

at 52161; *D & S Sales*, 71 FR at 37609; *Branex, Inc.*, 69 FR at 8690–92. DEA has further found that there is a substantial risk of diversion of list I chemicals into the illicit manufacture of methamphetamine when these products are sold by non-traditional retailers. See, e.g., *Joy's Ideas*, 70 FR at 33199 (finding that the risk of diversion was “real” and “substantial”); *Jay Enterprises, Inc.*, 70 FR 24620, 24621 (2005) (noting “heightened risk of diversion” should application be granted).

DEA orders thus recognize that the sale of combination ephedrine (and pseudoephedrine) products by non-traditional retailers is an area of particular concern in preventing diversion of these products into the illicit manufacture of methamphetamine. See, e.g., *Joey Enterprises, Inc.*, 70 FR 76866, 76867 (2005). As *Joey Enterprises* explains, “[w]hile there are no specific prohibitions under the Controlled Substances Act regarding the sale of listed chemical products to [gas stations and convenience stores], DEA has nevertheless found that [these entities] constitute sources for the diversion of listed chemical products.” *Id.* See also *TNT Distributors*, 70 FR 12729, 12730 (2005) (special agent testified that “80 to 90 percent of ephedrine and pseudoephedrine being used [in Tennessee] to manufacture methamphetamine was being obtained from convenience stores”).⁵ Here, nearly all of Respondent’s customers are convenience stores and gas stations, which are non-traditional retailers of list I chemical products; DEA has repeatedly found that these entities are conduits for the diversion of list I products into the illicit manufacture of methamphetamine.

Relatedly, DEA has repeatedly revoked the registrations of list I chemical distributors who supplied the non-traditional market for selling quantities of products that clearly exceeded legitimate demand and were likely diverted into the illicit manufacture of methamphetamine. See *T. Young Associates, Inc.*, 71 FR at 60572–73; *D & S Sales*, 71 FR at 37611–

12; *Joy's Ideas*, 70 FR at 33198–99; *Branex, Inc.*, 69 FR at 8693–96. Most significantly, the investigative file establishes that Respondent distributed combination ephedrine products in quantities that far exceeded legitimate consumer demand for these products as an asthma treatment.

The representative sampling of Respondent’s customers showed that the lowest average estimated monthly retail sale per store was \$ 1045; four of the stores had average monthly retail sales of more than \$ 1500. Moreover, the average estimated monthly sale for all stores in the sample was \$ 1414. These figures grossly exceed the monthly expected sales range of \$ 0 to \$ 25 (with an average of \$ 12.58) by convenience stores to meet legitimate demand for these products. See *T. Young*, 71 FR at 60568; *D & S Sales*, 71 FR at 37609.

Indeed, as found above, a monthly retail sale of \$ 60 of ephedrine products at a convenience store should “occur about once in a million times in random sampling.” *T. Young*, 71 FR at 60568. The \$ 1414 average monthly retail sale for all nine stores is more than twenty-three times this amount. Moreover, this figure is an average for these stores over a five-month period. It is thus considerably more improbable than a one in a million probability that Respondent’s products were being purchased to meet legitimate demand.

I therefore conclude that the only plausible explanation for these extraordinary sales is that Respondent’s products were being diverted into the illicit manufacture of methamphetamine. See *T. Young*, 71 FR at 60572; *D & S Sales*, 71 FR at 37611 (finding diversion occurred “[g]iven the near impossibility that * * * sales were the result of legitimate demand”); *Joy's Ideas*, 70 FR at 33198 (finding diversion occurred in the absence of “a plausible explanation in the record for this deviation from the expected norm”). Moreover, because the purpose of the CSA’s registration provisions is to protect the public interest, it is irrelevant whether Respondent knew that its products were being diverted. *T. Young*, 71 FR at 60572.

