DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Monitoring Information Collections.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 60 days for public comment until August 29, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rebekah Dorr, Department of Justice Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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.

Overview of This Information Collection

(1) *Type of Information Collection:* Proposed collection; comments requested.

(2) *Title of the Form/Collection:* Monitoring Information Collections.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: COPS Office hiring grantees that are selected for in-depth monitoring of their grant implementation and equipment grantees that report using COPS funds to implement a criminal intelligence system will be required to respond. The Monitoring Information Collections include two types of information collections: the Monitoring Request for Documentation and the 28 CFR part 23 Monitoring Kit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 140 respondents annually will complete the collections: 40 respondents to the Monitoring Request for Documentation at 3 hours per respondent; 100 respondents to the 28 CFR part 23 Monitoring Kit at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 320 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: June 26, 2006.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E6–10279 Filed 6–29–06; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 03–39]

D & S Sales, Revocation of Registration; Introduction and Procedural History

On June 30, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause proposing to revoke Respondent D & S Sales' DEA Certification of Registration, 003884DSY, as a distributor of List I chemicals, and to deny any pending applications for renewal or modification of that registration under 21 U.S.C. 824(a) (4) and 823(h). The Show Cause Order alleged that the continuation of Respondent's registration would be inconsistent with the public interest as that term is defined in 21 U.S.C. 823(h). Specifically, the Show Cause Order alleged that Respondent's ''product mix and sales of combination ephedrine products are inconsistent with the known legitimate market and known end user demand for products of this type,'' that D & S's owner, Mr. Dean Call, knew ''that his ephedrine sales are not for legitimate uses,'' ALJ Exh. 1, at 6, and that the ephedrine products he distributed were being purchased for use in the illicit manufacture of methamphetamine.

Respondent requested a hearing. The matter was assigned to Administrative Law Judge Gail Randall, who conducted a hearing in Fort Wayne, Indiana, on June 15, 2004. Following the hearing, the Government filed Proposed Findings of Fact, Conclusions of Law and Argument, and Respondent filed its Proposed Findings of Fact and Conclusions of Law.

On February 11, 2005, the ALJ submitted her decision. The ALJ concluded that the Government had proved that the continuation of Respondent's registration would be inconsistent with the public interest. See ALJ at 35. The ALJ further recommended that Respondent's registration be revoked and that its pending application for renewal of its registration be denied. See *id.* at 36. Thereafter, the Government filed exceptions on the ground that the ALJ had erred in holding that the statistical evidence it introduced through its expert witness did not provide ''conclusive evidence of diversion or fault on the part of Respondent.'' Government's Exceptions to the Recommended Findings of Fact, Conclusions of Law, and Decision of the ALJ, at 2 (quoting ALJ Dec. at 33).

Having considered the record as a whole, I hereby issue this decision and final order adopting the ALJ's findings of fact and conclusions of law except as expressly rejected herein. I further grant the Government's exception and hold that the Government has established by a preponderance of the evidence that diversion occurred. For the reasons set forth below, I concur with the ALJ's

conclusion that Respondent's continued registration would be inconsistent with the public interest and concur with the ALJ's recommendation that Respondent's registration be revoked and that its pending application for renewal be denied.

Findings of Fact

Respondent D & S Sales, a sole proprietorship owned by Mr. Call, holds DEA Certificate of Registration, 003884DSY, which authorizes it to distribute the List 1 chemicals of ephedrine and pseudoephedrine. While Respondent's registration expired on June 30, 2003, its registration has remained effective during the course of these proceedings. Mr. Call has also submitted an application to renew Respondent's registration.

While ephedrine and pseudoephedrine have therapeutic uses, they are also precursor chemicals that are regulated by the Controlled Substances Act. See 21 U.S.C. 802(34). These chemicals are easily extracted from legal over-the-counter products and used to make methamphetamine. Methamphetamine is ''a powerful and addictive central nervous system stimulant,'' Tr. at 28, and is a schedule II controlled substance. 21 CFR 1308.12(d). The illegal manufacture and abuse of methamphetamine pose a grave threat to this country. Methamphetamine abuse has destroyed lives and families, ravaged communities, and created serious environmental harms. The State of Indiana, which is where Respondent engages in business, has experienced a dramatic increase in the number of illegal meth labs, with the number of seizures increasing from forty-three in 1998 to 1260 in 2003. Tr. 26.

