Examiners. Under the order, Respondent's Texas medical license was revoked.

Thereafter, on July 13, 2006, the ALJ denied Respondent's request to stay the hearing until after his release from prison. ALJ Dec. at 2. The ALJ further ordered that Respondent file a response to the Government's motion by August 3, 2006. Respondent, however, failed to do so.

Thereafter, the ALJ granted the Government's motion. The ALJ noted that Respondent ''acknowledges that his license to practice medicine in Texas is revoked, and will remain revoked at least until his release from prison on April 7, 2007.'' *Id.* As this material fact was undisputed, the ALJ held that because ''Respondent lacks state authority, he is not entitled to a DEA registration in Texas,'' and therefore recommended that Respondent's registration be revoked. *Id.* at 2–3. The ALJ then forwarded the record to me for final agency action.

Having considered the record as a whole, I adopt the ALJ's recommendation that Respondent's registration be revoked. But in doing so, I decline to adopt the ALJ's reasoning to the extent it relies solely on the Texas State Board of Medical Examiner's revocation of Respondent's medical license. Under Texas law, a practitioner must obtain a separate state registration to dispense a controlled substance. Texas Health & Safety Code § 481.061. The record, however, contains no evidence regarding the status of Respondent's state registration.

Therefore, in accordance with 5 U.S.C. 556(e), I take official notice of the fact that according to the Texas Department of Public Safety's Controlled Substances Registration verification search page, Respondent is not currently registered to dispense controlled substances in the State.[1]

Under the Controlled Substances Act (CSA), a practitioner must be currently authorized to handle controlled substances in ''the jurisdiction in which he practices'' in order to maintain a DEA registration. *See* 21 U.S.C. 802(21) (''[t]he term 'practitioner' means a physician * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance in the course of professional practice''). *See also id.* section 823(f) (''The Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.''). DEA has held repeatedly that the CSA requires the revocation of a registration issued to a practitioner who no longer possesses authority under state law to handle controlled substances. *See Sheran Arden Yeates,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988). *See also* 21 U.S.C. 824(a)(3) (authorizing the revocation of a registration ''upon a finding that the registrant * * * has had his State license or registration suspended [or] revoked * * * and is no longer authorized by State law to engage in the * * * distribution [or] dispensing of controlled substances''). Therefore, Respondent's DEA registration must be revoked.[2]

Order

Accordingly, pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I hereby order that DEA Certificate of Registration, AP1614800, issued to Piyush V. Patel, M.D., be, and it hereby is, revoked. I further order that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective May 11, 2007.

Dated: March 30, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–6761 Filed 4–10–07; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 05–8]

Rick's Picks, L.L.C.; Revocation of Registration

On October 7, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Rick's Picks, L.L.C. (Respondent), of Moore, Oklahoma. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, 003949RPY, as a distributor of list I chemicals, on the ground that its continued registration was inconsistent with the public interest. Show Cause Order at 1 (citing 21 U.S.C. 823(h)).

The Show Cause Order incorporated the allegations of a show cause order which was initiated by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control; the latter order proposed the denial of Respondent's application for a state registration to distribute pseudoephedrine products that are Schedule V drugs under State law, as well as the revocation of Respondent's state registration to distribute pseudoephedrine products which are not scheduled under state law. *Id.* at 2. Specifically, the state show cause order alleged that Respondent and its owner, Rick D. Fowler, ''have a history of selling very large amounts of pseudoephedrine under suspicious and questionable circumstances, and with great negligence and reckless disregard for whether this product would be used in the clandestine manufacture of methamphetamine,'' and that Respondent, and its owner, had engaged in this activity notwithstanding ''numerous warnings from . . . DEA officials that Respondent's sales were fueling illicit methamphetamine laboratories.'' *Id.*

Relatedly, the State show cause order alleged that from January 2002 through April 2004, Respondent sold more than $ 2.2 million of Max Brand (for a total of nearly 10.5 million tablets), a product in which pseudoephedrine is the single active ingredient and which is the ''preferred choice [of] methamphetamine cooks.'' *Id.* at 4–5. The state show cause order also alleged that Respondent had brokered the sale of approximately 400,000 pseudoephedrine tablets for D & E Pharmaceutical. *Id.* at 5. The DEA Show Cause Order then repeated ten different allegations made in the state show cause order which asserted specific instances in which Respondent had sold extraordinary quantities of pseudoephedrine to convenience stores, gas stations and other non-traditional retailers of this product, and that Respondent had failed to report any of these transactions to DEA. *Id.* at 6–8.