“The diversion of list I chemicals into the illicit manufacture of methamphetamine poses the same threat to public health and safety whether a registrant sell the products knowing they will be diverted, sells them with a reckless disregard for the diversion, or sells them being totally unaware that the products were being diverted.” *Id.* (citing *D & S Sales*, 71 FR at 37610–12, & *Joy's Ideas*, 70 FR at 33198). As I have previously noted (albeit in a revocation proceeding), the

public interest standard does not require that the Government prove that a registrant acted with any particular *mens rea* in order to support a finding that diversion has occurred. *T. Young*, 71 FR at 60572. The same rule applies to an applicant who has previously engaged in the distribution of list I products. Accordingly, where, as here, substantial quantities of products have been diverted, adverse findings are warranted under factors four and five even if Respondent’s owner was unaware that its products were being diverted. I therefore hold that granting Respondent’s application would be inconsistent with the public interest.

Order

Accordingly, pursuant to the authority vested in me by 21 U.S.C. 823(h), as well as 28 CFR 0.100(b) & 0.104, I order that the application of MK Distributing, Inc., for a DEA Certificate of Registration as a distributor of list I chemicals, be, and it hereby is, denied. This order is effective April 5, 2007.

Dated: February 23, 2007.

Michele M. Leonhart,
Deputy Administrator.

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BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Notice of Law Enforcement Officer’s Injury or Occupational Disease (CA–721) and Notice of Law Enforcement Officer’s Death (CA–722). A copy of the proposed

⁵ See *OTC Distribution Co.*, 68 FR 70538, 70541 (2003) (noting “over 20 different seizures of [gray market distributor’s] pseudoephedrine product at clandestine sites,” and that in eight-month period distributor’s product “was seized at clandestine laboratories in eight states, with over 2 million dosage units seized in Oklahoma alone.”); *MDI Pharmaceuticals*, 68 FR 4233, 4236 (2003) (finding that “pseudoephedrine products distributed by [gray market distributor] have been uncovered at numerous clandestine methamphetamine settings throughout the United States and/or discovered in the possession of individuals apparently involved in the illicit manufacturer of methamphetamine”).

information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before May 7, 2007.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S-3201, Washington, DC 20210, telephone (202) 693-0418, fax (202) 693-1451, e-mail: bell.hazel@dol.gov. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA). The Act provides that non-Federal law enforcement officers and/or their survivors injured or killed under certain circumstances are entitled to benefits of the Act to the same extent as employees in the Federal government. The Notice of Law Enforcement Officer's Injury or Occupational Disease (CA-721) and the Notice of Law Enforcement Officer's Death (CA-722) are the forms used by non-Federal law enforcement officers and their survivors to claim compensation under FECA. This information collection is currently approved for use through August 31, 2007.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information to determine eligibility for benefits.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Notice of Law Enforcement Officer's Injury or Occupational Disease (CA-721), Notice of Law Enforcement Officer's Death (CA-722).

OMB Number: 1215-0116.

Agency Number: CA-721 and CA-722.

Affected Public: Individuals or Households; Business or other for-profit; State, Local or Tribal Government.

Total Respondents: 30.

Total Annual Responses: 30.

Average Time per Response: 60 to 90 minutes.

Estimated Total Burden Hours: 40.

Frequency: On occasion.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$12.60.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Ruben Wiley,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

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DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly

understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Survivor's Form for Benefits (CM-912). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before May 7, 2007.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S-3201, Washington, DC 20210, telephone (202) 693-0418, fax (202) 693-1451, e-mail bell.hazel@dol.gov. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

This collection of information is required to administer the benefit payment provisions of the Black Lung Act for survivors of deceased miners. Completion of this form constitutes the application for benefits by survivors and assists in determining the survivor's entitlement to benefits. Form CM-912 is authorized for use by the Black Lung Benefits Act 30 U.S.C. 901, et seq., 20 CFR 410.221 and CFR 725.304 and is used to gather information from a survivor of a miner to determine if the survivor is entitled to benefits. This information collection is currently approved for use through August 31, 2007.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or