(b) The application shall be in such form and provide such information as the [appropriate state official] shall require by rule or regulation pursuant to the [state

administrative procedure act.]

(c) The [appropriate state official] shall register an applicant unless the [official] determines that the registration shall be denied in accordance with Section 10(a).

(d) A separate registration is required for each principal place of business or professional practice of the regulated chemical distributor.

(e) A regulated chemical distributor shall notify the [appropriate state official] of any change in business name, address, zip code, area code, and telephone number, or a change in managers, agents or representatives, no later than the seventh calendar day after the date of the change.

(f) A registration shall terminate if and when the regulated chemical distributor dies, ceases legal existence, discontinues business or professional practice, or changes ownership.

(g) No registration shall be assigned or otherwise transferred except upon such conditions as the [appropriate state official] may specifically designate and then only pursuant to the [official's] written consent.

COMMENT

Section 7 draws upon the UCSA, federal controlled substances regulations, and California and Texas law for the [Act's] registration procedure. Annual registration serves dual purposes. First, it supplies information on legitimate chemical sources, persons who can be held accountable, locations, and available quantities. The responsibility for the control of regulated chemicals rests in large part with manufacturers and distributors. To adequately assess the extent of illegal diversion, it is critical to know the legal purpose for production and distribution of chemicals. Officials can more accurately determine if the source of chemicals found at clandestine lab sites is legitimate, an unregulated channel, or an "underground" process. Second, it emphasizes to manufacturers and distributors the critical role they play in eliminating unlawful chemical transfers.

The benefits of registration outweigh any anticipated administrative costs. The number of manufacturers and distributors who will submit applications is both finite and manageable. California, for example, registers approximately 40-45 companies per year. Section 16 authorizes assessment of fees to offset processing expenses of those who do apply. The fees' purpose is to prevent strain on scarce state resources, and not to profit from the application process. Therefore, a fee cannot exceed actual costs.

Section 8. Permit to Possess.

(a) Except as provided in Section 9 and subsection 8(i), a person shall obtain a permit to possess from the [appropriate state official] each time the person seeks to possess a regulated chemical. The person shall possess a regulated chemical only to the extent authorized by the permit and in conformity with this [Act].

(b) An individual applicant shall provide the following information on an application furnished by the [appropriate state official]:

- (1) name, residential address other than a post office box, and telephone number;
- (2) current and valid driver's license number or other current and valid official state-issued identification number;
- (3) social security number;
- (4) date of birth;
- (5) prior convictions, including those with an appeal pending, which involve a felony violation of state or federal law, or the law of another country, or a misdemeanor violation of this [Act] or the [state controlled substances act];
- (6) pending charges involving a felony violation of federal or state law, or the law of another country, or a misdemeanor violation of this [Act] or the [state controlled substances act];
- (7) the type and quantity of each regulated chemical to be possessed;
- (8) a complete description of the intended uses of each chemical;
- (9) the location where each chemical is to be stored and used;
- (10) the intended date and method of delivery of each regulated chemical;
- (11) the intended method of disposal of any unused chemical or chemical waste; and
- (12) any additional information requested by the [appropriate state official] relating to possible grounds for denial as set forth in Section 10.

(c) Each owner, partner, corporate officer or manager, and any agent or representative of a business applicant shall provide the information required in subsections (b)(1) -(b)(6), and (b)(12). An individual making application on behalf of the business shall provide all the

information required in subsection (b) in addition to:

- (1) the individual's relationship to the business;
 - (2) an affirmation that the individual is authorized to make application on behalf of the business;
 - (3) the name, business address, other than a post office address, and business phone number of the individual's immediate supervisor;
 - (4) the name, address other than a post office address, and telephone number of the business; and
 - (5) the nature of the business and type of business ownership;
- (d) The application shall be signed by the applicant under penalty of perjury, or in the case of a business applicant, by the individual making application on behalf of the business and, except as provided in subsection (f), each owner, partner, corporate officer or manager, and any agent or representative.
- (e) An applicant for an initial permit shall submit with the application two notarized sets of ten print fingerprint cards. A business applicant is required to submit cards for the individual making application on behalf of the business and, except as provided in subsection (f), for each owner, partner, corporate officer or manager, and any agent or representative.
- (f) An owner, partner, or corporate officer of a business applicant is exempted from the requirements of subsections (c), (d), and (e) of this section if the business applicant is a publicly held corporation of 35 shareholders or more.
- (g) The [appropriate state official] shall issue or deny a permit no later than 21 days after receipt of the completed application, unless the [official] determines there is good cause for an extension. The [official] shall state in writing the reasons for the extension and the new time period for issuance or denial of the permit. The applicant shall have a right to appeal the [official's] failure to act within the prescribed time period pursuant to the [state administrative procedure act].
- (h) The permit shall consist of five parts, including:
- (1) one copy to be retained by the applicant;
 - (2) one copy to be retained by the [appropriate state official];
 - (3) one copy to be delivered to the regulated chemical distributor by the applicant;

(4) one copy to be delivered to the [appropriate state law enforcement agency]; and

(5) one copy to be attached to the container of the regulated chemicals and to be kept with the chemicals at all times. In the case of multiple containers related to a single permit, a label reflecting the permit number shall be attached to each additional container.

