

Congress of the United States

Washington, DC 20510

November 1, 2012

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
Washington, DC 20530

Dear Attorney General Holder:

We are writing to request a formal Department of Justice investigation of an electronic logbook (or “tracking”) system that is currently in use at the state and local levels to track the sales of pseudoephedrine-containing products. This tracking system is used by several states as the primary tool for combating product diversion for the illegal production of methamphetamine. Based upon recently obtained information, we have new concerns about the legality, integrity, and effectiveness of this tracking system, and believe it may warrant greater federal scrutiny at this time.

These new concerns stem from recent conversations with state and local law enforcement officials who have been in contact with our offices about the development, implementation, and use of the National Precursor Log Exchange (NPLEx) in their respective jurisdictions. Initial feedback from law enforcement officials who oversee efforts to curtail precursor chemical diversion has led us to believe that NPLEx – which is an electronic, point-of-sale pseudoephedrine tracking database that is under the control of the National Association of Drug Diversion Investigators (NADDI), operated by the vendor Appriss, Inc. (Appriss), and in use to one degree or another in several states – may not be in compliance with federal law.

While we are concerned that NPLEx may be in violation of several different federal laws, in the near term, we are specifically concerned that the system may violate the Combat Methamphetamine Epidemic Act (CMEA),¹ which authorizes tracking systems for the monitoring of pseudoephedrine-containing product sales for law enforcement purposes in order to reduce this precursor’s availability for domestic methamphetamine production. Based upon our reading of the CMEA, we are concerned that NPLEx is in violation of the law. More specifically:

- Section 830(e)(1)(C) of Title 21 of the United States Code states that any tracking systems utilized for the purposes of tracking pseudoephedrine-containing products must adequately protect the privacy of the individual purchasers, whose personal identification information (PII) is electronically recorded and stored for monitoring purposes.
- Section 830(e)(1)(C) seems to make it clear that such tracking systems can exist solely for law enforcement or public safety purposes, and that it would be a violation of the CMEA for a tracking system to serve any purpose other than the stated law enforcement or public safety functions.

¹ Title VII, USA PATRIOT Improvement and Reauthorization Act of 2005 (Pub. L. 109-177).

- Similarly, Section 830(e)(1)(C) seems to also make it clear that any tracking system used under the CMEA may not impose restrictions on law enforcement or government agency access, other than any restrictions specifically imposed by the Attorney General.

In conversations and exchanges with state and local law enforcement officials who use NPLeX and coordinate with the Appriss personnel who operate NPLeX, our staffs have been made aware that Appriss may be inappropriately limiting, or even blocking, appropriate law enforcement access to NPLeX-collected data. More specifically:

- Anecdotal reports from law enforcement indicate that it is not uncommon for Appriss to deny law enforcement officials' requests for immediate access to real-time sales data and that NADDI, which contracts with state governments to permit states to use NPLeX, includes standard, restrictive language in its memoranda of understanding permitting delayed withholding of information.
- Other anecdotal reports indicate that the flow of data from particular stores, which are known by law enforcement for their high volumes of pseudoephedrine sales, will occasionally go offline, causing an effective blackout of sales data.
- Still other anecdotal reports indicate that NPLeX has categorized pseudoephedrine sales in such a way that it creates ambiguity as to whether pseudoephedrine sales in particular situations were blocked or ultimately allowed to go forward, which seems to run counter to the basic clarifying purpose of NPLeX.

These claims and others, if true, seem to indicate that NADDI, Appriss, and NPLeX may not only be violating the CMEA, but may also be impeding law enforcement's anti-diversion efforts, intentionally or otherwise.

Some of the law enforcement officials who have approached our offices with their complaints about Appriss and NPLeX also believe that the point-of-sale purchase data collected by NPLeX – namely, customers' PII – is being used for marketing and sales purposes, and that private-sector entities, such as private companies or associations with financial stakes in pseudoephedrine-containing product sales, that have contributed funding to Appriss for the development, implementation, and operation of NPLeX have received, and continue to receive, NPLeX-collected data for such purposes. If true, such utilization would also seem to be a complete violation of the CMEA's tracking system privacy protection and limited purpose provisions. Beyond mere compliance with the law, the involvement of any private companies or associations in the NPLeX funding equation also raises fundamental questions about the potential conflict of interest in having financially interested parties supply a tracking system that, if used for its stated purpose, could lead to fewer sales of pseudoephedrine-containing products.

In order to ensure both the integrity and effectiveness of the CMEA, and to guarantee that state and local law enforcement officials have the maximum amount of anti-diversion tools possible at their disposal, we are requesting that your Department conduct an investigation of NADDI, Appriss, and NPLeX. We would specifically be interested in assessments of the following issues:

1. Whether NPLeX, as currently constituted, is in compliance with the CMEA

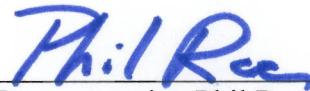
2. Whether Appriss, as the vendor of NPLEEx, has violated the CMEA by failing to comply with the specific law enforcement access and privacy protection provisions of the CMEA, either by failing to provide federal, state, and/or local law enforcement officials access to NPLEEx-collected data upon request, or by providing NPLEEx-collected data to non-law enforcement entities, such as private companies or associations
3. Whether Appriss, as the vendor of NPLEEx, may have violated any other federal laws, including other federal privacy protection laws
4. All sources of funding for the development, implementation, and operation of NPLEEx

We appreciate your prompt attention to this request and look forward to working with your office to bring a greater clarity to the functioning of existing pseudoephedrine tracking systems and the federal laws governing those systems. If you or your staff has any questions, do not hesitate to contact us.

Sincerely,



Senator Ron Wyden



Representative Phil Roe, M.D.