The State show cause order further alleged that pseudoephedrine distributed by Respondent had been found at twenty-two methamphetamine dumpsites. *Id.* at 8. Finally, the DEA Show Cause Order alleged that in November 2003, DEA had conducted an inspection of Respondent during which numerous recordkeeping violations were observed. *Id.* at 9.

Respondent requested a hearing on the allegations. The matter was assigned

[1] Under the Administrative Procedure Act, ''[a]gencies may take official notice of facts at any stage in a proceeding—even in the final decision.'' *Attorney General's Manual on the Administrative Procedure Act* 80 (1946) (Wm. W. Gaunt & Sons, Inc., reprint 1979). In accordance with the Act, Respondent may ''show to the contrary'' by filing a request for reconsideration which includes supporting documentation within fifteen days of receipt of this order.

[2] The expiration date of Respondent's DEA registration is March 31, 2008.

to Administrative Law Judge (ALJ) Mary Ellen Bittner, who conducted a hearing in Oklahoma City, Oklahoma, on January 10 and 11, 2006. At the hearing, the Government introduced both testimonial and documentary evidence; Respondent introduced only documentary evidence. Both parties submitted post-hearing briefs.

On August 9, 2006, the ALJ issued her decision. In that decision, the ALJ concluded that Respondent's continued registration would be inconsistent with the public interest and recommended that its registration be revoked. Neither party filed exceptions.

Having considered the record as a whole, I hereby issue this decision and final order. I adopt the ALJ's findings of fact and conclusions of law in their entirety. For the reasons set forth below, I hold that Respondent's continued registration would be inconsistent with the public interest and therefore revoke its registration and deny its pending application for renewal.

Findings

Respondent, an Oklahoma corporation, is a distributor of assorted merchandise to convenience stores, gas stations, and other small retailers in that State. Respondent's sole owner is Mr. Rickey Fowler. ALJ Dec. at 15.

Respondent currently holds DEA Certificate of Registration, 003949RPY, which authorizes it to distribute list I chemicals. Gov. Ex. 1. While Respondent's registration certificate states that its registration expired on April 30, 2005, the record indicates that Respondent filed a timely renewal application. Tr. 24. Therefore, Respondent's registration remains in effect until the conclusion of this proceeding. *See* 5 U.S.C. 558(c).

Methamphetamine and the Market for List I Chemicals

Pseudoephedrine is lawfully marketed under the federal Food, Drug and Cosmetic Act for over-the-counter use as a decongestant. Pseudoephedrine is, however, also regulated as a list I chemical under the Controlled Substances Act because it is easily extracted from non-prescription products and used in the illicit manufacture of methamphetamine, a Schedule II controlled substance. *See* 21 U.S.C. 802(34); 21 CFR 1308.12(d).

Methamphetamine ''is a powerful and addictive central nervous system stimulant.'' *T. Young Associates, Inc.,* 71 FR 60567 (2006). The illegal manufacture and abuse of methamphetamine pose a grave threat to this country. Methamphetamine abuse has destroyed numerous lives and families and ravaged communities. Moreover, because of the toxicity of the chemicals used in producing the drug, its illicit manufacture causes serious environmental harms. *Id.*

Methamphetamine abuse has been an especially serious problem in the State of Oklahoma. In 1999, law enforcement authorities seized 391 illicit laboratories/dumpsites in the State; in 2003 (the last full year before the State enacted laws restricting the distribution of pseudoephedrine), authorities seized 1091 illicit laboratories/dumpsites. *See* Gov. Exs. 7 & 11. Moreover, in 2004, there were still 659 seizures. *See* Gov. Ex. 12. According to a senior agent for the Oklahoma Bureau of Narcotics, Max Brand in tablet form, a product in which pseudoephedrine (60 mg.) is the single active ingredient, is the preferred product of the State's illicit methamphetamine cooks.[1] *See also* Tr. 46 & 180.

