hull or single bottom design variations, non-shipshaped FPSO systems, increased crude oil storage up to 2.3 million barrels, dynamically positioned shuttle tankers, reinjection of natural gas for later recovery, and gas-to-liquids conversion.

3. *Alternatives.* One of the alternatives to be considered in the DEIS is the exclusion of FPSO systems from the ''lightering prohibited area'' established by the U.S. Coast Guard at 33 CFR part 156 subpart C. Other alternatives may be identified during the scoping process.

4. *Scoping.* Scoping is an open and early process for determining the scope of the DEIS and for identifying significant issues related to a proposed action. Scoping also provides an opportunity for interested parties to help identify alternatives to the proposed action. For this DEIS, public scoping meetings will be held from 7 p.m. to 10 p.m. on June 21, 1999, at the Natural Resources Center—Room 1003, Texas A&M University in Corpus Christi, Texas; on June 22, 1999, at the Radisson Hotel and Conference Center, 9100 Gulf Freeway, Houston, Texas; on June 23, 1999, at the Beaumont Hilton in Beaumont, Texas; on June 24, 1999, at the Players Island Hotel in Lake Charles, Louisiana; and on June 28, 1999, at the Radisson Inn Airport in Kenner (New Orleans), Louisiana. Additional information on the scoping meetings will be distributed to interested parties. Details on the times and locations for the public scoping meetings will also be advertised in local media and are available on the MMS website at http://www.mms.gov or through the MMS Public Information Office at 1–800–200–GULF or GulfPublicInfo@mms.gov.

5. *Comments on the NOI.* In addition to participation at the scoping meetings, Federal and State agencies, local governments, and other interested parties are invited to send their written comments on the scope of the DEIS, significant issues to be addressed, and alternatives that should be considered in the DEIS to the contact person at the address listed below. Comments should be enclosed in an envelope labeled ''Comments on the NOI to Prepare a DEIS on FPSO's'' and should be submitted no later than 45 days after publication of this NOI in the **Federal Register**.

6. *Decisions.* The MMS will make several decisions based on the analysis in the EIS; (a) whether FPSO systems will be permitted in the Central and Western Planning Areas of the GOM OCS; (b) the range of acceptable FPSO operations; and (c) the potential exclusion of FPSO systems in certain geographic areas of the Central and Western Planning Areas of the GOM OCS; or (d) a decision for no action. The no action alternative will mean that FPSO systems will not be permitted in the Central and Western Planning Areas of the GOM OCS.

FOR FURTHER INFORMATION: Questions concerning the NEPA process and the DEIS should be directed to Minerals Management Service, Gulf of Mexico OCS Region, Attention: Ms. Deborah Cranswick (MS 5410), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, telephone (504) 736–2744.

Dated: June 4, 1999.

Chris C. Oynes,

Regional Director, Gulf of Mexico, OCS Region.

[FR Doc. 99–14704 Filed 6–9–99; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 18, 1999 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. AA1921–111 (Review) (Roller Chain from Japan)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on July 1, 1999.)
5. Outstanding action jackets:

(1) Document No. EC–99–011: Approval of study objectives, annotated study outline, final staffing plan, and final work schedule in Inv. No. 332–406 (Overview and Analysis of the Economic Impact of U.S. Sanctions with Respect to India and Pakistan).

(2) Document No. GC–99–047; Inv. Nos. 751–TA–17–20 (Titanium Sponge from Japan, Russia, Kazakhstan, and Ukraine).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: June 8, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14891 Filed 6–8–99; 2:57 pm]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–11]

Alfred Khalily, Inc. d.b.a. Alfa Chemical; Grant of Restricted Registration

On January 8, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued on Order to Show Cause to Alfred Khalily, Inc., d.b.a. Alfa Chemical (Respondent) of New York, notifying it of an opportunity to show cause as to why DEA should not deny its applications for registration as an importer and as a distributor of List I chemicals, for reason that such registration would be inconsistent with the public interest as determined pursuant to 21 U.S.C. 823(h).

Respondent, through counsel, filed a request for a hearing on the issues raised by the Order to Show Cause. Following prehearing procedures, a hearing was held in Uniondale, New York on May 19 and 20, 1998, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties filed proposed findings of fact, conclusions of law and argument. On October 30, 1998, Judge Randall issued her Opinion and Recommended Ruling, recommending that Respondent's applications be granted subject to two conditions. On November 23, 1998, the Government filed exceptions to the Administrative Law Judge's Opinion and Recommended Ruling and on December 15, 1998, Respondent filed its reply to the Government's exceptions. Thereafter, on December 16, 1998, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Ruling of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

Alfred Khalily started Respondent in 1990, and is Respondent's president, only officer, and only employee. In 1991, Respondent merged with another company named American Roland pursuant to a two-year contract. This company was involved in the

importation, brokering, and contract manufacturing of controlled substances and chemicals. Mr. Khalily was an assistant manager at American Roland.

