disclosing all changes in the membership or planned activities.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–8864 Filed 4–9–96; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research Notification; Southwest Research Institute: Diesel Particulate/NO subx Aftertreatment Using Plasma or Corona Discharges Cooperative Research Project

Correction

In notice document 95–27944 appearing on page 57022–04 in the issue of Monday, November 13, 1995 make the following correction:

In the first paragraph, in the first line ''July 24'' should read ''August 14''.

Contance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–8872 Filed 4–9–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993 Specialty Metals Processing Consortium, Inc.

Notice is hereby given that, on October 30, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the Specialty Metals Processing Consortium (''SMPC'') filed notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Oregon Metallurgical Corporation, Albany, OR has joined SMPC; and the following members have withdrawn from SMPC: Allied-Signal Aerospace Company, Garrett Engine Division, Phoenix, AZ; Cyclops Corporation, Cytemp Specialty Steel Division, Titusville, PA; Howmet Corporation, Alloy Division/Plymouth Plant, Plymouth, MI; United Technologies Corporation, Pratt and Whitney Division, Hartford, CT; and Precision Rolled Products, Inc., Reno, NE. No other changes have been made in either the membership or the planned activity of the joint venture.

On August 7, 1990, SMPC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(a) of the Act on September 17, 1990 (55 FR 38173). The last notification was filed on January 28, 1991. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on February 19, 1991 (56 FR 6686).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–8868 Filed 4–9–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 95–13]

Dinorah Drug Store, Inc.; Grant of Application

On December 12, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Dinorah Drug Store, Inc., (Respondent) of Hialeah, Florida, notifying it of an opportunity to show cause as to why DEA should not deny its application for registration as a retail pharmacy under 21 U.S.C. 823(f) and 824(a)(5). Specifically, the Order to Show Cause alleged that:

(1) Between May and June 1991, while doing business as Dinorah Pharmacy Corporation (Dinorah Pharmacy), its owner Luz B. Abad unlawfully sold samples and complimentary packages of non-controlled drug products to Medicaid recipients, and submitted claims for payment to the Florida Medicaid Program.

(2) On June 4, 1992, in the Eleventh Judicial Circuit of Florida (Dade County), Dinorah Pharmacy and Luz B. Abad pled guilty to one felony count of selling samples or complimentary packages of drug products. Dinorah Pharmacy and Ms. Abad were ordered to pay court costs, fines and to reimburse the State of Florida Office of the Auditor General for investigative cost.

(3) On February 24, 1993, Dinorah Pharmacy was notified by the Department of Health and Human Services of its five=year mondatory exclusion from participations in the Medicare program pursuant to 42 U.S.C. 1320a–7(a). Such exclusion constitutes a basis for the denial of [the Respondent's] application for DEA Certificate of Registration.

Pursuant to a telephone conference on August 31, 1995, with Administrative Law Judge Paul A. Tenney, the parties agreed to accept a decision based upon an agreed statement of facts. The statement of facts was to consist of the prehearing statements submitted by each party, and any exhibits that the parties timely submitted consistent with those statements. It was also stipulated that Ms. Luz B. Abad is the predominant owner of the Respondent, Dinorah Drug Store, Inc. (Dinorah Drug Store). Subsequently, the Government submitted ten exhibits and each party submitted proposed findings of fact, conclusions of law, and argument.

On October 11, 1995, Judge Tenney issued his Findings of Fact, Conclusions of Law and Recommended Ruling, recommending that the Respondent's application for registration be granted. Neither party filed exceptions to his decision, and on November 16, 1995, Judge Tenney 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 Findings of Fact, Conclusions of Law, 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.

The Deputy Administrator finds that Ms. Luz Abad is licensed as a pharmacist with the Board of Pharmacy for the State of Florida. She is the predominant owner of the Respondent, Dinorah Drug Store, and she was also the predominant owner and sole pharmacist of Dinorah Pharmacy until its dissolution in late 1992.

In June of 1991, the Office of the Auditor General for the State of Florida conducted an investigation of Dinorah Pharmacy and Ms. Abad regarding possible Medicaid fraud. The Regional Drug Inspector for the Department of Health and Rehabilitative Services informed the Office of the Auditor General that a large quantity of samples of non-controlled substances were found during a routine pharmacy inspection of Dinorah Pharmacy. Subsequent investigation revealed that Dinorah Pharmacy had dispensed sample medications to two Medicaid recipients and submitted claims to Medicaid for those samples. As a result, Dinorah Pharmacy had received $162.40 from Medicaid for the sample medications that had been dispensed.

Dinorah Pharmacy and Ms. Abad were both individually charged with one felony count of Selling Samples or Complimentary Packages of Drug Products in violation of Florida Statute 465.015(2)(d). On June 4, 1992, Dinorah Pharmacy pled guilty to the above charge. However, pursuant to a Pre-Trial Intervention Agreement, Ms. Abad was not prosecuted. The Dinorah Pharmacy was dissolved as a business entity, and its DEA registration was retired. Effective March of 1993, the Department

of Health and Human Services excluded Dinorah Pharmacy from participation in the Medicaid program pursuant to 42 U.S.C. 1320a–7(a) for a period of five years. Such exclusion was mandatory under Section 1128(a)(1) of the Social Security Act.