In June 2002, Madeline Kuzma, a Diversion Investigator (DI) assigned to DEA's Indianapolis, Indiana District Office, initiated a periodic investigation of Respondent. DI Kuzma met with Mr. Call at his home, which also serves as Respondent's registered location. While interviewing Mr. Call, DI Kuzma determined that Respondent distributes List 1 chemical products, novelty items, sunglasses, lighters and gloves to convenience stores and gas stations in North-Central and North-Eastern Indiana. The List 1 chemical products included Two-Way Action, a product manufactured by Body Dynamics, Inc. (BDI), which contains 25 milligrams of ephedrine and 200 mg of guaifenesin per tablet in both 60 count bottles and 6 tablet packets. Respondent also sold ProActive Laboratories ephedrine multi-action tablets in both 60 count bottles and 6 tablet packets. DEA has issued multiple warning letters to both BDI and ProActive Labs advising them that their products have been found in illegal meth labs.

During the interview, DI Kuzma also learned that Mr. Call derived substantial profits from his business, while working only four full days and a few partial days per month. Most of D & S's profits were derived, however, from ephedrine products. Mr. Call told DI Kuzma that his business sold an average of 17 to 20 cases of ephedrine products per month, with each case containing 144 bottles of 60 tablets.

DI Kuzma then provided Mr. Call with a DEA ''red notice.'' The red notice advised of the illegal and illegitimate use of ephedrine and pseudoephedrine in the illicit manufacturing of methamphetamine and further informed Mr. Call of the potential civil and criminal penalties for illegal possession or distribution of these List 1 Chemicals.

During DI Kuzma's discussion with Mr. Call regarding the illegal use of ephedrine, Mr. Call indicated that he knew of meth. labs in the area and that ephedrine could be used in the illegal manufacturing of the drug. Mr. Call told DI Kuzma that ephedrine ''was stupid and people that used it were stupid[,] as well as people that would ingest methamphetamine.'' Tr. 128. According to DI Kuzma's testimony, Mr. Call ''indicated that probably not one bottle of the product he distributed was actually ultimately used or purchased for the purpose for which it was medically approved by FDA.'' Tr. 129.

DI Kuzma then asked Mr. Call to voluntarily surrender respondent's DEA registration. Mr. Call refused, indicating ''that as long as [ephedrine] was legal and there were going to be firms registered to handle the product, * * * he was not going to be shut out from selling the product because someone else would step in and take over his accounts, and he'd lose money.'' Tr. 130.

Before concluding her visit with Mr. Call, DI Kuzma obtained a copy of Respondent's customer list. All of Respondent's customers were non-traditional retailers of over-the-counter medications such as convenience stores, gas stations, or liquor stores. DI Kuzma also obtained a sampling of Respondent's sales records for the period between early January 2002, and June 12, 2002, the date of the investigation.

Thereafter, DI Kuzma visited six of Respondent's customers to conduct verification visits. For these visits, DI Kuzma selected stores that were purchasing at least one case of ephedrine per month. The purpose of the visits was to verify the customers' purchases of ephedrine from Respondent and to determine the identity of the store's retail customers. The stores were typically located in rural areas.

At one store, DI Kuzma was informed that two customers purchased bottle quantities of ephedrine on a daily basis. At another store, DI Kuzma was informed by the cashier that some customers were purchasing ten to twelve 60-count bottles at a time, and another customer was purchasing a dozen bottles approximately every two weeks. At another store, DI Kuzma was told of a person who bought two bottles every afternoon and fit the description of a methamphetamine addict. At other stores supplied by Respondent, ephedrine was being purchased by factory workers who used it to stay awake. At one of these stores, DI Kuzma was informed that most of its ephedrine customers drove vehicles with Ohio license plates. The State of Ohio, however, prohibits ephedrine sales.

At the hearing, the DI testified that based on the quantity of ephedrine sold by Respondent and the nature of its customers, she believed that many of Respondent's ephedrine sales were suspicious and subject to reporting to DEA. It is DEA policy to send a suspicious order list to a registrant at the time of its initial registration by certified mail and to retain the certified mail receipt in the registrant's file. There was, however, no evidence in the record establishing that Respondent had received a suspicious order list at the time of its initial registration.

Respondent has not reported any suspicious transactions to DEA. Indeed, when DI Kuzma testified as to the information she had received at one store regarding the physical appearance of a purchaser who had the appearance of a methamphetamine addict, Mr. Call objected to the testimony stating, ''I could care less about who buys them or who, you know, I have no control over the retail end of those sales. I drop them off to the store and I'm done.'' Tr. 137.

At the hearing, the Government introduced the expert testimony of Mr. Jonathan Robbin, Founder and President of Ricecar, Inc., of Bethesda, MD. Mr. Robbin's firm ''specializes in the statistical analysis of demographic, economic, geographic, survey and sales data for the purpose of locating, sizing and segmenting markets for a wide variety of consumer goods sold at retail.'' ALJ at 19. Based on data from the latest available United States Economic Census of retail trade, Mr. Robbin has determined that ''over 97% of all sales of non-prescription drug

products occur in drug stores and pharmacies, supermarkets, large discount merchandisers and electronic shopping and mail order houses.'' Govt. Exh. 17, at 4. According to Mr. Robbin, ''[t]hese four retail industries * * * are where the vast majority of American consumers satisfy their needs for nonprescription remedies for coughs, colds, nasal congestion or asthmatic conditions,'' and ''constitute the traditional marketplace where such goods are purchased by ordinary consumers.'' *Id.*

Convenience stores are not classified in any of the categories described above. Based on the Census Data, Mr. Robbin determined that sales of non-prescription drugs by convenience stores ''account for only 2.2% of the overall sales of all convenience stores that handle the line and only 0.7% of the total sales of all convenience stores.'' *Id.*

Using Census Data, commercially available point of sale transaction data, and information from surveys conducted by the National Association of Convenience Stores, Mr. Robbin created a model of the traditional market for pseudoephedrine in the retail sector. According to Mr. Robbin, ''a very small percentage of the sales of such goods occur in convenience stores—only about 2.6% of the [Health and Beauty Care] category of merchandise or 0.05% of total in-store (non-gasoline) sales.'' *Id.* Mr. Robbin thus concluded that convenience stores are a non-traditional (or gray) market for over-the-counter pseudoephedrine products and that ephedrine containing products ''have about half the over the counter sales volumes of pseudoephedrine'' tablets. *Id.*

Based on his analysis of both general retail sales data and data measuring retail sales from the supply side, including that obtained in the U.S. Census Bureau's 1997 Economic Census, Mr. Robbin determined ''that the normal expected retail sale of pseudoephedrine * * * tablets in a convenience store may range between $0 and $40 per month, with an average of $20.60 per month.'' *Id.* at 7. Mr. Robbin further concluded that ''the expected sale of ephedrine * * * tablets in a convenience store ranges between $0 and $25, with an average of $ 12.58.'' *Id.* Moreover, a monthly retail sale of $40 of ephedrine ''would be expected to occur less than one in 1,000 times in random sampling.'' *Id.*

DEA provided Mr. Robbin with the sales data it obtained during its investigation of Respondent. The data included a list of 413 transactions between Respondent and the 37 stores it supplied during the 178 day period between January 2, 2002, and June 28, 2002. The data revealed that Respondent had sold 17,062 sixty-count bottles and 17,868 six-tablet packs of ephedrine products. The bottles contained 1,023,720 tablets and sold for a wholesale price of $52,713.70. The six tablet packs contained a total of 107,208 tablets and sold for a wholesale price of $9,150.60.

Mr. Robbin prepared a table, which ranked Respondent's 37 customers based on their ephedrine purchases. Only one store had made purchases of ephedrine products that were within the expected sales range. The next two stores had made purchases that were 4.9 and 5.2 times the expected sales range.

The three stores with the greatest sales sold over 100 times the expected sales range, and the top twelve stores all sold over 50 times expectation. Moreover, the top twenty-seven stores all sold more than 25 times the expected range. In Mr. Robbin's expert opinion, Respondent's sales ''are not possible in the normal commerce of these goods at ordinary convenience stores.'' *Id.* at 13. Mr. Robbin thus concluded that Respondent ''frequently sells * * * combination ephedrine (Hcl) products in extraordinary excess of normal or traditional demand.'' *Id.*

Mr. Call testified on behalf of Respondent. The ALJ found that ''Mr. Call credibly testified that he tries to conduct an honest and straight forward business, without knowingly violating any laws.'' ALJ at 22. The ALJ further found that Call ''credibly stated that if he had violated any laws, if the DEA would have called such violations to his attention, 'I'd have been more than glad to change directions.' '' *Id.* (quoting Tr. 219). Yet on cross-examination, Mr. Call twice denied having stated that he would change directions and then claimed that ''I don't remember saying it.'' *Id.* at 223.

Later in the cross-examination, Mr. Call was asked whether, after the DI's visit, ''you continued to sell Ephedrine as you did before, didn't you?'' Mr. Call answered, ''Why wouldn't I?'' and then asserted he did so ''with the blessing of the DEA.'' Tr. 224. After once again stating that ''I never said I was going to change direction I know of,'' the Government asked Mr. Call: ''And you never did, did you?'' Mr. Call then stated ''And I haven't yet. I sold it, I sold it yesterday morning.'' *Id.*

I decline to accept the ALJ's finding crediting Mr. Call's testimony that '' 'I'd have been more than glad to change directions.' '' In doing so, I am mindful of the Supreme Court's holding in *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474, 496 (1951), ''that evidence supporting a conclusion may be less substantial when an impartial, experienced [ALJ] who has observed the witness and lived with the case has drawn conclusions different from the [ultimate factfinder's] than when the [ALJ] has reached the same conclusion.'' See also *Morall* v. *DEA*, 412 F.3d 165, 179 (D.C. Cir. 2005). ''The findings of the [ALJ] are to be considered along with the consistency and inherent probability of the testimony.'' *Universal Camera*, 340 U.S. at 496.

But just as the ultimate factfinder must consider contrary evidence, see Morall, 412 F.3d at 179, so too must the ALJ. Here, the ALJ's decision does not acknowledge the apparent contradiction between Mr. Call's testimony on direct and his testimony on cross-examination, let alone explain why she made the finding that Mr. Call would change directions. Thus, the finding is not entitled to deference and I do not accept it.

The ALJ also found that Mr. Call ''hates the fact that ephedrine can be used to manufacture methamphetamine,'' but because ''ephedrine is a legal product for distributors and retailers to sell, * * * he has to carry those products.'' ALJ at 23. The ALJ further found that Call testified credibly that ''if I sold the ephedrine product and I knew a person bought that to manufacture methamphetamine, I would be the first one to turn him in or anybody else.'' *Id.* (quoting Tr. 223). While I acknowledge these findings, I conclude that they are immaterial. I do accept the ALJ's finding that Mr. Call cooperated with DEA in the investigation.

Discussion

21 U.S.C. 824(a) provides that a registration to distribute List 1 chemicals may be suspended or revoked ''upon a finding that the registrant * * * has committed such as acts as would render [its] registration under section 823 of this title inconsistent with the public interest as determined under that section.'' *Id.* section 824(a)(4). In making the public interest determination, the Controlled Substance 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 [registrant] 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.* section 823(h).

''[T]these 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); *Henry J. Schwartz, Jr., M.D.*, 54 FR 16,422 (1989). In this case, I have concluded that factors one, four and five are dispositive and support the revocation of Respondent's registration.

Factor One—Maintenance of Effective Controls Against Diversion

It is undisputed that Respondent maintains effective controls against diversion while listed chemical products are in its possession. But as the ALJ correctly noted, the inquiry into the effectiveness of Respondent's controls ''does not end when products leave [their] physical location.'' ALJ at 28.

''[P]rior agency rulings have applied a more expansive view of factor one than mere physical security.'' *OTC Distribution Co.*, 68 FR 70538, 70542 (2003). In OTC Distribution, I held that a registrant's ''unwillingness to fully comply with its record keeping and report obligations'' under a Memorandum of Agreement was a relevant consideration under Factor One. *Id.* at 70542. This principle applies to a registrant's failure to report suspicious transactions as required by 21 CFR 1310.05. The regulation specifically provides that a registrant ''shall report * * * [a]ny regulated transaction involving an extraordinary quantity of a listed chemical * * * or any other circumstance that the regulated person believes may indicate that the listed chemical will be used in violation of this part.'' *Id.* § 1310.05(a) & (a)(1).