(i) (1) A possessor may submit a comprehensive monthly report to the [appropriate state official] in lieu of the permit required by this section if the [official] so authorizes upon finding in writing that:

(A) the possessor is eligible to apply for a permit;

(B) there are no grounds for denial of a permit pursuant to Section 10; and

(C) (i) there is a regular relationship of supply and purchase between a regulated chemical distributor and the regulated chemical possessor with respect to the chemical; or

(ii) the regulated chemical possessor has established a record of use of the chemical solely for a lawful purpose.

(2) The comprehensive monthly report shall be submitted no later than 15 calendar days after the end of the calendar month which is the subject of the report. It shall be submitted on a form which the [appropriate state official] shall provide, and shall include:

(A) the quantity of the chemical possessed;

(B) the date and method of delivery of the chemical;

(C) the physical location where the chemical was stored and used;

(D) the use of the chemical;

(E) the method of disposal of any unused chemical or chemical waste; and

(F) any other information required by the [appropriate state official].

(3) The possessor shall notify the [appropriate state official] of any change in status relevant to any grounds for suspension or revocation of a comprehensive monthly report authorization no later than seven calendar days after the change.

(4) The authorization shall consist of four parts and, in lieu of a permit, be retained and delivered as provided in subsection (h) (1), (2), (3), and (4).

(5) (A) The grounds for suspension or revocation of a permit under Section 10 shall constitute grounds for suspension or revocation of the authorization.

(B) The [appropriate state official] shall suspend or revoke an authorization to submit a comprehensive monthly report in accordance with the procedures described in Section 10 (c), (d), and (e).

COMMENT

California law pioneered the permitting process which has served as a model for many other state precursor laws. Texas law expanded the process to require permits for single or multiple purchases in addition to transfers. Oklahoma law, the basis of this section, went one step further. It extended the requirement beyond purchases to possession of chemicals. This extension allows regulation of every non-exempted use of a regulated chemical.

Many illegal "cookers" produce the necessary chemical in their clandestine laboratories and then manufacture the desired controlled substance. Because they do not purchase the chemical, they escape regulation and liability under a requirement applicable solely to purchases. A permit requirement for possession eliminates this loophole.

Section 8 is one more stage in the information cycle begun by regulated chemical distributors through the registration procedure. It looks at the receiving end. Permits identify persons who intend to possess specific quantities of chemicals for a stated purpose. Regulatory and enforcement officials can ascertain the fitness of a potential recipient and ensure the intended use is legitimate. This section facilitates the detection of possible diversion opportunities.

The inherent danger of some regulated chemicals, the potential for abuse, and limited lawful uses justifies the need to obtain the information listed in subsections (b) (c), and (e). Subsection (e) borrows California's requirement that fingerprint cards be submitted with an application. Verification of personal identification and criminal histories helps prevent the mistaken issuance of a permit due to a falsified application.

Persons subject to the disclosure requirements maintain sufficient personal access or control over chemicals to effect an illegal use or transfer. However, many publicly held corporations are sizeable enough so the owners and officers lack a personal relationship with the chemicals. There is no need for detailed background information or fingerprint cards from these people. Therefore, subsection (f) exempts them from the identification requirements.

As subsection (f) illustrates, the extensive application process seeks to avoid undue interference with legitimate commerce. Subsection (i) provides a reporting alternative for possessors who demonstrate a history of regular, lawful use. The risk of illegal diversion associated with them is less than with other possessors. Their retrospective monthly submission of the necessary transaction information reasonably serves regulatory goals. It also prevents their unnecessary expenditure of time and money on permit applications. As with registration, a non-refundable application fee can offset actual processing costs.

Any related costs of a proactive regulatory scheme pale in comparison to the costs attendant to uncontrolled clandestine laboratories. As Section 15 discusses, the clean-up expense of clandestine labs is staggering, ranging in the millions of dollars. The cost of long-term environmental contamination remains unknown. This societal damage is compounded by millions of dollars in domestically produced illegal drugs which feed a thriving market.

In 1991 the California Bureau of Narcotics Enforcement (BNE) seized 1201 pounds of methamphetamine from 328 labs. The statewide average price for a pound of methamphetamine was \$8,000 - \$14,000. On the streets the product would have resulted in an average of \$9 - \$16 million in sales. The Oklahoma Bureau of Narcotics (OBN) seized approximately 482 pounds of methamphetamine that year. At approximately \$12,000 per pound, sales would have totalled over \$5 million. The toll in increased health, welfare and safety costs and human suffering is incalculable. These figures reflect only the actual product recovered from the labs. Many laboratories that are seized routinely contain no product but are capable of producing anywhere from ounce to multiple pound quantities.

A careful weighing of all pertinent costs favors adoption of a comprehensive chemical monitoring scheme.

Section 9. Ineligibility to Apply for Permit or Registration.

(a) A person is ineligible to apply for a permit or registration if the person:

(1) is an individual less than 18 years of age or a business in which an individual under 18 years of age is in the capacity of owner, partner, corporate officer, manager, agent, or representative.

(2) has been convicted of a [felony] violation of federal or state law, or the law of another country, or a federal or state misdemeanor violation involving a controlled substance, [controlled substance analog,] or a chemical subject to regulation; or

(3) has had a federal or state registration, or a registration from another country, to manufacture, distribute, dispense or possess controlled substances or any chemical subject to regulation denied, suspended, or revoked.