In 1992, the president of R.J. Meyer, a Mexican company, visited American Roland. Mr. Khalily was not a part of that meeting. However he met R.J. Meyer's president in June of 1993, when Respondent company split from American Roland and Respondent took over the R.J. Meyer account.

In October 1994, DEA's Long Island office received information from DEA's Atlanta office regarding three ''very large shipments'' of hydriotic acid, a List I chemical, from Ajay Chemical in Georgia to Respondent in New York. Hydriotic acid can be used in the illegal manufacture of methamphetamine and it takes at least one gallon of hydriotic acid to manufacture one kilogram of methamphetamine. Further investigation revealed two additional shipments of hydriotic acid from Ajay Chemical to Respondent. These shipments occurred in late December 1993, March 1994, May 1994, July 1994, and October 1994 for a total of over 11,000 kilograms (kgs.) of hydriotic acid.

On November 8, 1994, DEA personnel visited Respondent's business which is located in Mr. Khalily's home in a residential area. Mr. Khalily told a DEA investigator that R.J. Meyer was a regular customer of Respondent; that Respondent has sold R.J. Meyer pharmaceutical products other than hydriotic acid in the past; and that R.J. Meyer was a paint manufacturer that used the hydriotic acid as a disinfectant in the manufacture of paint. During this visit, Mr. Khalily gave the investigator a Purchase Authorization Form from R.J. Meyer which indicated that R.J. Meyer intended to use the hydriotic acid it purchased from Respondent as a disinfectant and a cleaner of metals.

In July or August 1993, R.J. Meyer's president first contacted Mr. Khalily regarding the purchase of hydriotic acid. In approximately 1993, R.J. Meyer sent Respondent a purchase order for hydriotic acid. Mr. Khalily then sent R.J. Meyer a Purchase Authorization Form which detailed the provisions of the ''Anti-Drug Abuse Act of 1988,'' regarding the reporting of suspicious orders and the need to establish the identity of the purchaser, and which requested that R.J. Meyer ''please identify the general use you intend for all Hydriotic Acid purchased from Alfa Chem.'' In response to this request, R.J. Meyer listed the following proposed uses for the hydriotic acid: agents for reducing fabrications of iodides, disinfectants, metal finishing, reducing in the pigment, and petroleum acidification. It was Mr. Khalily's understanding that R.J. Meyer was engaged in ''contract manufacturing'' whereby R.J. Meyer would supply a manufacturer with the ''synthesizing path'' and the necessary raw materials, and the contractor would return the finished product to R.J. Meyer.

Based on price, Respondent selected Ajay Chemicals, Inc. (Ajay), as the manufacturer to supply this order. Respondent ultimately engaged in five transactions with R.J. Meyer for hydriotic acid. In general, when Respondent received an R.J. Meyer purchase order, it would then send a purchase order to Ajay. Mr. Khalily would call Sky Harbor warehouse, R.J. Meyer's warehouse, to notify them that a shipment would be arriving. The shipments were sent by Ajay via Yellow Freight, directly to Sky Harbor. Ajay paid Yellow Freight and R.J. Meyer paid Sky Harbor. Ajay would send an invoice to Respondent and Respondent would then send a check to Ajay. Respondent would send an invoice to R.J. Meyer, who would in turn send a check to Respondent. Mr. Khalily would call Sky Harbor to check to see if the shipment was received and would later call to see if the shipment had been picked up.

Specifically, in December 1993 Respondent sold R.J. Meyer 3,080 kgs. of hydriotic acid; 1,686 kgs. in March 1994; 1,686 kgs. in May 1994; 1,686 kgs. in July 1994; and 6,650 pounds or approximately 3,016 kgs. in October 1994. A review of R.J. Meyer's purchase orders revealed that shipments were either consigned to Jose Gutierrez, and sometimes Gus Pimental c/o Sky Harbor Delivery in Tucson, Arizona, or to Jose Gutierrez c/o Gus Pimentel at a warehouse in Phoenix, Arizona.

Ajay's invoices showed that the hydriotic acid was sold to Respondent, but was to be shipped to R.J. Meyer at Sky Harbor Delivery c/o Jose Gutierrez. According to these invoices Respondent was billed approximately $42,000 for the first shipment, approximately $41,500 for the last shipment, and $22,086 for the other three shipments.

According to Respondent's invoices, Respondent sold the hydriotic acid to R.J. Meyer, but it was shipped to Jose Gutierrez at Sky Harbor Delivery. These shipments were ''FOB Destination,'' which according to Mr. Khalily means that the shipper's responsibility ends when the product is delivered to the specified location. Respondent billed R.J. Meyer approximately $63,000 for the first and last shipments, and $33,720 for the other three shipments.

Bills of Lading for two of the transactions indicated that the hydriotic acid was shipped from Ajay and was consigned to R.J. Meyer c/o Sky Harbor Delivery, Attention: Jose Gutierrez.

