

prepaid, registered return receipt to Mr. Nabil Maswadeh, Transtar Distributors, Inc., 6130 Edgewater Drive, Unit D, Orlando, Florida 32810.

Karen C. Grant.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Yemen Wholesale Tobacco and Candy Supply, Inc.; Revocation of Registration

On January 9, 2001, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) to Yemen Wholesale Tobacco and Candy Supply, Inc. (Yemen), located in Yonkers, New York, notifying it of a preliminary finding that, pursuant to evidence set forth therein, it was responsible for the diversion of large quantities of List I chemicals into other than legitimate channels. Based on these preliminary findings, and pursuant to 21 U.S.C. 824(d) and 28 CFR §§ 0.100 and 0.104, the OTSC suspended Yemen's DEA Certificate of Registration, effective immediately, with such suspension to remain in effect until a final determination is reached in these proceedings. The OTSC informed Yemen of an opportunity to request a hearing to show cause as to why the DEA should not revoke its DEA Certificate of Registration, 003952YAY, and deny any pending applications for renewal or modification of such registration, for reason that such registration is inconsistent with the public interest, as determined by 21 U.S.C. 823(h). The OTSC also notified Yemen that, should no request for hearing be filed within 30 days, its right to a hearing would be considered waived.

On January 9, 2001, a copy of the OTSC was served upon Hasham Alkaifi, Vice President of Yemen. No request for a hearing or any other response was received by DEA from Yemen or Alkaifi nor anyone purporting to represent the registrant in this matter. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes Yemen is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 (d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals 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 is a List I chemical that is commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

A "regulated person" is a person who manufactures, distributes, imports, or exports *inter alia* a listed chemical. 21 U.S.C. 802(38). A "regulated transaction" is *inter alia* a distribution, receipt, sale, importation, or exportation of a threshold amount of a listed chemical. 21 U.S.C. 802(39). The Administrator finds all parties mentioned herein to be regulated, and all transactions mentioned herein to be regulated transactions, unless otherwise noted.

Yemen became registered with the DEA January 25, 1999, as a distributor of List I chemicals. During the pre-registration inspection of Yemen's premises, Yemen was asked to provide a list of proposed suppliers of List I chemical products, and a list of proposed customers for its List I chemical products. DEA investigators subsequently attempted to contact each of the proposed suppliers and customers. Investigation showed that Yemen had made no arrangements with any of the suppliers or customers.

On or about August 18, 1999, 802 bottles of 60 count, 60 mg. pseudoephedrine tablets were sized en route to an individual in Oakland, California. The address was not a DEA registered location authorized to handle List I chemicals. The investigation showed the bottles originated from Yemen, and were sent to Oakland from a business called "One Hour Photo" in New York, also not authorized by DEA to buy or sell List I chemicals.

On August 30, 1999, DEA investigators seized 1,056 bottles of 120 count, 60 mg. pseudoephedrine tablets from a public storage facility in San Pablo, California. The storage facility was not a DEA registered location authorized to handle List I chemicals. An individual was arrested at the time of this seizure, and an additional 3,408 bottles of the same product were seized from his vehicle. The DEA investigation revealed all 4,464 bottles originated from Yemen.

On October 5, 1999, DEA investigators interviewed the arrested individual referenced in the preceding paragraph.

That individual stated that Mr. Alkaifi, President of Yemen, was one of a number of persons who diverted pseudoephedrine from the East Coast to the West Coast. He further stated that those who wanted to purchase pseudoephedrine for the illicit manufacture of methamphetamine would purchase a money order at his market, made payable to Alkaifi. The money order would be sent to Alkaifi, who would deliver the pseudoephedrine to California.

On or before December 8, 1999, Yemen received a Warning Letter from DEA. This letter informed Yemen that its List I chemical product, labeled "Action Release" pseudoephedrine, had been discovered in various illicit settings consistent with the illicit manufacture of the controlled substance methamphetamine. The letter specified two locations; one at San Pablo, California in August, 1999, the other at Oakland, California, in August, 1999.

The DEA investigation also revealed Yemen purchased in excess of 3,594,000 dosage units of 60 mg. pseudoephedrine tablets subsequent to the receipt of this Warning Letter, between February 4, 2000, and July 25, 2000.

On August 7, 2000, a criminal search warrant was served upon Yemen. The search revealed Yemen kept no records of its purchases or sales of pseudoephedrine. The DEA investigation showed, however, that Yemen purchased approximately 26 million dosage units of pseudoephedrine from various suppliers between November 22, 1999, until July 25, 2000.

Also during the August 7, 2000, execution of the search warrant, DEA investigators discovered Yemen had stored approximately 1.6 million dosage units of 60 mg. pseudoephedrine in an off-site storage unit at an unregistered address. This pseudoephedrine was seized, and Hasham Alkaifi, Vice President of Yemen and nephew of Alkaifi, was interviewed. He stated to investigators that Alkaifi was in Yemen (the country), but was continuing to order pseudoephedrine on behalf of Yemen Wholesale. Alkaifi had rented the storage unit and stored the pseudoephedrine there at Alkaifi's director. Alkaifi was not aware of any customers for the 1.6 million dosage units at the storage facility.