(b) An applicant, registrant, or permit holder shall notify the [appropriate state official] of any change in status regarding the conditions listed in this section no later than the seventh calendar day after the change.

COMMENT

Based on California law, this section precludes authorized access to regulated chemicals by unqualified or unscrupulous persons. It is a common sense provision. Individuals who have demonstrated previous illegal or irresponsible behavior involving controlled substances or chemicals should no longer be allowed control over chemicals. Therefore, convicted offenders are ineligible to apply for a permit or registration. The same is true for persons who have had a prior registration or permit denied, suspended, or revoked.

It is also important to exclude minors from positions of total responsibility for chemicals. Drug dealers often employ juveniles because juveniles are subject to less harsh penalties than adults. A minor's ineligibility therefore prevents drug dealers from using juveniles to gain access to chemicals for illegal purposes.

Section 10. Denial, Suspension, or Revocation of Registration or Permit to Possess.

(a) The [appropriate state official] may deny, suspend, or revoke a registration or permit to possess upon finding that the applicant, registrant, or permit holder:

(1) has failed to make proper application to the [appropriate state official] pursuant to Sections 7 and 8 and any applicable rule or regulation;

(2) has failed to demonstrate that the chemical will be used solely for legitimate purposes;

(3) has violated any rule or regulation of the [appropriate state official] or any provision of this [Act] or the [state controlled substances act];

(4) has failed, or does not demonstrate the ability, to maintain effective controls against diversion of regulated chemicals into other than legitimate medical, scientific, research, or industrial channels;

(5) has materially falsified or omitted material information from any application, record, report, inventory, or other document required to be kept or filed under this [Act] or any applicable rule or regulation; or

(6) has committed such acts as would render the person's registration or permit inconsistent with the public interest as determined by the [appropriate state official].

(b) An applicant, registrant, or permit holder shall notify the [appropriate state official] of any change in status regarding the conditions listed in subsection (a) no later than the seventh calendar day after the change.

(c) Before denying, suspending, or revoking a registration or permit under subsection (a), the [appropriate state official] shall cause to be served upon the applicant, registrant, or permit holder an order to show cause why a registration or permit should not be denied, suspended, or revoked. The order to show cause shall contain a statement of its basis and shall call upon the applicant, registrant, or permit holder to appear before the appropriate person or agency at the time and place within 30 days after the date of service of the order. The proceedings shall be conducted in accordance with the [state administrative procedure act] without regard to any criminal prosecution or other proceeding. An applicant, registrant, or permit holder shall have a right to appeal an adverse decision pursuant to the [state administrative procedure act].

(d) The [appropriate state official] shall suspend, without an order to show cause, any registration or permit simultaneously with the institution of proceedings described in subsection (a) if the [appropriate state official] finds there is imminent danger to the public health or safety. The suspension shall continue in effect until

the conclusion of the proceedings, including review thereof, unless withdrawn by the [appropriate state official] or dissolved by a court of competent jurisdiction.

(e) [The [appropriate state official] shall promptly provide the [director of agency responsible for enforcement of the state controlled substances act] the name, address, and phone number of any individual whose registration or permit has been denied, suspended, or revoked under this section.]

COMMENT

This section's standards and procedures draw upon those in the UCSA, federal CSA, California, Oklahoma, and Texas law. The grounds for denial, suspension, or revocation are taken from Sections 304 and 305 of the UCSA and Section 824 of the federal CSA. The show cause hearing in subsections (c) and (d) is patterned after Oklahoma law which also draws upon the UCSA and federal CSA. Subsection (e) is intended to facilitate enforcement of the [Act]. It requires inter-agency information sharing when the revoking or suspending authority is not the state drug enforcement agency.

Subsection (b)'s requirement for prompt notice of a change in conditions is a California and Texas addition. It parallels similar requirements in the registration, permit, and application ineligibility sections. Maintenance of updated information is critical to achieving the [Act's] purpose. It helps officials prevent an unfit person from having unlimited access to a regulated chemical for an indefinite period of time.

Records and Reporting Requirements

Section 11. Identification of Purchaser.

(a) Each regulated chemical distributor shall obtain and each purchaser shall present the following identification prior to receipt or distribution of any regulated chemical:

(1) the registration number, or permit, or monthly report authorization of the purchaser;

(2) a current and valid driver's license or other current and valid official state issued identification containing a photograph of the individual purchaser or individual receiving the regulated chemical on behalf of a business, and the purchaser's or recipient's residential or mailing address other than a post office box; and

(3) the motor vehicle license and vehicle identification number of the motor vehicle used in the regulated chemical transaction.

(b) A regulated chemical possessor authorized to submit a monthly report pursuant to Section 8 (i) may designate an individual to receive the regulated chemical on the possessor's behalf for purposes of subsection (a).

COMMENT

State officials for years have confronted a recurring problem with the monitoring of chemicals. In California individuals were using multiple identities and vehicles to conduct numerous transactions at various locations throughout the state. The evasive tactic hampered officials' ability to trace the path of a chemical. Determining the actual purchaser was difficult and at times impossible. In response, California drafted purchaser identification requirements which several state statutes and this [Act] incorporate.

Section 12. Record Keeping Requirements.