On October 20, 1992, Dinorah Drug Store was incorporated, and Ms. Abad was listed as the registered agent of the corporation. Ms. Abad applied for and received a pharmacy permit for Dinorah Drug Store from the Board of Pharmacy for the State of Florida. Per the record, Ms. Abad had not applied for a Medicaid provider number for the Respondent pharmacy. On February 8, 1993, Ms. Abad submitted, on behalf of the Respondent, an application for a DEA registration as a retail pharmacy. That application was the basis of the DEA's Order to Show Cause dated December 12, 1994.

Since its incorporation, the Respondent pharmacy has been routinely inspected by the Department of Business and Professional Regulation for the State of Florida and has always been found to be in compliance with the laws and regulations of the State of Florida regarding pharmacies. The record contains an opinion from a pharmacy investigator for the State of Florida (Florida Investigator), a stating that he does not believe any grounds exist to deny Dinorah Drug Store a DEA registration. The Respondent also submitted evidence from members of the community, attesting to the honesty and trustworthiness of Ms. Abad.

Initially, the parties dispute whether 21 U.S.C. 824(a)(5) may be used as a basis to deny DEA registration to the Respondent pharmacy on the grounds that Ms. Abad, the predominant owner of the Respondent pharmacy, was also the predominant owner of Dinorah Pharmacy at the time it was excluded under the Medicaid program pursuant to 42 U.S.C. 1320as–7(a). Under Section 824(a)(5), the Deputy Administrator may suspend or revoke a registration issued pursuant to Section 823 upon a finding that the registration—''has been excluded (or directed to be excluded) from participation in a program pursuant to Section 1320a–7(a) of Title 42.'' It is the Government's position that this section is to be construed as not only grounds for the suspension or revocation of a DEA registration, but also as a basis for the denial of an application for a DEA registration. However, counsel for the Respondent argued that this provision is inapplicable, because this section is limited to the revocation or suspension of already existing registrations. Here the Respondent is applying for a new DEA Certificate of Registration.

The Deputy Administrator agrees with Judge Tenney's resolution of this issue. Judge Tenney noted that the Government's argument was more convincing.

> To reject 21 U.S.C. 824(a)(5) as a basis for the denial of DEA registration makes little sense. The result would be to grant the application for registration, only to possibly turn around and propose to revoke or suspend that registration based on the registrant's exclusion from a Medicare program. A statutory construction which would impute a useless act to Congress will be viewed as unsound and rejected. *South Corp*. v. *United States*, 690 F.2d [1369], 1374 (Fed. Cir. 1982).

Therefore, 21 U.S.C. 824(a)(5) may serve as a basis for the denial of a DEA registration.

As Judge Tenney noted, the DEA Deputy Administrator ''has consistently revoked, suspended, or denied the registrations of pharmacies based upon the unlawful practices of the pharmacy's owner, majority shareholder, officer, managing pharmacist, or other key employee.'' See, e.g., AML Corporation, d/b/a/ G & O Pharmacy, Docket No. 94–34 and 92–78, 61 FR 8973 (1996); Unarex of Plymouth, d/b/a/ Motor City Prescription and Unarex of Dearborn, d/b/a/ Motor City Prescription Center, 50 FR 6077 (1985). Therefore, it is appropriate to look to the conduct of Ms. Abad, the person who is both the predominant owner and practicing pharmacist for the Respondent.

Although Ms. Abad was not prosecuted for her actions in dispensing sample medications and submitting claims to Medicaid for those samples, it is significant that such conduct resulted in the conviction and the mandatory exclusion of Dinorah Pharmacy from the Medicaid program pursuant to 42 U.S.C. 1320a–7(a), while Ms. Abad was its predominant owner and sole pharmacist. Therefore, the Deputy Administrator agrees with Judge Tenney in concluding that ''[c]ounsel for the DEA has presented a *primafacie* case for the denial of [the] Respondent's application for registration under 21 U.S.C. 824(a)(5).''

However, also as Judge Tenney correctly wrote, ''[s]ince denial of registration under Section 824(a)(5) is discretionary, the factors listed in Section 823(f) may be considered in determining whether the granting of [the] Respondent's application is inconsistent with the public interest.'' Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for registration as a retail pharmacy, if he determines that granting the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989).

In this case, all five factors are relevant in determining whether the Respondent's registration would be inconsistent with the public interest. As to factor one, ''recommendation of the appropriate State licensing board, . . .'' it is significant that the Respondent and Ms. Abad have the requisite permits and licenses to operate within the State of Florida, and that no evidence has been submitted of adverse actions taken by the Florida Board of Pharmacy against either the Respondent or Ms. Abad. Further, the Florida Investigator has inspected the Respondent and found it to be in compliance with Florida law. He also opined that no reason existed to deny the Respondent's registration application. In light of the above, the Deputy Administrator agrees with Judge Tenney's conclusion, that ''as to Factor 1, I find that Ms. Abad and the Respondent have some form of approval attributable to the appropriate State licensing body.''

