Order

Accordingly, pursuant to the authority vested in me by 21 U.S.C. 823(f) and 28 CFR 0.100(b) and 0.104(b), I hereby order that Respondent's application for a DEA Certificate of Registration be, and it hereby is, denied. This order is effective July 21, 2006.

Dated: June 12, 2006.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E6–9706 Filed 6–20–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

McBride Marketing; Revocation of Registration

On October 13, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause proposing to revoke McBride Marketing's (Respondent) DEA Certificate of Registration, 002748MMY, as a distributor of List I chemicals and to deny any pending applications for renewal. As grounds for the action, the Show Cause Order alleged that Respondent's continued registration would be inconsistent with the public interest. See 21 U.S.C. 824(a)(4). Specifically, the Show Cause Order alleged, *inter alia*, that Respondent did not have adequate security to protect List I chemical products from diversion, that Respondent did not maintain adequate sales records in accordance with 21 CFR 1310.06, that Respondent had product shortages, and that Respondent had been acquiring and distributing pseudoephedrine products even though it was not registered to do so.

The Show Cause Order was sent by certified mail, return receipt requested, to Respondent's registered location and receipt was acknowledged on October 20, 2004. Neither Respondent, its owner, nor anyone else purporting to represent it has responded. Because (1) more than thirty days have passed since the receipt of the Show Cause Order, and (2) no request for a hearing has been received, I conclude that Respondent has waived its right to a hearing. See 21 CFR 1309.53(c). I therefore enter this final order without a hearing based on relevant material in the investigative file and make the following findings.

Findings

Ephedrine and pseudoephedrine are List I chemicals that while having therapeutic uses, are easily extracted from lawful products and used in the illicit manufacture of methamphetamine, a schedule II controlled substance. See 21 U.S.C. 802(34). As noted in numerous prior DEA orders, ''methamphetamine is an extremely potent central nervous system stimulant.'' A–1 Distribution Wholesale, 70 FR 28573 (2005). Methamphetamine abuse has destroyed lives and families, ravaged communities, and created serious environmental harms.

Methamphetamine abuse is an especially serious problem in Tennessee, the State in which Respondent's business is located. At the time of the issuance of the Show Cause Order, Tennessee led the Southeast in clandestine lab seizures, accounting for approximately 59% of these seizures during the second quarter of 2004. Moreover, in enacting the Meth-Free Tennessee Act of 2005, the Tennessee legislature found that as a result of these seizures, ''more than 700 children are entering state custody each year.'' 2005 Tennessee Laws Pub. Ch. 18 (Preamble).

Respondent is an unincorporated firmed owned by Mr. Bobby McBride. The firm, which is located at the McBrides' home in Parsons, Tennessee, has held a DEA registration to distribute ephedrine products since 1998. Respondent has approximately 58 convenience store and gas stations customers which purchase listed chemical products. Although Respondent also sells novelty items and toys, listed chemicals account for 30% of its business.

On February 26, 2004, two DEA Diversion Investigators (DIs) visited Respondent to conduct a regulatory investigation. They met with Nancy McBride, the owner's wife and Respondent's bookkeeper, presented her with their credentials and a notice of inspection, and obtained Respondent's consent to the inspection.

During the inspection, the DIs determined that Respondent stored listed chemical products in two mini-vans. While the vans were kept locked at all times, the vehicles did not have alarm systems.

The DIs also conducted an inventory and audit of Respondent's ephedrine products. In reviewing the records, the DIs determined that while Respondent's sales records included the purchaser's name, product description and quantity, the records did not contain the brand name of the products, price, or the customer's address. Therefore, in conducting the audit, the DIs were required to group products together based on package size. Moreover, while Respondent's owner claimed that he conducted a physical inventory each January, the record for January 2003 could not be found. The DIs thus used the record for the January 2004 inventory as the beginning inventory and conducted an accountability audit covering the period of January 1, 2004, through February 26, 2004.

The DI's audit found shortages in both the sixty-count bottles and six-count package sizes. Notwithstanding the relatively short period of the audit, 70 sixty-count bottles and 380 six-count packages were unaccounted for. The DIs also found in Respondent's inventory several pseudoephedrine products, including four boxes of Tylenol Allergy Sinus (with each box containing 50 sealed packets of one caplet), three boxes of Aleve Cold and Sinus (with each box containing 50 sealed packets of two gel caps), and one box of Vick's Nyquil Liquicaps (with the box containing 25 packets of two caplets).

Respondent, however, was not registered to distribute pseudoephedrine products. The DIs confirmed that Respondent had been selling pseudoephedrine products based on their review of sales records and interviews they conducted during customer verification visits.

Discussion

21 U.S.C. 824(a) provides that a registration to distribute List I chemical may be suspended or revoked ''upon a finding that the registrant * * * has committed such acts as would render [its] registration under section 823 of this title inconsistent with the public interest as determined under [that] section.'' In making the public interest determination, the Controlled Substances Act requires the consideration of 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 [registrant] with applicable Federal, State, and local law;

(3) Any prior conviction record of the [registrant] 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. 823(h).

''[T]hese factors are considered in the disjunctive.'' Joy's Ideas, 70 FR 33195, 33197 (2005). I ''may rely on any one or 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 a registration be denied.'' Id. See also Energy Outlet, 64 FR 14,269 (1999). In this case, I have concluded that factors one, two and five are dispositive and support the revocation of Respondent's registration.

Factor One—Maintenance of Effective Controls

I conclude that Respondent does not maintain effective controls against diversion. Respondent's storage of its List I chemical products in two mini-vans is clearly inadequate to protect against diversion. DEA's regulations clearly contemplate that List 1 chemicals be stored in a secure premises and not in motor vehicles unless in transit. See 21 CFR 1309.71(b) (directing DEA to consider ''[t]he location of the premises,'' and ''[t]he type of building construction comprising the facility and the general characteristics of the building or buildings'').

While the DIs were correct to note that the vehicles did not have alarms, even if Respondent's vehicles had alarms, they would not comply with the regulations. A thief can steal a vehicle in far less time than it takes to break into a properly secured and alarmed premises. Moreover, a thief stealing a van holding listed chemicals does not have to load the goods into the getaway vehicle. Storage of listed chemicals in a van plainly creates an unacceptable risk of diversion.

The shortages that were found during the audit further support the conclusion that Respondent does not maintain effective controls against diversion. The shortages uncovered in the audit were substantial given that the audit only covered a period of two months. I need not find that diversion was the cause of the shortages to conclude that Respondent does not maintain effective controls against diversion.

Furthermore, Respondent's sales records did not contain the addresses of its purchasers. Such information is essential for DEA and local authorities to effectively investigate whether purchasers are conducting a legitimate business or whether diversion is occurring. I thus conclude that factor one weighs heavily against Respondent's continued registration.

Factor 2—Compliance With Applicable Law

As stated above, Respondent's use of mini-vans to store List I chemicals does not comply with the physical security regulations. Moreover, Respondent failed to properly maintain sales records because its invoices did not contain product names and the addresses of the purchasers. See 21 CFR 1310.03 and 1310.06. Finally, Respondent engaged in the distribution of pseudoephedrine notwithstanding that its registration did not give it authority to distribute the chemical. See 21 CFR 1309.21(a) (requiring registration ''specific to the List I chemicals to be handled''). I thus conclude that this factor weighs against Respondent's continued registration.

Factor 3—The Registrant's Prior Conviction Record

There is no evidence in the investigative file establishing that Respondent has been convicted of a drug-related criminal offense. I thus find that this factor weighs in favor of continued registration. I conclude, however, that this factor is entitled to little weight as it is reasonable to expect that DEA registrants not have a drug-related criminal record.

Factor 4—The Registrant's Past Experience in Distributing List I Chemicals

The record indicates that Respondent has held a registration to distribute List I chemicals since 1998. But in light of the findings discussed above, it appears that Respondent has been improperly storing and distributing List I chemicals in violation of DEA's regulations for a substantial period of time. I thus decline to give Respondent's experience any weight in this determination.

Factor 5—Such Other Factors As Are Relevant to and Consistent With the Public Health and Safety

According to the investigative file, Respondent distributes List 1 chemicals solely to convenience stores and gas stations in Western Tennessee, a State which at the time these proceedings were initiated had a severe problem with methamphetamine abuse. As noted above, Tennessee recently enacted the Meth-Free Tennessee Act of 2005. See also Joy's Ideas, 70 FR at 33199. One of the Act's provisions requires that ''any product that contains any immediate methamphetamine precursor may be dispensed only by a licensed pharmacy.'' Tenn. St. § 39–17–431(a). While the Act exempts from this requirement those products containing methamphetamine precursors ''not in a form that can be used in the manufacture of methamphetamine,'' id. § 39–17–431(b)(1), none of the ephedrine products which Respondent distributed under his DEA registration are exempt. See id. § 39–17–431(b)(3) (exempting gel capsules and liquid preparations).

Respondent, however, does not have any licensed pharmacies as customers, and therefore, Respondent would violate state law were it to distribute ephedrine products to its existing customers. In prior orders, I have noted the important role of the States in combating the illicit manufacture of methamphetamine. See, e.g., Joy's Ideas, 70 FR at 33198 (discussing Oklahoma and Tennessee legislation). Where, as here, state efforts are fully consistent with federal policy, it is appropriate to give them due weight in determining whether continuing a registration would be consistent with public health and safety.[1] It would be manifestly inconsistent with public health and safety to continue Respondent's registration in light of the provisions of Tennessee law. See id. at 33199. I therefore conclude that factor five weighs in favor of revocation. Having considered all of the statutory factors, I conclude that the continuance of Respondent's registration would be inconsistent with the public interest.

Order

Accordingly, pursuant to the authority vested in me by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, I hereby order that DEA Certificate of Registration, 002748MMY, issued to McBride Marketing, 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 July 21, 2006.

Dated: June 12, 2006.

Michele M. Leonhart,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: 30-day notice of information collection under review: National Crime Victimization Survey (NCVS).

The U.S. Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information

[1] I do not consider the relationship of Tennessee law under factor two because at the time of the investigation, the statute had not been enacted. Moreover, there is no evidence in the investigative file establishing that Respondent subsequently violated state law.