relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov,* or mailed to the, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *EPNG,* D.J. Ref. 90–5–1–1–08184.

The Consent Decree may be examined at the Office of the United States Attorney, Federal Office Building, 201 Third Street, NW., Suite 900, Albuquerque, New Mexico 87102, and at United States Department of Transportation Docket Operations facility, West Building, Room W–12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. During the public comment period, the Consent Decree may also be examined on the following Department of Justice, Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $28.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Thomas Mariani,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resource Division.

[FR Doc. 07–3751 Filed 7–31–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 C.F.R. 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Kenrock, Inc., John Doe, and Frank Lisa,* Case No. 3:05–CV–0057 AS, was lodge with the United States District Court for the Northern District of Indiana on July 23, 2007. This proposed Consent Decree concerns a complaint filed by the United States against the Defendants pursuant to Section 301(a) of the Clean Water Act (''CWA''), 33 U.S.C. 1311(a), to obtain injunctive relief from and impose civil penalties against the Defendants for filling wetlands without a permit.

The proposed Consent Decree resolves these allegations by requiring the Defendants to restore the impacted areas and to pay a civil penalty. The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Clifford D. Johnson, Assistant United States Attorney, 204 S. Main Street, Room M–01, South Bend, Indiana 46601 and refer to *United States of America* v. *Kenrock, Inc., John Doe, and Frank Lisa,* Case No. 3:05–CV–0057 AS.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Northern District of Indiana, South Bend Division, 204 S. Main Street, South Bend, IN 46601. In addition, the proposed Consent Decree may be viewed on the World Wide Web at *http://www.usdoj.gov/enrd/open.html.*

Scott Schachter,

Assistant Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 07–3748 Filed 7–31–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Oil Pollution Act (''OPA'')

Notice is hereby given that on July 20, 2007, a proposed Consent Decree in *United States* v. *Texmo Oil Company Jobbers, Inc.*, Civil Action No. 2:07–cv–01401–DKD (D. Ariz.), was lodged with the United States District Court for the District of Arizona. The proposed Consent Decree resolves the United States' claim against Texmo Oil Company Jobbers, Inc. (''Texmo''), for natural resources damages under the Oil Pollution Act, 33 U.S.C. Sections 2701–2761, relating to a spill of approximately 7,700 gallons of diesel fuel into the Bill Williams River National Wildlife Refuge in Arizona. The Consent Decree requires Texmo to pay to $1,217,382.91 to the United States for damages for injuries to natural resources that resulted from the spill.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Texmo Oil Company Jobbers, Inc.*, D.J. Ref. 90–5–1–1–09082.

The proposed Consent Decree may be examined at the Office of the Solicitor, Phoenix Field Office, U.S. Department of the Interior, 401 W. Washington Street SPC 44, Suite 404, Phoenix, AZ 85003–2151. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation no. (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.25 (25 cents per page reproduction cost) payable to the ''U.S. Treasury'' or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–3752 Filed 7–31–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Archer's Trading Company; Revocation of Registration

On February 6, 2006, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Archer's Trading Company (Respondent), of Mechanicsville, Virginia. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, 003001ATY, as a distributor of List I chemicals, on the ground that its ''continued registration is inconsistent with the public interest.'' Show Cause Order at 1. The Show Cause Order also proposed the denial of any pending applications for renewal or modification of Respondent's registration. *Id.*

The Show Cause Order specifically alleged that Respondent distributed List I chemicals to gas stations and convenience stores, which DEA has found are non-traditional retailers of

these products for legitimate therapeutic demand. *Id.* at 2–3. The Show Cause Order alleged that during the period 2001 through 2003, Respondent ''sold over-threshold amounts of pseudoephedrine to an unregistered individual [who] was subsequently convicted of the federal offense of unlawful distribution of listed chemicals.'' *Id.* at 2. The Show Cause Order also alleged that DEA investigators audited Respondent's handling of List I chemical products and found that it ''was unable to account for nearly 3,800 bottles of 60-count combination ephedrine'' products and that there were ''numerous discrepancies in the firm's sales receipts.'' *Id.*

