

heightened risk of diversion. Because of this inherent risk of diversion, United States drug control laws and international drug control treaties have, for most of the past century, placed paramount focus on international shipments of drugs of abuse. For example, the CSI&EA has, in general, always prohibited the commercial importation into the United States of controlled substances manufactured abroad, except where domestic production is inadequate to supply the legitimate medical, scientific, research, and industrial needs of the United States. In this manner, drug control authorities in the United States can maintain oversight over the handling of controlled substances from the point of manufacture to the point of dispensing to the ultimate user. Such complete oversight is essential to preventing diversion of controlled substances. This is precisely why Congress made the "closed" system of drug distribution the hallmark of the CSA.<sup>2</sup>

The allowance of importation and exportation of controlled substances for personal medical use (first established by Congress in 1970 and codified in 21 U.S.C. 956) was meant to strike a balance between the significant risk of diversion associated with the carrying of controlled substances across international borders and the desire to accommodate the legitimate medical needs of travelers during their actual travel between countries. Stated alternatively, the allowance was meant to accommodate those who have an unavoidable legitimate medical need to import (or export) controlled substances as a result of their travel. The allowance was *not* meant to encourage United States residents to travel abroad to obtain their controlled substances for use in this country. To encourage such obtaining of controlled substances abroad would be to diminish the closed system of drug distribution intended by Congress under the CSA.

#### *Why Congress Amended the Law in 1998*

In 1998, Congress became concerned that 21 U.S.C. 956 and the DEA regulation implementing this provision were being misused by individuals—particularly United States residents—whose true intent was to divert controlled substances obtained abroad

for illicit use in the United States (rather than to import controlled substances for legitimate personal medical use). Due to this concern, Congress amended 21 U.S.C. 956 to limit to 50 dosage units the amount of a controlled substance that a United States resident may bring into the country through an international land border for personal medical use without a prescription. This amendment was contained in a bill entitled the "Controlled Substances Trafficking Prohibition Act" (Pub. L. 105-357), which was enacted November 10, 1998.

The sponsor of the bill in the House of Representatives, Representative Chabot of Ohio, explained the purpose of the amendment as follows:

This important initiative [the amendment to 21 U.S.C. 956] will close a loophole in Federal law that allows dangerous drugs, particularly drugs used in connection with date rape, to be legally imported into the United States.

Federal, State and local law enforcement agencies have raised serious concerns about the trafficking of controlled substances from Mexico. Right now uppers, downers, hallucinogens and date rape drugs similar to Rohypnol may be easily obtained from so-called health care providers or pharmacists in Mexico with no documentation of medical need whatsoever.

According to DEA, these drugs are frequently resold illegally in the United States. This situation is especially dangerous because these powerful drugs may be used in connection with date rapes. While Rohypnol, the most well-known date rape drug, has been banned in the U.S., it is still being used to rape young women, and many other dangerous controlled substances have taken its place. Jane Maxwell, director of the Texas Commission on Alcohol and Drug Abuse, says that this loophole continues to allow date rape drugs to cross the border.

For example, the drug Rivotril is everywhere, according to Maxwell, and is now being used by juveniles, just as Rohypnol has been used. A 1996 study documented the controlled substance drug trafficking problems along the U.S.-Mexico border. The study found that in just one year at the Laredo border crossing over 60,000 drug products were brought into the U.S. by more than 24,000 people. All of the top 15 drug products, which represented 94 percent of the total quantity of declared drugs, were controlled substances. These dangerous drugs, classified as prescription tranquilizers, stimulants and narcotic analgesics, are potentially addictive and subject to abuse. Specifically, Valium was declared by 70 percent of the people, with the average person bringing in 237 tablets. Rohypnol was brought in by 43 percent of those who declared their prescription medication. Over a full year that means that over 4 million doses of Valium and almost 1.5 million doses of Rohypnol were brought in at one single border crossing.

The median age for those who declared Valium and Rohypnol is 24 and 26 years old

respectively. The large quantity of dangerous drugs passing through a single border crossing underscores the seriousness of the problem. The quantity and types of pills discovered also back up DEA's view that these drugs are being used for illegal purposes.

While this problem is most notable in communities along the U.S.-Mexico border, it impacts communities well outside the Southwest. The study in Laredo found that residents from 39 States crossed the border and returned to the United States with a variety of drug products.

Around the country, prescription drug abuse is a growing problem, especially among our youth. The purity and low price of prescription drug pills makes them an attractive alternative to traditional street drugs. At a recent Subcommittee on Crime hearing on date rape drugs, experts testified that GHB, Rohypnol and other date rape drugs are rapidly becoming the drug of choice in various communities and among the different types of users, particularly among teenagers.

Mr. Speaker, this legislation will help close the loophole which allows these dangerous drugs into our communities.

144 Cong. Rec. H 6903-01, H6904 (August 3, 1998).

#### **Will the Proposed Rule Eliminate Any of the Current Requirements for Personal Use Importation?**

The proposed rule will expand upon, but not eliminate, the requirements currently in effect as a result of Congress's 1998 amendment to 21 U.S.C. 956. The current requirements are as follows:

Under 21 CFR 1301.26, any individual may enter or depart the U.S. with a controlled substance listed in Schedule II, III, IV, or V, which he/she has lawfully obtained for his/her personal medical use, or for administration to an animal accompanying him/her, provided that the following conditions are met:

(a) The controlled substance is in the original container in which it was dispensed to the individual; and

(b) The individual makes a declaration to an appropriate official of the U.S. Customs Service stating:

(1) That the controlled substance is possessed for his/her personal use, or for an animal accompanying him/her; and

(2) The trade or chemical name and the symbol designating the schedule of the controlled substance if it appears on the container label, or, if such name does not appear on the label, the name and address of the pharmacy or practitioner who dispensed the substance and the prescription number, if any; and

(c) The importation of the controlled substance for personal medical use is authorized or permitted under other Federal laws and state law.

<sup>2</sup> See House Report No. 91-1444, 1970 U.S.C.C.A.N. 4566-4572. "The [CSA] provides for control by the Justice Department of problems related to drug abuse through registration of manufacturers, wholesalers, retailers, and all others in the legitimate distribution chain, and makes transactions outside the legitimate distribution chain illegal." *Id.*