Therefore, pursuant to 21 U.S.C. 824(d), the Administrator of the DEA issued an immediate suspension of Yemen's DEA Certificate of Registration. While the above-cited evidence provides ample grounds for an immediate suspension pursuant to § 824(d), these grounds also provide the

basis for the revocation of Yemen's DEA Certificate of Registration.

Pursuant to 21 U.S.C. 824(a), the Administrator may revoke a registration to distribute List I chemicals upon a finding that the registrant has committed such acts as would render his registration under section 823 inconsistent with the public interest as determined under this section. Pursuant to 21 U.S.C. 823(h), the following factors are 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 in the manufacture and distribution of chemicals; and
- (5) Such other factors as are relevant to and consistent with the public health and safety.

Like 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 Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate determining whether a registration should be revoked or an application for registration be denied. *See, e.g. Energy Outlet*, 64 FR 14,269 (1999). *See also Henry J. Schwartz, Jr., M.D.*, 54 FR 16,422 (1989).

Regarding the first factor, maintenance of effective controls against diversion, the Administrator finds substantial evidence in the investigative file that Yemen and Alkafa actively participated in the illegal diversion of pseudoephedrine knowing it would be used to manufacture methamphetamine.

Regarding the second factor, compliance with applicable Federal, State, and local law, the investigative file that Yemen and Alkafa, and Alkaifi significantly violated applicable law in the following primary instances: first, by trafficking List I chemicals knowing that they would be diverted to the illicit manufacture of methamphetamine; second, by failing to keep and maintain required records; and third, by failing to report suspicious transactions. The confession of the individual arrested in California implicated Yemen and Alkafa in the active diversion of pseudoephedrine to the illicit manufacture of methamphetamine; the DEA search of August 7, 2000, revealed Yemen failed to keep or maintain any

records of its pseudoephedrine sales and purchases whatsoever; and the DEA investigation showed Yemen failed to report various suspicious transactions (money orders from California for List I chemical products; sales to individuals not registered with DEA as authorized to handle List I chemicals; failure to report transactions involving extraordinary quantities of a listed chemical).

The Administrator thus finds substantial evidence showing Yemen and Alkafa violated 21 U.S.C. 841(d)(1) (possession of a listed chemical with intent to manufacture a controlled substance); 841(d)(2) (possession/distribution of a listed chemical knowing or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance); 841(g)(1) (knowing distribution of a listed chemical in violation of the Controlled Substances Act); 841(g)(2) (possession of a listed chemical with knowledge that recordkeeping or reporting requirements not adhered to); 842(a)(5) and (10) (failure to keep required records); and 830(b)(1)(a) (failure to report any regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance the regulated person believes may indicate that the listed chemical will be used in violation of this subchapter). (Note: subparagraphs (d) and (g) of 841 have been redesignated as (c) and (f)).

Regarding the third factor, any prior conviction record under Federal or State laws relating to controlled substances or chemicals, there is no evidence in the investigative file that Yemen, Alkafa, or Alkaifi have any record of convictions under Federal or State laws relating to controlled substances or chemicals.

Regarding the fourth factor, past experience in the manufacture and distribution of chemicals, the Administrator finds substantial evidence in the investigative file that Yemen and Alkafa actively participated in the illegal trafficking of pseudoephedrine, knowing that it was being diverted to the manufacture of methamphetamine, and completely ignored the responsibilities of a DEA registrant. Yemen was shipping pseudoephedrine individuals in California not registered with DEA. Yemen purchased almost 26 million dosage units of pseudoephedrine during an eight month period, yet failed to keep required records concerning these purchases and sales. At the time of the service of the criminal search warrant, Yemen continued to stockpile 1.6 million dosage units of

pseudoephedrine in an unregistered off-site storage unit facility, for no stated legitimate purpose. The Administrator concludes that there is substantial evidence in the investigative file that this pseudoephedrine was also intended to be diverted to the illicit manufacture of methamphetamine.

Regarding the fifth factor, such other factors relevant to and consistent with the public safety, the Administrator finds substantial evidence that Yemen significantly violated applicable law by illegally trafficking millions of dosage units of pseudoephedrine knowing it was being diverted to the manufacture of methamphetamine and further by failing to keep and maintain required records and failure to report suspicious listed chemical transactions.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration 003952YAY, previously issued to Yemen Wholesale Tobacco and Candy Supply, Inc., be, and it hereby is, revoked; and any pending applications for renewal or modification of said registration be, and hereby are, denied. This order is effective April 4, 2002.

Dated: February 22, 2002.

Asa Hutchinson,
Administrator.

Certificate of Service

This is to certify that the undersigned, on February 25, 2002, placed a copy of the Final Order referenced in the enclosed letter in the interoffice mail addressed to Brian Bayly, Esq., Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537; and caused a copy to be mailed, postage prepaid, registered return receipt to Mr. Nagi Alkafa, Yemen Wholesale Tobacco & Candy Supplies, Inc., 350 South Broadway, Yonkers, New York 10705

Karen C. Grant.

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DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: Notice of information collection under review: new collection; Violent Criminal Apprehension Program (VICAP) Sexual Assault Crime Analysis Report.