The Show Cause Order further alleged that ''sometime in October–November 2004, [Respondent] moved its listed chemicals to an unapproved location in Ashland, Virginia.'' *Id.* at 3. Relatedly, the Show Cause Order alleged that Respondent violated Federal law by distributing products out of the Ashland location. *Id.* The Show Cause Order also alleged that Respondent had failed to report a theft of listed chemicals that had occurred at the Ashland location. *Id.*

On February 13, 2006, the Show Cause Order was served on Respondent's counsel by certified mail, return receipt requested. On March 13, 2006, Respondent, through its counsel, requested a hearing. The matter was assigned to Administrative Law (ALJ) Judge Mary Ellen Bittner. On November 2, 2006, however, Respondent submitted a letter withdrawing its request for a hearing and waiving its right to a hearing. Accordingly, on November 8, 2006, the ALJ terminated the proceeding.

On or about June 11, 2007, the investigative file was forwarded to me for final agency action. Based on Respondent's letter waiving his right to a hearing, I therefore enter this Final Order without a hearing based on relevant material contained in the investigative file, *see* 21 CFR 1301.43(e), and make the following findings.

Findings

Respondent is the holder of DEA Certificate of Registration, 003001ATY, which authorizes it to distribute the List I chemicals pseudoephedrine, ephedrine and phenylpropanolamine, at the registered location of 10247 Finlandia Lane, Mechanicsville, Virginia. The expiration date of Respondent's registration was June 30, 2004. On May 24, 2004, however, Respondent submitted a renewal application. I therefore find that Respondent's registration has remained in effect pending the issuance of this Final Order. *See* 5 U.S.C. 558(c).

Both pseudoephedrine and ephedrine currently have therapeutic uses. *See, e.g., Tri-County Bait Distributors,* 71 FR 52160, 52161 (2006).[1] Both chemicals are, however, regulated under the Controlled Substances Act because they are precursor chemicals which are easily extracted from non-prescription products and used in the illicit manufacture of methamphetamine, a Schedule II controlled substance. *See* 21 U.S.C. 802(34); 21 CFR 1308.12(d).

Methamphetamine ''is a powerful and addictive central nervous system stimulant.'' *T. Young Associates, Inc.,* 71 FR 60567 (2006) (other citations omitted). As noted in numerous DEA final orders, the illegal manufacture and abuse of methamphetamine pose a grave threat to this country. *See id.* Methamphetamine abuse has destroyed numerous lives and families. *Id.* Moreover, because of the toxic nature of the chemicals used in making the drug, illicit methamphetamine laboratories cause serious environmental harms. *Id.*

Respondent is owned and operated by Mr. Archer Carr Satterfield, Jr. Respondent distributes dry goods, cakes, pies, and over-the-counter medicines (including those containing listed chemicals) to gas stations, convenience stores and small grocery stores in central Virginia. List I chemicals account for between 15 and 20 percent of Respondent's business. As of February 2004, the business was located at Mr. Satterfield's private residence in Mechanicsville, Virginia.

On June 10, 2003, two DEA Diversion Investigators (DIs) went to Respondent's registered location to conduct a regulatory inspection. As part of the inspection, the DIs conducted an audit of Respondent's handling of six combination ephedrine products during the period June 1, 2002, through June 10, 2003. Notwithstanding that the DIs used zero as the initial inventory for each of the audited products, they found that Respondent had large shortages in five of the products.

For example, with respect to the sixty-count bottles of Mini Thins, Respondent was short 144,792 dosage units or 2413 bottles. As for the six-count packets of Mini Thins, Respondent was short 12,660 dosage units or 2,110 packets.

With respect to the sixty-count bottles of Biotek Ephedrine, Respondent was short 80,640 dosage units or 1344 bottles. As for the six-count packets of Biotek Ephedrine, Respondent was short 8,856 dosage units or 1476 packets. Because zero was used as the starting inventory for each of the products (and thus any product actually on hand on the beginning date would not be counted), the actual shortages were likely greater than those calculated by the DIs.