(a) Each regulated chemical distributor and regulated chemical possessor:

(1) shall prepare annually a complete, legible, and accurate physical count of all regulated chemicals on hand. The physical count shall be prepared on the effective date of this [Act] and every year thereafter or, if authorized by the [appropriate state official], on the annual general physical inventory date of a regulated chemical distributor or regulated chemical possessor;

(2) shall include on the record of each physical count, the date it was conducted, whether the count was taken as of the opening or as of the closing of business on that day, the name of the preparer, and any other information which the [appropriate state official] may require by regulation. The record shall be maintained for [four] years after the date of the count.

(b) Each regulated chemical distributor and regulated chemical possessor shall keep a record of each regulated chemical transaction in which it engages for [four] years after the date of the transaction.

(c) A record required under subsection (b):

(1) shall be kept in a readily retrievable manner and shall include:

(A) the date of the regulated chemical transaction;

(B) the identity of each party to the transaction;

(C) the description and license number of any vehicle used during the transaction;

(D) a statement of the quantity and form of the regulated chemical;

(E) the permit issued for the transaction; and

(F) a description of the method of transfer.

(2) shall be available for inspection and copying as authorized under Section 17.

COMMENT

This section facilitates the timely and routine monitoring of regulated chemicals. Complementing reporting requirements in Section 13, it helps document the actual distribution and possession of chemicals.

Section 13. Reporting Requirements.

(a) Each regulated chemical distributor and regulated chemical possessor shall report to the [appropriate state official]:

(1) any regulated chemical transaction involving an unusual quantity of a regulated chemical;

(2) a method of payment involving \$99.00 or more in cash, currency or money orders;

(3) any loss, spillage, breakage or theft of a regulated chemical or breakage of a container in which a regulated chemical is stored;

(4) any discrepancy between the quantity of regulated chemicals shipped and received;

(5) any regulated chemical transaction involving circumstances which would indicate to a reasonable person that a regulated chemical might be used or disposed of in violation of this [Act] or the [state controlled substances act], or applicable EPA laws or regulations; or

(6) any other regulated chemical transaction required to be reported by the [appropriate state official] as necessary to protect public health and safety.

(b) Submission of the report required by subsection (a)

shall be at the earliest practicable opportunity and no later than three calendar days after any occurrence listed in subsection (a).

(c) Each regulated chemical distributor shall report to the [appropriate state official] all distributions of regulated chemicals in which the distributor has engaged during a calendar month no later than 15 calendar days after the end of the month.

(d) Each broker or trader shall report to the [appropriate state official] all regulated chemical transactions which the broker or trader has helped arrange during a calendar month no later than 15 calendar days after the end of the month.

(e) The [appropriate state official] may supply a common form or format for submission of the reports required in subsections (a), (c), and (d).

(f) A regulated chemical distributor and regulated chemical possessor may satisfy the requirements of any subsection of this [Act] for transactions involving threshold amounts of regulated chemicals under federal law by submitting to the [appropriate state official] copies of reports filed pursuant to federal law which contain all of the information required by that subsection.

COMMENT

Section 13 requires submission of two types of reports. The first, under subsection (a), identifies suspicious transactions or circumstances which alert officials to potential illegal diversion, including unusual quantities of chemicals. "Unusual" refers to an amount outside the range of amounts normally acquired in the regular course of business for a particular distributor or possessor. The second, under subsections (c) and (d), provides retrospective monthly information about all regulated chemical transactions.

Federal and state reporting systems often overlap regarding specific information which persons submit. Subsection (f) prevents unnecessary duplication by accepting copies of federal reports containing the required information.

This section provides the logical follow-up to information obtained through the registration and permit process. Sections 7 and 8 provide a picture of the potential flow of chemicals throughout a state. Section 11 helps trace the actual flow of chemicals. It supplies essential details about the customers of chemical manufacturers and distributors. Officials can identify the true

purchaser, ensure the intended use of chemicals is the real use, and address violations of the [Act].

Offenses and Penalties

Section 14. Prohibited Acts; Penalties.

- (a) It is unlawful for a regulated chemical distributor to:
- (1) fail to obtain proper identification as required by Section 11;
 - (2) engage in a regulated chemical transaction without a registration issued under Section 7 or in a manner not authorized by the registration;
 - (3) use a registration number which is altered, fictitious, revoked, suspended, or issued to another regulated chemical distributor;
 - (4) engage in a regulated chemical transaction with knowledge or intent that a regulated chemical will be used in violation of this [Act] or the [state controlled substances act];
 - (5) engage in a regulated chemical transaction in violation of a rule or regulation of the [appropriate state official].
- (b) It is unlawful for any person to:
- (1) possess a regulated chemical without a permit or authorization in lieu of a permit issued under Section 8 or in a manner not authorized by the permit or authorization;
 - (2) acquire or obtain, or attempt to acquire or obtain, possession of a regulated chemical by material misrepresentation, fraud or deception;
 - (3) knowingly acquire or obtain, or attempt to acquire or obtain, possession of a regulated chemical from anyone other than a regulated chemical distributor properly registered under Section 7;
 - (4) possess a regulated chemical with knowledge or intent that the chemical will be used in violation of this [Act] or the [state controlled substances act];
 - (5) possess a regulated chemical with no attached permit or label as required by Section 8; or
 - (6) remove, alter, or obliterate any attached permit or label required by Section 8;
 - (7) move or distribute a regulated chemical to, or store or possess a regulated chemical at, a location

other than that identified in the permit or authorization issued under Section 8;

