



Department of Justice

STATEMENT FOR THE RECORD OF

**JOSEPH T. RANNAZZISI
DEPUTY ASSISTANT ADMINISTRATOR
OFFICE OF DIVERSION CONTROL
DRUG ENFORCEMENT ADMINISTRATION**

BEFORE THE

**SENATE CAUCUS ON INTERNATIONAL NARCOTICS CONTROL
UNITED STATES SENATE**

ENTITLED

**“THE STATUS OF METH: OREGON’S EXPERIENCE MAKING
PSEUDOEPHEDRINE PRESCRIPTION ONLY”**

APRIL 13, 2010

**Written Statement of Joseph T. Rannazzisi
Deputy Assistant Administrator, Office of Diversion Control
Drug Enforcement Administration
United States Department of Justice**

**Senate Caucus on International Narcotics Control
“The Status of Meth: Oregon's Experience Making Pseudoephedrine Prescription Only”
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Introduction

In 2004, the United States experienced a record number of illicit methamphetamine labs. Unlike any other drug, the unique characteristics under which this drug is produced leaves in its wake enormous collateral damage. Volumes of toxic waste, deflated property values, increased crime rates, increased social costs, increased medical costs and more importantly devastated lives. In addition to the record number of labs seized in 2004 we also experienced a record number of children being affected, injured or killed from these labs.

In response to this epidemic, state and federal legislation was passed to control the essential precursors used to manufacture methamphetamine – pseudoephedrine, ephedrine, and phenylpropanolamine. These measures had an immediate and positive result. Meth lab incidents plummeted and proved that effective chemical control could have a dramatic positive impact on illicit methamphetamine production. These measures also reduced social costs, crime rates and spared lives. Unfortunately, history is once again repeating itself. Law enforcement agencies across the country are reporting a disturbing trend – meth lab seizures are rising, and rising fast. The vast majority of this increase can be attributed to the phenomenon known as “smurfing”.

Situational Overview

Subsequent to the passage of various state legislative measures and the Combat Methamphetamine Epidemic Act (CMEA) (Title VII of the USA PATRIOT Improvement and Reauthorization Act of 2005, P.L. 109-177), there was a significant decline in the number of clandestine methamphetamine laboratories across the United States. In 2006 alone, there was a reduction of 58 percent over the previous year. More importantly, the reduction in the number of toxic labs resulted in less children being exposed to the hazards posed by these labs, reduced the number of toxic waste sites caused by these labs, and allowed law enforcement to devote precious resources elsewhere.

Despite these successes however, beginning in 2008, lab seizures began to rise at a rapid rate. Upon further analysis law enforcement identified a criminal subculture that was supplying meth lab operators with large quantities of pseudoephedrine and ephedrine for the manufacture of methamphetamine. This criminal subculture uses individuals that are paid to go from store to store making purchases of products containing pseudoephedrine or ephedrine under the threshold requirements set forth by the CMEA. This activity is more commonly known as smurfing and this process was and is repeated day after day in store after store. They easily circumvent any

logbook system, electronic or otherwise, by effectively using various forms of identification under alias names or simply by using a large numbers of individuals. Law enforcement has been able to identify some smurfing groups and have traced their activity to active meth labs, but this requires an enormous amount of precious resources and has not had a measurable effect against the growing number of meth labs.

By maintaining the status quo, i.e. using logbooks to combat the problem, law enforcement is relegated to taking a reactive approach to chasing meth lab operators rather than a proactive approach to putting them out of business. The clandestine production of synthetic drugs like methamphetamine can be successfully reduced by controlling the essential chemicals needed to manufacture the drug.

