Dated: September 8, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–21962 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a registration under 21 U.S.C. 952(a)(2)(b) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on July 21, 2004, Tocris Cookson, Inc., 16144 Westwoods Business Park, Ellisville, Missouri 63021–4500, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of Tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

The company plans to import small quantities of the products for research purposes.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections or requests for hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCD) and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: September 16, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–21942 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Value Wholesale Denial of Registration

On September 8, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Value Wholesale (Value) proposing to deny its November 6, 2001, application for DEA Certificate of Registration as a distributor of list I chemicals. The Order to Show Cause alleged that granting Value's application would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(h) and 824(a). The order also notified Value that should no request for a hearing be filed within 30 days, its hearing right would be deemed waived.

According to the DEA investigative file, the Order to Show Cause was sent by certified mail to Value at its proposed registered location at 15188 Eight Mile Road, Oak Park, Michigan 48237. It was received on September 16, 2003, and DEA has not received a request for a hearing or any other reply from Value or anyone purporting to represent the company in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days have passed since delivery of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Value has waived its hearing right. See Aqui Enterprises, 67 FR 12576 (2002). After considering relevant material from the investigative file, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1309.53(c) and (d) and 1316.67 (2003). The Deputy Administrator finds as follows:

List I chemicals are those 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 and ephedrine are list I chemicals commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Phenhylpropanolamine, also a list I chemical, is presently a legitimately manufactured and distributed product used to provide relief of the symptoms resulting from irritation of the sinus, nasal and upper respiratory tract tissues, and is also used for weight control. Phenylpropanolamine is also a precursor chemical used in the illicit manufacture of methamphetamine and amphetamine. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is an ongoing public health concern in the United States.

The Deputy Administrator's review of the investigative file reveals that an application dated November 6, 2001, was submitted on behalf of Value and signed by its President and only officer, Mr. John Loussia (Mr. Loussia). Value sought registration as a distributor of multiple list I chemicals, including pseudoephedrine (8112) and phenylpropanolamine (1225). There is no evidence in the investigative file that Value has sought to modify its pending application with regard to those two chemicals.

In January 1999, Value originally applied for DEA registration as a distributor of list I chemicals and during a pre-registration investigation, it was determined the company had been buying and selling list I chemical products for a number of years prior to filing this application for registration. However, on February 5, 1999, that application was approved and Value issued DEA Certificate of Registration 004000VHY.

On October 31, 2001, during the course of a regularly scheduled cyclic investigation, it was discovered Value's registration had expired, effective May 31, 2000, without any application for renewal having been filed. Nevertheless, investigators found that the firm had continued to order and sell list I chemical products after its registration had expired. Investigators also discovered Value had not been maintaining adequate or complete records of customer addresses as required by 21 CFR 1310.06. A DEA letter of admonition was issued the company and in reply, Mr. Loussia advised he would be submitting the instant application for registration and not be carrying list I chemical products until its approval.

In connection with the pending application, an on-site pre-registration investigation was conducted in March 2002. Mr. Loussia advised investigators that Value was a full-line wholesaler/distributor of groceries to local food

stores in the Detroit metropolitan area and its intention was to sell name brand cough and cold products containing list I chemicals. However, Value's application included over 21 chemical codes, many of which are solely used for commercial or industrial purposes. After being briefed by investigators, Mr. Loussia requested that numerous chemical codes be deleted from Value's application.

The company proposed to primarily sell over-the counter products on a cash and carry basis to walk-in customers, including businesses ranging from gas stations, small grocery stores, dollar stores, party stores and meat markets. They would pay in cash or by check and pick up products directly from Value's facility. Mr. Loussia provided a list of proposed customers, estimating that chemical products would be sold to about 50 to 60 customers in the Detroit area and represented less than 1% of Value's total business. When investigators attempted to verify several of these proposed customers, it was determined they no longer existed.

The Deputy Administrator finds that during the year 2000, DEA suspended the registrations of three Detroit area listed chemical distributors who were engaged in diversion of listed chemical products by purporting to distribute them to phony distributors and non-existent retail customers. Additionally, DEA suspended the registration of a Florida distributor who was purporting to sell listed chemical products to Detroit area retailers, after DEA was unable to determine that retailers were actually receiving the product.

