

New Federal Meth Law Changes Requirements for Michigan Retailers

On March 9, 2006, President Bush signed into law the USA Patriot Act Reauthorization. Contained within the USA Patriot Act is the Combat Methamphetamine Epidemic Elimination Act (CMEEA), which places significant restrictions on retail sales of over-the-counter pseudoephedrine (PSE) products.

◆ *The first phase impacting retail sales went into effect on April 8, 2006, and it impacts sales amounts:* (1) retailers are prohibited from selling a consumer more than 3.6 grams of PSE in a given day; and (2) consumers are prohibited from purchasing more than 9 grams of PSE per 30 day period.

◆ *The second phase of retail restrictions goes into effect September 30, 2006, and it impacts access:* All PSE products regardless of form—including liquid, liquid-filled gel capsules and pediatrics—must be placed behind a counter or in a locked display case. These are the only two options.

Michigan's methamphetamine law took effect December 15, 2005. The federal law does not provide for federal pre-emption. ***This means state law prevails whenever it is more restrictive than the new federal law and federal law prevails whenever it is more restrictive than state law.***

The following is an overview of the key federal requirements compared to the key state requirements governing the sale of all cough and cold products that contain ephedrine, pseudoephedrine or phenylpropanolamine, referred to here as PSE for simplicity.

Products Covered		
Federal Law: (Effective April 8, 2006) All PSE products, including liquids, gel caps and pediatrics, are subject to the provisions of the law.	Michigan Law: Products containing ephedrine or pseudoephedrine, except those in liquid form where pseudoephedrine is not the only active ingredient or those made especially for children under age 12.	Bottom Line for Michigan Retailers: The federal law is more restrictive than the Michigan law, so it must be followed. Retailers will have to regulate the sale of more products.

Sales — Age Restrictions		
Federal Law: The federal law does not restrict the age of the purchaser.	Michigan Law: A person must be age 18 or older to buy over-the-counter products containing any ephedrine or pseudoephedrine.	Bottom Line for Michigan Retailers: Michigan law is more restrictive so the age requirement remains 18 or older.

Sales — Product Limits		
Federal Law: (Effective April 8, 2006) 1. Retailers are prohibited from selling a consumer more than 3.6 grams of PSE in a given day; and 2. Consumers are prohibited from purchasing more than 9 grams of PSE per 30-day period.	Michigan Law: Retailers may only sell two packages or 48 tablets or capsules at a time.	Bottom Line for Michigan Retailers: The amount of PSE varies among product packages. (See chart on bottom of page 11.) In most instances, Michigan's law is more restrictive than the federal law, so <i>retailers should continue to limit sales to two packages per person per day.</i> However, larger packages of "extended relief" products—those that offer 12 or 24-hour relief—contain about 2.4 grams of PSE. <i>Therefore, retailers should not sell more than one package of any extended relief PSE product per person per day.</i>

Sales — Restriction on Access		
Federal Law: (Effective September 30, 2006) Sellers have two options. Put PSE products: 1. Behind a counter where the public is not permitted, or 2. In a locked case so customers will have to ask employees for assistance.	Michigan Law: Sellers have four options. Put PSE products: 1. Behind a counter where the public is not permitted. 2. In a locked case so customers will have to ask employees for assistance. 3. Within 20 feet of an employee who constantly monitors the products. 4. In an area that has constant video surveillance with an antitheft device on every package.	Bottom Line for Michigan Retailers: Michigan retailers may no longer opt for choices 3 or 4 (placing PSE products within 20 feet of an employee who constantly monitors the products or in an area that has constant video surveillance with an antitheft device on every package). Only the first two options now comply with the law.