Controlling the Precursor Chemicals

Methamphetamine is unique from other illicit drugs of abuse because production of the drug requires no specialized skill or training, and its recipes are readily available on the Internet. The precursor chemicals associated with this drug have also been historically easy to obtain and inexpensive to purchase. These factors have contributed to methamphetamine's rapid sweep across our nation. In response to the devastating impact that the illicit manufacture of methamphetamine was having on our nation, Congress enacted the CMEA in March 2006. Among other things, the Act established a system to monitor and regulate the importation, production, and retail sales of non-prescription ephedrine and pseudoephedrine products - common ingredients found in over-the-counter cough, cold, and allergy products. The Act also included the precursor phenylpropanolamine which is now marketed in products for veterinarian use. These chemicals and drugs were included in the CMEA because they are key precursors used in the illicit manufacture of methamphetamine or amphetamine. This legislation provided law enforcement and regulators with invaluable tools used to contain the production of methamphetamine.

Retail provisions of the CMEA became effective in September 2006 and include self-certification, employee training, product packaging and placement requirements, sales logbooks, and daily and 30-day sales/purchase limits. In order to purchase products containing ephedrine and pseudoephedrine, an individual must show identification and sign a logbook at sales locations. Law enforcement is able to monitor these logbooks in order to identify any person purchasing more than 9 grams within a 30-day period. These requirements place additional responsibilities on retail sellers and as demonstrated above are currently easy to circumvent. However, as a result of the implementation of the CMEA (and similar predecessor laws passed by the states), there was a substantial reduction in the number of methamphetamine laboratories in 2006. The laws proved that by controlling the precursor chemicals illicit labs could be contained domestically.

In response to the current spike in domestic methamphetamine production, the Administration and DEA are looking at a wide range of options. One option could be to follow the approach taken in Oregon, in 2006, placing pseudoephedrine, ephedrine and phenylpropanolamine on the state's schedule of controlled substances, and requiring an individual to obtain a prescription for products that contained any of these chemicals. Since that

time Oregon has seen a dramatic and sustained decline in the number of meth labs seized in that state. Furthermore, law enforcement from that state attributes the limited number of labs that are seized to out of state smurfing. Since the passage and implementation of their law, Oregonians appear to have been able to successfully acquire products that contain pseudoephedrine or ephedrine for legitimate medical needs.

Federally there are two ways to schedule a controlled substance, either statutorily or through an administrative process. DEA has administrative scheduling authority; however, under the Controlled Substances Act pseudoephedrine, ephedrine, and phenylpropanolamine are specifically exempted from this administrative process.

In addition to scheduling these products under the CSA with a prescription requirement, the DEA is considering other possible options to prevent illicit production of methamphetamine. These considerations include the establishment of a national electronic logbook system and making these products available for sale at pharmacies only. However, based on the DEA's experience as well as numerous State and local law enforcement agencies across the country investigating methamphetamine labs, a national electronic logbook system will not be an effective measure to prevent methamphetamine production because it represents a reactive approach to the problem that will tie up significant law enforcement resources. Additionally, smurfers will continue to circumvent any such program by means they currently employ, such as using multiple false IDs to purchase precursor chemicals.

Conclusion

After gaining significant ground in the fight against methamphetamine much of that gained "real estate" has now been lost. In day-to-day battle against meth labs explosions and fires are very real. The volatile chemical reactions created during the illicit manufacture of methamphetamine are routinely the direct cause of lost property and even deaths.

Many states, counties, and municipalities find their communities, law enforcement agencies, courts, and social service agencies overwhelmed with clandestine methamphetamine labs and their consequences. DEA is supportive of efforts by state, county, and municipal jurisdictions to control access to the precursor chemicals from which methamphetamine can be manufactured, while at the same time, ensuring that such substances remain available for legitimate medical purposes. At the federal level, DEA is committed to exploring all options, including legislative changes to place pseudoephedrine, ephedrine and their analogues in Schedule V, as prescription only substances.

Until a more effective solution is implemented, DEA has and will continue to work with federal partners and its state and local counterparts in protecting the public health and safety against the scourge of methamphetamine. DEA is also committed to working with the Department of Health and Human Services and other Federal agencies to find a solution that best balances the goals of law enforcement and legitimate access to products that provide health benefits.