(8) fail to present, or to present false or fraudulent identification when identification is required by Section 11;

(9) knowingly or intentionally furnish false or fraudulent material information in, or omit any material information from, any application, report, record, inventory or other document required to be kept or filed under this [Act] or any applicable rule or regulation;

(10) fail to attach a permit or label as required by Section 8;

(11) possess a regulated chemical in violation of a rule or regulation of the [appropriate state official];

(12) refuse or fail to make, keep, submit or furnish an application, record, report, inventory, notification or other information required under this [Act] or any applicable rule or regulation;

(13) refuse entry into controlled premises for any inspection authorized by Section 8 or 9.

(c) A person who commits an offense described in subsections (a) (1)-(4) and (b) (1)-(9) is guilty of a [felony] and upon conviction may be imprisoned for not more than [] years, fined not more than [], or both.

(d) A person who commits an offense described in subsections (a)(5) and (b)(10)-(13) is guilty of a [misdemeanor] and upon conviction may be imprisoned for not more than [] months, days, or years, fined not more than [], or both.

(e) A person who commits a second or subsequent offense described in subsection (c) is guilty of a [felony] and upon conviction is punishable by a term of imprisonment and fine not to exceed [twice] that authorized by subsection (c).

(f) A person who commits a second or subsequent offense described in subsection (d) is guilty of a [felony] and upon conviction is punishable by a term of imprisonment and fine not to exceed [twice] that authorized by subsection (d).

(g) In addition to any other penalty imposed, a corporation which commits an offense described in ()-() shall be subject to a civil fine of not more than [].

COMMENT

This section establishes a standard penalty provision based upon the legal obligations imposed under this [Act]. Despite the diversity of state penalty schemes, commonly found categorizations of offenses exist and are reflected in Section 14. Subsections (a) and (b) list offenses according to category of offender. Subsections (c) and (d) divide offenses according to degree of seriousness, felony or misdemeanor. Subsection (g) authorizes additional civil corporate fines. Each state must necessarily tailor Section 14 to fit its own unique sentencing structure. The purpose of this model provision is to give insight into practitioners' views about the types of actions or omissions which constitute violations and their relative gravity.

Section 15. Chemical Cleanup Assessment.

(a) In addition to any fine or imprisonment imposed under Section 14 of this [Act], the following civil assessment shall be imposed:

(1) Ten thousand dollars (\$10,000.00) for each violation described in subsections ()-() of Section []; or the actual cleanup costs of illegal laboratory sites, whichever is greater; and

(2) One hundred thousand dollars (\$100,000.00) for each violation described in subsections () -() of Section [] or the actual cleanup costs of illegal laboratory sites, whichever is greater.

(b) The assessment provided for in this section shall be collected as provided for the collection of [other civil assessments and judgments].

(c) All monies collected under this section shall be deposited to the [appropriate state or local revolving fund] and used for the enforcement of this [Act] and the cleanup of illegal laboratory sites.

(d) Monies from the fund shall not supplant any other local, state or federal funds.

COMMENT

This section establishes a civil remedy which serves dual purposes. First, it helps pay for cleaning up clandestine lab sites. Seizures often reveal significant hazardous or toxic waste or by-products. Clean-up costs are staggering as California officials have experienced firsthand. For several years California has paid over \$1,000,000 each year for illegal lab clean-up costs. Smaller states as well feel the monetary pinch. Last year

Oklahoma expended approximately \$6,000 to clean-up illegal labs. This expense is only the cost to remove bulk contamination. Site restoration through hazardous waste removal and mitigation measures consumes enormous amounts of financial resources. Consequently, it is difficult for states to address long-term environmental contamination. A civil assessment helps stop violators from escaping financial liability for potential health and environmental hazards.

Second, the civil remedy helps recover costs for the enforcement and prosecution of cases pursuant to this [Act]. Clandestine lab cases are not cost effective because of the expense to clean-up hazardous waste and deal with residual contamination. A civil assessment allows states to pursue illegal lab operators without creating additional resource allocation problems.

Enforcement and Administrative Provisions

Section 16. Powers of Enforcement and Regulatory Personnel.

(a) The [appropriate state official] is authorized to conduct any investigation necessary to determine compliance with this [Act], and in accordance with the [state administrative procedure act] may subpoena witnesses, compel their attendance and testimony, and require the production of documentary evidence relevant to the investigation. The [appropriate state official] may invoke the aid of the [appropriate state court] in the jurisdiction of which the investigation is carried on, or in which the subpoenaed person resides, carries on business, or may be found, to compel compliance with the subpoena.

(b) Except as otherwise provided, no documentary material, transcripts, oral testimony, or copies in the possession of the [appropriate state official] shall be available prior to the filing of a criminal proceeding for examination by any individual other than the [appropriate state official], the [official's] designee, or a local, state or federal law enforcement officer without the consent of the person who produced the material or transcripts.

(c) The [appropriate state official] is authorized to promulgate rules and regulations, and to charge reasonable and non-refundable registration, permit, and monthly report authorization fees, which the [official] deems necessary and appropriate for the efficient and effective implementation of this [Act]. All non-refund-

able fees shall be used for and shall not exceed actual processing costs.