Air freight Door to Door receipts showed a transfer fee of $92.75 for the May 1994 shipment, and a transfer fee of $166.25 for the October 1994 shipment. Sky Harbor billed Respondent for these fees. The Government alleges that these fees indicate that Respondent rented the space from Sky Harbor. However, Mr. Khalily testified that R.J. Meyer leased the space at Sky Harbor for the deliveries. According to Mr. Khalily, some of the containers of hydriotic acid leaked because there were not properly sealed by Ajay. Respondent paid the transfer fees to Sky Harbor so that the warehouse would accept the shipment and place the containers outside with container material around them so as not to damage the warehouse facility.

According to Sky Harbor employees, all of the shipments were picked up by the same Hispanic male in a rental truck and on one or two occasions, the shipment would be loaded into two trucks because the cargo was so large.

During the course of the investigation of these shipments, a DEA investigator questioned an employee of R.J. Meyer who indicated that Respondent was a ''customer'' of R.J. Meyer and that they had a long-standing relationship. Regarding these five shipments, the employee indicated that R.J. Meyer had ''brokered'' the transactions for Respondent. However, Mr. Khalily acknowledged that while R.J. Meyer sometimes participated in transactions with Respondent where R.J. Meyer acted as the broker, R.J. Meyer was the customer in these five transactions. All of the purchase orders for these transactions submitted to Respondent by R.J. Meyer indicated that R.J. Meyer was the customer.

The employee of R.J. Meyer indicated that R.J. Meyer never received any of the five shipments; the shipments had not come into Mexico; and that she had no information regarding the final destination of the shipment. DEA has not been able to determine the disposition of the shipment after they left the Sky Harbor warehouse. Specifically, DEA does not know if the shipments ever entered Mexico.

According to a DEA investigator who testified at the hearing in this matter, Respondent is considered to be the exporter of the hydriotic acid because it was ''the principal party of interest that is arranging to have the chemical exported out of the country.'' A review of DEA's records indicated that no export declarations were filed by any party to the five transactions at issue.

Mr. Khalily testified that because the transactions were ''FOB Destination,'' his responsibilities ended when the shipments were delivered to the Sky Harbor warehouse in Arizona.

In a letter to DEA dated May 24, 1995, in response to a subpoena for information regarding these shipments, Mr. Khalily stated that prior to the shipments, ''The local DEA was notified and they gave their O.K. The shipment was made directly to our customer. * * * From our background checking we know our customer has been in the chemical and pharmaceutical business for the past 30 years.''

At the hearing, Mr. Khalily testified that in his opinion the five transactions did not involve extraordinary amounts of hydriotic acid. He believed that the chemical was being used as a disinfectant and testified that:

> [W]hen you are starting a production run of disinfectant you probably use about maybe 30 or 40 55-gallon drums, approximately, a regular run, to start the production. Then later on, for other productions, you just replenish—a little bit less. May about 20 or 30 55-gallon drums is (sic) used to be able to achieve that.

According to Mr. Khalily, an initial start-up of a product run would require approximately 7,000 to 10,000 pounds of hydriotic acid. The Government did not present any evidence to dispute Respondent's explanation for the quantity of hydriotic acid that it sold to R.J. Meyer.

Mr. Khalily also testified that the method of delivery of these transactions was not unusual. The same method of delivery was used for these transactions as was used for other transactions with R.J. Meyer. According to Mr. Khalily, an unusual method of delivery would include: ''Picking up from you, from your warehouse or picking up from a third party or drop shipping into some other place which you don't know about,'' Mr. Khalily explained that a drop ship is when ''you are sending to a third party which is not part of the transaction.''

At the hearing, Mr. Khalily admitted that he does not know Jose Gutierrez or Gus Pimentel, however he believed that they were representatives of R.J. Meyer, who would be responsible for the export of the hydriotic acid. When told that R.J. Meyer's president indicated that Jose Gutierrez was not an R.J. Meyer representative, Mr. Khalily stated that, ''[t]his was the first time I heard of that. All the purchase orders that they have, they have the name of their representatives on it.'' Mr. Khalily admitted that he did not know what happened to the five shipments after they were delivered to Arizona.

In October 1995, Respondent submitted an application to be registered as an importer of various List I chemicals. The address listed on the application is also Mr. Khalily's residence. Respondent submitted a second application in October 1995 to be registered as a distributor of various List I chemicals. The address on this application is for a public warehouse where individuals can lease space to store goods. DEA did not conduct a preregistration investigation at either of these locations.

Accordingly to Mr. Khalily, the warehouse address listed on the distributor application is a public bonded warehouse that he has used for 18 years. He explained that he does not have any specific space leased, but that we will be charged based on the square footage his product(s) takes up. In response to a question regarding security at the warehouse, Mr. Khalily stated:

> It is a public, bonded warehouse. United States Customs leave their goods over there. What other provision [do] I have to have? * * * I talked to the manager * * * and he would allow me to build a cage, sort of the same way that the controlled substance are controlled. There is a fenced in area which two people would have * * * the key to that cage. And also, it has an alarm and is very much contained, within the same facility.

