feasible, that is packaged in unit dose packets or pouches; and

(ii) for liquids, sold in package sizes of not more than 3.0 grams of pseudoephedrine base or 3.0 grams of phenylpropanolamine base.

(46)(A) The term "retail distributor" means a grocery store, general merchandise store, drug store, or other entity or person whose activities as a distributor relating to pseudoephedrine or phenylpropanolamine products are limited almost exclusively to sales for personal use, both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales.

(B) For purposes of this paragraph, sale for personal use means the sale of below-threshold quantities in a single transaction to an individual for legitimate medical use.

(C) For purposes of this paragraph, entities are defined by reference to the Standard Industrial Classification (SIC) code, as follows:

(i) A grocery store is an entity within SIC code 5411.

(ii) A general merchandise store is an entity within SIC codes 5300 through 5399 and 5499.

(iii) A drug store is an entity within SIC code 5912.

(Pub.L. 91–513, Title II, § 102, Oct. 27, 1970, 84 Stat. 1242; Pub.L. 93–281, § 2, May 14, 1974, 88 Stat. 124; Pub.L. 95–633, Title I, § 102(b), Nov. 10, 1978, 92 Stat. 3772; Pub.L. 96–88, Title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub.L. 96–132, § 16(a), Nov. 30, 1979, 93 Stat. 1049; Pub.L. 98–473, Title II, § 507(a), (b), Oct. 12, 1984, 98 Stat. 2071; Pub.L. 98–509, Title III, § 301(a), Oct. 19, 1984, 98 Stat. 2364; Pub.L. 99–570, Title I, §§ 1003(b), 1203, 1870, Oct. 27, 1986, 100 Stat. 3207–6, 3207–13, 3207–56; Pub.L. 99–646, § 83, Nov. 10, 1986, 100 Stat. 3619; Pub.L. 100–690, Title VI, § 6054, Nov. 18, 1988, 102 Stat. 4316; Pub.L. 101–647, Title XIX, § 1902(b), Title XXIII, § 2301, Title XXXV, § 3599I, Nov. 29, 1990, 104 Stat. 4852, 4858, 4932; Pub.L. 103–200, §§ 2(a), 7 to 9(a), Dec. 17, 1993, 107 Stat. 2333, 2340; Pub.L. 103–322, Title IX, § 90105(d), Title XXXIII, § 330024(a), (b), (d)(1), Sept. 13, 1994, 108 Stat. 1988, 2150; Pub.L. 104–237, Title II, §§ 204(a), 209, Title IV, § 401(a), (b), Oct. 3, 1996, 110 Stat. 3102, 3104, 3106, 3107; Pub.L. 104–294, Title VI, §§ 604(b)(4), 607(j), Oct. 11, 1996, 110 Stat. 3506, 3512; Pub.L. 105–115, Title I, § 126(c)(3), Nov. 21, 1997, 111 Stat. 2328.)

HISTORICAL AND STATUTORY NOTES

References in Text

"This subchapter", referred to in text, was in the original "this title" which is Title II of Pub.L. 91–513, Oct. 27, 1970, 84 Stat. 1242, and is popularly known as the "Controlled Substances Act". For complete classification of Title II to the Code, see Short Title note set out under section 801 of this title and Tables.

"Subchapter II of this chapter", referred to in text, was in the original "title III", meaning Title III of Pub.L. 91–513, Oct. 27, 1970, 84 Stat. 1285. Part A of Title III comprises subchapter II of this chapter. For classification of Part B, consisting of sections 1101 to 1105 of Title III, see Tables.

Subtitle E of the Internal Revenue Code of 1986, referred to in par. (6), is classified to § 5001 et seq. of Title 26, Internal Revenue Code.

Schedule I or II, referred to in par. (32)(A), are set out in section 812(c) of this title.

The Federal Food, Drug, and Cosmetic Act, referred to in par. (39)(A)(iv), is Act June 25, 1938, c. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 [section 301 et seq.] of this title. For complete classification of this Act to the Code, see section 301 of this title and Tables.

Section 401(d) of the Comprehensive Methamphetamine Control Act of 1996, referred to in par. (39)(A)(iv), is section 401(d) of Pub.L. 104–237, Title IV, Oct. 3, 1996, 110 Stat. 3108, which is set out as a note under this section.

Codifications

Amendment by section 83 of Pub.L. 99–646 to par. (14) was not capable of execution in view of prior amendment to such par. by Pub.L. 99–570 making identical amendment.

Amendment by Pub.L. 98–509 has been executed to par. (29) of this section notwithstanding directory language of Pub.L. 98–509 that the amendment be executed to "section 102(28) of the Controlled Substances Act", since par. (28) was redesignated (29) by Pub.L. 98–473.