In the course of adjudicating numerous cases, DEA has acquired substantial expertise pertaining to the market for list I chemical products containing pseudoephedrine. Accordingly, pursuant to 5 U.S.C. 556(e), I take official notice of the following facts related to the market for pseudoephedrine.[2]

According to Jonathan Robbin, an expert in statistical analysis of demographic, economic, geographic and survey data, ''over 97% of all sales of non-prescription drug products occur in drug stores and pharmacies, supermarkets, large discount merchandisers and electronic shopping and mail order houses.'' *T. Young,* 71 FR at 60568. Moreover, ''sales of non-prescription drugs by convenience stores (including both those that sell and do not sell gasoline), account for only 2.2% of the overall sales of all convenience stores that handle the line and only 0.7% of the total sales of all convenience stores.'' *Id.*

Based on his study of U.S. Government Economic Census Data, information obtained from the National Association of Convenience Stores, and commercially available point of sale transaction data, Mr. Robbin has constructed a model of the traditional market for retail sales of pseudoephedrine. *See id.* According to Mr. Robbin, ''sales of pseudoephedrine account for only about 2.6% of the sales of health and beauty care products in convenience stores and only 0.05% of total in-store (non-gasoline) sales.'' *Id.*

Moreover, ''the normal expected retail sale of pseudoephedrine (Hcl) tablets in a convenience store may range between $ 0 and $ 40 per month, with an average of $ 20.60 per month.'' *Id.* According to Mr. Robbin, a monthly retail sale at a non-traditional retailer of ''$ 60 of pseudoephedrine would occur less than one in 1,000 times in random sampling.'' *Id.* Moreover, a monthly retail sale of ''$ 100 in pseudoephedrine would occur about once in a million times in random sampling.'' *Id.*

Findings Pertaining To Respondent

Respondent first became registered to distribute list I chemicals in January 1999. Prior to becoming registered, DEA Diversion Investigators (DIs) conducted a pre-registration investigation. During this visit, the DIs discussed with Mr. Fowler the recordkeeping requirements imposed by federal law and regulations. Tr. 32–33. The DIs also provided Mr. Fowler with DEA notices that discussed suspicious transactions and advised that certain list I chemical products including pseudoephedrine were being diverted into the illicit manufacture of methamphetamine. *Id.* at 34. One of the notices specifically stated that ''[t]he exemption from certain recordkeeping and reporting requirements for below threshold transactions . . . does not reduce the risk of criminal liability.'' Gov. Ex. 3. This notice also advised Mr. Fowler to ''[r]eport all suspicious orders to your nearest DEA office immediately.'' *Id.*

The DIs, however, also gave Mr. Fowler a handout listing required reports. See Resp. Ex. 18, Tr. 64. More specifically, this document stated that reports were required for ''[a]ny regulated transaction involving an extraordinary quantity of a Listed Chemical,'' ''[a]ny regulated transaction involving an uncommon method of payment or delivery,'' and ''[a]ny regulated transaction involving any other circumstances that the regulated person (supplier) believes may indicate that the List (sic) Chemical will be used in the illicit production of controlled substances.'' Resp. Ex. 18.

In September 2001, DEA DIs returned to Respondent for a scheduled

[1] In response to the methamphetamine problem, effective April 6, 2004, Oklahoma made pseudoephedrine in tablet form a Schedule V controlled substance. Pseudoephedrine in liquid, liquid-filled capsules, and gel caps is, however, exempt from the requirement provided it is not the only active ingredient in the product. *See* 63 Okl. St. Ann. section 2–212.

[2] Under the Administrative Procedure Act, ''[a]gencies may take official notice of facts at any stage in a proceeding-even in the final decision.'' *Attorney General's Manual on the Administrative Procedure Act* 80 (1946) (Wm. W. Gaunt & Sons, Inc., reprint 1979). In accordance with the Act, Respondent may request a reopening of the proceeding to contest the facts of which I am taking official notice by filing a request with supporting affidavits no later than fifteen days after service of this order.

inspection. Among other things, the DIs determined that Respondent was storing list I chemicals in a trailer at a boat storage and not at its registered location. *Id.* at 37. The DIs also found that Respondent was in violation of recordkeeping requirements because its receiving invoices did not include the date that products were received and its sales invoices did not indicate package size. *Id.* at 38. Respondent's owner was issued a letter admonishing him for the violations. Resp. Ex. 2. Subsequently, Mr. Fowler wrote to one of the DIs advising of changes Respondent would make in its recordkeeping; at that time, DEA took no further action. ALJ Dec. at 16.

