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Constance K. Robinson,

Director of Operations.

[FR Doc. 02–5147 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

CHM Wholesale Co.; Denial of Application

On or about April 11, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to CHM Wholesale Company (CHM), located in Chicago, Illinois, notifying it of an opportunity to show cause as to why the DEA should not deny its application, dated June 8, 2000, for a DEA Certificate of Registration as a distributor of the List I chemicals ephedrine and pseudoeophedrine, pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified CHM that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was returned, marked ''Return to Sender—Moved, Left No Address.'' The OTSC subsequently was sent by certified mail to the residential address of CHM's owner, Hyun Jin Kim (Kim), where it was received, June 4, 2001, as indicated by the signed postal return receipt. Since that time, no further response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that CHM is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Administrator finds that on or about June 8, 2000, an application was received by the DEA Chemical Operations Registration section on behalf of CHM for DEA registration as a distributor of the two above-mentioned List I chemicals. The DEA pre-registration inspection on September 7, 2000, revealed that Kim and CHM had no prior experience in distributing List I chemical products. Kim further stated that he had lived in Chicago only three months. He stated he previously had lived in Houston, Texas, where he had operated a number of different retail businesses.

CHM provided a supplier list in response to DEA's request. The DEA investigation revealed both of CHM's proposed suppliers were the recipients of 15 Warning Letters between them. These letters notified the recipients that List I chemicals distributed by them were being diverted and were being discovered in various illicit settings consistent with the clandestine manufacture of methamphetamine. CHM was unable to provide a list of proposed customers.

Pursuant to 21 U.S.C. 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires the following factors be considered:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See, e.g. Energy Outlet,* 64 FR 14,269 (1999). *See also Henry J. Schwartz, Jr., M.D.,* 54 FR 16,422 (1989).

The Administrator finds factors one, four, and five relevant to this application.

Regarding factor one, the maintenance of effective controls against the diversion of listed chemicals, the DEA pre-registration inspection documented inadequate security arrangements, in that there was no separate secure enclosure at the proposed business location wherein the List I chemical products would be stored. The inspection also revealed inadequate recordkeeping arrangements, in that CHM failed to provide information regarding planned controls to prevent diversion.

Also relevant to this factor, Kim stated to DEA investigators that he planned to relocate CHM's business premises. No further information has been received by DEA regarding the relocation, however, and therefore DEA has been unable to inspect the new proposed business location.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the DEA investigation revealed that Kim could provide no verifiable evidence of previous experience related to handling or distributing listed chemicals.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator finds that both of CHM's proposed suppliers were the recipients of 15 Warning Letters between them; one of the proposed suppliers was the subject of a current DEA investigation regarding the diversion of listed chemicals. CHM could not provide a customer list, so DEA investigators could not verify a legitimate customer base for the distribution of List I chemical products. The investigation further showed CHM had inadequate security and no apparent recordkeeping arrangements for listed chemical products. The Administrator concludes that CHM is not prepared to be entrusted with the responsibilities of a DEA registration.

Therefore, for the above-stated reasons, the Administrator concludes that it would be inconsistent with the public interest to grant the application of CHM.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by CHM Wholesale Company be denied. This order is effective April 4, 2002.

Dated: February 22, 2002.

Asa Hutchinson,

Administrator.

Certificate of Service

This is to certify that the undersigned, on February 25, 2002, placed a copy of the Final Order referenced in the enclosed letter in the interoffice mail addressed to Robert Walker, Esq., Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537; and caused a copy to be mailed, postage prepaid registered return receipt to Mr. Hyun Jin Kim, CHM Wholesale

Company, 2428 W. Jarvis, Chicago, Illinois 60645.

Karen C. Grant.

[FR Doc. 02–5224 Filed 3–4–02; 8:45 am]
BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Denver Wholesale; Revocation of Registration

On July 29, 2000, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) to Denver Wholesale, located in Denver, Colorado, notifying it of a preliminary finding that, pursuant to evidence set forth therein, it was responsible for the diversion of large quantities of List I chemicals into other than legitimate channels. Based on these preliminary findings, and pursuant to 21 U.S.C. 824(d) and 28 CFR 0.100 and 0.104, the OTSC suspended Denver Wholesale's DEA Certificate of Registration, effective immediately, with such suspension to remain in effect until a final determination is reached in these proceedings. The OTSC informed Denver Wholesale and its owner, Hassan, Zaghmot (Zaghmot) of an opportunity to request a hearing to show cause as to why the DEA should not revoke its DEA Certificate of Registration, 003378DHY, and deny any pending applications for renewal or modification of such registration, for reason that such registration is inconsistent with the public interest, as determined by 21 U.S.C. 823(h). The OTSC also notified Denver Wholesale that, should no request for hearing be filed within 30 days, its right to a hearing would be considered waived.

