Dated: January 28, 1997.
James S. Milford,
Acting Deputy Administrator.
[FR Doc. 97–3050 Filed 2–6–97; 8:45 am]
BILLING CODE 4410–09–M

Durg Enforcement Administration

David William Nyman, D.O.; Denial of Application

On April 16, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to David William Nyman, D.O., Colorado Springs, Colorado, notifying him of an opportunity to show cause as to why DEA should not deny his application, dated January 20, 1995, for a DEA Certificate of Registration pursuant to 21 U.S.C. 823(f), as being inconsistent with the public interest. The order also notified Dr. Nyman that, should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The DEA mailed the show cause order to Dr. Nyman be certified mail, and a signed return receipt dated April 27, 1996, was received by the DEA. However, no request for a hearing or any other reply was received the DEA from Dr. Nyman or anyone purporting to represent him in this matter. Therefore, the Acting Deputy Administrator, finding that (1) thirty days have passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Nyman is deemed to have waived his hearing right. After considering relevant material from the investigative file in this matter, the Acting Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.54(e) and 1301.57.

The Acting Deputy Administrator finds that on March 23, 1994, the Colorado State Board of Medical Examiners (Board) issued an order summarily suspending Dr. Nyman's license to practice medicine. This action was based upon the Board's findings that Dr. Nyman first came to the attention of the Colorado Physician Health Program (CPHP) in July 1986 after he collapsed and an emergency toxicology report revealed Darvon and codeine. He subsequently received treatment with CPHP for opiate abuse. Dr. Nyman relapsed into substance abuse and was hospitalized for treatment from January 5 to 23, 1994. After his discharge, he participated in an intensive outpatient treatment program. However, on February 22, 1994, CPHP was advised that Dr. Nyman had relapsed into substance abuse again. It was discovered that he was abusing the synthetic narcotic Buprenex. Dr. Nyman underwent a five-day inpatient detoxification program and then resumed intensive outpatient treatment. On March 16, 1994, CPHP learned that Dr. Nyman had repeatedly called a pharmacy during the week of March 7, 1994, in an attempt to obtain a personal order for Valium and Buprenex.

The Acting Deputy Administrator finds that as a result of the summary suspension of his license to practice medicine, Dr. Nyman surrendered his previous DEA Certificate of Registration, AN3166635.

Subsequently, on November 9, 1995, the Board approved a Stipulation and Final Agency Order (Order) wherein, the suspension of Dr. Nyman's medical license was lifted. However, pursuant to the Order, his license shall remain suspended indefinitely until he provides evidence indicating that he has been accepted into a residency program and that his participation in the residency program would be subject to terms set forth in the Order.

The Acting Deputy Administrator finds that there is no evidence in the record that Dr. Nyman has provided the Board with evidence of his acceptance into such a residency program, and therefore concludes that Dr. Nyman's medical license remains suspended. Dr. Nyman has not presented any evidence to the contrary. Thus, the Acting Deputy Administrator concludes that Dr. Nyman is not currently licensed to practice medicine in the State of Colorado and consequently he is not currently authorized to handle controlled substances in the state.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21) and 823(f). This prerequisite has been consistently upheld. See Earl G. Rozeboom, M.D., 61 FR 60,730 (1996); Charles L. Novosad, Jr., M.D., 60 FR 47,182 (1995); Dominick A. Ricci, M.D., 58 FR 51,104 (1993). Here, Dr. Nyman is not currently licensed to practice medicine, and therefore not authorized to handle controlled substances, in the State of Colorado. Hence, Dr. Nyman is not entitled to a DEA registration. Because, Dr. Nyman is not entitled to a DEA registration due to his lack of state authorization to handle controlled substances, the Acting Deputy Administrator concludes that it is unnecessary to address whether Dr. Nyman's registration would be inconsistent with the public interest.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by David William Nyman, D.O., be, and it hereby is, denied. This order is effective March 10, 1997.

Dated: January 30, 1997.
James S. Milford,
Acting Deputy Administrator.
[FR Doc. 97–3052 Filed 2–6–97; 8:45 am]
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Drug Enforcement Administration

[DEA Number 155N]

Reports of Certain Distributions by Postal Service or Private or Commercial Carriers to Nonregulated Persons

AGENCY: Drug Enforcement Administration (DEA), Justice.
ACTION: Notice; guidance.

SUMMARY: This notice provides temporary guidance to persons who distribute ephedrine, pseudoephedrine, and phenylpropanolamine, including drug products containing those chemicals, to nonregulated persons by either the Postal Service or private or commercial carriers. The comprehensive Methamphetamine Control Act of 1996 requires that, as of October 3, 1996, any person who engages in the above distributions must make a monthly report of each such transaction to the Attorney General in such a manner as the Attorney General shall establish by regulation. This notice provides temporary guidance that will allow affected persons to comply with the new reporting requirements pending promulgation of the appropriate regulations.

FOR FURTHER INFORMATION CONTACT: William Wolf, Jr., Chief, Chemical Operations Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7204.

SUPPLEMENTARY INFORMATION: On October 3, 1996, the Comprehensive Methamphetamine Control Act of 1996 (MCA) was signed into law. Section 402 of the MCA requires that ''(A) Each regulated person who engages in a transaction with a nonregulated person which—(i) involves ephedrine, pseudoephedrine, or

phenylpropanolamine (including drug products containing these chemicals); and (ii) uses or attempts to use the Postal Service or any private or commercial carrier shall, on a monthly basis, submit a report of each such transaction conducted during the previous month to the Attorney General in such form, containing such data, and at such times as the Attorney General shall establish by regulation.'' Section 402 further requires that such reports shall include the name of the purchaser, the quantity and form of the chemical purchased, and the address to which the chemical was sent. The reporting requirement became effective on October 3, 1996, and applies to all transactions after that date.

While the term nonregulated person is not specifically defined, the term regulated person is defined as ''* * * a person who manufactures, distributes, imports, or exports a listed chemical, a tableting machine, or an encapsulating machine or who acts as a broker or trader for an international transaction involving a listed chemical, a tableting machine, or an encapsulating machine.'' See 21 U.S.C. 802(38). Any reference to a listed chemical in the statute includes a drug product containing any listed chemical, whether or not that drug product is exempt from any requirement under the law. A nonregulated person, therefore, is a person *who does not* manufacture, distribute, import, or export a product containing a listed chemical, or a tableting or encapsulating machine or who does not act as a broker or trader for an international transaction involving a product that contains a listed chemical or for a tableting or encapsulating machine.

Pending proposal and promulgation of final regulations establishing the specific procedures to be followed in making the reports, persons engaged in the distribution of ephedrine, pseudoephedrine, and phenylpropanolamine (including drug products containing those chemicals) to nonregulated persons by mail or private or commercial carrier are requested to satisfy the reporting requirement by submitting the reports by no later than the 15th day of the succeeding month to the Chemical Operations Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Attn: Section 402 Reports.

As established by the MCA, each report must contain the name of the purchaser, the quantity and form of the ephedrine, pseudoephedrine, or phenylpropanolamine purchased, and the address to which the chemical was sent. While not required at this time, the date of each transaction, the trade name and the lot number of the product distributed (where applicable) are requested.

As noted earlier, the reporting requirement applies only to distributions of ephedrine, pseudoephedrine, and phenylpropanolamine via the postal service or private or commercial carrier to *nonregulated* persons. A distributor does not have to report distributions to regulated persons. In this regard, it is critical that distributors take the appropriate steps to ascertain whether their customers are regulated or nonregulated persons. The failure of a distributor to report a transaction based on a customer's mere representation that they are a regulated person, without further inquiry to confirm that status, may be grounds for administrative, civil, or criminal action. Therefore, the distributor should take appropriate steps to confirm the customer's status as a regulated person. Steps may include verification of the customer's DEA registration status or, if they are not a registrant, inquiry as to whether they are in the business of redistributing the products ordered.

The above guidelines are intended to provide affected persons with a temporary means to ensure compliance with the reporting requirement set out in section 402 of the MCA, pending promulgation of final regulations, through notice and comment, regarding the reporting requirement. DEA will publish a notice of proposed rulemaking in the near future detailing the proposed amendments to the regulations in Title 21, Code of Federal Regulations, part 1310, to establish the specific reporting requirements to be followed.

Any questions regarding the reporting requirement set out in section 402 of the MCA should be directed to the Chemical Operations Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, telephone (202) 307–7204.

DEA is preparing the appropriate documentation regarding the new reporting requirement established by the MCA for submission to the Office of Management and Budget for review, pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C., Chapter 35.

Dated: January 30, 1997.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 97–3085 Filed 2–6–97; 8:45 am]

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DEPARTMENT OF LABOR

Office of the Secretary; Submission for OMB Review; Comment Request

February 4, 1997.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5096 ext. 143). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the Federal Register.

The OMB 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 submission of responses.

Agency: Mine Safety and Health Administration.

Title: Qualification and Certification Program.

OMB Number: 1219–0069, MSHA Form 50004– and 5000–7.

Frequency: On occasion.

Affected Public: Business or other for-profit.