On November 3, 2003, DEA DIs conducted another inspection of Respondent. The DIs determined that while Respondent was now properly storing its list I chemical products, it was still violating the recordkeeping requirements. See id. at 16–17. DEA issued Respondent an additional letter of admonition. Tr. 41. During this visit, DEA also obtained Respondent's receiving and sales invoices for the period from January 1, 2002, through November 1, 2003. *Id.* at 261; Resp. Ex. 25.[3]

In May 2004, law enforcement authorities obtained a warrant and executed a search of Respondent. Based on records obtained during the search, as well as the records obtained during the November 2003 inspection, DEA investigators compiled a spreadsheet of Respondent's purchases of pseudoephedrine. Gov. Ex. 21; Tr. 187. According to this document, between January 28, 2002, and March 6, 2004, Respondent had purchased 10,062,144 tablets of Max Brand pseudoephedrine at a wholesale price of $ 941,072.20. *Id.* Moreover, during the 2003 calendar year, Respondent purchased nearly six million tablets at a wholesale price of $ 564,884.20. *Id.* Furthermore, between January 5, 2004, and March 6, 2004 (shortly before the Oklahoma statute scheduling tablet-form pseudoephedrine became effective), Respondent purchased approximately 1.8 million tablets at a wholesale price of $ 173,004. *Id.*

DEA investigators also compiled a spreadsheet of Respondent's pseudoephedrine sales. *See* Gov. Ex. 23. This 102 page document lists Respondent's sales to each store by product size and date. The document shows that Respondent repeatedly made monthly sales of a $ 1,000 or more of pseudoephedrine products to the great majority of the stores.[4] *See generally id.*

For example, from January 2002 through April 6, 2004, Respondent sold $ 62,658.00 (and brokered the sale of $ 7,013) of pseudoephedrine to Bernhardt's, a convenience store in Pharoah, Oklahoma. Gov. Ex. 24, at 5. During the same period, Respondent sold $ 50,256 (and brokered the sale of $ 7,015) of pseudoephedrine to Dock's General Store in Council Hill, Oklahoma, and sold $ 44,640 (and brokered the sale of $ 7,015) of the chemical to Dock's General Store in Leonard, Oklahoma. *Id.* at 6–7. Both of these establishments were bait and tackle shops. Tr. 269–71. Respondent also sold $ 37,116 (and brokered the sale of $ 4,676) of the chemical to Kern's Korner Grocery in Henryetta, Oklahoma. Gov. Ex. 24, at 8. Furthermore, from January 2002 through December 2002, Respondent sold $ 11,880 of pseudoephedrine to the Funky Munky, a head shop located in McAlester, Oklahoma. *Id.* at 9; *see also* Tr. 273.

The record also establishes that between February 2002 and March 2004, Respondent sold $ 97,026 (and 468,144 tablets) of pseudoephedrine to five stores in Poteau, a small city in eastern Oklahoma. Of significance among these customers, Respondent sold $ 30,672 to Babe's Place and $ 37,590 to the Tote-A-Poke # 1. Gov. Ex. 24, at 3. It also sold $14,040 to Burkes Friendly Store; all of the sales to Burkes occurred between February 2002 and March 2003. Gov. Ex. 23, at 15–16.

The above per-store figures are based on Respondent's wholesale prices. Several of Respondent's exhibits indicate that the suggested retail price was typically twice the wholesale price. *See* Resp. Exh. 20, at 19; Resp. Ex. 19. Ultimately, even if Respondent's customers sold the products at far less than the suggested retail prices, their sales of these products so greatly exceeded the monthly expected sales range of $ 0 to $ 40, with an average of $ 20.60, that the probability that the products were being purchased to meet legitimate consumer demand for use as a decongestant is infinitesimal. Indeed, as DEA's expert has testified, a monthly retail sale of $ 100 in pseudoephedrine to meet legitimate demand would occur about once in a million times in random sampling. Here, where there are numerous stores to which Respondent sold repeatedly $ 1,000 or more per month at wholesale prices, the only plausible explanation is that the products were being diverted into the illicit manufacture of methamphetamine.[5] I thus find that substantially all of Respondent's products were being diverted.

The ALJ further credited the testimony of a DEA investigator that ''some of Respondent's customers engaged in practices that the DEA considers suspicious.'' ALJ at 18. More specifically, these practices included: (1) Ordering only single-entity pseudoephedrine rather than a variety of pseudoephedrine and other over-the-counter drug products, (2) selling single-entity products that are marketed in large quantities and not in blister packs, (3) selling products that have only been on the market for a few years and which receive little advertising, and (4) purchasing large quantities of pseudoephedrine throughout the year by establishments that traditionally do not sell large quantities of these products and do little or no marketing of them.[6] ALJ at 18, Tr. 349–51.