As to factor two, the Respondent's ''experience in dispensing . . . controlled substances,'' the Deputy Administrator agrees with Judge Tenney's finding, that it is relevant that Ms. Abad, as owner and sole pharmacist of Dinorah Pharmacy, had a DEA registration. Further, for eleven years she had operated under that registration as the sole pharmacist responsible for handling and dispensing controlled substances without any allegations of improprieties. Finally, neither party presented any evidence with regards to

Dinorah Pharmacy or the Respondent pharmacy, alleging any improprieties involving controlled substances.

As to factors three and four, neither the Respondent, Dinorah Pharmacy, nor Ms. Abad has ever been charged with or convicted of any offense relating to the distribution or dispensing of controlled substances. Dinorah Pharmacy was convicted of one count of Selling Samples or Complimentary Packages of Drug Products in violation of Florida law, but the drug products involved were not controlled substances.

Finally, as to factor five, ''[s]uch other conduct which may threaten the public health or safety,'' Judge Tenney found it significant that the small amount involved in the unlawful billing to the Medicaid program of Dinorah Pharmacy ''suggests that the billing was not a widespread practice. . . .'' He further noted that in the notification letter sent to Dinorah Pharmacy, giving notice of its mandatory exclusion from the Medicaid Program, the Department of Health and Human Services had written that there were no aggravating circumstances in this instance to justify imposing more than the mandatory minimum period of exclusion.

Further, the Respondent also submitted relevant character evidence as to the trustworthiness and honesty of Ms. Abad. Various individuals in the medical profession, and one accountant, noted that Ms. Abad was an honest, hard-working individual who provided quality service to the community served by the Dinorah Drug Store.

The Deputy Administrator agrees with Judge Tenney's conclusion that the denial of registration under Section 824(a)(5) is discretionary. Here, the Government's basis for denial is Dinorah Pharmacy's five-year mandatory exclusion from the Medicaid Program as a result of the conduct of Ms. Abad, the current owner and pharmacist for the Respondent. However, balanced against this basis for denial is (1) the lack of any adverse action or allegations pertaining to Ms. Abad's conduct related to controlled substances, (2) the observations and recommendation of the Florida Investigator concerning Ms. Abad's conduct as a pharmacist for the Respondent and his recommendation that DEA grant the registration application, and (3) the positive character evidence provided by the Respondent, attesting to Ms. Abad's trustworthiness and positive contributions of her professional services to the community served by the Dinorah Drug Store.

In reaching his conclusion, the Deputy Administrator notes that Ms. Abad's conduct of selling drug samples and billing Medicaid for such sales is fraudulent behavior, and he certainly does not condone such activity. However, in reviewing the entire record, the Deputy Administrator concludes that the public interest is best served by granting the Respondent a DEA Certificate of Registration. Further, the Deputy Administrator is aware of the Respondent's immediate need for such a registration. Therefore, given this need, the Deputy Administrator has determined that the public interest will be better served in making this final order effective upon publication, rather than thirty days from the date of publication.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823, and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application of Dinorah Drug Store, Inc., for a DEA Certificate of Registration, be, and it hereby is, approved. This order is effective upon the date of publication in the Federal Register.

Dated: April 4, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–8927 Filed 4–9–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Correction

As set forth in the Federal Register (FR Doc. 96–4944) Vol. 61, No. 43 at page 8303, dated March 4, 1996, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer for certain controlled substances. The listing of controlled substances for which Johnson Matthey applied should have included dihydrocodeine (9120) and meperidine (9230).

Any other such applicant and any person who is presently registered with DEA to manufacturer such substances may file comments or objections to the issuance of the above application.

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 June 10, 1996.

Dated: April 3, 1996.

Gene R. Haislip,

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

[FR Doc. 96–8926 Filed 4–9–96; 8:45 am]

BILLING CODE 4410–09–M

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Simplified Request for Advance or Reimbursement; Implementation of Section 104(d) of the Communications Assistance for Law Enforcement Act.

In accordance with the Paperwork Reduction Act of 1995, the Federal Bureau of Investigation invites comments on the information collection required to implement section 104(d) of the Communications Assistance for Law Enforcement Act (CALEA) (Pub. L. 103–414, 47 U.S.C. 1001–1010).

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted on or before June 10, 1996.

Comments or suggestions regarding the items contained in this information collection request should be directed to Telecommunications Industry Liaison Unit, Federal Bureau of Investigation, P.O. Box 220450, Chantilly, VA 22022–0450, telephone number (800) 551–0336. If you wish to receive a copy of the proposed carrier statement template with instructions, please contact the office of listed above.

The purpose of this notice is to request written comments and suggestions from the public, including telecommunications carriers, and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) 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;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collection of information on those who are to