Although there are currently no security arrangements specifically established for Respondent at the warehouse, Mr. Khalily explained that he would make the necessary arrangements when he anticipated receiving any regulated substances.

Mr. Khalily testified that listed chemicals have comprised less than one percent of his business, and that he subsequently ceased listed chemical transactions with R.J. Meyer because it ''was a kind of service that I was supplying to them, and it wasn't really our main business.'' Mr. Khalily further testified that since 1994, his practice in selling listed chemicals has become to ask which state the customer is calling from; to ask for the customer's DEA number, the product they are seeking, and their phone number; and to call DEA in Washington to double-check the accuracy of the DEA number of the customer.

In arguing against Respondent's registration, the Government contends that Respondent has not maintained adequate controls against diversion, as evidenced by the disappearance of over 1,750 gallons of hydriotic acid. The Government further argues that Respondent violated 21 U.S.C. 841(d)(2), since Respondent knew or had reasonable cause to believe that the listed chemical it was distributing would be used to unlawfully manufacture methamphetamine. The Government also contends that the transactions involved the following regulatory violations by Respondent: (1) Failure to report an extraordinary quantity of a listed chemical; (2) failure to identify the other party to the transaction; (3) failure to keep and maintain records of regulated transactions; and (4) failure to notify the DEA 15 days in advance of an export of a listed chemical. The Government notes that Respondent's experience in the chemical industry made him aware of the regulatory requirements, but that Respondent ''was more concerned with seeking a profitable venture rather than ensuring the integrity of the regulated transactions in which he was involved.''

In arguing in favor of its registration, Respondent alleges that the term ''extraordinary quantity'' is vague, and that the quantities involved in the transactions at issue were not extraordinary, and the transactions were conducted in the normal course of international commerce, and were ''[f]ar from being a series of secretive and unreported sales.'' As to the identification requirement, Respondent argues that R.J. Meyer was the only party Respondent was required to identify. Respondent also contends that it was not required to file any export documentation since it was merely acting as a broker and therefore was not considered a ''regulated person'' at that time. Respondent points out that its principal officer ''has substantial experience in the chemical industry and is fully aware of the regulatory requirements.''

Pursuant to 21 U.S.C. 958(c)(2)(A), ''[t]he Attorney General shall register an applicant to import or export a list I chemical unless the Attorney General determines that registration of the applicant is inconsistent with the public interest.'' Pursuant to 21 U.S.C. 823(h), ''[t]he Attorney General shall register an applicant to distribute a list I chemical unless the Attorney General determines that registration of the applicant is inconsistent with the public interest.''

Section 823(h) requires that the following factors be considered in determining the public interest:

(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.

These factors are to be considered in the disjunctive; the Deputy Administrator may properly rely on any one or a combination of these factors, and give each factor the weight he deems appropriate in determining whether an application should be denied. See Jacqueline Lee Pierson, Energy Outlet, 56 FR 14,269 (1999); Henry J. Schwarz, Jr. M.D., 54 FR 16,422 (1989).

As a preliminary matter, DEA has consistently held that a retail store operates under the control of its owners, stockholders, or other employees, and therefore the conduct of these individuals is relevant in evaluating the fitness of an applicant or registrant for registration. See, e.g., Rick's Pharmacy, 62 FR 42,595 (1997); Big T Pharmacy, Inc., 47 FR 51,830 (1982). Since Mr. Khalily is the owner of Respondent, his conduct is relevant in determining whether or not to grant Respondent's applications for registration.

Regarding factor one, the Government alleged that the fact that over 1,750 gallons of a listed chemical disappeared is evidence that Respondent failed to maintain effective controls against the diversion of listed chemicals. However, the Government did not provide any specific argument under this factor to support its allegation. The Deputy Administrator concludes that Respondent's failure to properly identify Jose Gutierrez, which will be discussed in more detail under factor two, clearly shows that Respondent failed to maintain effective controls against the diversion of listed chemicals.

Pursuant to 21 CFR 1309.71, there are general security requirements that List I chemical handlers must meet. The Deputy Administrator agrees with Judge Randall that the Government failed to prove by a preponderance of the evidence that the physical security at both locations is inadequate. DEA did not conduct a preregistration inspection at either location to determine whether or not the facilities lacked adequate security.

As to factor two, Respondent's compliance with applicable law, it must first be determined whether Respondent was subject to the laws and regulations relating to listed chemicals. A ''regulated person'' engaged in a ''regulated transaction'' is subject to various recordkeeping, reporting and identification requirements. Respondent was a regulated person pursuant to 21 U.S.C. 802(38), since it distributed a listed chemical when it caused the hydriotic acid to be delivered, ''FOB destination'' to Sky Harbor warehouse in Arizona.