The ALJ further found that ''Respondent never sold more than the [1000 grams] threshold amount to any one customer in a calendar month.'' ALJ at 20. The ALJ also found that Respondent's owner twice ''reported a suspicious sale to'' DEA. *Id.* According to the record, on October 8, 2003, Mr. Fowler reported that while servicing a store the previous day, ''the store clerk made a comment that she needed products that Methamphetamine is made from.'' Resp. Ex. 6, at p. 2. Mr. Fowler further wrote that he had ''suspended sales of all pseudo ephedrine products to this store due to this comment,'' and that he would ''not service this store in the future with any cold medications containing pseudo ephedrine.'' *Id.* Approximately, a month

[3] On April 7, 2004, a DEA DI again returned to Respondent to discuss the then-recently enacted state legislation which scheduled pseudoephedrine in tablet form. During this visit, the DI conducted a closing inventory. ALJ Dec. at 17.

[4] One of the DIs testified that her review of Respondent's records showed that its sales of pseudoephedrine constituted eighty-five percent of its business. ALJ Dec. at 17. The Government also introduced evidence that Respondent brokered the sale of substantial amounts of ''Bolt'' brand pseudoephedrine directly from its manufacturer to various stores. Tr. 273–276; Gov. Ex. 24, at 5–8.

[5] During cross-examination, Respondent's counsel elicited testimony from a Government witness that a few of the stores it sold to were located on highways—thus suggesting that the sales at these stores were to meet legitimate consumer demand. Tr. 201–02. This testimony does not persuade me that Respondent's products were being sold to meet legitimate demand. The ALJ found that Respondent had more than 200 customers, *see* ALJ Dec. at 18; Respondent's line of cross-examination begs the question: What about the other 200 plus stores? Indeed, the ALJ found that ''some of Respondent's customers were convicted of criminal charges involving the diversion of pseudoephedrine.'' *Id.*

[6] Most of these indicia were published by DEA in February 1999. *See* Suspicious Orders Task Force, *Report to the U.S. Attorney General* Appendix A (1999). The indicia were re-published in the June 2002 Chemical Handler's Manual. *See* DEA, *Chemical Handler's Manual—A Guide to Chemical Control Regulations* 40–43 (June 2002).

later Mr. Fowler also reported that he had been contacted by a person who wanted to come to his premises to purchase products but Mr. Fowler advised him that his firm ''did not do business this way.'' *Id.* at 3. Mr. Fowler further stated that the address given by this person was non-existent and that he had determined that the business was not legitimate.[7] *Id.*

On November 14, 2005, the Cleveland County, Oklahoma, District Attorney filed a felony information charging Mr. Fowler with criminal racketeering under Oklahoma law. Gov. Ex. 42. More specifically, the information alleged that ''between January 2002 and April 2004,'' Fowler ''was willfully, knowingly and criminally associated with an enterprise,'' which consisted of himself, ''individually, and as the owner of Rick Picks,'' the affairs of which ''were to distribute pseudoephedrine, a precursor in the manufacturing of methamphetamine, with reckless disregard for how the product was going to be used in violation of 63 O.S. 2–333(A).'' *Id.* I further take official notice of the fact that on October 16, 2006, the State filed a second amended felony information charging Respondent with the ''unlawful distribution of pseudoephedrine with reckless disregard for how it was going to be used.'' Finally, I take official notice of the fact that on February 9, 2007, a jury found Mr. Fowler guilty of the crime charged in the second amended information. *See* Docket Sheet, *State* v. *Fowler*, No. CF–2005–1651, Cleveland County, Oklahoma, District Court.

Discussion

Section 304(a) of the Controlled Substances Act provides that a registration to distribute a list I chemical ''may be suspended or revoked * * * upon a finding that the registrant * * * has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a)(4). In making this determination, Congress directed that I consider the following factors:

(1) Maintenance by the [registrant] 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.

Id. section 823(h).