On August 9, 2000, a copy of the OTSC was served upon Zaghmot's attorney. No request for a hearing or any other response was received by DEA from Denver Wholesale or Zaghmot; nor anyone purporting to represent it in this matter. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes Denver Wholesale is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 (d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine is a List I chemical that is commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

A ''regulated person'' is a person who manufactures, distributes, imports, or exports inter alia a listed chemical. 21 U.S.C. 802(38). A ''regulated transaction'' is inter alia a distribution, receipt, sale, importation, or exportation of a threshold amount of a listed chemical. 21 U.S.C. 802(39). The Administrator finds all parties mentioned herein to be regulated, and all transactions mentioned herein to be regulated transactions, unless otherwise noted.

The DEA investigation shows that at the time Denver Wholesale became registered with the DEA in July of 1998 as a distributor of List I chemicals, Zaghmot was personally served with the DEA notices informing him that ephedrine and pseudoephedrine are diverted for use in clandestine methamphetamine laboratories, as well as the notice informing him that possession or distribution of a listed chemical knowing or having reasonable cause to believe that the listed chemical will be used to manufacture a controlled substance is a violation of the Controlled Substances Act.

The DEA investigation shows Denver Wholesale has received millions of dosage units of pseudoephedrine from distributors nationwide since being registered with DEA. In calendar year 1999, Denver Wholesale received 18 million dosage units of 60 mg. pseudoephedrine from one of its six List I chemical suppliers alone.

During September, 1999, and on June 20, 2000, Denver Wholesale provided DEA with customer lists. The lists showed no customers in California, yet Federal Express records document numerous large shipments of pseudoephedrine from Denver Wholesale to California, several of which were tracked directly to methamphetamine laboratories. Zaghmot used fictitious and non-existent business names and addresses in shopping pseudoephedrine to California.

In March of 2000, in Denver, Colorado, Zaghmot and other individuals loaded approximately 55 boxes containing over 15,000 bottles of pseudoephedrine 60 mg. tablets from a storage locker into a rented van, that was then packed with furniture obtained from thrift shops throughout the Denver area. The boxes were transported to a self-storage facility in California, from whence it was transported to several different locations at which laboratory equipment and chemicals consistent with the clandestine manufacture of methamphetamine were located. The individuals having access to the storage lockers were arrested and charged with conspiracy to manufacture methamphetamine. The rented van was stopped in Nevada, and a search revealed $233,960 in United States currency. The passenger, who had been observed by investigators assisting Zaghmot loading pseudoephedrine into the van, stated that he had driven the van from Denver to Sacramento, California, with a load of pseudoephedrine, and was returning to Denver for another load of the chemical.

On July 20, 2000, an undercover DEA agent purchased 120 bottles of Denver Wholesale-labeled pseudoephedrine product for $1000 in cash from a convenience store in Denver, Colorado. On July 25, 2000, the undercover agent returned for another purchase. In response to questioning from the convenience store owner, the undercover agent stated that he had used the previous purchase to manufacture methamphetamine. The convenience store owner sold the agent another 144 bottles of the same product, and informed the agent that he could provide as much as 100 cases (14,400 bottles) of pseudoephedrine. Larger quantities, however, would cost $1,500 a case. The undercover agent left, and the convenience store owner was observed to drive to Denver Wholesale, where he met with Zaghmot. The next day, the undercover agent contacted the convenience store owner, who stated that since the supplier did not know the agent, the supplier would only provide two cases at a time until a relationship was built.

Therefore, pursuant to 21 U.S.C. 824(d), the Administrator of the DEA issued an immediate suspension of Denver Wholesale's DEA Certificate of Registration. While the above-cited evidence provides ample grounds for an immediate suspension pursuant to section 824(d), these grounds also provide the basis for the revocation of Denver Wholesale's DEA Certificate of Registration.

Pursuant to 21 U.S.C. 824(a), the Administrator may revoke a registration to distribute List I chemicals upon a finding that the registrant has committed such acts as would render his registration under section 823 inconsistent with the public interest as