Sections 604(b)(4) and 607(j)(2) of Pub.L. 104–294, both of which directed that this section be amended by redesignating second par. (43) as par. (44), could not be executed to text because of prior, identical amendment by section 401(b)(3) of Pub.L. 104–237.

Effective and Applicability Provisions

1997 Acts. Amendments by Pub.L. 105–115, the Food and Drug Administration Modernization Act of 1997, effective 90 days after November 21, 1997, except as otherwise provided, see section 501 of Pub.L. 105–115, set out as a note under section 321 of this title.

1996 Acts. Amendment by section 604 of Pub.L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub.L. 104–294, set out as a note under section 13 of Title 18, Crimes and Criminal Procedure.

Section 401(g) of Pub.L. 104–237 provided that: "Notwithstanding any other provision of this Act [enacting section 872a of this title, amending this section and sections 814, 830, 841, 842, 843, 844, 853, 881, 959, and 960 of this title and section 1607 of Title 19, Customs Duties, and enacting provisions set out as notes under this section and sections 801, 872 and 971 of this title, section 994 of Title 28, Judiciary and Judicial Procedure, and section 290aa–4 of Title 42, The Public Health and Welfare], this section shall not apply to the sale of any pseudoephedrine or phenylpropanolamine product prior to 12 months after the date of enactment of this Act [Oct. 3, 1996], except that, on application of a manufacturer of a particular pseudoephedrine or phenylpropanolamine drug product, the Attorney General may, in her sole discretion, extend such effective date up to an additional six months. Notwithstanding any other provision of law, the decision of the Attorney General on such an application shall not be subject to judicial review."

1994 Acts. Section 330024(f) of Pub.L. 103–322 provided that: "The amendments made by this section [amending this section and sections 824, 960, and 971 of this title] shall take effect as of the date that is 120 days after the date of enactment of the Domestic Chemical Diversion Control Act of 1993 [Dec. 17, 1993]."

1993 Acts. Section 11 of Pub.L. 103–200 provided that: "This Act and the amendments made by this Act [enacting section 814 of this title, amending this section and sections 821, 822, 823, 824, 830, 843, 880, 957, 958, 960, and 971 of this title and enacting provisions set out as notes under this section and section 801 of this title] shall take effect on the date that is 120 days after the date of enactment of this Act [Dec. 17, 1993]."

1990 Acts. Section 1902(d) of Pub.L. 101–647 provided that: "This section and the amendment made by this section [enacting par. (41) of this section and section 812(c) Schedule III(e) and note provision set out under section 829 of this title] shall take effect 90 days after the date of enactment of this Act [Nov. 29, 1990']."

1988 Acts. Section 6061 of Pub.L. 100–690 provided that: "Except as otherwise provided in this subtitle, this subtitle [enacting section 972 of this title, amending sections 802, 830, 841, 842, 843, 872, 876, 881, 960, and 961 of this title] shall take effect 120 days after the enactment of this Act [Nov. 18, 1988]."

1978 Acts. Amendment by Pub.L. 95–633 effective on the date the Convention on Psychotropic Substances enters into force in the United States [July 15, 1980], see § 112 of Pub.L. 95–633, set out as a note under § 801a of this title.

1970 Acts. Section effective Oct. 27, 1970, see § 704(b) of Pub.L. 91–513, set out as a note under § 801 of this title.

Change of Name

"Secretary of Health and Human Services" was substituted for "Secretary of Health, Education, and Welfare" on authority of Pub.L. 96–88, Title V, § 509, Oct. 17, 1979, 93 Stat. 695, which is classified to § 3508 of Title 20, Education.

Regulation of Retail Sales of Certain Precursor Chemicals; Effect on Thresholds; Combination Ephedrine Products

Section 401(d) to (f) of Pub.L. 104–237 provided that:

"(d) **Regulation of retail sales.**—

"(1) **Pseudoephedrine.**—

"(A) **Limit.**—

"(i) **In general.**—Not sooner than the effective date of this section [see section 401(g) of Pub.L. 104–237 set out as an Effective Date of 1996 Amendments note under this section] and subject to the requirements of clause (ii), the Attorney General may establish by regulation a single-transaction limit of 24 grams of pseudoephedrine base for retail distributors. Notwithstanding any other provision of law, the single-transaction threshold quantity for pseudoephedrine-containing compounds may not be lowered beyond that established in this paragraph.

"(ii) **Conditions.**—In order to establish a single-transaction limit of 24 grams of pseudoephedrine base, the Attorney General shall establish, following notice, comment, and an informal hearing that since the date of enactment of this Act [Oct. 3, 1996] there are a significant number of instances where ordinary over-the-counter pseudoephedrine products as established in paragraph (45) of section 102 of the Controlled Substances Act (21 U.S.C. 802(45)), as added by this Act [par. (45) of this section], sold by retail distributors as established in paragraph (46) in section 102 of the Controlled Substances Act (21 U.S.C. 802(46)) [par. (46) of this section], are being widely used as a significant source of precursor chemicals for illegal manufacture of a controlled substance for distribution or sale.