''These factors are considered in the disjunctive.'' *Joy's Ideas*, 70 FR 33195, 33197 (2005). I may rely on any one or a combination of factors, and may give each factor the weight I deem appropriate in determining whether a registration should be revoked or an application for renewal of a registration should be denied. *See, e.g.*, *David M. Starr*, 71 FR 39367, 39368 (2006); *Energy Outlet*, 64 FR 14269 (1999). Moreover, I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA*, 419 F.3d 477, 482 (6th Cir. 2005); *Morall* v. *DEA*, 412 F.3d 165, 173–74 (D.C. Cir. 2005). In this case, I hold that factors one, two, four, and five overwhelmingly establish that Respondent's continued registration would be ''inconsistent with the public interest.'' 21 U.S.C. 823(h). Accordingly, I further hold that Respondent's registration should be revoked and its pending application for renewal should be denied.

Factor One—Maintenance of Effective Controls Against Diversion

I concur with the ALJ's conclusion that the record does not establish that Respondent fails to provide adequate physical security for list I chemicals. However, '''[p]rior agency rulings have applied a more expansive view of factor one than mere physical security.''' *D & S Sales*, 71 FR 37607, 37610 (2006) (quoting *OTC Distribution Co.*, 68 FR 70538, 70542 (2003)). Relatedly, I have previously held that a registrant is ''required to exercise a high degree of care in monitoring its customers' purchases.'' *D & S Sales*, 71 FR at 37610.

Respondent argues that he maintains effective controls against diversion because he obtained proof of identity from his customers and only distributed to ''legitimate store[s],'' Resp. Statement of Supporting Reasons 9 [hereinafter Resp. Br.], he maintained adequate and retrievable records, *id.*, and he ''did not fail to report suspicious sales because he was only required to report suspicious regulated transactions,'' *i.e.*, transactions that exceeded the 1,000 grams threshold. *Id.* at 11 (citing 21 U.S.C. 830(b)(1) and 21 CFR 1310.05(a)(1)).

Respondent apparently believes that as long as he sold under threshold amounts he could distribute pseudoephedrine without taking any further steps to determine the ultimate disposition of his products. Respondent's understanding is mistaken. Congress's imposition of recordkeeping and reporting requirements for regulated transactions does not mean that one can engage in below-threshold transactions without any further obligation to determine whether the products are likely to be diverted. Indeed, DEA has found that products which have been distributed to non-traditional retailers in sub-threshold transactions are routinely diverted. Contrary to Respondent's view, the threshold provisions pertaining to regulated transactions do not create a safe harbor which allows a registrant to sell list I chemicals without any further duty to investigate how the products are being used.

Respondent further contends that ''[t]here was no evidence presented that [it] had actual knowledge [that] any customer was diverting pseudoephedrine for the manufacture of methamphetamine.'' *Id.* at 10. In short, Respondent raises the ostrich defense.

Congress, however, has rejected the ostrich defense in creating criminal liability under 21 U.S.C. 841(c)(2), and I have previously rejected this defense as incompatible with the purpose of proceedings under 21 U.S.C. 823 and 824, which are brought to protect the public interest. *See D & S Sales*, 71 FR at 37612; *T. Young Associates*, 71 FR at 60572. As *D & S Sales* explained: ''Burying one's head in the sand while his firm's products are being diverted may allow one to maximize profits. But it is manifestly inconsistent with public health and safety.'' 71 FR at 37612. More recently, I revoked a registration holding—albeit in the context of analyzing factors four and five—that a registrant's lack of ''any intent to divert or to sell to customers who were diverting to the illicit manufacture of methamphetamine is irrelevant.'' *T. Young*, 71 FR at 60572. *See also Joy's Ideas*, 70 FR at 33198 (revoking registration notwithstanding that distributor was ''an unknowing and unintentional contributor to [the] methamphetamine problem.'').

Respondent's owner also contends that he maintained adequate controls because he ''reported suspicious activities to the DEA in the past.'' Resp. Br. at 9. According to the record, Mr. Fowler reported an encounter he had during which a store clerk informed him ''that she needed products that Methamphetamine is made from.'' Resp. Ex. 6. at 2. Mr. Fowler then stated that he would stop servicing the store. *Id.*

A review of the compilation of Respondent's sales records indicates,

[7] While Respondent introduced several form letters to customers purporting to impose requirements for the sale of pseudoephedrine, Resp. Exs. 11–13, as the ALJ noted, ''Respondent did not call any witnesses at the hearing, and there is no evidence as to whether such letters were mailed to Respondent's customers.'' ALJ Dec. at 19.

however, that this store—the 66 Lake Stop in Arcadia, Oklahoma—was actually one of the smaller volume purchasers of its pseudoephedrine products. *See* Gov. Ex. 23, at 2. For example, on May 24, 2003, the store purchased $ 270 of products; on July 11, 2003, the store purchased $ 105: and on August 13, 2003, the store purchased $ 252. *Id.* The fact that this store ''needed more products that Methamphetamine is made from,'' begs the question of what Mr. Fowler thought was the likely disposition of the products he sold to the numerous customers that were repeatedly buying more than $ 1,000 a month of the chemical from his firm.

Relatedly, Mr. Fowler contends that ''the DEA did not warn him that he was making suspicious sales, [or] that he was making excessive sales'' before November 3, 2003. Resp. Br. at 10. *See also id.* at 2 (''Between September, 2001 and November 3, 2003, the DEA never formally warned Mr. Fowler that he was selling excessive amounts of pseudoephedrine.''). The suggestion that Respondent would have stopped its excessive sales if it had been warned is absurd. As the Government's compilation of Respondent's sales invoices establishes, Mr. Fowler continued to sell extraordinary quantities of pseudoephedrine to numerous stores for months following the November 3, 2003 warning. Indeed, it appears that the only reason that the sales eventually stopped was because Respondent's customers ceased purchasing the products in anticipation of the effective date of the new Oklahoma law which restricted the sale of tablet-form pseudoephedrine. *See generally* Gov. Ex. 23. In short, it is clear that DEA's warning did not register with Mr. Fowler. I thus conclude that Respondent lacks effective controls against diversion and that this factor is, by itself, sufficient to conclude that Respondent's continued registration would be inconsistent with the public interest.

Factors Two and Three—Respondent's Compliance With Applicable Laws and Record of Criminal Convictions

As noted by the ALJ, Respondent has previously been admonished for several violations of DEA regulations pertaining to security and recordkeeping requirements. Moreover, while Mr. Fowler has not been formally convicted of a crime (because a final judgment has yet to be entered in the state criminal case), a jury recently found him guilty of the state law offense of distributing pseudoephedrine ''with reckless disregard as to how the product will be used.'' 63 Okl. St. Ann. section 2–333(A). I also hold that Respondent's distributions of pseudoephedrine violated 21 U.S.C. 841(c)(2) (prohibiting the 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''). Accordingly, while Mr. Fowler has not been formally convicted of a crime, I conclude that Respondent's record of compliance with applicable federal and state laws further demonstrates that Respondent's continued registration would be inconsistent with the public interest.

Factors Four and Five—Respondent's Experience in the Distribution of Chemicals and Other Factors Relevant to and Consistent With Public Health and Safety

As explained above, Respondent's experience in the distribution of listed chemicals is characterized by the egregious and criminal misconduct of its owner, Mr. Fowler. But even if there was no such evidence, I would still conclude—consistent with DEA precedent—that Respondent's excessive sales to non-traditional retailers would support a finding under factor five that its continued registration would be inconsistent with the public interest.

While pseudoephedrine has a legitimate medical use as a decongestant, its diversion into the illicit manufacture of methamphetamine has had pernicious effects on families and communities throughout the nation. Cutting off the supply source of methamphetamine traffickers is thus of critical importance in protecting the public from the devastation wreaked by this drug.

DEA orders have established that convenience stores and gas-stations constitute the non-traditional retail market for legitimate consumers of products containing this chemical. *See, e.g., Tri-County Bait Distributors*, 71 FR 52160, 52161–62; *D & S Sales*, 71 FR at 37609; *Branex, Inc.*, 69 FR 8682, 8690–92 (2004). DEA has further found that there is a substantial risk of diversion of pseudoephedrine 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*, 70 FR 24620, 24621 (2005) (noting ''heightened risk of diversion'' should application be granted). *See also TNT Distributors*, 70 FR 12729, 12730 (2005) (establishing that ''80 to 90 percent of ephedrine and pseudoephedrine being used [in Tennessee] to manufacture methamphetamine was being obtained from convenience stores''); *Joey Enterprises*, 70 FR 76866, 76867 (2005) (''[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'').

The record here likewise establishes that there is a substantial nexus between the sale of non-traditional list I chemical products by non-traditional retailers and the diversion of these products into the illicit manufacture of methamphetamine. Here, testimony establishes that Max Brand pseudoephedrine was the preferred product of Oklahoma meth. cooks and that this product was found in about eighty percent of the illicit laboratories seized by law enforcement authorities. Tr. 180–82. The Government also established that Max Brand pseudo was not found in traditional retailers and that it was distributed to non-traditional retailers such as convenience stores and gas stations from which meth cooks obtained the product. *See id.* Furthermore, the Government also showed that ''the vast majority of pseudoephedrine diversion'' in Oklahoma occurs in the non-traditional retail market. *Id.* at 216.

To protect the public from the harms caused by methamphetamine abuse, 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. Here, the record clearly establishes that Respondent distributed pseudoephedrine products in quantities that grossly exceeded legitimate consumer demand for these products as a decongestant. As found above, 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'').

While in this case, there is substantial evidence that Mr. Fowler distributed pseudoephedrine with a reckless disregard for its eventual use, such proof is not essential to sustain the revocation of Respondent's registration. A proceeding under section 304 of the CSA is not a criminal prosecution. Rather, its purpose is to protect the public interest. *See Leo R. Miller*, 53 FR 21931, 21932 (1988).

'' 'In determining the public interest,' Congress granted the Attorney General broad discretion to consider any other factor that is 'relevant to and consistent with the public health and safety.'' ' *T. Young*, 71 FR at 60572 (quoting 21 U.S.C. 823(h)(5)). The statutory text of factor five does not require that the Government prove that a registrant or its key employees acted with any particular *mens rea*.[8] As I have previously explained, ''the diversion of list I chemicals into the illicit manufacture of methamphetamine poses the same threat to public health and safety whether a registrant sells the products knowing they will be diverted, sells them with a reckless disregard for the diversion, *see D & S Sales*, 71 FR at 37610–12, or sells them being totally unaware that the products were being diverted.'' *T. Young*, 71 FR at 60572 (citing *Joy's Ideas*, 70 FR at 33198) (revoking registration notwithstanding that distributor was ''an unknowing and unintentional contributor to [the] methamphetamine problem''). Accordingly, Respondent's excessive sales of pseudoephedrine also provide reason alone to conclude that its continued registration would be inconsistent with the public interest.

In sum, four of the five factors conclusively demonstrate that Respondent's continued registration is inconsistent with the public interest. Furthermore, in accordance with 21 CFR 1316.67, I find that Respondent's owner engaged in egregious misconduct and is responsible for the diversion of massive amounts of pseudoephedrine into the illicit manufacture of methamphetamine. There, I conclude that the public interest requires that Respondent's registration be revoked effective immediately.

Order

Accordingly, pursuant to the authority vested in me by 21 U.S.C. 823(h) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I order that DEA Certificate of Registration, 003949RPY, issued to Rick's Picks, L.L.C., be, and it hereby is, revoked. I further order that the pending application of Rick's Picks, L.L.C., for renewal of its registration be, and it hereby is, denied. This order is effective immediately.

Dated: March 30, 2007.

Michele M. Leonhart,

Deputy Administrator.

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[8] To the extent *mens rea* is relevant, it is accounted for in factor three, which directs the consideration of a registrant's prior conviction record. *See* 21 U.S.C. 823(h)(3).

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 07–030]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Walter Kit, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street SW., JE000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This is an online application form for the Exploration Systems Mission Directorate—Space Grant Consortia Faculty Project. NASA must select candidates via a competitive process, and in order to do so must collect personal information in an application. The voluntary respondents will be full-time professors that are employed at a university in the United States or Puerto Rico.

II. Method of Collection

This information collected on the application is needed to competitively select faculty to participate in the 10 week Fellowship.

III. Data

Title: Exploration Systems Mission Directorate—Space Grant Consortia Faculty Project.

OMB Number: 2700–XXXX.

Type of review: New Collection.

Affected Public: Individuals or households.

Number of Respondents: 156.

Responses Per Respondent: 0.5 hour.

Annual Responses: 156.

Annual Burden Hours: 80.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gary Cox,

Deputy Chief Information Officer (Acting).

[FR Doc. E7–6772 Filed 4–10–07; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 050–00315, 050–00316; License Nos. DPR–58 & DPR–74 EA–06–295]

In the Matter of Indiana Michigan Power Company D.C. Cook Nuclear Power Plant; Confirmatory Order Modifying License (Effective Immediately)

I

Indiana Michigan Power Company (I&M or Licensee) is the holder of Facility Operating License Nos. DPR–58 and DPR–74 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on October 25, 1974 and December 23, 1977, respectively. The licenses authorize the operation of the D.C. Cook nuclear power plant units 1 & 2 in