COMMENT

This section authorizes investigative and administrative powers which help effectuate the chemical tracking system. Subsections (a) and (c) grant typical fact-finding and rulemaking authority possessed by regulatory agencies. To ensure proper use of acquired information, subsection (b) creates a confidentiality provision which is drawn from the Model Asset Seizure and Forfeiture Act (MASFA). Finally, subsection (c) plays an important role in maintaining fiscal soundness of the regulatory scheme. A system of non-refundable fees helps offset the state's administrative expense of monitoring chemical transactions.

Section 17. Warrantless Administrative Inspections.

(a) The [appropriate state official], the [official's] designee, or a local, state, or federal officer empowered by law to conduct investigations of or to make arrests for drug law offenses is authorized to conduct administrative inspections of controlled premises in accordance with the requirements of this section.

(b) The [appropriate state official], [official's] designee, or any law enforcement officer, may inspect controlled premises after making a demand to conduct an inspection and presenting appropriate credentials to any person identified in an application submitted under Section 7 or 8, or if no such person is present or readily available, to any person present at the controlled premises.

(c) The demand for inspection must be made and the inspection conducted during regular and usual business hours. The inspection may include:

- (1) inventorying any stock of any regulated chemical and obtaining samples;
- (2) copying records required by this [Act] to be, or in fact, kept; and
- (3) inspecting, within reasonable limits and in a reasonable manner, all pertinent equipment, apparatus, finished and unfinished material, containers and labeling found thereon, and all other things which help determine compliance with the [Act] including records, files, papers, processes, controls and facilities.

COMMENT

This section permits state officials access to the premises of persons who are subject to this [Act]. Administrative inspections allow routine and unimpeded review of inventories, storage facilities, records, papers, files, and equipment. They are important means of identifying noncompliance with the [Act].

Section 17 authorizes warrantless inspections in accordance with the Supreme Court's holding in *New York v. Burger*, 107 S. Ct. 2636 (1987). Burger involved a junkyard owner's business which partly consisted of dismantling automobiles and selling their parts. Pursuant to a New York statute allowing warrantless inspections of junkyards, police inspected the owner's premises and found stolen vehicles and parts. The owner was subsequently charged with possession of stolen property and unregistered operation as a vehicle dismantler.

The Supreme Court held the inspection was a constitutionally reasonable exception to the warrant requirement for closely regulated businesses. The New York regulatory structure satisfied three criteria. First, New York had a substantial governmental interest in eradicating auto theft, a problem which is associated with the junkyard industry. Second, warrantless administrative inspections necessarily further the regulatory goal. Frequent and unannounced inspections are crucial to preventing junkyards from becoming markets for stolen vehicles and parts. Third, the statute supplies a constitutionally adequate substitute for a warrant. It informs the business operator that regular inspections will be made and discusses the limited scope and authority of the inspectors.

Chemical regulation is a relatively new area of government oversight. However, it too qualifies as a closely regulated industry. Illegal diversion of chemicals surfaced as a national problem in the 1980s. Since its widespread recognition, federal and state officials have sought and obtained tight regulatory controls over chemicals. Moreover, chemical regulation is closely related to state regulation of scheduled substances which has existed federally and in every state since the early 1970s.

This [Act's] regulatory system also satisfies the Burger criteria. First, a state has a substantial governmental interest in preventing the transfer of chemicals to the illegal production of drugs. Controlling access to and monitoring the flow of chemicals serves that interest. Second, warrantless inspections are necessary to further the regulatory scheme. Advance notice provides dis-

tributors and possessors time to falsify records and conceal or modify inventories. This defeats the [Act's] purpose of ensuring the legitimate distribution, possession, and use of chemicals. Third, the [Act] provides a constitutionally adequate substitute for a warrant. Section 17 clearly informs persons that periodic inspections will be conducted in accordance with specific requirements. Additionally, the section limits the inspectors' discretion in time, place, and scope. Subsection (a) permits the inspection only by appropriate officials. Subsection (b) limits and carefully defines the activities of the inspectors, and subsection (c) permits the inspection only during normal business hours.

Section 18. Administrative Inspection and Seizure Warrants.

- (a) In addition to procedures provided in Section 17 and subsection (e), an [appropriate state court judge or magistrate] within the [judge's or magistrate's] jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants to conduct administrative inspections and seize property as authorized by this [Act]. For the purpose of issuance of an administrative inspection warrant, probable cause exists upon a showing of a valid public interest in the effective enforcement of this [Act], or rules adopted under this [Act], sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant.
- (b) A warrant shall be issued only upon an affidavit of the [appropriate state official], the [official's] designee, or an officer, sworn to before the [judge or magistrate], and establishing grounds for issuing the warrant. If the [judge or magistrate] is satisfied that grounds for the application exist or that there is probable cause to believe they exist, the [judge or magistrate] shall issue a warrant identifying the area, the conveyance, the building or other premises to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any.
- (c) The warrant shall:
 - (1) state the grounds for its issuance and the name of the affiant;
 - (2) be directed to a person authorized by this section to serve and execute the warrant;
 - (3) command the person to whom it is directed to inspect the area, conveyance, building or other premises identified for the purpose specified and, if

appropriate, direct the seizure of the property specified;

(4) identify the items or types of property to be seized, if any;

(5) allow the sale or destruction of regulated chemicals or equipment if appropriate and the deposit of the proceeds of any sale with the court; and

(6) direct that it be served during normal business hours or other hours designated by the magistrate and designate the magistrate to whom it shall be returned.