During the audit, the DIs also found that a substantial number of Respondent's sale invoices were incomplete. Some of the invoices lacked the purchaser's address information including its street and city. Others lacked information regarding the quantity and product size.

During this inspection, Mr. Satterfield told the DIs that he was suspicious of the activities of one of his customer's, Fasil Mitha, the owner of Trio's Market/California Imports. Mr. Satterfield further related that Mitha had told him that he ''sells to customers off the shelf.'' Upon reviewing Respondent's sales invoices, the DIs determined that Respondent has sold nearly 47,000 dosage units of combination ephedrine products to Mitha between November 20, 2002, and June 4, 2003. This would amount to approximately 782 sixty-count bottles during a six-and-a-half month period.[2]

During the audit period, Respondent also sold large quantities to a store identified as Market #14, in Richmond, Virginia. More specifically, Respondent sold this entity 50,554 dosage units between August 13, 2002, and May 22, 2003. This would amount to approximately 842 sixty-count bottles.

Sometime in either October or November 2004, Mr. Satterfield notified the DEA Richmond office that he had moved his business from his residence in Mechanicsville, Virginia, to a new location at 11262 Elmont Road, Ashland, Virginia. Mr. Satterfield requested that DEA visit his new location and approve his request for modification.

As part of the process, Mr. Satterfield was asked to provide a complete customer list. Mr. Satterfield submitted a customer list, but it was missing address and phone number information

[1] The FDA is, however, currently proposing to remove combination ephedrine-guaifenesin products from its over-the-counter (OTC) drug monograph and to declare them not safe and effective for OTC use. *See* 70 FR 40232 (2005). While Respondent also sought authority to handle phenylpropanolamine, there is no evidence in the file that it actually handled the product.

[2] According to the investigative file, Mitha subsequently pled guilty to violating 21 U.S.C. § 841(c)(2), which makes it a criminal offense to knowingly ''possess[ ] or distribute[ ] a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance except as authorized by'' the CSA. Mitha was sentenced to 135 months in prison.

for nine of his customers. He also failed to provide the address, phone number, social security number and date of birth for one of his employees.

The DIs instructed Mr. Satterfield that he could not store listed chemicals at his new location until his request for the modification was approved. Mr. Satterfield stated that he would keep his List I products at his Mechanicsville location.

Subsequently, in March 2005, the DIs obtained an incident report from the Hanover County Sheriff's Department pertaining to a theft that had occurred at the Ashland property on the night of November 1–2, 2004. According to the report, at approximately midnight, Mr. Satterfield had parked his delivery truck at his Ashland property. When Mr. Satterfield returned to the property the following morning, both the truck and a trailer that he stored merchandise in had been broken into.

Mr. Satterfield reported that approximately $4,609 in merchandise had been stolen. Among the stolen items were various OTC drug products including listed chemical products. Mr. Satterfield expressed to the responding officer his concern for the consequences were DEA to find out about the theft because the products were not locked in a secure place. Mr. Satterfield further told the officer that he would never get a license if DEA found out about the theft. Mr. Satterfield did not report the theft to this Agency.

On June 22, 2005, two DIs went to Respondent's Ashland facility. During the visit, the DIs found that substantial quantities of various List I chemical products were stored in the building and were on the delivery truck. Mr. Satterfield told the DIs that the products that were on the delivery truck were going to be offloaded and stored in the building that evening.

Discussion

Section 304(a) of the Controlled Substances Act provides that a registration to distribute a List I chemical ''may be suspended or revoked * * * upon a finding that the registrant * * * has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a)(4). In making this determination, Congress directed that I consider the following factors:

(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.

Id. § 823(h).

''These factors are considered in the disjunctive.'' *Joy's Ideas*, 70 FR 33195, 33197 (2005). I may rely on any one or a 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 renewal or modification of a registration should be denied. *See, e.g., David M. Starr*, 71 FR 39367, 39368 (2006); *Energy Outlet*, 64 FR 14269 (1999). Moreover, I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA*, 419 F.3d 477, 482 (6th Cir. 2005); *Morall* v. *DEA*, 412 F.3d 165, 173–74 (D.C. Cir. 2005). In this case, I conclude that factors one, two, four, and five establish that Respondent's continued registration would be ''inconsistent with the public interest.'' 21 U.S.C. 823(h). Accordingly, Respondent's registration will be revoked and its pending applications for renewal and modification of its registration will be denied.