I agree with the ALJ's finding that Respondent was required ''to exercise a high degree of care in monitoring its customers' purchases,'' ALJ at 29, and that Respondent failed to do so. Indeed, the record demonstrates that Mr. Call was not simply negligent but deliberately indifferent to the diversion of Respondent's products. The record clearly establishes that Mr. Call was aware that the ephedrine products he sold were being used in the illicit manufacturing of methamphetamine. The testimony indicates that Mr. Call knew of the existence of methamphetamine labs in the area and that ephedrine could be used to make the drug. Moreover, Mr. Call acknowledged to DI Kuzma ''that probably not one bottle of the product he distributed was actually ultimately used or purchased for the purpose for which it was medically approved.'' Tr. 129. Notwithstanding Mr. Call's evident knowledge that Respondent's products were being diverted, he failed to report any suspicious transactions to DEA.

I am especially appalled by Mr. Call's statement during the hearing that ''I could care less about who buys [my products] or who, you know, I have no control over the retail end of those sales. I drop them off to the store and I'm done.'' *Id.* at 137. This attitude is fundamentally inconsistent with the obligations of a registrant. It is highly relevant in assessing the adequacy of a registrant's systems for monitoring the disposition of List I chemicals. See 21 CFR 1309.71(b)(8). I thus conclude that Respondent has failed to maintain effective controls against diversion. This factor strongly weighs in favor of the revocation of Respondent's registration. Indeed, I conclude that this factor alone supports the revocation of Respondent's registration.

Factor Two—Compliance With Applicable Federal, State and Local Law

The ALJ concluded that beyond the violations described above, ''the record contains no additional evidence of conduct that violated any applicable law by the Respondent, or its owner.'' ALJ at 31. I note, however, that the Eighth Circuit has upheld a criminal conviction for distribution of pseudoephedrine, having reason to believe that the chemical would be used to manufacture methamphetamine in violation of 21 U.S.C. 841(c)(2), based on a ''deliberate ignorance'' instruction. *United States* v. *Sdoulam*, 398 F.3d 981, 993–94 (8th Cir. 2005). Beyond the testimony that Mr. Call was aware ''that not one bottle of the product he distributed was actually used or purchased for the purpose for which it was medically approved,'' Tr. 129, I also note Mr. Call's admission on cross-examination to the effect that he had continued to sell ephedrine even after the visit of DI Kuzma, during which he had been advised of the illicit use of ephedrine in manufacturing methamphetamine. Tr. 224. The Government did not, however, elicit the amount of product Mr. Call had sold following the DI's visit. Ultimately, it is not necessary to determine whether the evidence in this case is sufficient to establish a criminal violation on the part of Respondent's owner because the record supports several alternative grounds for revoking Respondent's registration. Thus, while I do not accept the ALJ's finding, I do not make a finding on Factor Two.

Factor Three—Any Prior Conviction Record Relating to Distribution of Controlled Substances or Listed Chemicals

I agree with the ALJ that there is no record evidence establishing that either Respondent or Mr. Call have been convicted of any crime relating to the distribution of either a controlled substance or listed chemical.

Factor Four—Any Past Experience in the Distribution of Listed Chemicals

I acknowledge that Respondent has several years of experience in distributing List 1 chemicals, that Respondent has never received a warning letter, and that DI Kuzma testified that Respondent has cooperated with DEA. But, as explained above, Mr. Call has conducted Respondent's business with deliberate indifference to the diversion of its products. I thus conclude that this factor weighs in favor of revocation.

Factor Five—Such Other Factors as Are Relevant to and Consistent With the Public Health and Safety

The Government contends that the evidence it produced of Respondent's excessive sales of ephedrine into the gray market is conclusive evidence of diversion and justifies revocation. The ALJ acknowledged that the Government's ''substantial statistical evidence * * * establish[ed] that the Respondent's customers sell more list one chemicals than most convenience stores.'' ALJ at 33. The ALJ concluded, however, that the evidence was not conclusive ''of diversion or fault on the part of Respondent.'' *Id.*

According to the ALJ,''[i]n any specific case, there may be a number of reasons why a distributor's customers have sales in excess of the national average.'' *Id.* Because Respondent's customers are largely located in rural areas ''where traditional retailers are not found,'' the ALJ reasoned that ''[o]ne could argue that their high volume sales of list one chemical products are attributable to the necessity, ease, and/or convenience of local shopping, not diversion.'' *Id.* While acknowledging that ''this is only a possible explanation,'' the ALJ held ''that evidence of sales in excess of the national average is not, without more, enough to justify the revocation of a

DEA registrant's registration.'' *Id.* at 33–34. Following her canvassing of the case law, the ALJ concluded that ''precedent and due process considerations obligate me to consider the behavior of each individual Respondent, not merely the purchases of its customers.'' *Id.* at 35.

