

**WASHINGTON****PRODUCTS:**

- All single entity and combination ephedrine (EPH), pseudoephedrine (PSE) and phenylpropanolamine (PPA) products

**PRODUCT EXEMPTIONS:**

- Combination EPH, PSE or PPA products in liquid, liquid capsule or gel capsule form;
- EPH, PSE and PPA products sold upon prescription;
- EPH, PSE and PPA products sold by a traditional Chinese herbal practitioner to a patient; or
- When details of transactions are recorded in a pharmacy profile individually identifiable with the recipient and maintained in the pharmacy are exempted from prohibition against sale to minors, ID and product placement requirements (Uncodified – Section 2 of H.B. 2266)
- Also, Combination EPH, PSE or PPA products in liquid, liquid capsule, or in a gel capsule form, products dispensed upon prescription, or products sold where sale is recorded in a pharmacy profile and the profile is maintained by the pharmacy (profile must be the individualized record for the purchaser, containing identifying information, including, but not limited to, name, address, date of purchase, purchaser's date of birth, and product) are not subject to the sales records requirements established in board rules. (WAC 246-889-080)

**SALES LIMITS:**

- No pharmacy or retail may sell in a single transaction a total of more than 3.6 grams of EPH/PSE/PHA, their salts, isomers, or salts of isomers in any twenty-four hour period or more than 9 grams per purchaser in any 30 day period. WA ST 69.43.110

**PURCHASE LIMITS:**

- No manufacturer, wholesaler, pharmacy, practitioner, or retailer licensed by or registered with the department of health may acquire more than 3.6 grams in any 24 hr period or more than a total 9 grams in any 30 day period. WA ST 69.43.110

**SALES RESTRICTIONS:**

- Existing law provides that products may only be sold by licensed pharmacies (or their employees), by shopkeepers or itinerant vendors (or their employees) registered with the Department of Health, by a practitioner or a traditional Chinese herbal practitioner (RCS 69.42.110);
- No sales of nonexempt EPH, PSE or PPA products to persons under 18 years (Uncodified – Section 2 of H.B. 2266)

**PRODUCT PLACEMENT:**

- Nonexempt EPH, PSE or PPA products must be kept behind the counter where the public permitted, or locked display case so that a customer wanting access must ask an employee of the merchant for assistance. WA ST 69.43.110

**ID REQUIREMENTS:**

- Licensed pharmacies, appropriately licensed shopkeepers and itinerant vendors, practitioners and traditional Chinese herbal practitioners may not knowingly sell nonexempt EPH, PSE or PPA products at retail without first obtaining photo ID showing purchaser is at least 18 years old from all purchasers and who must produce photo ID before purchase with signature and valid description (Uncodified – Section 2 of H.B. 2266; WAC 246-889-085)
- To be an acceptable form of identification, the identification must be issued by a government agency and include the person's photograph, name, address, signature, and physical description. The following are acceptable forms of identification:
  - A driver's license or instruction permit issued by any U.S. state or foreign government;
  - US armed forces identification card issued to active duty, reserve and retired personnel and the personnel's dependents;
  - Merchant marine identification card (Coast Guard);
  - An identification card issued by any foreign, federal, or state government;
  - Official US passport or an unexpired foreign passport that contains a temporary I-551 stamp;
  - Enrollment card issued by the governing authority of a federally recognized Indian tribe located in Washington state if the card has security features comparable to those used for Washington state drivers' licenses.
  - (WAC 246-889-090)

**RECORDKEEPING (LOG) REQUIREMENTS:**

- A pharmacy licensed by, or retailer registered with, the department of health under chapter 18.64 RCW selling a nonprescription drug containing ephedrine, pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts of isomers shall require the purchaser to electronically or manually sign a record of the transaction. WA ST 69.43.110
- The record must include the name and address of the purchaser, the date and time of the sale, the name and initials of the retailer, pharmacist, pharmacy technician, or employee conducting the transaction, the name of the product being sold, as well as the total quantity in grams, of ephedrine, pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts of isomers, being sold. WA ST 69.43.110