"(B) **Violation.**—Any individual or business that violates the thresholds established in this paragraph shall, with respect to the first such violation, receive a warning letter from the Attorney General and, if a business, the business shall be required to conduct mandatory education of the sales employees of the firm with regard to the legal sales of pseudoephedrine. For a second violation occurring within 2 years of the first violation, the business or individual shall be subject to a civil penalty of not more than $5,000. For any subsequent violation occurring within 2 years of the previous violation, the business or individual shall be subject to a civil penalty not to exceed the amount of the previous civil penalty plus $5,000.

"(2) **Phenylpropanolamine.**—

"(A) **Limit.**—

"(i) **In general.**—Not sooner than the effective date of this section [see Effective Date of 1996 Amendments note set out under this section] and subject to the requirements of clause (ii), the Attorney General may establish by regulation a single-transaction limit of 24 grams of phenylpropanolamine base for retail distributors. Notwithstanding any other provision of law, the single-transaction threshold quantity for phenylpropanolamine-containing compounds may not be lowered beyond that established in this paragraph.

"(ii) **Conditions.**—In order to establish a single-transaction limit of 24 grams of phenylpropanolamine base, the Attorney General shall establish, following notice, comment, and an informal hearing, that since the date of enactment of this Act [Oct. 3, 1996] there are a significant number of instances where ordinary over-the-counter phenylpropanolamine products as established in paragraph (45) of section 102 of the Controlled Substances Act (21 U.S.C. 802(45)), as added by this Act [par. (45) of this section], sold by retail distributors as established in paragraph (46) in section 102 of the Controlled Substances Act (21 U.S.C. 802(46)) [par. (46) of this section], are being used as a significant source of precursor chemicals for illegal manufacture of a controlled substance in bulk.

"(B) **Violation.**—Any individual or business that violates the thresholds established in this paragraph shall, with respect to the first such violation, receive a warning letter from the Attorney General and, if a business, the business shall be required to conduct mandatory education of the sales employees of the firm with regard to the legal sales of pseudoephedrine. For a second violation occurring within 2 years of the first violation, the business or individual shall be subject to a civil penalty of not more than $5,000. For any subsequent violation occurring within 2 years of the previous violation, the business or individual shall be subject to a civil penalty

TAE H. CHON, Petitioner, vs. UNITED STATES OF AMERICA, Respondent.
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION
2012 U.S. Dist. LEXIS 115104
Criminal Case No. 2:01-CR-487 TS,Civil Case No. 2:09-CV-654 TS
August 14, 2012, Decided
August 14, 2012, Filed

Editorial Information: Subsequent History

Affirmed by, Certificate of appealability denied, Motion denied by United States v. Chon, 2013 U.S. App. LEXIS 4889 (10th Cir. Utah, Mar. 12, 2013)

Editorial Information: Prior History

United States v. Tae H. Chon, 434 Fed. Appx. 730, 2011 U.S. App. LEXIS 10768 (10th Cir. Utah, 2011)

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Judges: TED STEWART, United States District Judge.

Opinion

Opinion by: TED STEWART

Opinion

MEMORANDUM DECISION AND ORDER DENYING PETITIONER'S 60(d) MOTION

This matter is before the Court on Petitioner's 60(d) Motion. For the reasons discussed below, the Court will deny the Motion.

I. BACKGROUND

Petitioner was indicted on August 22, 2001, on three counts of distribution and possession of pseudoephedrine knowing, or having reasonable cause to believe, it would be used to manufacture methamphetamine in violation of 21 U.S.C. § 841(c)(2). Petitioner absconded from supervision in January 2003, and remained a fugitive until October 2006, when he turned himself in to **{2012 U.S. Dist. LEXIS 2}**authorities.

A jury trial was held in July of 2007. Petitioner was acquitted of two counts, but convicted of the third. On October 26, 2007, Petitioner was sentenced to 180 months imprisonment. Judgment was entered on October 29, 2007.

Repeal of provisions relating to regulation of retail sales of pseudoephedrine and phenylpropanolamine. Act Oct. 3, 1996, P. L. 104-237, Title IV, § 401(d)-(f), 110 Stat. 3108, which formerly appeared as a note to this section, were repealed by Act March 9, 2006, P. L. 109-177, Title VII, Subtitle A, § 712(b), 120 Stat. 264. Such note provided for regulation of retail sales of pseudoephedrine and phenylpropanolamine, effect on thresholds, and combination ephedrine products.