

**TITLE 475. OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS
DRUGS CONTROL
CHAPTER 55. PSEUDOEPHEDRINE CONTROL**

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

475:55-1-3. Pharmacy requirements [AMENDED]

475:55-1-5. Electronic Reporting [AMENDED]

AUTHORITY:

The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, 63 O.S. §§ 2-301, 2-309H.

DATES:

Adoption:

October 7, 2013

Effective:

Immediately upon Governor's approval

Expiration:

Effective through September 14, 2014, unless superseded by another rule or disapproved.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The compelling extraordinary circumstance that requires these rule amendments came from the Oklahoma Court of Criminal Appeals. In Angela Michelle Wolf v. State of Oklahoma, 2012 OK CR 16, the Court of Criminal Appeals held the criminal provisions of the Oklahoma Methamphetamine Offender Registry Act, 63 O.S. §2-701 to be unconstitutional because the Act lacks a notice requirement. As a result, House Bill 2217, signed by the Governor on April 29, 2013, added notification elements to the statutes, which go into effect November 1, 2013. The amendments to the rules explain how these notification procedures are to take place.

ANALYSIS:

475:55-1-3. Pharmacy requirements [AMENDED] - Adds section addressing notification requirements prior to the purchase of pseudoephedrine products.

475:55-1-5. Electronic Reporting [AMENDED] - Adds requirement to have a person attest that they are not subject to the Methamphetamine Registry Act before they can purchase pseudoephedrine products.

CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING
EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE
UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION**

253(D):

475:55-1-3. Pharmacy requirements

(a) Schedule V pseudoephedrine substances may be sold only in licensed pharmacies that are registered with the Oklahoma Bureau of Narcotics and Dangerous Drugs Control. These substances, as a special class of Schedule V controlled substances, shall be kept in a locked environment (shelving unit, safe, cabinet, etc.) that is within view of the pharmacy, or behind the pharmacy counter. As specified in 63 OS, 2-303 (1), 2-304 (A)-4, and OAC 475:20-1-2, the pharmacist and those with access to pseudoephedrine products will have an affirmative duty to guard against the theft and diversion of these products.

(b) Pharmacies that sell, distribute or otherwise deliver Schedule V pseudoephedrine substances must post a sign, provided by the Oklahoma Bureau of Narcotics, in a conspicuous area in or around the pharmacy, to inform persons obtaining pseudoephedrine about the provisions of the Oklahoma Methamphetamine Offender Registry Act, 63 O.S. §2-701, that prohibit any person who, after November 1, 2010, that has been convicted, pled guilty or no contest, or otherwise on that date was serving any sentence for a methamphetamine related offense, from purchasing or possessing a product containing any amount of pseudoephedrine. Alternatively, the above notification may be presented to the purchaser by electronic means. A purchaser must attest, by signature, in written or electronic form, that they are not subject to the Oklahoma Methamphetamine Offender Registry Act, as summarized above, prior to purchase of any pseudoephedrine products. The pharmacy must maintain those signatures for a period of two (2) years from the date of signature.

475:55-1-5. Electronic Reporting

Pharmacists or other authorized persons who sell Schedule V pseudoephedrine products shall exercise reasonable care in assuring that the purchaser has not exceeded the three and six-tenths (3.6) gram limit per day, the seven and two-tenths (7.2) gram limit for a thirty (30) day period or the sixty (60) gram limit for a twelve (12) month period. The pharmacist or other authorized person must utilize the real-time electronic pseudoephedrine tracking system as set forth pursuant to 63 O.S. §2-341 and the Methamphetamine Registry as set forth pursuant to 63 O.S. §2-701.

The following provisions are necessary for compliance with this system:

- (1) All pseudoephedrine transactions regulated by Oklahoma law must be approved through submitting the request to the electronic log and Methamphetamine Registry;
- (2) Pseudoephedrine products regulated by Oklahoma law will only be sold to customers who present a valid form of identification and who attest that they are not subject to the Oklahoma Methamphetamine Offender Registry Act;
- (3) The customer information must be the same as that on the presented identification, and shall include the following information (fields that are required for submitting information as required by Oklahoma law):
 - (A) Pharmacy identification;
 - (B) Identification number;
 - (C) Last name;
 - (D) First name;

- (E) Purchase quantity (in grams);
- (F) Initials of the pharmacist or other authorized person conducting the transaction;
- (G) Product name;
- (H) Form of pseudoephedrine if it is liquid or gel-caps;
- (I) Customer's street address;
- (J) Customer's current city, state, and zip code; and
- (K) Date of birth.

(4) If at any time a pharmacist or other authorized person discovers that the electronic log is unavailable or that the information submitted to the electronic log is inaccurate, the authorized person may continue regulated transactions for twenty-four (24) hours, provided that all sales are manually recorded. The authorized person shall suspend all sales if the reporting problem is not corrected within twenty-four (24) hours of discovery. Regulated sales may be resumed only when the reporting problem is corrected and all manually recorded sales are correctly submitted to the electronic log.

ATTESTATION

I, the undersigned, do hereby attest that the copy enclosed herewith is a true and correct copy of amendments to Chapter 55, Pseudoephedrine Control, which was adopted by the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control on October 7, 2013 under emergency rulemaking provisions of the Administrative Procedures Act, 75 O.S., Sections 250 et seq.

I, the undersigned, do hereby attest that such rule was finally adopted in substantial compliance with the Administrative Procedures Act.

s/Marie Schuble
Marie Schuble
Staff Attorney
Oklahoma State Bureau of Narcotics
and Dangerous Drugs Control
October 7, 2013