(d) A warrant issued pursuant to this section must be served and returned within [] days of its date of issue unless, upon a showing of a need for additional time, the [judge or magistrate] orders otherwise. If property is seized pursuant to a warrant, a copy of the warrant shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken, or the copy and receipt shall be left at the place from which the property was taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person serving the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person serving the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(e) This section does not prevent warrantless entries and administrative inspections, including seizures of property, during times other than normal business operating hours:

(1) in situations presenting imminent danger to health or safety; or

(2) in an emergency or other exigent circumstance where time or opportunity to apply for a warrant is lacking.

COMMENT

This section establishes a procedure for issuance and

Drafters include Steve Brookman, Oklahoma State Bureau of Investigation; Mark Faull, Crime Strike, Phoenix, Arizona; William Holman, San Diego District Attorney's Office; John Duncan, Oklahoma Bureau of Narcotics Enforcement; Katina Kypridakis, California Bureau of Narcotics Enforcement; Richard Wintory, Oklahoma District Attorney's Office; Michael Scott, Texas Department of Public Safety; Gary Sundt, Washington State Patrol; Harry Matz, U.S. Department of Justice; Ken Ronald, Drug Enforcement Administration; and Sherry Green, former Senior Attorney with APRI.

execution of administrative inspection warrants in circumstances outside Section 17's scope. For example, a warrant would be required to conduct an inspection during nonemergency times other than normal business operating hours.

The specific language is substantially drawn from Section 502 of the UCSA. The described procedure incorporates the traditional warrant requirements in several states controlled substances acts.

Section 19. Forfeiture.

(a) all regulated chemicals which have been or are intended to be manufactured, provided, sold, furnished, transferred, delivered, or possessed in violation of this [Act] shall be deemed contraband, seized and summarily forfeited to the state.]

(b) A violation of this [Act] shall constitute conduct giving rise to forfeiture under [forfeiture procedures applicable to the state controlled substances act].

COMMENT

Forfeiture is a potent weapon designed to attack the economic base of criminal activity. It removes equipment, buildings, monies and other property from the cycle of continued illegal use. Subsection (b) applies this remedy through existing state procedures. States may choose to eliminate subsection (a) and include regulated chemicals in the list of property subject to forfeiture under a state drug forfeiture statute.

Section 20. Severability Provision.

If any provisions of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

Section 21. Effective Date.

This [Act] shall take effect on [reference to normal state method of determination of effective date][reference to specific date].

Appendix B

State Chemical Control Statutes

	AL	AZ	AR	CA	CO	HI	IA	LA	MN	MO	MT	NM	OK	OR	PA	TX	UT	WA
Number of Chemicals	17	19	20	32	35	31	12	18	31	20	9	26	20	17	32	16	31	23
Forfeiture of Chemicals	X		X	X		X				X		X					X	
EXCLUDED DRUGS																		
Prescription Drugs	X		X		X					X		X	X			X		X
Over-the-counter Drugs	X		X	●	X	●	○●		●	X ¹		X	X	⊕	X	X	● ²	X [⊕]
LICENSE																		
Annual Renewal	X		X	X	X	X	X			X		X	X			X	X ³	X
Reasonable Fee	X		Max. \$25	Max. Costs	X	Max. Costs	Max. Costs	X		X		Min. \$250	\$100/ \$10 ⁴				X	Max. Costs
LICENSE/REPORTING EXEMPTIONS																		
Medical Professionals	X	X	X	X	X	X	X		X	X	X	X		X	X		X ⁵	X
Licensed Entities & Agents	X	X	X	X	X	X	X		X	X	X	X	Comm. carrier	X ⁶	X			X
College Chemistry Students			X		X						X	X						
Employees of Govt. Agencies			X		X													
Licensed Researchers			X		X						X							
REV./SUSP./DENIAL																		
Drug Conviction or Guilty Plea	X		X		X			X		X		X	X					
Rev./Susp. of Federal Registration	X		X		X			X		X		X						
Violation of Drug Law	X		X	X			X	X		X		X						X
License Obtained by Fraud	X		X	X	X		X	X		X		X	X ⁷					X

This chart was prepared by the American Prosecutors Research Institute's National Drug Prosecution Center under a grant from the National Institute of Justice.

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Survey information current through April 10, 1993

LEGEND:

Drugs Specifically Exempted: ●=Ephedrine, Pseudoephedrine, Norpseudoephedrine and Phenylpropanolamine ○=Cosmetics ⊕=Ephedrine

¹ Also excludes sales or transfers below threshold level and drugs lawfully sold in ordinary course of business.

² Also exempts dietary supplement, vitamins, minerals, herbs containing naturally occurring amount of chemicals.

³ Requires renewal in odd numbered years.

⁴ License to sell/permit to possess.

⁵ Applies to practitioners holding a substance license and registration from DEA.

⁶ Also exempts patients and persons reporting in an alternative manner.

⁷ Failure to maintain effective controls is also a reason for rev./susp./denial.