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

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

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

(3) Any prior conviction record 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.

As with 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 Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See, e.g.,* Energy Outlet, 64 FR 14269 (1999). *See also,* Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

The Deputy Administrator finds factors one, two, four and five relevant to the pending application for registration.

With respect to factor one, maintenance of effective controls against diversion, while physical security of list I chemical products is a focus of 21 CFR 1309.71, among the factors considered under the general security requirements of 21 CFR 1309.71, is ''[t]he adequacy of the registrant's or applicant's system for monitoring the receipt, distribution and disposition of list I chemicals in its operations.'' 21 CFR 1309.71(b)(8). Prior agency rulings have applied a more expansive view of factor one then mere physical security. *See, e.g.,* OTC Distribution Company, 68 FR 70538 (2003) (failure to maintain adequate administrative records and controls to permit a precise audit of list I chemical products and company's inability or unwillingness to fully comply with record keeping and report obligations under an MOA considered adverse under factor one). *See also,* Alfred Khalily, Inc., 64 FR 31289 (1999) and NVE Pharmaceuticals, Inc., 64 FR 59215 (1999) (failure to identify a party to a transaction or engaging in transactions with non-registered entities fell under factor one); State Petroleum, Inc., 67 FR 9994 (2002); Hadid International, Inc., 67 FR 10230 (2002) and Aqui Enterprises, 67 FR 12576 (2002) (recordkeeping inadequate to track sales and customers within factor one). The Deputy Administrator finds that factor one is adversely implicated to the extent that Value has previously failed to maintain records, as required by 21 CFR 1310.06.

With regard to factor two, compliance with applicable Federal, State and local law, the Deputy Administrator finds that prior to its initial application for DEA registration and then subsequent to that registration's expiration, Value illegally acquired listed chemical products while not registered to do so. It then distributed those products in violation of the criminal provisions of 21 U.S.C. 841, 842 and 843. Value also failed to comply with applicable laws and regulations requiring adequate and complete records of listed chemical transactions.

With regard to factor four, the applicant's past experience in the distribution of chemicals, the Deputy Administrator finds this factor relevant based on Mr. Loussia's lack of knowledge or inability to comply with the laws and regulations governing handling of list I chemical products. Before applying for initial registration in 1999, for several years Value had been acquiring list I chemical products from certain distributors and reselling those products. Mr. Loussia claimed he was unaware of the registration requirement until Value was turned down as a customer by a major distributor, based on Value's lack of a DEA registration. Only then did Value submit the 1999 application for registration which was ultimately granted. The company then allowed that registration to expire but continued to acquire and distribute list I chemical products. It was either unaware of the need to renew its registration or purposely failed to do so. In addition, the Deputy Administrator finds factor four relevant to Mr. Loussia's apparent unfamiliarity with listed chemical products, as evidenced by his inclusion in Value's application of multiple products having only industrial and commercial uses.

With respect to factor five, other factors relevant to and consistent with the public safety, the Deputy Administrator finds this factor relevant to Value's proposal to distribute listed chemical products to gas stations, small retail markets and convenience stores. While there are no specific prohibitions under the Controlled Substances Act regarding the sale of listed chemical products to these entities. DEA has nevertheless found that gas stations and convenience stores constitute sources for the diversion of listed chemical products *See, e.g.,* ANM Wholesale, 69 FR 11652 (2004); Xtreme Enterprises, Inc., 67 FR 76195 (2002); Sinbad Distributing, 67 FR 10232 (2002); K.V.M. Enterprises, 67 FR 70968 (2002).

Finally, as noted above, there is no evidence in the investigative file that Value ever sought to modify its pending application with respect to the listed chemical product phenylpropanolamine. In light of this development, the Deputy Administrator also finds factor five relevant to Value's request to distribute phenylpropanolamine, and the apparent lack of safety associated with the use of that product. DEA has previously determined that an applicant's request to distribute phenylpropanolamine constitutes a ground under factor five for denial of an application for

registration. *See* Direct Wholesale, 69 FR 11654 (2004); ANM Wholesale, supra, 69 FR 11652; Shani Distributors, 68 FR 62324 (2003).

