

Oregon legislation returning pseudoephedrine (PSE) to a prescription drug (effective July 1, 2006)

The Oregon legislation returning pseudoephedrine (PSE) to a prescription drug in Oregon was contained within Enrolled 2005 Oregon House Bill 2485:

- <http://www.leg.state.or.us/05reg/measpdf/hb2400.dir/hb2485.en.pdf>

The PSE provisions are in Sections 11 through 13a on pages 5 through 8 of the bill.

The key PSE sections are now codified as Oregon Revised Statutes (ORS) sections 475.973 (directive to move PSE to CIII) and 475.843 (safe harbor affirmative defense):

- <http://www.leg.state.or.us/ors/475.html>

Both sections are recited below.

The key rules adopted by the Oregon Board of Pharmacy are found in Oregon Administrative Rule (OAR) sections 855-080-0023 (moving PSE to CIII, effective July 1, 2006) and 855-080-0065 (exemption from the usual CIII enhanced cage and security requirements):

- http://arcweb.sos.state.or.us/rules/OARS_800/OAR_855/855_080.html

Both sections are recited below.

ORS 475.973. Rulemaking authority regarding products containing ephedrine, pseudoephedrine and phenylpropanolamine; records.

(1)(a) Notwithstanding ORS 475.045, the State Board of Pharmacy may not adopt rules that exempt a product containing ephedrine or pseudoephedrine from classification as a controlled substance. Except as otherwise provided in this paragraph, the State Board of Pharmacy shall adopt rules to classify ephedrine, pseudoephedrine and phenylpropanolamine as Schedule III controlled substances. The Schedule III classification may be modified by the State Board of Pharmacy if the State Board of Pharmacy finds that restrictions on products containing ephedrine, pseudoephedrine or phenylpropanolamine under a Schedule III designation do not significantly reduce the number of methamphetamine laboratories within the state.

(b) Records of transactions involving products containing ephedrine, pseudoephedrine or phenylpropanolamine are subject to inspection by the State Board of Pharmacy and law enforcement agencies. A person required to make or maintain records of transactions involving products containing ephedrine, pseudoephedrine or phenylpropanolamine shall forward the records to the Department of State Police if directed to do so by the department. Failure to forward records as required by this paragraph is a Class A misdemeanor.

(2) This section does not apply to products that the State Board of Pharmacy, upon application of a manufacturer, exempts by rule because the product is formulated to effectively prevent conversion of the active ingredient into methamphetamine or its salts or precursors. Upon notification from the Department of State Police that the department has probable cause to believe that a product exempted under this subsection does not effectively prevent conversion of the active ingredient into methamphetamine or its salts or precursors, the State Board of Pharmacy may issue an emergency rule revoking the exemption for the product pending a full hearing.

ORS 475.843. Affirmative defense to unlawfully possessing pseudoephedrine.

It is an affirmative defense to a charge of violating ORS 475.840 by unlawfully possessing pseudoephedrine that the person:

- (1) Obtained the pseudoephedrine lawfully;
- (2) Possessed no more than six grams of pseudoephedrine, the salts, isomers or salts of isomers of pseudoephedrine or a combination of any of these substances; and
- (3) Possessed the pseudoephedrine under circumstances that are consistent with typical medicinal or household use, as indicated by factors that include but are not limited to storage location, purchase date, possession of the products in a variety of strengths, brands, types or purposes and expiration date.

OAR 855-080-0023. Schedule III.

Schedule III consists of the drugs and other substances by whatever official, common, usual, chemical, or brand name designated, listed in 21 CFR part 1308.13; and

- (1) Products containing pseudoephedrine or the salts of pseudoephedrine as an active ingredient.
- (2) Products containing ephedrine or the salts of ephedrine as an active ingredient.
- (3) Products containing phenylpropanolamine or the salts of phenylpropanolamine as an active ingredient.

OAR 855-080-0065. Security.

(1) Applicants for registration and registrants must comply with the security requirements of 21 CFR 1301.02, 1301.71 through 1301.76 and 1301.90 through 1301.93, which apply to their registration classification. The requirements of 21 CFR 1301.75 and 1301.76 relating to "practitioners" are applicable to applicants and registrants who are drug dispensers.

(2) The security requirements of subsection one of this rule apply to all "controlled substances," as defined in these rules, except ephedrine, pseudoephedrine and phenylpropanolamine.

(3) Applicants and registrants must guard against theft and diversion of ephedrine, pseudoephedrine and phenylpropanolamine.

For more information, visit www.oregondec.org

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