- Existing law limits requires that ‘shopkeepers’ & ‘itinerant vendors’ must register through the master license system to sell EPH, PSE & PPA products at retail. Shopkeepers may only purchase products from licensed wholesalers or manufacturers (RCW 16.64.044; RCW 16.64.047);
- ‘Shopkeepers’ & ‘itinerant vendors’ may not sell any quantity of EPH, PSE or PPA products if the total monthly sales of those products exceeds 10% of the shopkeeper’s prior monthly sales of nonprescription drugs in March through October, and 20% of monthly sales in November through February (RCW 16.64.044; RCW 16.64.047);
- ‘Shopkeepers’ & ‘itinerant vendors’ must maintain inventory records of receipt and disposition of nonprescription drugs available for inspection by the board or law enforcement that must be maintained for 2 years. Registration may be revoked by the Board of Pharmacy for failure to maintain records. (RCW 16.64.044; RCW 16.64.047)
- Sales records must be kept on a written or electronic log and must be readily retrievable and contain information required by WAC 246-889-095. Methods other than written or electronic must be approved in advance by the board of pharmacy. (WAC 246-889-100)
- Records of sales are confidential and only open to inspection by board of pharmacy and law enforcement upon request; retailer not required to transmit records to the board or law enforcement; but retailers required to produce the records in court when lawfully required. (WAC 246-889-110)
- Board of pharmacy to conduct statewide pilot project requiring collection and maintenance of written or electronic logs or other alternatives to record retail transactions (Uncodified – Section 8 of H.B. 2266; WAC 246-889-080);
- Retailer must record date of purchase, purchaser name, purchaser’s date of birth, type of identification, agency issuing the identification, and the identification number if applicable, and number of packages and the number of tablets per package (WAC 246-889-095);
- Transaction records must be maintained for two years and then may be destroyed; if destroyed the manner must leave the records unidentifiable and nonretrievable. (WAC 246-889-105);
- Records collected under the pilot program are for the confidential use of the pharmacy, shopkeeper, or itinerant vendor; except that records may be produced to the court if lawfully required and must be open for inspection by the Board of Pharmacy and general or limited authority Washington peace officers. (Uncodified – Section 8 of H.B. 2266)
- Law enforcement may access the sales records for criminal investigations when, at minimum, there is an articulated individualized suspicion of criminal activity. Each law enforcement officer shall ensure: only authorized employees have access to the data bases; each employee uses his/her unique password or access code to access the data bases; each employee adheres to all state &

federal laws regarding confidentiality; and as employees change, new passwords or access codes are assigned to new employees and passwords of ex-employees or transferred employees are removed.

- Retail sales records of restricted products, written or electronic are kept for 2 years.

#### **ELECTRONIC SALES TRACKING SYSTEM:**

- Beginning July 1, 2011, or the date upon which the electronic sales tracking system established, whichever is later, a pharmacy licensed by, or retailer shall, before completing a sale under this section, submit the required information to the electronic sales tracking system, as long as such a system is available without cost to the pharmacy, shopkeeper, or itinerant vendor for accessing the system. The pharmacy, shopkeeper, or itinerant vendor may not complete the sale if the system generates a stop sale alert, except as permitted. WA ST 69.43.110
- If a pharmacy, or retailer selling a nonprescription drug containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers experiences mechanical or electronic failure of the electronic sales tracking system and is unable to comply with the electronic sales tracking requirement, he or she shall maintain a written log or an alternative electronic recordkeeping mechanism until such time as he or she is able to comply with the electronic sales tracking requirement. WA ST 69.43.110
- The board of pharmacy shall implement a real-time electronic sales tracking system to monitor the nonprescription sale of products in this state containing any detectable quantity of ephedrine, pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts of isomers, provided that the system is available to the state without cost for accessing the system to the state or retailers. The board is authorized to enter into a public-private partnership, through a memorandum of understanding or similar arrangement, to make the system available. WA ST 69.43
- The records submitted to the tracking system are for the confidential use of the pharmacy, shopkeeper, or itinerant vendor who submitted them, except that: the records must be produced in court when lawfully required; records must be open for inspection by the board of pharmacy; and records must be available to any general or limited authority Washington peace officer to enforce the provisions of this chapter or to federal law enforcement officers in accordance with rules adopted by the board of pharmacy regarding the privacy of the purchaser of products covered by this act and law enforcement access to the records submitted to the tracking system as provided in this section consistent with the federal combat meth act. WA ST 69.43
- The electronic sales tracking system shall be capable of generating a stop sale alert, which shall be a notification that completion of the sale would result in the seller or purchaser violating the quantity limits. The system shall contain an