Respondent seems to suggest that it was not a regulated person at the time of the transactions at issue in 1993 and 1994, because it was acting as a broker, and ''brokers'' were not added to the definition of ''regulated person'' until 1995. However, like Judge Randall, the Deputy Administrator rejects Respondent's argument. Starting in 1995, a broker engaged in an international transaction is a regulated person pursuant to 21 U.S.C. 802(38), (42), and (43). ''International transaction'' is defined in 21 U.S.C. 802(42) as ''a transaction involving the shipment of a listed chemical across an international border (other than a United States border) in which a broker or trader located in the United States participates.'' Although Respondent entered into a contract with a Mexican company for hydriotic acid, these were not ''international transactions'' because Respondent only arranged for the chemicals to be delivered to Arizona.

Pursuant to 21 U.S.C. 802(39), a sale or distribution of above a threshold amount of a listed chemical is a regulated transaction. In 1993 and 1994, the threshold for hydriotic acid was 1.7 kgs. Each of the transactions at issue in this proceeding were above the threshold amount and were therefore regulated transactions.

The Deputy Administrator concludes that since Respondent was a regulated person engaged in regulated transactions at the times at issue in this proceeding, it was subject to various recordkeeping, reporting and identification requirements.

The Government alleged that Respondent violated these regulatory requirements by failing to maintain records of these transactions; to report these transactions to DEA; to properly identify the other party to the transactions; and to file required export declarations. In addition, the Government alleged that Respondent violated 21 U.S.C. 824(d)(2) because it knew or had reasonable cause to believe that the listed chemical that it was distributing would be used to unlawfully manufacture methamphetamine.

First, the Deputy Administrator agrees with Judge Randall that the Government has failed to present any evidence regarding the adequacy of Respondent's records. Therefore, the Government has failed to prove by a preponderance of the evidence that Respondent violated the recordkeeping provisions found in 21 U.S.C. 830(a) and 21 CFR 1310.03, 1310.04, and 1310.06.

Next, pursuant to 21 U.S.C. 830(b)(1)(A) and 21 CFR 1310.05(a)(1), a regulated person is required to report to DEA ''[a]ny regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance that the regulated person believes may indicate that the listed chemical will be used in violation of this part.''

The phrase ''extraordinary quantity'' is not defined in the regulations. Judge Randall noted that ''[b]y merely comparing the threshold of 1.7 kilograms to each of the five sales, whose quantities ranged from 1,686 kilograms to 3,080 kilograms, the quantities would seem to be extraordinary.'' However, Mr. Khalily testified that he did not believe that these quantities were excessive because R.J. Meyer indicated that it was using the chemical as a disinfectant for contract manufacturing and that these amounts were reasonable for the stated purpose. The Government did not present any evidence at the hearing as to why it believed that these were extraordinary quantities, nor did it present any evidence to dispute Mr. Khalily's explanation of the amounts needed by R.J. Meyer for its stated purpose. The Deputy Administrator agrees with Judge Randall that ''[g]iven this alternate explanation for the large amounts of hydriotic acid being shipped, the lack of evidence to the contrary, and the lack of any further guidance in the regulations, * * * the quantities alone in these transactions are not sufficient to trigger the reporting requirements of section 1310.05 as they pertain to the Respondent.''

Likewise the phrase ''uncommon method of payment or delivery'' is not defined in the regulations. Regarding the method of payment for these shipments, Respondents was paid by a business account check drawn on R.J. Meyer's bank and Respondent used a business check to pay Ajay from its own checking account. The Deputy Administrator agrees with Judge Randall's conclusion that there is no evidence that there was an uncommon method of payment for these shipments.

As to the method of delivery, Mr. Khalily testified that the method of delivery used for these transaction was the same as was used by Respondent in

non-listed chemical transactions. He further testified that he believed that Jose Gutierrez was R.J. Meyer's representative, and the transaction documents support this interpretation. As Judge Randall noted, ''[t]hese documents, prepared in 1993 and 1994, weigh heavily in favor of finding credible Mr. Khalily's interpretation of Mr. Gutierrez's role in these transactions on behalf of R.J. Meyer.''

However, with the benefit of hindsight, the method of delivery for these transactions was suspicious. Mr. Gutierrez signed for the hydriotic acid at Sky Harbor warehouse, and loaded it into a rental truck. DEA has been unable to determine the whereabouts of the hydriotic acid after it was picked up by Mr. Guiterrez. But as Judge Randall noted, ''at the time the transaction[s] arose, Mr. Khalily did not have the benefit of this hindsight.''

Therefore, the Deputy Administrator agrees with Judge Randall's conclusion ''that preponderating evidence supports Mr. Khalily's interpretation of Mr. Gutierrez's relationship to R.J. Meyer * * *.'' However, the Deputy Administrator shares Judge Randall's concern ''that Mr. Khalily failed to ascertain Mr. Guiterrez's role in the transaction prior to shipping the listed chemicals to him as the named recipient on behalf of R.J. Meyer.''