Sales — Additional Requirements: Logbooks

Federal Law (Effective September 30, 2006):

A written or electronic log of the transaction is required to be maintained. The log must identify:

1. Name of product(s) sold;
2. Quantity sold;
3. Name, address and signature of purchaser (entered by purchaser); *Retailers are required to ask for photo identification to verify the information entered by the purchaser.*
4. Date and time of sale (entered by purchaser); *A log is not required to be kept for transactions involving a single sales package of PSE product, if that package contains not more than 60 milligrams (one 4-6 hour adult dose; this exception is not applicable to EPH products).*
5. Logbook entries must be maintained for two years;
6. Logbook must include a notice to purchasers that entering false statements or misrepresentations in the logbook may subject the purchasers to criminal penalties under section 1001 of title 18, United States Code. Notice must specify the maximum fine and term of imprisonment.
7. Retailers must maintain logbooks in a secure fashion.

Michigan Law:

Retailers choosing to place PSE products behind a counter or in a locked case where not required to keep a logbook.

Bottom Line for Michigan Retailers:

The federal logbook and photo ID requirements are more restrictive and, therefore, must be followed.

Special Federal Mail Order Requirements:

As of April 8, 2006, mail order sales of PSE products will be limited to 7.5 grams PSE per customer during a 30-day period. Prior to shipping, the seller must verify the identity of the purchaser in accordance with regulations to be issued by the Department of Justice. Mail orders that must be reported to the Attorney General are not subject to the logbook, training or certification requirements. Retail distributors who are otherwise exempt from the current AG reporting requirement must, however, report transactions related to PSE products.

Additional Federal Requirements: Training & Certification

(Effective September 30, 2006) Retailers must train applicable sales personnel to ensure that they understand the requirements of PSE product sales and submit self-certifications to the Attorney General in this regard.

1. Training:
 - a. Individuals to be trained. Retailers must train all individuals who deliver PSE-products to purchasers and cashiers who receive payments for PSE-products to ensure that these persons understand the requirements that apply.
 - b. Criteria. The U.S. Drug Enforcement Administration (DEA) will issue regulations on the training criteria.
2. Training Certification:
 - a. Retailers must certify that all retail store employees who conduct PSE sales transactions have been trained.
 - b. Retailers must maintain certifications and records to confirm employee training.
 - c. Certifications must state that the retailer understands the legal requirements and agrees to comply with them.
 - d. Separate certifications are required for each place of business.
 - e. DEA will establish certification criteria through the regulatory process, but must provide for self-certifications.
 - f. State and local officials will have access to certifications.
3. Implementation: Retailers will be able to submit self-certifications over an Internet web site to be established by DEA and receive an acknowledgment of that submission.

PSE Quantity Guidelines (from National Grocers Association)

Dosage	PSE Quantity	Typical Delivery	Typical Package Size/ Total Quantity of PSE in Package	Number of Packages Within Daily 3.6 gram Limit	Number of Packages Within Monthly 9 gram Limit
Infant 4-6 Hours	15 mg	1.6 ml liquid or	.5 fl oz (15 ml) .14 g PSE per bottle	25 bottles	64 bottles
		2.5 ml liquid	1 fl oz (30 ml) .18 g PSE per bottle	20 bottles	50 bottles
Child 4-6 Hours	30 mg	10 ml liquid or	4 fl oz (118 ml) .354 g PSE per bottle	10 bottles	25 bottles
		two 15 mg tablets	18 tablets .27 g PSE per box	13 boxes	33 boxes
Adult 4-6 Hours	60 mg	10 ml liquid or	4 fl oz (118 ml) .708 g PSE per bottle	5 bottles	12 bottles
		two 30 mg tablets	24 tablets .720 g PSE per box	5 boxes	12 boxes
Adult 12 Hours	120 mg	single tablet	10 tablets 1.2 g PSE per box	3 boxes	7 boxes
			20 tablets 2.4 g PSE per box	1 box	3 boxes
Adult 24 Hours	240 mg	single tablet	5 tablets 1.2 g PSE per box	3 boxes	7 boxes
			10 tablets 2.4 g PSE per box	1 box	3 boxes