- override function for use by a dispenser of ephedrine, pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts of isomers, which has a reasonable fear of imminent bodily harm. Each instance in which the override function is utilized shall be logged by the system. WA ST 69.43
- The board of pharmacy shall have the authority to adopt rules necessary to implement and enforce the provisions. The board of pharmacy shall adopt rules regarding the privacy of the purchaser of products covered by this act, and any public or law enforcement access to the records submitted to the tracking system consistent with the federal combat meth act. WA ST 69.43

**ELECTRONIC METHAMPHETAMINE PRECURSOR TRACKING:**

- Unless exempted under RCW 69.43.110 upon the sale or attempted sale of a restricted product, each retailer must enter and electronically transmit the following to the meth precursor tracking system prior to the completion of the transaction.
- Sale transaction information include: date and time of intended; product description; quantity of product to be sold ( total grams per box, # of boxes); purchaser information including full name as appeared on ID; date of birth , address information must include house number; street; zip code; city; state.
- Form of photo ID presented by the purchaser including the issuing agency of the acceptable identification; and the ID # appearing on the ID; and purchaser signature.
- If retailer is not able to secure an electronic signature, the retailer shall maintain a hard copy of a signature logbook consisting of each purchaser's signature and the transaction number provided by the meth precursor tracking system. Full name or initials of the individual conducting the transaction and other info as required by the meth tracking system data base.
- If transaction occurs during a time when the meth tracking system is temporarily out of order due to power outage or other technical difficulties, retailer shall record the info required in a written logbook for entry into the meth precursor tracking system with 72hrs of the system becoming operational. WAC 246-889-095

**FUNDING:**

- \$23,000 of the general fund--state appropriation is provided solely to implement chapter 182, Laws of 2010. S.B. 6444

**PENALTIES:**

- Violations of ID requirement and selling to minors is a gross misdemeanor (Uncodified – Section 2 of H.B. 2266);
- Existing law provides that shopkeepers that sell EPH, PSE and PPA products without registering with the Department of Health will be guilty of a misdemeanor with each sale or offer to sell constituting a separate offense (RCS 16.64.044);

- Wholesalers that operate without a Department of Health issued license, that sell in excess of quantity limitations or sell to persons not authorized to purchase EPH, PSE or PPA products are guilty of a Class C felony for each sale in violation. (RCW 16.64.046)

**RETAILER LIABILITY EXEMPTION:**

- A pharmacy, or retailer participating in the electronic sales tracking system is not liable for civil damages resulting from any act or omission in carrying out the requirements of RCW 69.43.110(4), other than an act or omission constituting gross negligence or willful or wanton misconduct. WA ST 69.43
- A pharmacy, or retailer is not liable for civil damages resulting from a data breach that was proximately caused by a failure on the part of the electronic sales tracking system to take reasonable care through the use of industry standard levels of encryption to guard against unauthorized access to account information that is in the possession or control of the system. WA ST 69.43
- A pharmacy or retailer selling a nonprescription drug containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers may seek an exemption from submitting transactions to the electronic sales tracking system in writing to the board of pharmacy stating the reasons for the exemption. The board may grant an exemption for good cause shown, but in no event shall a granted exemption exceed one hundred eighty days. WA ST 69.43.110
- The board may grant multiple exemptions for any pharmacy, or retailer if the good cause shown indicates significant hardship for compliance with this section. A pharmacy, shopkeeper, or itinerant vendor that receives an exemption shall maintain a logbook in hardcopy form and must require the purchaser to provide the information required under this section before the completion of any sale. The logbook shall be maintained as a record of each sale for inspection by any law enforcement officer or board inspector during normal business hours in accordance with any rules adopted pursuant to section 3 of this act. For purposes of this subsection (4)(c), “good cause” includes, but is not limited to, situations where the installation of the necessary equipment to access the system is unavailable or cost prohibitive to the pharmacy, shopkeeper, or itinerant vendor.
- A pharmacy or retailer vendor may withdraw from participating in the electronic sales tracking system if the system is no longer being furnished without cost for accessing the system. A pharmacy or retailer who withdraws from the electronic sales tracking system is subject to the same requirements as a pharmacy, shopkeeper, or itinerant vendor who has been granted an exemption.
- Pharmacies, shopkeepers, itinerant vendors, practitioners and traditional Chinese herbal practitioners who make a good faith attempt to comply with proof of identification of proof of age requirements are not subject to prosecution for a gross misdemeanor (Uncodified – Section 2 of H.B. 2266)