Next, the Government alleged that Respondent failed to properly identify the other party to the transactions at issue as required by 21 CFR 1310.07(a). While Mr. Khalily and Respondent's predecessor has a long-standing business relationship with R.J. Meyer, he had never met Mr. Gutierrez before. Mr. Khalily testified that he assumed that Mr. Gutierrez was a representative of R.J. Meyer because ''[a]ll purchase orders that they have, they have the name of their representatives on it.'' But, pursuant to 21 CFR 1310.07(c), ''[w]hen transacting business with a new representative of a firm, the regulated person must verify the claimed agency status of the representative.'' Mr. Khalily failed to do this. Judge Randall found that ''[b]ased on his own testimony, it appears that Mr. Khalily merely assumed that Mr. Gutierrez was a representative of R.J. Meyer, rather than to verify his identity with R.J. Meyer, prior to shipping the listed chemicals to him.'' Therefore, the Deputy Administrator agrees with Judge Randall that the preponderance of the evidence shows that Mr. Khalily failed to properly identify the other party to the five transactions as required by 21 CFR 1310.07.

As to the Government's allegation that Respondent failed to file the appropriate export documentation, the Deputy Administrator agrees with Judge Randall that pursuant to the regulations Respondent was not required to file such documentation. Pursuant to 21 CFR 1313.21(a) (1993 & 1994), DEA must be notified at least 15 days in advance of any export of threshold or above threshold quantities of a listed chemical. The term ''chemical export'' is defined in 21 CFR 1313.02(a) (1993 & 1994) [1] as ''transferring ownership or control, or the sending or taking of threshold quantities of listed chemicals out of the United States * * *.'' The regulations further define ''chemical exporter'' as ''a regulated person who, as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending of the listed chemical out of the United States.'' 21 CFR 1313.02(b) (1993 & 1994).[2]

While Respondent was selling above threshold quantities of hydriotic acid to a Mexican company, these sales were ''FOB Destination'' transactions and therefore Respondent's responsibility ended when the chemicals were delivered to the warehouse in Arizona. Respondent did not send or take the listed chemicals out of the United States, nor was it the ''principal party in interest'' with the power and control over sending the chemicals out of the United States. Therefore, it was not responsible for filing any export documentation.

As to factor three, there is no evidence that Respondent or its owner, Mr. Khalily, has been convicted of any criminal acts related to controlled substances or listed chemicals.

Regarding Respondent's past experience in the manufacture or distribution of chemicals, Mr. Khalily has been involved with the importation, contract manufacturing, and brokering of transactions involving controlled substances and listed chemicals for a number of years. As a result, he has been aware of the regulatory requirements regarding listed chemicals. Nonetheless, Mr. Khalily distributed a listed chemical on five occasions without properly identifying the other party to the transaction in violation of the regulations which allowed over 11,000 kgs. of hydriotic acid to disappear.

As to other factors relevant to the public health and safety, Judge Randall noted Mr Khalily's failure to take responsibility for his role in the transactions and his lack of concern regarding the disappearance of the five shipments. Further, Mr. Khalily did not present adequate assurances that Respondent will implement better procedures for properly identifying other patties to listed chemical transactions.

Judge Randall concluded that ''[t]he Government has not proven by a preponderance of the evidence that the Respondent is conducting five regulated transactions of hydriotic acid, failed to comply with any record-keeping or reporting requirements.'' Further, the Government has failed to prove that Respondent was required to file export documents. But, the Deputy Administrator agrees with Judge Randall that the evidence does support the conclusion that Respondent failed to properly identify Mr. Gutierrez thereby allowing over 11,000 kgs. of a listed chemical that can be used in the illicit manufacture of methamphetamine to disappear.

Judge Randall concluded that ''[t]he Government has proven by a preponderance of the evidence that the Respondent's failure to comply with identification regulations contributed to the ultimate loss of the shipments, leading to a greater likelihood that they could have been diverted to illicit use, the very evil addressed by this regulatory and statutory scheme.'' Judge Randall also concluded that ''Respondent has done nothing to assure the DEA that it will act more responsibly in future transactions.'' Nonetheless, after considering all of the facts and circumstances of this case, Judge Randall concluded that complete denial of Respondent's applications is not warranted. However, Judge Randall further concluded that Respondent's prior conduct warrants closer monitoring than in other cases.

Therefore, Judge Randall recommended that Respondent's applications be granted with the following conditions:

(1) The Respondent be required to maintain a log of all listed chemical transactions he engages in for a period of three years from the date of issuance of these DEA Certificates of Registration. At a minimum, the log shall indicate the date that the shipment occurred, the name and address of all the parties involved in the transaction, the destination of the shipments, and the name and quantity of the listed chemical shipped. Upon request by the Special Agent in Charge of the local DEA Field Division, or his designee, the Respondent shall submit or otherwise make available his log for inspection.