Factor One—Maintenance of Effective Controls Against Diversion

Under DEA's regulations, a List I chemical distributor is required to ''provide effective controls and procedures to guard against theft and diversion of List I chemicals.'' 21 CFR 1309.71(a). The regulations further provide that ''[i]n evaluating the effectiveness of security controls and procedures, the Administrator shall consider * * * [t]he adequacy of the registrant's or applicant's systems for monitoring the receipt, distribution, and disposition of List I chemicals in its operations.'' *Id.* 1309.71(b)(8).

''[M]aintaining proper records is * * * an essential part of providing effective controls against diversion.'' *John J. Fotinopoulos*, 72 FR 24602, 24605 (2007). Here, the investigative file establishes that many of Respondent's sales invoices were missing necessary information for monitoring the distribution and disposition of List I products. More specifically, Respondent's invoices were frequently missing critical information including the street address and the city that its customers were located in. Moreover, the invoices also typically lacked information regarding the size of the List I products.

Beyond that, the accountability audit found substantial shortages in five of the List I products which Respondent distributed. As found above, Respondent was short 144,792 dosage units or 2413 bottles of sixty-count Mini-Thins; it was also short 12,660 dosage units or 2,110 six-count packets of the product. Moreover, Respondent was short 80,640 dosage units or 1344 sixty-count bottles of Biotek Ephedrine; it was also short 8,856 dosage units or 1476 six-count packets of the product. Finally, because the DIs assigned a value of zero for the opening inventory for each product, the actual amount of the shortages may well have been even larger.

Accordingly, I conclude that Respondent does not maintain effective controls against diversion and that this finding provides reason alone to conclude that its continued registration ''is inconsistent with the public interest.'' 21 U.S.C. 823(h).

Factors Two and Four—Respondent's Compliance With Applicable Laws and Its Experience in the Distribution of Listed Chemicals

The investigative file also establishes that Respondent failed to comply with Federal law in two other respects. First, Respondent clearly was distributing listed chemical products out of its Ashland facility which did not have a registration. Second, Respondent failed to report the November 2, 2004 theft of listed chemical products as required by 21 U.S.C. 830(b)(1)(C).

Under Federal law, a registration is location specific. *See* 21 U.S.C. 822(e) (''A separate registration shall be required at each principal place of business * * * where the applicant * * * distributes * * * list I chemicals.''); *see also* 21 CFR 1309.23(a). Moreover, Federal law clearly provides that a registrant is ''authorized to possess [or] distribute'' a listed chemical only ''to the extent authorized by their registration and in conformity with the other provisions of this subchapter.'' 21 U.S.C. 822(b).

Under DEA regulations, a request for a modification is treated as a new application. *See* 21 CFR 1309.61 (a ''request for modification shall be handled in the same manner as an application for registration,'' and, if approved, ''the Administrator shall issue a new certificate of registration''). As I recently explained, a request for modification does not authorize a registrant to engage in listed chemical activities at a new location until the modification is approved and the new certificate of registration is issued. *See Fotinopoulos*, 72 FR at 24606. *Cf.*

Orlando Wholesale, L.L.C., 71 FR 71555, 71557 (2006) (applicant's change of address following pre-registration inspection renders application moot).

Here, Mr. Satterfield was specifically told that he could not store listed chemicals at the Ashland facility until his request for modification was approved. Moreover, Mr. Satterfield told investigators that he would store Respondent's listed chemicals products at his Mechanicsville location. Mr. Satterfield nonetheless stored listed chemicals at the Ashland facility both in the building and in a truck which he parked there and distributed listed chemicals from this location. 21 U.S.C. 822(b) & (e). This violated Federal law. Moreover, based on the date of the theft (which occurred on November 2, 2004), as well as the DIs' finding that during the June 22, 2005 visit, substantial quantities of List I products were being kept at the Ashland location, it appears that Mr. Satterfield repeatedly violated Federal law.