- Pharmacies exempt from entering purchase info into meth precursor tracking system when the sales of products containing EPH, PSE, PPA or their salt isomers, or salt isomers sold pursuant to a prescription written by an authorized practitioner.
- Retailer must demonstrate “good cause” to qualify for an exemption from electronic reporting requirements. “Good cause” includes, but not limited to, situations where the installation of the necessary equipment to access the meth precursor tracking system is unavailable or cost prohibitive to the retailer.
- Retailer must submit written request on a form provided by the board which shall include the following information: reason for exemption; anticipated duration needed for exemption. Exemption from electronic reporting may not exceed 180 days.
- Retailer must request additional exemptions by submitting form at least 30 days before current expires. Must show compliance will cause significant hardship.
- All sales transactions involving the sale or attempted sale of a restricted product occurring during period of exemption, retailer shall record a written logbook, at time of the sale or attempted, the information required under WAC 246-889-095(1).
- Written logbook of each sale or attempted sale shall be available for inspection by any law enforcement or board inspector during business hours.

**DENIAL OF SALE:**

- Retailer must deny the sale of restricted product to purchasers who aren’t able to produce acceptable ID or if the sale would violate federal law.
- In the event that the retailer perceives that refusal of the purchase may place him/her in imminent physical harm, retailer may use database safety override function to proceed with the sale, provided when threat is no longer perceived, retailer must immediately call local law enforcement to report incident. WAC 246-889-120

**WHOLESALE DISTRIBUTION REQUIREMENTS:**

- Existing law requires that wholesalers obtain license from the Department of Health to sell nonexempt EPH, PSE & PPA products at retail. Shopkeepers may only purchase products from licensed wholesalers or manufacturers (RCW 16.64.046);
- Wholesalers may not sell any quantity of EPH, PSE or PPA products to persons if the total monthly sales of those products exceeds 5% of the wholesaler’s prior monthly sales of nonprescription drugs in March through October, and 10% of monthly sales in November through February (RCW 16.64.046);
- Wholesalers may not sell any EPH, PSE or PPA products to any person other than a pharmacy, a shopkeeper or itinerant vendor, a practitioner or a traditional Chinese herbal practitioner. (RCW 16.64.046)

**OTHER:**

- The Board of Pharmacy has the authority to exempt by rules any combination EPH, PSE or PPA products if the product is found not to be used in the illegal manufacture of methamphetamine or other controlled substances upon application of the product manufacturer (Uncodified – Section 2 of H.B. 2266);
- No vendor of EPH, PSE or PPA products may retaliate against an employee that has made good faith efforts to comply with proof of identification of proof of age requirements (Uncodified – Section 2 of H.B. 2266);
- Authorizes the Washington Association of Sheriffs and Police Chiefs or the Washington State Patrol to petition the Board of Pharmacy to apply log requirements to combination EPH, PSE or PPA products in liquid, liquid capsule or combination form. Directs the Board of Pharmacy to adopt rules to implement the log requirement when such a petition is filed. (Uncodified – Section 3 of H.B. 2266)