determined under that 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 in 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 Denver Wholesale and Zaghmot 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 in this matter reveals that on July 27, 2000, a Federal Grand Jury in the District indicated Zaghmot and other individuals with violations of 21 U.S.C. 841(d)(2) (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) and 846 (attempt or conspiracy to violate the Controlled Substances Act); as well as various money-laundering offenses. Zaghmot was arrested the next day. Search warrants were executed upon Denver Wholesale, a storage facility used by Zaghmot, and Zaghmot's residence. Totals of approximately 2,500 pounds of pseudoephedrine and $668,000 in United States currency were seized from Denver Wholesale, Zaghmot, and his co-conspirators.

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 Denver Wholesale or Zaghmot has 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 Zaghmot actively participated in the illegal trafficking of pseudoephedrine, knowing that it was being diverted to the manufacture of methamphetamine. Denver Wholesale's customer list did not contain any customers from California. Yet DEA investigators observed Zaghmot and others loading pseudoephedrine into a rental van in Denver, Colorado, concealing the chemicals with thrift store furniture, and driving the van to a California self-storage facility. A search of the rental van as it was headed back to Colorado revealed $233,960 in United States currency.

In addition, the investigative file contains information obtained from Federal Express showing Denver Wholesale shipping large quantities of pseudoephedrine to California. Zaghmot used fictitious business names and addresses in making these shipments. A number of these shipments were traced directly to clandestine methamphetamine laboratories.

Thus the Administrator finds Denver Wholesale and Zaghmot violated 21 U.S.C. 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); 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)). Therefore, the Administrator finds Denver Wholesale and Zaghmot significantly violated applicable federal law.

Regarding the fifth factor, such other factors relevant to and consistent with the public safety, the Administrator finds substantial evidence that Denver Wholesale significantly violated applicable law by illegally trafficking thousands of pounds 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. Zaghmot was indicated and arrested for various violations pertaining to controlled substances and listed chemicals.

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 003378DHY, previously issued to Denver Wholesale, 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 Charles Trant, 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. Hassan Zaghmot, Denver Wholesale, 8200 East Pacific Place, Suite 103, Denver, Colorado 80231.

Karen C. Grant.

[FR Doc. 02–5221 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Daniel E. Epps, Jr., Denial of Application

On or about March 6, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Daniel E. Epps, Jr. (Epps), located in Matthews, North Carolina, notifying him of an opportunity to show cause as to why the DEA should not deny his applications, dated May 2, 2000, and July 26, 2000, for a DEA Certificate of Registration as a distributor of the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified Mr. Epps that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was received March 12, 2001, as indicated by the signed postal return receipt. Since that time, no further response has been received from the applicant nor any person purporting to represent the applicant. 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 that Mr. Epps is deemed to have waived his 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, ephedrine, and phenylpropanolamine are List I chemicals that are 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.

The Administrator finds that on or about May 2, 2000, an application was submitted by and on behalf of Daniel E. Epps, Jr., for DEA registration as a distributor of the List I chemical ephedrine. On July 26, 2000, Mr. Epps requested that his application be amended to include the List I chemicals pseudoephedrine and phenylpropanolamine.

During the July 29, 2000, pre-registration inspection, Mr. Epps informed a DEA investigator that he proposed to sell various products from his home, including List I chemical products. While Mr. Epps alleged he had 29 years of experience in the grocery/retail business, he admitted he had no experience in the handling of listed chemical products. Mr. Epps stated he planned to sell List I chemical products to convenience stores and gas stations. He also stated that he wished to distribute certain List I chemical products in 60 count bottles.

The DEA investigation showed that Mr. Epps' residence, where he proposes to conduct business, is not zoned for business purposes in Mecklenburg County, North Carolina. Additionally, as of the date of the July 26, 2000, inspection, Mr. Epps had not applied with the North Carolina State authorities for a Change of Use Permit for the operation of a business from his residence.

Pursuant to 21 U.S.C. 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires the following factors be considered:

(1) Maintenance by the applicant 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.

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 Administ6rator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in 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 factor one, the maintenance of effective controls against the diversion of listed chemicals, the DEA pre-registration inspection documented inadequate security at the proposed business location. Mr. Epps proposes to store List I chemical products in an unlocked room in the basement of his residence. The residence does not have any sort of alarm system, and the DEA investigation shows that the residence goes unoccupied for long periods of time. Moreover, Mr. Epps admittedly has no experience in handling List I chemicals.

Regarding factor two, the applicant's compliance with applicable law, the Administrator notes that the DEA investigation showed North Carolina State or local law requires zoning approval and a Change of Use Permit cooperate a business from this residence. Mr. Epps did not possess such a permit, and challenged DEA investigators when this lack was noted. There is no evidence in the investigative file that Mr. Epps ever applied for or received the required Change of Use Permit.

Regarding factor three, there is no evidence that Mr. Epps has any record of convictions related to controlled substances or to chemicals controlled under Federal or State law.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the DEA investigation revealed that Mr. Epps has no previous experience in handling listed chemicals or distributing listed chemical products.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator finds that due to the applicant's lack of experience in handling listed chemicals, a lack of adequate security at the proposed business location, and his failure to obtain the required zoning approval to operate a business from his residence, the Administrator concludes it would be inconsistent with the public interest to grant this application.

Accordingly, the 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 Mr. Daniel E. Epps, Jr. be 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 Robert Walker, 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. Daniel E. Epps, Jr., 539 Walnut Point Drive, Matthews, North Carolina 28105.

Karen C. Grant.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled