(§§ 5501–5518) of subtitle F of title V of Pub. L. 105–33, amending this section, sections 601 to 603, 604 to 608, 609 to 611, and 612 to 617 of Title 42, The Public Health and Welfare, and provisions set out as notes under section 612c of Title 7, Agriculture, and sections 601 and 613 of Title 42] shall take effect as if the amendments had been included in the provision at the time the provision became law.''

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of Title 42, The Public Health and Welfare.

§ 862b. Sanctioning for testing positive for controlled substances

Notwithstanding any other provision of law, States shall not be prohibited by the Federal Government from testing welfare recipients for use of controlled substances nor from sanctioning welfare recipients who test positive for use of controlled substances.

(Pub. L. 104–193, title IX, § 902, Aug. 22, 1996, 110 Stat. 2347.)

CODIFICATION

Section was enacted as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and not as part of the Controlled Substances Act which comprises this subchapter.

§ 863. Drug paraphernalia

(a) In general

It is unlawful for any person—

(1) to sell or offer for sale drug paraphernalia;

(2) to use the mails or any other facility of interstate commerce to transport drug paraphernalia; or

(3) to import or export drug paraphernalia.

(b) Penalties

Anyone convicted of an offense under subsection (a) of this section shall be imprisoned for not more than three years and fined under title 18.

(c) Seizure and forfeiture

Any drug paraphernalia involved in any violation of subsection (a) of this section shall be subject to seizure and forfeiture upon the conviction of a person for such violation. Any such paraphernalia shall be delivered to the Administrator of General Services, General Services Administration, who may order such paraphernalia destroyed or may authorize its use for law enforcement or educational purposes by Federal, State, or local authorities.

(d) "Drug paraphernalia" defined

The term ''drug paraphernalia'' means any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under this subchapter. It includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana,[1] cocaine, hashish, hashish oil, PCP, methamphetamine, or amphetamines into the human body, such as—

(1) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(2) water pipes;

(3) carburetion tubes and devices;

(4) smoking and carburetion masks;

(5) roach clips: meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;

(6) miniature spoons with level capacities of one-tenth cubic centimeter or less;

(7) chamber pipes;

(8) carburetor pipes;

(9) electric pipes;

(10) air-driven pipes;

(11) chillums;

(12) bongs;

(13) ice pipes or chillers;

(14) wired cigarette papers; or

(15) cocaine freebase kits.

(e) Matters considered in determination of what constitutes drug paraphernalia

In determining whether an item constitutes drug paraphernalia, in addition to all other logically relevant factors, the following may be considered:

(1) instructions, oral or written, provided with the item concerning its use;

(2) descriptive materials accompanying the item which explain or depict its use;

(3) national and local advertising concerning its use;

(4) the manner in which the item is displayed for sale;

(5) whether the owner, or anyone in control of the item, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(6) direct or circumstantial evidence of the ratio of sales of the item(s) to the total sales of the business enterprise;

(7) the existence and scope of legitimate uses of the item in the community; and

(8) expert testimony concerning its use.

(f) Exemptions

This section shall not apply to—

(1) any person authorized by local, State, or Federal law to manufacture, possess, or distribute such items; or

(2) any item that, in the normal lawful course of business, is imported, exported, transported, or sold through the mail or by any other means, and traditionally intended for use with tobacco products, including any pipe, paper, or accessory.

(Pub. L. 91–513, title II, § 422, as added and amended Pub. L. 101–647, title XXIV, § 2401(a)–(c),

[1] So in original. Probably should be ''marihuana,''.

Nov. 29, 1990, 104 Stat. 4858, 4859; Pub. L. 106–310, div. B, title XXXVI, § 3614, Oct. 17, 2000, 114 Stat. 1230.)

CODIFICATION

The text of section 857(b) to (f) of this title, which was transferred to subsecs. (b) to (f) of this section by Pub. L. 101–647, § 2401(b), was based on Pub. L. 99–570, title I, § 1822(b)–(f), Oct. 27, 1986, 100 Stat. 3207–51; Pub. L. 100–690, title VI, § 6485, Nov. 18, 1988, 102 Stat. 4384.