[1] This regulation has since been renumbered and can now be found in 21 CFR 1300.02(5).

[2] This regulation has since been renumbered and can now be found in 21 CFR 1300.02(6).

(2) For three years from the date of issuance of the DEA Certificates of Registration, the Respondent shall consent to periodic inspections at its registered locations by DEA personnel based on a Notice of Inspection rather than an Administrative Inspection Warrant.

In its exceptions to Judge Randall's Opinion and Recommended Ruling, the Government argued that the Administrative Law Judge gave undue weight to Mr. Khalily's testimony that Respondent had no obligation to report the transactions as a result of the proposed use for the hydriotic acid. Further, the Government argued that Respondent had an obligation to report these shipments since they were for extraordinary quantities and there was an uncommon method of delivery.

Specifically, the Government contended that Respondent's explanation of the quantities distributed was self-serving, and that Judge Randall gave too much significance to the intended uses listed on R.J. Meyer's purchase authorization form. ''The Government believes that this form, standing alone, is inadequate to prove that the listed uses were intended, or even valid, uses.'' The Government disagreed with the Administrative Law Judge's conclusion that mere quantities of shipments alone are not sufficient to require reporting and that the method of delivery was reasonable based upon Mr. Khalily's mistaken impression that Mr. Gutierrez was an agent of R.J. Meyer.

The Government argued that the quantities of these shipments were extraordinary because they each greatly exceeded the threshold for hydriotoc acid; ''the physical size of the product shipment was bulky and large''; and ''the amount of illicit methamphetamine that could ostensibly be made from this product was immense.'' The Government also argued that an uncommon method of delivery was used for these shipments because Mr. Khalily ''did not know the persons to whom he shipped the [hydriotic acid,] * * * [t]he shipments were picked up by rental truck * * * [and] [n]o one knows where the [hydriotic acid] went.''

The Government further contended that ''the burden of establishing whether any given shipment is required to be reported falls heavily upon the regulated industry.'' In support of its position, the Government cites to the final rule implementing the chemical Diversion and Trafficking Act wherein DEA declined to define either ''extraordinary quantity'' or ''uncommon method of delivery'', but rather stated:

> The chemical industry is expected to understand the nature of its legitimate business transactions and must make informed decisions as to whether the above terms apply to any of their transactions.

See 54 FR 31,657,31,659 (1989).

Based upon the record before him, the Deputy Administrator finds that the Government has not established that the quantities of these shipments were extraordinary. While these shipments seem large to the Deputy Administrator, the Respondent's explanation based upon the intended use of the hydriotic acid for the quantities shipped was unrebutted by the Government. The Deputy Administrator would like to have considered evidence of whether R.J. Meyer's intended use for the hydriotic acid was legitimate and what the usual quantities are in the industry for the intended use, however no such evidence was presented by the Government. Therefore, the Deputy Administrator is left with nothing but Respondent's explanation, and as stated above the industry is expected to understand the nature of its business. Consequently, based upon the evidence in the record before him the Deputy Administrator concludes that Respondent was not required to report these transactions in light of the quantities shipped.

The Deputy Administrator has considered the Government's contention that these shipments should have been reported based upon an uncommon method of delivery. However as stated above, the method of delivery employed for these transactions was the same as had been employed by Respondent with R.J. Meyer in previous non-listed chemical transactions, and based upon the transaction documents, Respondent's assumption that Mr. Gutierrez was a representative of R.J. Meyer was not unreasonable.

In its exceptions, the government also disagreed with the Administrative Law Judge's conclusion that Respondent was not required to file any export documents. Essentially the Government argued that by selling hydriotic acid to a Mexican company Respondent was exporting the chemical, and therefore was responsible for filing the appropriate documents. However as previously noted, the Deputy Administrator agrees with Judge Randall that since these were ''FOB Destination'' transactions, Respondent responsibility ended when the shipments were received at the warehouse in Arizona. Therefore, Respondent did not meet the definition of a chemical exporter since it did not have ''the power and responsibility for determining and controlling the sending of the listed chemical out of the United States.'' 21 CFR 1313.02(b) (1993 & 1994).

Finally, the government took exception to Judge Randall's conclusion that despite Respondent's failure to properly identify the other party to these transactions, Respondent's applications should not be denied. The Government argued that Respondent's failure to determine the identity of Mr. Gutierrez resulted in the disappearance of over 11,000 kgs. of hydriotic acid which could be used to produce over 1,700 kgs. of methamphetamine. The Government further argued that Respondent has distanced itself from the transactions; has accepted no culpability for its actions; and ''thus has not shown that it can be depended upon to carry out DEA regulations in the future.''