The evidence also establishes that Respondent failed to report to DEA the theft of listed chemicals that occurred on November 2, 2004. Under 21 U.S.C. 830(b)(1)(C), a registrant must report ''any unusual or excessive loss or disappearance of a listed chemical under the control of the regulated person.''

According to the responding officer, Mr. Satterfield failed to report the theft because he was concerned that if the Agency found out, it would not grant him a registration for his new location. Mr. Satterfield thus not only violated Federal law, making matters worse, he did so intentionally.

Finally, the evidence establishes that Respondent sold extraordinary quantities of products to at least two stores, and that the owner of one of the stores, Mr. Mitha, subsequently plead guilty to violating 21 U.S.C. 841(c)(2). As found in *T. Young Associates*, 71 FR at 60572, and numerous other cases, non-traditional retailers (such as those supplied by Respondent) sell only small amounts of listed chemical products to meet legitimate demand. On average, these stores sell only $12.58 per month of combination ephedrine products to meet legitimate demand for these products as a bronchodilator. *Id.*

The evidence establishes that in a six-and-a-half month period, Respondent sold the equivalent of 782 sixty-count bottles of combination-ephedrine products to Mr. Mitha. While the record does not establish the retail price Mr. Mitha sold the products at, in other cases DEA has found that smaller size bottles (48 count) sold for approximately $5.99 to 6.99 each. *See Wild West Wholesale*, 72 FR 4042, 4043 (2007). Respondent's sales to Mr. Mitha's store so exceeded legitimate demand that it is clear that Respondent's products were diverted into the illicit manufacture of methamphetamine, a fact confirmed by Mr. Mitha's guilty plea.[3] The same is also true of Respondent's sales to Market #14.

Respondent's violations of Federal law and its experience in distributing listed chemical products thus provide further grounds to conclude that its continued registration would be ''inconsistent with the public interest.'' 21 U.S.C. 823(h).

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

The illicit manufacture and abuse of methamphetamine have had pernicious effects on families and communities throughout the nation. Cutting off the supply source of methamphetamine traffickers is of critical importance in protecting the American people from the devastation wreaked by this drug.

While listed chemical products containing pseudoephedrine and ephedrine are currently recognized as having legitimate medical uses, DEA orders establish that convenience stores and gas-stations constitute the non-traditional retail market for legitimate consumers of products containing these chemicals. *See, e.g., Tri-County Bait Distributors*, 71 FR at 52161–62; *D & S Sales*, 71 FR at 37609; *Branex, Inc.*, 69 FR 8682, 8690–92 (2004). DEA has further found that there is a substantial risk of diversion of List I chemicals into the illicit manufacture of methamphetamine when these products are sold by non-traditional retailers. *See, e.g., Joy's Ideas*, 70 FR at 33199 (finding that the risk of diversion was ''real'' and ''substantial''); *Jay Enterprises, Inc.*, 70 FR 24620, 24621 (2005) (noting ''heightened risk of diversion'' if application to distribute to non-traditional retailers was granted).

Accordingly, ''[w]hile there are no specific prohibitions under the Controlled Substances Act regarding the sale of listed chemical products to [gas stations and convenience stores], DEA has nevertheless found that [these entities] constitute sources for the diversion of listed chemical products.'' *Joey Enterprises, Inc.*, 70 FR 76866, 76867 (2005). *See also TNT Distributors*, 70 FR 12729, 12730 (2005) (special agent testified that ''80 to 90 percent of ephedrine and pseudoephedrine being used [in Tennessee] to manufacture methamphetamine was being obtained from convenience stores'').[4] The risk of diversion is especially great where, as here, a registrant cannot account for large quantities of the products it handles.

