



COMBAT METHAMPHETAMINE EPIDEMIC ACT OF 2005 – RETAIL SALES OF PSEUDOEPHEDRINE COMPLIANCE INFORMATION

On March 9, 2006, President Bush signed into law the “USA PATRIOT Improvement and Reauthorization Act of 2005.” Among that bill’s provisions was the “Combat Methamphetamine Epidemic Act of 2005” (“Combat Meth Act”). The Combat Meth Act seeks to curb the availability of certain chemicals used in the manufacture of methamphetamine. These precursor chemicals – pseudoephedrine, ephedrine, or phenylpropanolamine – are common ingredients in many over-the-counter cold, flu, and allergy medications. The Combat Meth Act subjects retailers to new sales restrictions, employee training obligations, and reporting requirements if they wish to continue to sell these over-the-counter medicines.

This guide is designed to provide retailers with a check list of the Combat Meth Act’s requirements. The list does not go into detail about all of the legal questions that may be relevant to each retailer’s particular business. Should retailers have additional questions, they may contact NACS staff and/or NACS counsel at Collier Shannon Scott PLLC. Lyle Beckwith at NACS can be reached at (703) 518-4220 and Doug Kantor at Collier Shannon can be reached at (202) 342-8412.

Compliance Points

Self Certification & Training of Sales Personnel – By September 30, 2006 (or as otherwise set by Department of Justice regulations), retailers must submit to the Department of Justice a “self-certification” that all of the retailer’s sales employees have undergone training regarding the pseudoephedrine, ephedrine, or phenylpropanolamine sales restrictions imposed by this federal law. The retailer will be required to retain a copy of the self-certification and records evidencing the employee training.

IMPORTANT: Retailers will be prohibited from selling pseudoephedrine, ephedrine, or phenylpropanolamine unless it has submitted the self-certification. A self-certification will be required for each place of business which will sell pseudoephedrine, ephedrine, or phenylpropanolamine. To be effective, the self-certification must include a statement that the

seller understands each of the requirements imposed by this law and that the seller agrees to comply with the requirements.

3.6 Gram Daily Limit - As of April 8, 2006 retailers may not sell more than 3.6 grams of pseudoephedrine, ephedrine, or phenylpropanolamine per day to a customer. This is a daily limit, not a transaction limit.

Blister Packs - As of April 8, 2006, retailers may not sell products that contain these chemicals in nonliquid form unless the product is packaged in blister packs. No more than 2 doses may be included in each individual blister. If there are products for which the use of blister packs is technically impossible, then the product may be packaged in unit dose packets.

No Direct Customer Access – Beginning September 30, 2006, customers may not have direct access to these products. The products must be kept behind the counter or in a locked cabinet that a customer cannot access without help from a sales clerk.

Nine Gram Limit Per Person Per Month– Beginning April 8, 2006, all individuals are prohibited from purchasing, at retail, more than 9 grams of pseudoephedrine, ephedrine, or phenylpropanolamine in a 30-day period. No more than 7.5 grams may be purchased remotely (i.e., shipped through any private or commercial carrier such as FedEx or UPS or the U.S. Postal Services). Retailers should note that even though the statute makes this requirement applicable to the individual making the purchase, it is possible that the Drug Enforcement Administration will attempt to enforce the provision against retailers.

Logbook Requirement – Beginning September 30, 2006, retailers must maintain a list of all sales of pseudoephedrine, ephedrine, or phenylpropanolamine (with the exception of single dose sales). The log may be maintained electronically. The logbook must include the following information:

- Product Name;
- Quantity Sold;
- Name and address of purchaser; and
- Date and time of the sale.

The retailer must require that the customer present, prior to purchase, a photo ID card issued by a state or the Federal Government, a passport or an Alien Registration Receipt Card or Permanent Resident Card (“Green Card”). The Customer must also sign the logbook, writing his or her name, address, and the date and time of the sale. The retailer must confirm that the name in the logbook corresponds with the name on the ID and that the date and time are correct. The retailer must then enter into the logbook the name of the product and the quantity sold. Retailers must retain the logbooks for at least two years. Logbooks will be subject to certain privacy protections which will be discussed in regulations promulgated by the Department of Justice.

Logbook Exception – Retailers are not subject to the logbook requirements for sales of single dose packages of products containing pseudoephedrine. Packages containing 60 milligrams or less of pseudoephedrine are considered single dose packages. This may be the least burdensome

way for retailers to comply with the law and still sell some of these products. If the only products that the retailer sells are pseudoephedrine products in 60 milligram packages, then the retailer will not need to maintain a logbook or check the identification of purchasers.

Logbook Legal Notice – The logbook must contain a notice to customers that entering false statements or misrepresentations in the logbook may subject the purchaser to criminal penalties. The following is a sample notice:

This information is required by Federal law and may be provided to Federal authorities in accordance therewith. Under 18 U.S.C. § 1001, anyone who makes a materially false, fictitious, or fraudulent statement to the U.S. Government is subject to criminal penalties. Penalties may include a fine of up to \$250,000 and or imprisonment for up to five years.

Mail Order Sales & Reporting – Retailers who wish to sell pseudoephedrine, ephedrine, or phenylpropanolamine via mail-order will be required, as of April 8, 2006, to:

- Confirm the identity of the purchaser consistent with procedures established by the Department of Justice;
- Limit the sale of pseudoephedrine, ephedrine, or phenylpropanolamine to 7.5 grams per customer per 30-day period;
- Report all sales of the product sold remotely to the Department of Justice.

Penalties – Any retailer that violates the Combat Meth Act will be subject to a civil penalty of not more than \$25,000. Retailers that are found to have knowingly violated the requirements of the Combat Meth Act will be sentenced to imprisonment for up to one year or fined. Moreover, upon such violation, the Department of Justice may prohibit retailers from selling these products. Retailers found to have violated this law after having previously been convicted for violating it may be imprisoned for up to two years or fined.

Effects on State Law – While the Combat Meth Act does not explicitly pre-empt state laws, retailers will be required to follow all of its provisions. If the Act directly conflicts with a provision of state law, then the Act will take precedence. For example, some states have not required liquids and gel caps to be placed behind the counter or in locked cabinets. Notwithstanding such exceptions, retailers in those states will have to comply with the Combat Meth Act's requirement that all products containing the referenced chemicals must not be directly accessed by consumers.

COMBAT METH ACT REGULATIONS TO BE WRITTEN

Self-certification	The Department of Justice will issue regulations establishing criterion for filing certifications for employee training. Retailers will be permitted to file self-certification via the Internet
Privacy Protections	The Department of Justice will issue regulations that will restrict a retailer's disclosure of information in the logbooks.
Mail-Order Sales	The Department of Justice will issue regulations that establish the means by which retailers can confirm the identity of remote purchasers of covered products.