In its response to the Government's exceptions, Respondent contended that it is not distancing itself from its own conduct, however it argues that the Government also bears some responsibility for failing to prevent the listed chemical from disappearing. Respondent asserted that ''[t]he Government must provide expert assistance to the chemical industry. It should provide information to assist the chemical handlers in recognizing potential problem transactions.'' Specifically, Respondent argued that it would have benefited from knowing that in 1993, ''the Southwest was the home for the illegal production of amphetamines and [hydriotic acid] was the main ingredient.'' In addition, Respondent argued that had they known of Ajay's concerns regarding the first four of the transactions, ''the final sale in October 1994 would have occurred.'' According to Respondent, Mr. Khalily ''believes that he did everything the law required in 1993 and 1995 and that he should not be held solely accountable when there were other parties involved in these transactions, including the DEA, who were equally unable to prevent the listed chemical from disappearing.''

The Deputy Administrator agrees with Respondent that such information may have been helpful to Respondent. However, in 1993 and 1994 Respondent was experienced in the handling of listed chemicals and Mr. Khalily testified that he was familiar with the provisions of the law relating to listed chemicals. Consequently, he knew that he had to properly identify the other party to any transaction involving a listed chemical. While it is true that Respondent and its predecessor had a long-standing business relationship with R.J. Meyer, he had never before dealt with Mr. Gutierrez.

The Deputy Administrator is extremely concerned by Mr. Khalily's failure to properly identify Mr. Gutierrez and verify whether he was a representative of R.J. Meyer. This is particularly troubling given that Mr. Khalily knew that hydriotic acid was a listed chemical; that he had not seen Mr. Gutierrez's name on previous invoices; and that R.J. Meyer had not previously purchased hydriotic acid from Respondent. All of these things combined should have caused Mr. Khalily to recognize the need to ascertain whether Mr. Gutierrez was in fact a representative of R.J. Meyer.

Nontheless, the Deputy Administrator agrees with Judge Randall that denial of Respondent's applications is not warranted in this case. Although Respondent was clearly not as careful as he should have been in identifying Mr. Gutierrez, Respondent did follow its normal business practices regarding these shipments and there has been no other evidence of any wrongdoing by Respondents. However, chemicals are designated as listed chemicals because they have the potential to be used to manufacture dangerous substances. Consequently those who deal with these chemicals have to be ever vigilant to ensure that they are not diverted for illegal purposes. Therefore, the Deputy Administrator agrees with Judge Randall that Respondent's prior conduct warrants that Respondent should be more closely monitored than other registrants.

The Deputy Administrator agrees with Judge Randall's recommendation that Respondent's applications be granted with the following conditions:

(1) The Respondent be required to maintain a log of all listed chemical transactions he engages in for a period of three years from the date of issuance of these DEA Certificates of Registration. At a minimum, the log shall indicate the date that the shipment occurred, the name and address of all the parties involved in the transaction, the destination of the shipments, and the name and quantity of the listed chemical shipped. Upon request by the Special Agent in Charge of the local DEA Field Division, or his designee, the Respondent shall submit or otherwise make available his log for inspection.

(2) For three years from the date of issuance of the DEA Certificates of Registration, the Respondent shall consent to periodic inspections at its registered locations by DEA personnel based on a Notice of Inspection rather than an Administrative Inspection Warrant.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the applications for registration as an importer and a distributor of various listed chemicals, submitted by Alfred Khalily, Inc., d.b.a. Alfa Chemical, be, and they hereby are, granted subject to the above described conditions. This order is effective upon issuance of the DEA Certificates of Registration, but not later than July 12, 1999.

Dated: June 1, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–14650 Filed 6–9–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration; Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 14, 1998, and published in the **Federal Register** on December 23, 1998, (63 FR 71155), Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methamphetamine (1105), a basic class of controlled substance listed in Schedule II.

The firm plans to bulk manufacture methamphetamine to produce products for distribution to its customers.

DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Chattem Chemicals, Inc. to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated Chattem Chemicals, Inc. to ensure that the company's registration is consistent with the public interest. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: May 25, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–14651 Filed 6–9–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration; Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on February 24, 1999, Los Angeles Cannabis Resources Center, Inc., 7494 Santa Monica Blvd., #215, West Hollywood, California 90046, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of marihuana (7360), a basic class of controlled substance.

The firm plans to develop single-cannabinoid strains of marihuana and to provide cannabis and naturally extracted plant-derived cannabionids for use in pharmaceutical research and cannabionoid-based drug development.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 9, 1999.

Dated: May 28, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–14649 Filed 6–9–99; 8:45 am]

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FOREIGN CLAIMS SETTLEMENT COMMISSION

Sunshine Act Meeting

[F.C.S.C. Meeting Notice No. 4–99]

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Thursday, June 17, 1999, 1:30 p.m.

SUBJECT MATTER: Consideration of a Request for Reopening of the Final Decision on a claim against Albania, as follows: Claim No. ALB–075 Haritini Poulos.