Moreover, the record establishes that Respondent sold extraordinary quantities of combination ephedrine products to several stores including one whose owner subsequently pled guilty to distributing a listed chemical knowing or having reasonable cause to believe that the chemical would be used to illegally manufacture a controlled substance. *See* 21 U.S.C. 841(c)(2). Thus, the record supports a finding that Respondent's products were diverted. This factor thus provides additional support for the conclusion that Respondent's continued registration ''is inconsistent with the public interest.'' *Id.* § 823(h).

In sum, as found above under factor one, the evidence supports a finding that Respondent did not maintain adequate records and an audit found that it could not account for several hundred thousand dosage units of combination ephedrine products. Moreover, while Respondent and its owner have no record of relevant criminal convictions, *see* 21 U.S.C. 823(h)(3), the evidence nonetheless establishes that Respondent violated federal law by: (1) Distributing listed chemicals from a facility which was not registered and likely did so for months, and, (2) failing to report to DEA the theft of listed chemicals from its non-approved location. Finally, the evidence supports a finding that a substantial

[3] Even if Mr. Satterfield lacked either actual or constructive knowledge that Mr. Mitha was diverting the products, his state of mind is irrelevant. As I have previously noted, the public interest standard does not require the Government to ''prove that a Registrant has acted with any particular *mens rea.* Indeed, the diversion of List I chemicals into the illicit manufacture of methamphetamine poses the same threat to public health and safety whether a registrant sells the products knowing they will be diverted, sells them with a reckless disregard for the diversion, or sells them being totally unaware that the products were being diverted.'' *T. Young*, 71 FR at 60572 (footnote omitted) (citing *D & S Sales*, 71 FR 37607, 37610–12 (2006), and *Joy's Ideas*, 70 FR 33195, 33198 (2005)).

[4] *See OTC Distribution Co.*, 68 FR 70538, 70541 (2003) (noting ''over 20 different seizures of [gray market distributor's] pseudoephedrine product at clandestine sites,'' and that in eight-month period distributor's product ''was seized at clandestine laboratories in eight states, with over 2 million dosage units seized in Oklahoma alone.''); *MDI Pharmaceuticals*, 68 FR 4233, 4236 (2003) (finding that ''pseudoephedrine products distributed by [gray market distributor] have been uncovered at numerous clandestine methamphetamine settings throughout the United States and/or discovered in the possession of individuals apparently involved in the illicit manufacture of methamphetamine'').

portion of Respondent's products were diverted. Accordingly, I therefore conclude that Respondent's continued registration ''is inconsistent with the public interest.'' *Id.* § 823(h).

Order

Accordingly, pursuant to the authority vested in me by 21 U.S.C. 823(h) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I order that DEA Certificate of Registration, 003001ATY, issued to Archer's Trading Company be, and it hereby is, revoked. I further order that Archer Trading Company's pending applications for modification and renewal of its registration be, and they hereby are, denied. This order is effective August 31, 2007.

Dated: July 20, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–14815 Filed 7–31–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 05–33]

Holloway Distributing; Revocation of Registration

On May 25, 2005, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Holloway Distributing, Inc. (Respondent), of Puxico, Missouri. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, 003219HIY, and the denial of Respondent's pending application for renewal of its registration, on the ground that its continued registration ''is inconsistent with the public interest.'' Show Cause Order at 1.

More specifically, the Show Cause Order alleged that Respondent distributed list I chemical products containing pseudoephedrine, a precursor chemical used in the illicit manufacture of methamphetamine, a schedule II controlled substance, to convenience stores, gas stations, liquor and video stores, and bait and tackle shops in various parts of Missouri, the State which has repeatedly ranked first in the nation in the number of clandestine methamphetamine lab seizures. *Id.* at 2. The Show Cause Order alleged that these establishments constitute the non-traditional market for consumers who purchase pseudoephedrine products for legitimate uses. *Id.* at 7. The Show Cause Order further alleged that Respondent's ''sale of pseudoephedrine products is inconsistent with the known legitimate market and known end-user demand for products of this type.'' *Id.*

The Show Cause Order also alleged that in March 2004, DEA investigators conducted verifications of several entities which Respondent identified as its customers. *Id.* at 3–4. According to the allegations, DEA investigators determined that several of Respondent's customers were purchasing additional list I chemical products from other distributors and also selling other products such as starting fluid and lantern fuel which are used in the illicit manufacture of methamphetamine. *Id.*