I grant the Government's exception and conclude that it has proved by a preponderance of the evidence that diversion occurred. The preponderance standard requires only that the ultimate factfinder ''believe the existence of a fact is more probable than its nonexistence before * * * find[ing] in favor of the party who has the burden to persuade the [factfinder] of the fact's existence.'' *Metropolitan Stevedore Co.* v. *Rambo*, 521 U.S. 121, 137 n.9 (1997) (other citation omitted). In short, the standard only requires proof that diversion was more likely than not to have occurred.

In this case, the Government submitted the expert testimony of Jonathan Robbin, who analyzed nearly six months of Respondent's sales records. Mr. Robbin testified at length as to the methodology he employed, his data sources, and the model he created for the traditional market in pseudoephedrine and ephedrine. Mr. Robbin laid an adequate foundation for his testimony, which included his findings that Respondent's twelve largest customers had bought quantities of ephedrine that were more than 50 times the expectation of legitimate demand and the three greatest customers had purchased quantities that were more than 100 times the expectation. Moreover, twenty-seven stores bought more than 20 times the expectation of legitimate demand. Mr. Robbin further testified that the probability that the purchases of these twenty-seven stores were to meet legitimate demand ''is so small as to be near impossibility.'' Govt. Exh. 17, at 13. Given the near impossibility that these sales were the result of legitimate demand, I conclude the Government has proved that it is more likely than not that diversion occurred. Indeed, courts have relied on statistical evidence far less compelling than this. See, e.g., *United States* v. *Kandiel*, 865 F.2d 967, 971 (8th Cir. 1989) (prosecution for making false representation of citizenship; upholding use of expert testimony that genetic tests established ''only a 'one in 1,000' chance that defendant was the child of a Native American''). Cf. *United States* v. *Veysey*, 334 F.3d 600, 605 (7th Cir. 2003) (''All evidence is probabilistic-statistical evidence merely explicity so * * * Statistical evidence is merely probabilistic evidence coded in numbers rather than words.'') (internal quotations and citations omitted).

I find unpersuasive the ALJ's hypothesis that Respondent's excessive sales could be attributable to the fact that its customers are located in rural areas *where traditional retailers are not found*. The record simply does not establish ''that most of the Respondent's customers are located in rural areas where traditional retailers are not found.'' ALJ at 33 (emphasis added). At most, it establishes that some of the six stores visited by DI Kuzma in conducting the verifications were ''stand-alone facilit[ies].'' Tr. 202. The record lacks substantial evidence regarding the density of, or lack of, traditional retailers within the area of Respondent's customers.

DI Kuzma also testified that there was a Target or Walmart in Decatur, Indiana, which was also the location of one of Respondent's customers, the Fairway Deli. Notwithstanding its proximity to traditional retailers, the Fairway Deli's sales were more than 38 times the expected amounted. Govt. Exh. 17 Table 2.

Respondent could have produced evidence of its own establishing an expected sales range for non-traditional retailers in rural areas. It did not. Respondent could have also challenged the validity of Mr. Robbin's methodology. It did not.

I further note that the Eighth Circuit has rejected a challenge to similar testimony of Mr. Robbin in a criminal case involving a Kansas based chemical distributor. See *Sdoulam*, 398 F.3d at 989–91. In *Sdoulam*, Mr. Robbin testified that the defendant's convenience store was selling pseudoephedrine in an amount 123 times the expected range. *Id.* at 989. The Eighth Circuit upheld the admission of this testimony, observing that ''Robbin laid adequate foundational support for his conclusions by explaining their bases'' in national census population and marketing data and business records. *Id.* at 990. So too here. I thus conclude that the Government has proved that a substantial portion of Respondent's products were diverted.

Nonetheless, I decline to announce a rule that renders diversion by itself adequate grounds to revoke a registration. I acknowledge the ALJ's concern that each case cited by the Government required not only excessive sales into the gray market but also a showing that the Respondent ''committed or proposed to commit other acts inconsistent with the public interest.'' ALJ at 34. Most of the cited cases, however, involved denials of applications. The cases did not go so far as to establish a requirement that the Government must show fault on the part of a Respondent to sustain a public interest revocation. Indeed, fault is typically a concept that is associated with past conduct and not proposed future activity. Thus, while these cases suggest that more than excessive sales are required to deny an application, they are not controlling in a revocation action.

