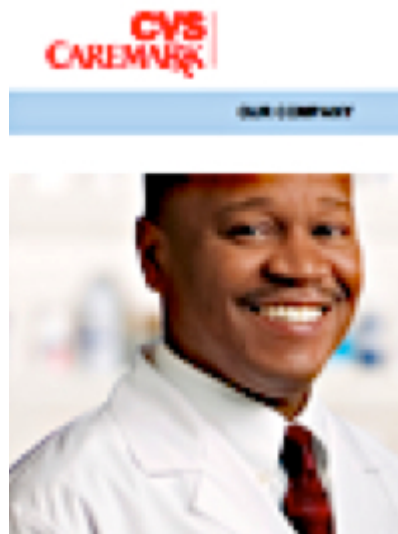




Written by [Michael Tennant](#) on October 15, 2010

\$77 Million CVS Fine Nothing to Sneeze At

CNNMoney reports that “CVS Pharmacy Inc. has agreed to pay \$77.6 million in fines and returned profits in a case alleging improper control in the sale of an ingredient used to make methamphetamine, federal prosecutors said Thursday.” What was this dangerous ingredient? Why, it was none other than pseudoephedrine, a very effective decongestant once found in many cold remedies such as Sudafed and Actifed — the latter brand used by U.S. astronauts, one of whom even appeared in commercials promoting it.



Yes, CVS is now being penalized with \$75 million in fines — “the largest civil penalty ever paid under the Controlled Substances Act,” according to CNN — and \$2.6 million in profits for the so-called crime of selling cold medicine without monitoring who was buying it and how much he was buying. This “crime,” by the way, was perfectly legal a mere five years ago. Then, in 2006, President George W. Bush signed a renewal of the USA PATRIOT Act which included an amendment requiring retailers to keep detailed records of all purchasers of products containing pseudoephedrine and to ensure that no one purchased more than the feds’ arbitrarily set limits on the stuff.

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The officially stated reason for imposing these draconian restrictions on the purchase of a heretofore legal substance is that pseudoephedrine can be used in the manufacture of methamphetamines. That, in fact, is the reason the Los Angeles U.S. Attorney’s Office gave for fining CVS, says CNN: “Through failing to monitor these transactions [purchases of pseudoephedrine-containing products], the pharmacy helped methamphetamine traffickers in Southern California and the area around Las Vegas to get their hands on ‘large amounts’ of pseudoephedrine [sic], the prosecutors said in a statement — adding that the sales fueled a rise in methamphetamine production in California.” This is akin to prosecuting the store where Timothy McVeigh bought the fertilizer he used to make the bomb that blew up the Oklahoma City federal building. Furthermore, how do we really know “the sales fueled a rise in methamphetamine production”? We have only the prosecutors’ word for that, which won’t even be tested in court since CVS agreed to settle and accept a compliance agreement with the government rather than be bankrupted by a trial.

There may, however, have been another reason Washington restricted pseudoephedrine, essentially forcing its replacement with phenylephrine. Jeffrey Tucker of the Ludwig von Mises Institute [explains](#): “The replacement drug phenylephrine is far less effective on noses but more effective in Washington: the company that makes it, Boehringer Ingelheim, spent \$1.6 million lobbying Washington in 2006 ... and the same amount the year before. The makers of the drug everyone actually wants are diffuse and spread all over China.”

Whether the near-ban on pseudoephedrine was the result of the War on Drugs or lobbying by Boehringer Ingelheim or both, it is most certainly unconstitutional. The federal government has no



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authority whatsoever to tell businesses what products they may sell to whom and in what quantities or to conscript businesses into enforcing such mandates. Even if the products CVS sold were being used for meth production, the federal government has no business prohibiting that activity either, and, therefore, no authority to prosecute anyone for participating in it or abetting it.

What will be the end result of the extraction of this enormous sum from CVS? Certainly not a reduction in meth production. CVS Caremark CEO Thomas Ryan indicated that the “lapse occurred in 2007 and 2008 and has been addressed,” writes CNN, so meth producers have already been forced to look elsewhere for their supply of pseudoephedrine. Furthermore, as Tucker pointed out in an [earlier article](#), the restrictions on pseudoephedrine purchases have only made the meth situation worse by driving even more of the production process underground:

Looking up home-based meth labs now, I can easily see that this has to be one of the most dangerous processes ever undertaken in any home. Clearly this is not for the faint of heart. Indeed, no one would ever take the risk were the substance not illegal. The laws have ended up creating huge incentives for mad-scientist tricks at home, risking lives and turning city blocks into combustible mine fields.

Even more interesting is how the black market is finding its way around the laws. Whereas hundreds or thousands of pills used to be required to make meth, [the pseudoephedrine] laws have led to new innovations: like [the shake-and-bake method](#), which uses a legal number of pills and allows the user to make the stuff while driving. Yikes. That seems much more dangerous than texting while driving.

Keep in mind that all this insanity is a result of the laws themselves. People are still using the drug, but they are now risking their lives to do so. In other words, the laws are not working, except to make meth production and use even more dangerous.

The only outcome of the CVS settlement, then, will be to transfer tens of millions of dollars from the productive private sector to the nonproductive government sector while doing nothing to prevent meth production. In fact, by further restricting the supply of pseudoephedrine and thus raising the price of meth, it will encourage more people to enter the meth-production business and to take greater risks in producing the substance. Meanwhile, ordinary citizens who just want to be able to breathe will continue to be treated like criminals when purchasing formerly commonplace decongestants.

And that’s nothing to sneeze at.



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