The Show Cause Order next alleged that in March 2004, as part of a regulatory investigation of Respondent, DEA investigators conducted an accountability audit of five list I chemical products. *Id.* at 5. The Show Cause Order alleged that there were either overages or shortages for each product, and that DEA investigators found that Respondent had ''failed to notify the agency of a significant loss of List I chemical products as required by 21 U.S.C. 830(b)(1)(C) and 21 CFR 1310.05(a)(3).'' *Id.*

Finally, the Show Cause Order alleged that between November 7, 2003, and April 1, 2004, Respondent sold pseudoephedrine products on numerous occasions to one Keith Frankum, notwithstanding that Frankum had presented a sales tax exempt certificate which indicated that his business address was a local storage facility and was vague when asked about the nature of his business. *Id.* at 5–6. According to the allegations, notwithstanding that local law enforcement authorities had told one of Respondent's employees that Frankum's brother was ''a meth cook,'' and that its employees ''referred to [Frankum] as 'the drug guy' whenever he arrived at Holloway to make a purchase,'' Respondent made additional sales of pseudoephedrine products to him. *Id.* at 6. The Show Cause Order further alleged that in early April 2004, Frankum was arrested and during a search incident to the arrest, was found to be in possession of twenty boxes of pseudoephedrine products sold by Respondent, an invoice from Respondent, and a handwritten note which read: ''Be careful when leaving here!'' *Id.* at 5. According to the allegations, Frankum subsequently told DEA investigators that he sold pseudoephedrine ''to several repeat customers'' and that it ''was a big seller because it was used to make drugs.'' *Id.* at 6. The Show Cause Order also alleged that Frankum admitted that he had a prior arrest for possession of methamphetamine and that he had done ''a lot of meth'' five years earlier. *Id.* The Show Cause Order further alleged that Respondent never reported to DEA its sales to Frankum. *Id.* at 5.

On June 24, 2005, Respondent, through its counsel, requested a hearing. The matter was assigned to Administrative Law Judge (ALJ) Gail A. Randall, who conducted a hearing in Arlington, Virginia, on February 7, 2006, and in Cape Girardeau, Missouri, on February 22–23, 2006. During the hearing, both parties called witnesses to testify and introduced documentary evidence. Following the hearing, both parties submitted briefs containing proposed findings of fact, conclusions of law and argument.

On December 19, 2006, the ALJ submitted her recommended decision (hereinafter, ALJ). In her decision, the ALJ concluded that the Government had ''initially * * * met its burden of proof * * * by demonstrating that the Respondent made 'grossly excessive sales' of listed chemical products between October 1, 2003, and March 23, 2004.'' ALJ at 40 (citing FOF 26). The ALJ also acknowledged DEA precedent holding that a registrant's grossly excessive sales support a finding that its products were diverted and that its continued registration would be inconsistent with the public interest. *Id.* at 40–41.

The ALJ concluded, however, that Respondent's continued registration would not be inconsistent with the public interest for two reasons. *Id.* at 41. First, the ALJ noted that Respondent had ''demonstrated its willingness and its ability to develop and implement changes in its business processes consistent with the [agency's] recommendations.'' *Id.* Second, the ALJ relied on Missouri's recently enacted restrictions on pseudoephedrine sales. According to the ALJ, the statute showed that ''the State will be monitoring the gelcap and liquid pseudoephedrine products, if any, found in the methamphetamine labs,'' and that ''[s]uch heightened scrutiny leads to the conclusion that, if the products of the Respondent, as well as other distributors of List I chemical products in Missouri, are found in illicit methamphetamine laboratories, the State will close the legislative loophole afforded these limited products.'' *Id.* The ALJ reasoned that ''[u]ntil such time as the problem is substantiated * * * the possibility of * * * Respondent's products being diverted [should] not be relied upon to revoke'' its registration. *Id.* The ALJ therefore recommended that I not revoke