

North Dakota’s laws restricting sales of over-the-counter cold and allergy medicines containing pseudoephedrine and ephedrine took effect in 2003. In 2006, the President signed the Combat Meth Act, which imposed additional restrictions on both retailers and consumers. The 2007 Legislature amended North Dakota’s laws to more closely mirror federal laws, effective immediately. To assist retailers, the Office of Attorney General has prepared the following summary of state and federal laws.

RETAIL RESTRICTIONS ON THE SALE/PURCHASE OF CERTAIN <u>NON-PRESCRIPTION</u> COLD/ALLERGY MEDICINES	
Restricted Products	Retail sales of all non-prescription products containing pseudoephedrine (PSE) and ephedrine (EPH) are restricted – including liquid and pediatric products. Prescription medications are not subject to these reporting requirements.
Product Placement	Retailers must keep restricted products behind the counter or in a locked cabinet. Product may not be displayed on shelves.
Sales Limits	No more than 2 packages of restricted products can be sold in a single sale; a package cannot contain more than 2 grams of EPH or PSE product. <u>Regardless</u> of the number of packages sold, the purchaser cannot exceed the daily limit (below).
Purchase Limits	DAILY SALES LIMIT – a purchaser may not buy more than 3.6 grams of restricted product per day; ¹ AND MONTHLY SALES LIMIT – a purchaser cannot buy more than 9.0 grams of restricted product per calendar month. ²
ID Requirements	Purchaser must be over 18. A government issued photo identification card is required.
Logbook and Record Keeping Requirements	<ul style="list-style-type: none"> • Retailers must keep a written or electronic log of each separate sales transaction. The log must contain a warning to consumers about the penalties for using false, forged, or altered identification. • The PURCHASER must complete name, address, date and time of sale, and sign the log. The RETAILER must enter the name and quantity of the product sold, verify the purchaser’s information corresponds to the ID card shown, and ensure the date and time of sale is accurate. The purchaser’s phone number is not required. • The log must be kept confidential (i.e., a purchaser’s log entry must not be visible at any time to another purchaser) and can be released only to law enforcement officers. Records must be kept for three years. • Although federal law requires the written log to be in a bound book, use of an alternate form created to comply with state law is permitted provided it contains all information required by USDEA (such as the form created by this office).
Warning to Purchaser	<p>The log must contain the following written warning or, if not feasible (i.e. the seller is using a bound book or electronic log), the warning must be prominently displayed where the purchaser will see it when providing the information:</p> <ul style="list-style-type: none"> • Warning: Section 1001 of Title 18, United States Code, states that whoever, with respect to the logbook, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, shall be fined not more than \$250,000 if an individual or \$500,000 if an organization, imprisoned not more than five years, or both.

¹ US DEA defines a “day” as the period from midnight to midnight.

² US DEA interprets this to mean a rolling calendar where the sales limit is based on sales to the purchaser in the previous 30 days.

RETAILER INFORMATION (additional requirements of federal law are highlighted)	
Product Restrictions	Non-liquid dosage forms (including gel caps) of the restricted products must be in blister packaging or unit dose packaging. Restricted products are now classified in a new category under the federal Controlled Substances Act as “scheduled listed chemical products.”
Training Requirements	<p>Federal: Employers must certify with DEA that all employees have been trained. An approved training and self-certification program has been developed by the DEA, accessed online at: http://www.deadiversion.usdoj.gov/meth/index.html.</p> <p>State: At the time of initial employment and each year thereafter, retailers and employees shall participate in a training program approved by the Attorney General which provides information regarding state and federal regulations governing the sale, possession, and packaging of restricted products. Retailers who have completed the US DEA self-certification program required under federal law are deemed to have participated in an approved training program for purposes of compliance with state law.</p>
Penalties	<p>A person who knowingly exceeds the single sales limit of 2 grams of restricted product or sells a non-liquid product that is not in a blister package or unit dose package is guilty of a Class A Misdemeanor, for which the penalty is one year’s imprisonment or a fine of \$2,000, or both.</p> <p>A person who exceeds the single sales limit of two packages, fails to require purchaser to show an ID; does not follow the logbook and recordkeeping requirements; does not comply with the requirement to keep the product behind the counter or display only one package of product or maintain continuous video surveillance; is guilty (for a first offense) of an Infraction, for which the penalty is a fine of \$500; a second offense within one year shall be treated as a Class B Misdemeanor, for which the penalty is thirty days imprisonment, a fine of \$1,000, or both.</p> <p>Additional penalties under FEDERAL law: Civil penalty of up to \$25,000; and for a first offense - imprisonment of up to one year in addition to a fine; for subsequent offenses – imprisonment of up to two years in addition to a fine; retailer is prohibited from selling any “scheduled listed chemical products.”</p>
Retailer Defenses	It is an affirmative defense if a person obtained proof of age from the purchaser, and the purchaser appeared to be at least eighteen, even if purchaser used a false, forged, or altered document. A person who is an owner, operator, manager of the retail outlet, or supervisor of the employee is not subject to criminal penalties if the person did not have knowledge of, participate in, or direct the employee to commit the violation, AND can document full compliance with the training requirements.
Other Provisions (federal)	A retailer must take measures to guard against employee theft or diversion of restricted product, including asking applicants if they have ever been convicted of a crime involving or related to restricted product or other controlled substances.