AMENDMENTS

2000—Subsec. (d). Pub. L. 106–310 inserted ''methamphetamine,'' after ''PCP,'' in introductory provisions.

1990—Subsec. (b). Pub. L. 101–647, § 2401(c)(1), substituted ''fined under title 18'' for ''fined not more than $100,000''.

Pub. L. 101–647, § 2401(b), redesignated subsec. (b) of section 857 of this title as subsec. (b) of this section. See Codification note above.

Subsecs. (c) to (e). Pub. L. 101–647, § 2401(b), redesignated subsecs. (c) to (e) of section 857 of this title as subsecs. (c) to (e) of this section. See Codification note above.

Subsec. (f). Pub. L. 101–647, § 2401(c)(2), made technical amendment to reference to ''This section'' to correct reference to corresponding provision of original act.

Pub. L. 101–647, § 2401(b), redesignated subsec. (f) of section 857 of this title as subsec. (f) of this section. See Codification note above.

§ 864. Anhydrous ammonia

(a) It is unlawful for any person—

(1) to steal anhydrous ammonia, or

(2) to transport stolen anhydrous ammonia across State lines,

knowing, intending, or having reasonable cause to believe that such anhydrous ammonia will be used to manufacture a controlled substance in violation of this part.

(b) Any person who violates subsection (a) of this section shall be imprisoned or fined, or both, in accordance with section 843(d) of this title as if such violation were a violation of a provision of section 843 of this title.

(Pub. L. 91–513, title II, § 423, as added Pub. L. 106–310, div. B, title XXXVI, § 3653(a), Oct. 17, 2000, 114 Stat. 1240.)

§ 864a. Grants to reduce production of methamphetamines from anhydrous ammonia

(a) Definitions

In this section:

(1) Eligible entity

The term ''eligible entity'' means—

(A) a producer of agricultural commodities;

(B) a cooperative association, a majority of the members of which produce or process agricultural commodities; or

(C) a person in the trade or business of—

(i) selling an agricultural product (including an agricultural chemical) at retail, predominantly to farmers and ranchers; or

(ii) aerial and ground application of an agricultural chemical.

(2) Nurse tank

The term ''nurse tank'' shall be considered to be a cargo tank (within the meaning of section 173.315(m) of title 49, Code of Federal Regulations, as in effect as of the date of the enactment of this Act).

(b) Grant authority

The Secretary may make a grant to an eligible entity to enable the eligible entity to obtain and add to an anhydrous ammonia fertilizer nurse tank a physical lock or a substance to reduce the amount of methamphetamine that can be produced from any anhydrous ammonia removed from the nurse tank.

(c) Grant amount

The amount of a grant made under this section to an eligible entity shall be the product obtained by multiplying—

(1) an amount not less than $40 and not more than $60, as determined by the Secretary; and

(2) the number of fertilizer nurse tanks of the eligible entity.

(d) Authorization of appropriations

There is authorized to be appropriated to the Secretary to make grants under this section $15,000,000 for the period of fiscal years 2008 through 2012.

(Pub. L. 110–234, title XIV, § 14203, May 22, 2008, 122 Stat. 1458; Pub. L. 110–246, § 4(a), title XIV, § 14203, June 18, 2008, 122 Stat. 1664, 2220.)

REFERENCES IN TEXT

The date of the enactment of this Act, referred to in subsec. (a)(2), is the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

Section was enacted as part of the Food, Conservation, and Energy Act of 2008, and not as part of the Controlled Substances Act which comprises this subchapter.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

DEFINITION OF ''SECRETARY''

''Secretary'' as meaning the Secretary of Agriculture, see section 8701 of Title 7, Agriculture.

§ 865. Smuggling methamphetamine or methamphetamine precursor chemicals into the United States while using facilitated entry programs

(a) Enhanced prison sentence

The sentence of imprisonment imposed on a person convicted of an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), involving methamphetamine or any listed chemical that is defined in section 102(33) of the Controlled Substances Act (21 U.S.C. 802(33),[1] shall, if the offense is committed under the circumstance de-

[1] So in original. A second closing parenthesis probably should precede the comma.