Based on the foregoing, the Deputy Administrator concludes that granting the pending application of Value would be inconsistent with the public interest. In sum, by its past conduct, Value has displayed a continuing history of illegal activity and an inability to discharge the responsibilities of a registrant.

Accordingly, the Deputy Administrator of the drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders the pending application for DEA Certificate of Registration, previously submitted by Value Wholesale be, and it hereby is, denied. This order is effective November 1, 2004.

Dated: September 13, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–21948 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 5, 2004, and published in the **Federal Register** on May 26, 2004, (69 FR 29979), Varian, Inc. Lake Forest, 25200 Commercentre Drive, Lake Forest, California 92630–8810, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Phencyclidine (7471)	II
1-Piperidinocyclohexane-. carbonitrile (8603)	II
Benzoylecgonine (9180)	II

The company plans to manufacture small quantities of controlled substances for use in diagnostic products.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Varian, Inc. Lake Forest to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Varian, Inc. Lake Forest to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: September 16, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–21956 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Security Programs: Unemployment Insurance Program Letter Interpreting Federal Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Workforce Agenices. UIPL 30–04 is published in the **Federal Register** to inform the public.

This UIPL concers the SUTA Dumping Prevention Act of 2004 (Pub. L. 108–295); SUTA refers to state unemployment tax acts. All states will need to amend their laws regarding the transfer of unemployment experience as a result of the new Federal law. This UIPL includes a detailed explanation of the law in question and answer format, draft legislative language, a conformity checklist for states, and the text of P.L. 108–295.

Dated: September 22, 2004.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

Employment and Training Administration, Advisory System, U.S. Department of Labor, Washington, DC 20210

Classification: SUTA Dumping.

Correspondence Symbol: DL.

Date: August 13, 2004.

Advisory: Unemployment Insurance Program Letter No. 30–04.

To: State Workforce Agencies.

From: Cheryl Atkinson s/s, Administrator, Office of Workforce Security.

Subject: SUTA Dumping—Amendments to Federal Law affecting the Federal-State Unemployment Compensation Program.

1. *Purpose:* To advise states of the amendments to Federal law designed to prohibit ''SUTA Dumping.''

2. *References.* Public Law (Pub. L. 108–295, the ''SUTA Dumping Prevention Act of 2004,'' signed by the President on August 9, 2004; the Social Security Act (SSA); the Internal Revenue Code (IRC), including the Federal Unemployment Tax Act (FUTA); and Unemployment Insurance Program Letters (UIPLs) 29–83 (56 FR 54891 (October 23, 1991)), 29–83, Change 3 (61 FR 39156 (July 26, 1996)), 30–83, 15–84, and 34–02.

3. *Background.*

a. *In General.* Some employers and financial advisors have found ways to manipulate state experience rating systems so that these employers pay lower state unemployment compensation (UC) taxes than their unemployment experience would otherwise allow. This practice is called SUTA dumping. (''SUTA'' refer to state unemployment tax acts, but has also been said to stand for, among other things, ''State Unemployment Tax Avoidance.'') Most frequently, it involves merger, acquisition or restructuring schemes, especially those involving shifting of workforce/payroll. The legality of these SUTA dumping schemes varies depending on state laws. Public Law 108–295 amended the SSA to add a new Section 303(k) establishing a nationwide minimum standard for curbing SUTA dumping. All states will need to amend their UC laws to conform with new legislation.

Recissions: None.

Expiration Date: Continuing.

b. *Experience Rating.* All states operate experience rating systems in order for employers in the state to receive the additional credit against the Federal unemployment tax. (The tax credit scheme is explained in UIPL 30–83 and experience rating in UIPL 29–83.) Under experience rating, the state unemployment tax rate of an employer is, in most states, based on the amount of UC paid to former employees. The more UC paid to its former employees, the higher the tax rate of the employer, up to a maximum established by state law. Experience ratings helps ensure an equitable distribution of costs of the UC program among employers, encourages employers to stabilize their workforce, and provides an incentive for employers