State Chemical Control Statutes

	AL	AZ	AR	CA	CO	HI	IA	LA	MN	MO	MT	NM	OK	OR	PA	TX	UT	WA	
RECORDS/REPORTS																			
Years Records Must Be Kept	2		2		2			2	5					2		2			
Common Form	X	X			X	X	X	X			X			X		X			X
Required Delivery Notice (Days Before/After Delivery)		21	21	21/3	21	21	21	21	21	21	/3			3/10		21	3 ⁹	21	
Monthly Report Alternative		X	X ¹⁰	X	X	X	X	X	X	X	X ¹⁰		X ¹¹	X ¹⁰		X			X
Days to Report Difference in Quan. Shipped vs. Received	3	3	3		3		7	3			3			3		3			7
Purchase Out of State Report		X	X	X	X	X	X	X						X		X	X ¹²	X	
Days to Report Theft/Loss	3 ¹³	3	3		3	3	7	3			3		3 ¹³	3		3	X ¹⁴	7	
Records for Chemical Lab Apparatus																X			
Confidentiality of Records						X				X					15				
PURCHASER I.D.																			
Photo I.D.	X		X	X	X	X	X	X	X	X			X		X	X	X ¹⁶	X	
Driver's License/I.D. #	X		X	X	X			X					X		X	X			
Birthdate	X		X		X			X					X			X			
Street/Resid. Mailing Addr.	X		X	X	X	X	X	X	X	X			X		X	X			X
Vehicle Lic. #, Year, State	X		X	X	X	X	X	X	X	X					X	X			X
Description of Use of Drugs	X ¹⁸		X	X	X	X	X	X	17	X			X ¹⁸		X ¹⁹	X			X
Signature			X	X	X	X	X	X	X	X					X	X			X
Business Authorization Letter	20		X	X	X	X	X	X	X	X					X	X			X
REGULATORY AGENCY	▲	■	◇ †	▷	‡ ▲	■	▲	■	▷	‡	▷	▲	☆	◇	‡	■	*	▲	
Subpoena Powers						X													

LEGEND:

Two symbols included within same cell indicates that the agencies share the regulatory duties ■=Dept. of Public Safety †=Dept. of Health
 ▲=Board of Pharmacy ☆=Bureau of Narcotics & Drugs ◇=Dept. of Police ▷=Dept. of Justice *=Dept. of Commerce

- ⁹ Applies only to extraordinary or unusual transaction.
- ¹⁰ Requires both lawful record of use and supply pattern.
- ¹¹ Requires only lawful record of use.
- ¹² Also applies to selling out-of-state.
- ¹³ Also requires 3 day notice for disposal of drug.
- ¹⁴ No days specified.

- ¹⁵ Penalty for wrongful use.
- ¹⁶ Identification required but specifics left to regulation.
- ¹⁷ Requires type, qty., method of delivery.
- ¹⁸ Requires also location where stored & used.
- ¹⁹ Requires also qty., price, manner of payment, date, time, location.
- ²⁰ No letter, but applicant must disclose relationship to business.

Citations to State Chemical Control Statutes

1. Alabama: Alabama Code §20-2-180 to 20-2-190 (Supp. 1992)
2. Arizona: Ariz. Rev. Stat. Ann. §13-3401 to 13-3404 (Supp. 1992)
3. Arkansas: Ark. Stat. Ann. §5-64-415 (Supp. 1991)
4. Colorado: Colo. Rev. Stat. §12-22-301 to 12-22-322 (Supp. 1992)
5. California: Cal. Health & Safety Code §11100 to 11107.1 (Deering Supp. 1993)
6. Hawaii: Hawaii Rev. Stat. §329-61 to 329-91 (Supp. 1992)
7. Iowa: Iowa Code Ann. §204B.1 to 204B.10 (Supp. 1992)
8. Louisiana: La. Rev. Stat. Ann. §40:976.1 (Supp. 1993)
9. Minnesota: Minn. Stat. Ann. §152.0972 to 152.0974 (Supp. 1993)
10. Missouri: Mo. Ann. Stat. §195.400 to 195.425 (Supp. 1992)
11. Montana: Mont. Code Ann. §50-32-401 to 50-32-405 (1991)
12. New Mexico: N.M. Stat. Ann. §30-31B-1 to 30-31B-41 (Supp. 1991)
13. Oklahoma: Okla. Stat. Ann. Tit. 63 §2-321 to 2-329 (Supp. 1993)
14. Oregon: Or. Rev. Stat. §475.940 to 475.965 (Supp. 1992)
15. Pennsylvania: Pa. Stat. Ann. Tit. 35 §881 to 888 (Supp. 1992)
16. Texas: Tx. Health & Safety Code §481.077 to 481.082 (Supp. 1993)
17. Utah: Utah Code Ann. §58-37C-1 to 58-37C-17 (Supp. 1992)
18. Washington: Wash. Rev. Code Ann. §69.43.010 to 69.43.100 (Supp. 1993)

FOOTNOTES:

1. The following states control chemicals under CSA schedules like cocaine or LSD: AK, CT, DE, DC, FL, ID, IL, KS, MI, MS, NE, NV, NH, NJ, NY, NC, ND, OH, RI, SC, TN, VA, WV, WI, WY.
2. The following states do not control precursor chemicals: GA, IN, KY, ME, MD, MA, SC, VT.