I further note that dicta in *Mediplas Innovations*, 67 FR 41256, 41261 (2002), a suspension of shipments case, observed that a revocation of a registration ''require[s] a finding of culpability.'' The *Mediplas* decision further declared that ''[o]nly upon a finding of culpability can a DEA registrant permanently be deprived of controlled substances or List I chemicals.'' *Id.* at 41261.

In support of these assertions, *Mediplas* cited sections 823 and 824. The case did not, however, analyze the statutory text of either provision and neither section 824(a)(4) nor section 823(h) appears to impose on the Government the burden of proving culpability in order to sustain a public interest revocation. The statute is silent on the question, see *Chevron, U.S.A. Inc.,* v. *NRDC*, 467 U.S. 837, 843 (1984), and a reconsideration of the issue might be warranted in light of the unique difficulties posed in combating the use of OTC products in the illicit manufacture of methamphetamine. *Cf. Rust* v. *Sullivan*, 500 U.S. 173, 186–87 (1991) (an agency ''must be given ample latitude to adapt [its] rules and policies to the demands of changing circumstances'') (internal quotations and citations omitted).

Holding registrants strictly liable for excessive sales of listed chemicals might well be the appropriate approach for effectuating Congress' intent to protect the public interest. See 21 U.S.C. 824(f). Given that the Supreme Court has endorsed the propriety of strict liability for regulatory criminal offenses, see *Morisette* v. *United States*, 342 U.S. 246, 255–60 (1952), the imposition of strict liability in a purely regulatory scheme should not raise any serious constitutional objection.

I need not decide this question, however, because the Government alleged that Mr. Call knew that Respondent's ''ephedrine sales [were] not for legitimate uses,'' see ALJ Exh.1, at 6, and there is ample evidence of Respondent's fault. As explained above, Mr. Call's admissions to DI Kuzma and his statements and testimony during the hearing establish that he was—as Respondent's owner—deliberately indifferent to the diversion of its

products for use in the illicit manufacture of methamphetamine. Burying one's head in the sand while his firm's products are being diverted may allow one to maximize profits. But it is manifestly inconsistent with public health safety and justifies the revocation of Respondent's registration.

In sum, factors one, four and five each independently support revocation. I have considered the mitigating evidence offered by Respondent including his cooperation with the investigation. I nonetheless conclude that revocation is necessary to adequately protect the public interest.

Order

Accordingly, pursuant to the authority vested in me by 21 U.S.C. 823 & 824, and 28 CFR 0.100(b) & 0.104, I hereby order that DEA Certificate of Registration, 003884DSY, issued to D & S Sales, 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 31, 2006.

Dated: June 12, 2006.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E6–9705 Filed 6–29–06; 8:45 am]

BILLING CODE 4410–09–P

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 Youth Gang Survey.

The U.S. Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the *Federal Register,* Volume 71, Number 23, page 5881, on February 3, 2006 allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 31, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* National Youth Gang Survey.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* The Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice, is sponsoring the collection.

Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State, local, or tribal law enforcement agencies. Other: None. This collection will gather information related to youth gangs and their activities for research and assessment purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take 2,300 respondents approximately ten minutes each to complete the survey.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual burden hours to complete the certification form is less than 427 hours.

If additional information is required, contact Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 23, 2006.

Robert B. Briggs,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 06–5926 Filed 6–29–06; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (06–042)]

NASA International Space Station Independent Safety Task Force; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the International Space Station Independent Safety Task Force (IISTF).

DATES: Tuesday, July 25, 2006, 8 a.m. to 5 p.m.; Wednesday, July 26, 2006, 8 a.m. to 5 p.m.; and Thursday, July 27, 2006, 8 a.m. to 12 Noon, Central Daylight Time.

ADDRESSES: NASA Lyndon B. Johnson Space Center, 2101 NASA Parkway, Bldg. 1, Room 966, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Y. Gard, IISTF Executive Director, National Aeronautics and Space Administration, Lyndon B. Johnson Space Center, Houston, TX 77058, telephone (281) 244–7980, e-mail *melissa.y.gard@nasa.gov.*

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room (20). Seating will be on a first-come basis. The agenda for the meeting includes the following topics: