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December 1, 2020

The Honorable Lindsey Graham  
Chairman  
The Honorable Dianne Feinstein  
Ranking Member  
Committee on the Judiciary  
United States Senate

The Honorable Jerrold Nadler  
Chairman  
The Honorable Jim Jordan  
Ranking Member  
Committee on the Judiciary  
House of Representatives

Subject: *Department of Justice, Drug Enforcement Administration: Implementation of the Combat Methamphetamine Epidemic Act of 2005; Retail Sales; Notice of Transfers Following Importation or Exportation*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Justice, Drug Enforcement Administration (DEA) entitled "Implementation of the Combat Methamphetamine Epidemic Act of 2005; Retail Sales; Notice of Transfers Following Importation or Exportation" (RINs: 1117-AB05; 1117-AB06). We received the rule on November 23, 2020. It was published in the *Federal Register* as a final rule on October 29, 2020. 85 Fed. Reg. 68450. It has an effective date of December 28, 2020.

According to DEA, the final rule adopts, with one technical change, an interim final rule issued in September 2006, and adopts, without change, an interim final rule issued in April 2007. DEA stated it promulgated the September 2006 interim final rule to implement the retail sales provisions of the Combat Methamphetamine Epidemic Act of 2005, Pub. L. No. 109-177, title VII, 120 Stat. 192, 256 (Mar. 9, 2006) (CMEA). DEA further stated it promulgated the April 2007 interim final rule to implement section 716 of CMEA, which required additional reporting for import, export, and international transactions involving all list I and list II chemicals.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The 60-day delay in effective date can be waived, however, if the agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. § 808(2). DEA determined it had good cause to waive the 60-day delay because DEA is making a technical amendment to the definition of the term "retail distributor." DEA stated the definition of "retail distributor" that was set forth in the September 2006 interim final rule is being amended to include ephedrine so that it will mirror the definition

of "retail distributor" found in the Controlled Substances Act, 21 U.S.C. § 802(49)(A). According to DEA, CMEA sets forth this definition in such detail as to be self-implementing. DEA further stated it inadvertently omitted ephedrine when it set forth the definition of "retail distributor" in the September 2006 interim final rule. Because this definition is already in effect, DEA finds that delay would be unnecessary. DEA also stated that it previously determined public notice and comment were unnecessary and impracticable with regard to the April 2007 interim final rule, which this final rule adopts without change.

Enclosed is our assessment of DEA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Scott A. Brinks  
Section Chief  
Diversion Control Division, DEA  
Department of Justice

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF JUSTICE,  
DRUG ENFORCEMENT ADMINISTRATION  
ENTITLED  
"IMPLEMENTATION OF THE COMBAT METHAMPHETAMINE EPIDEMIC  
ACT OF 2005; RETAIL SALES; NOTICE OF TRANSFERS  
FOLLOWING IMPORTATION OR EXPORTATION"  
(RIN: 1117-AB05; 1117-AB06)

(i) Cost-benefit analysis

The Department of Justice, Drug Enforcement Administration (DEA) estimated the final rule should have no costs because all costs were imposed by the promulgation of the September 2006 and April 2007 interim final rules.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

DEA determined the Act does not apply to the final rule because DEA was not required to issue a notice of proposed rulemaking for the final rule or either of the September 2006 or April 2007 interim final rules.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

DEA determined the final rule would not result in any federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted for inflation) in any one year.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

DEA waived notice and comment procedures for good cause. DEA determined it had good cause because DEA is making a technical amendment to the definition of the term "retail distributor." DEA stated the definition of "retail distributor" that was set forth in the September 2006 interim final rule is being amended to include ephedrine so that it will mirror the definition of "retail distributor" found in the Controlled Substances Act, 21 U.S.C. § 802(49)(A). According to DEA, the Combat Methamphetamine Epidemic Act of 2005, Pub. L. No. 109-177, title VII, 120 Stat. 192, 256 (Mar. 9, 2006), sets forth this definition in such detail as to be self-implementing. DEA further stated it inadvertently omitted ephedrine when it set forth the definition of "retail distributor" in the September 2006 interim final rule. Because this definition is already in effect, DEA finds that notice and comment procedures would be unnecessary. DEA also stated that it previously determined public notice and comment were unnecessary and impracticable with regard to the April 2007 interim final rule, which this final rule adopts without change.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

DEA stated the final rule relates to previously approved information collection requests (ICRs). The ICRs are "Self-certification, Training and Logbooks for Regulated Seller of Scheduled Listed Chemical Products" (Office of Management and Budget (OMB) Control Number 1117-0046) and "Import/Export Declaration for list I and list II Chemicals" (OMB Control Number 1117-0023).

Statutory authorization for the rule

DEA promulgated the final rule pursuant to sections 802, 821, 822, 829, 871, 951, and 958 of title 21, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

DEA stated the final rule was not significant under the Order.

Executive Order No. 13132 (Federalism)

DEA determined the final rule does not have substantial direct effects on the states, on the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. DEA stated the rule does preempt state laws that are less stringent than the statutory requirements.