US West and Cascade Communications have canceled their membership in ADSL.

No other changes have been made in the membership, nature or objectives of ADSL. Membership remains open, and ADSL intends to file additional written notifications disclosing all changes in membership.

On May 15, 1995, ADSL 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(b) of the Act on July 25, 1995 (60 Fed. Reg. 38058).

The last notification was filed with the Department on May 15, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 10, 1997 (62 FR 47690).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–4124 Filed 2–18–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Healthcare Information Technology Enabling Community Care (HITECC)

Notice is hereby given that, on November 14, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Healthcare Information Technology Enabling Community Care (HITECC) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes to the parties to the venture. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following has become a member of HITECC: Lockheed Martin Energy Systems, Oak Ridge, TN.

Membership in HITECC remains open, and HITECC intends to file additional written notification disclosing all changes in membership, if any occur.

On November 27, 1995, HITECC 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(b) of the Act on April 8, 1996 (61 FR 15521).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–4126 Filed 2–18–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–134A (IPACT–I)

Notice is hereby given that, on December 3, 1997, 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 International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–134a (''IPACT–I'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following has become a new member to the IPACT–I: Aeropharm Technology, Inc., Edison, NJ, a subsidiary of Kos Pharmaceuticals, Inc.

No other changes have been made in either the membership or planned activity of IPACT–I. Membership in this group research project remains open, and IPACT–I intends to file additional written notification disclosing all changes in membership.

On August 7, 1990, IPACT–I 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(b) of the Act on September 6, 1990 (55 FR 36710).

The last notification was filed with the Department on March 6, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 3, 1997 (62 FR 15939).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–4125 Filed 2–18–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Alliance Agreement for the Conduct of Research Relating to Oxygen Transport Membranes for the Production of Hydrogen and Synthesis Gas

Notice is hereby given that, on November 13, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Praxair, Inc. filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties, and (2) the nature and objectives of the venture. 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. Pursuant to Section 6(b) of the Act, the identities of the parties are Praxair, Inc., Danbury, CT; BP Chemicals, Inc., Cleveland, OH; Sasol Technology (Pty), Ltd., Johannesburg, REPUBLIC OF SOUTH AFRICA; Den norske stats oljeselskap a.s., Stavanger, NORWAY; and Amoco Production Company, Houston, TX.

The objective of the venture is to develop a new process for converting natural gas to synthesis gas using ceramic membrane technology.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–4207 Filed 2–18–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96–6]

Townwood Pharmacy; Revocation of Registration

On October 31, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Townwood Pharmacy (Respondent) of Houston, Texas, notifying the pharmacy of an opportunity to show cause as to why DEA should not revoke its DEA Certificate of Registration, AT8866468, and deny any pending applications for renewal of such registration as a retail pharmacy under 21 U.S.C. 823(f), for reason that the pharmacy's continued registration would be inconsistent with

the public interest pursuant to 21 U.S.C. 824(a)(4).

By letter dated November 15, 1995, Respondent, through counsel, timely filed a request for a hearing, and following prehearing procedures, a hearing was held in San Antonio, Texas on October 16, 1996, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, Government counsel submitted proposed findings of fact, conclusions of law and argument. Respondent did not submit any posthearing filing. On November 10, 1997, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her decision, and on December 12, 1997, Judge Bittner transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting 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 Acting Deputy Administrator adopts, in full, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision 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 Acting Deputy Administrator finds that Respondent is a retail pharmacy located in Houston, Texas. A.B. Hurd, has been a licensed pharmacist for 25 years and has been Respondent's owner and operator for 17 years. In late 1992, DEA received information from the Houston Police Department that Respondent pharmacy had a reputation for diverting controlled substances.

As a result of this information, DEA initiated an investigation of Respondent, which included five undercover visits between December 17, 1992 and July 9, 1993. The purpose of these visits was to determine whether Respondent would dispense controlled substances for no legitimate medical purpose. DEA obtained a total of nine controlled substance prescriptions written by a local Houston orthopedic physician for a Symone Williams to be used in the undercover investigation. Five of these prescriptions were for various quantities of Tylenol #4 with codeine, a Schedule III controlled substance, and four were for various quantities of Valium 10 mg., a Schedule IV controlled substance. However, none of the prescriptions were for an excessive quantity of either drug, given that each undercover visit was made more than a month after the previous visit. The prescriptions did not contain the patient's address or the date of issuance. Four out of the five visits were conducted by an undercover agent posing as Symone Williams and the fifth visit was conducted by an undercover agent posing as Ms. Williams' boyfriend.

On each occasion, the undercover agent had a conversation with Mr. Hurd while he was filling the prescriptions. At least four of these visits were tape recorded and transcripts of these recordings are in evidence in this proceeding. During the course of these visits, the undercover agents made a number of statements to Mr. Hurd in an attempt to indicate to him that the controlled substances were not going to be used for a legitimate medical purpose. For instance, during the first visit, the undercover agent told Mr. Hurd, ''I just tell my doctor to write 'em, I don't tell him anything''; ''I like the brand, 'cause that's what my boyfriend likes''; and ''He's gonna have some alcohol with it anyway.'' During the second visit, the undercover agent told Mr. Hurd, ''Me and my boyfriend used [the controlled substances,] they worked good''; and ''take that with a little bit of Crown,'' referring to alcohol. On another occasion, the agent made the following comments to Mr. Hurd: ''I go back to my doctor and * * * I told him I'm feeling bad, and he just give it to me''; and ''[Y]ep, we'll get high. That's right, some Crown and some Tylenol.'' During several of these visits, the undercover agent posing as Symone Williams kept talking about ''partying'' with Mr. Hurd. Throughout the transcripts of these visits, almost all of Mr. Hurd's comments, especially those in response to the above statements, were unintelligible. Mr. Hurd filled all of the prescriptions presented to him by the undercover agents. The prescriptions for Valium were filled with its generic equivalent diazepam.

Following the undercover visits, the undercover agent telephoned Mr. Hurd on September 27, and October 12, 1993, in an attempt to obtain controlled substances without presenting a prescription. Mr. Hurd did not agree to dispense any more controlled substances to the undercover agent. At the hearing, Mr. Hurd testified that he denied the undercover agent's telephone requests because there were no refills listed on the previously presented prescriptions and the agent had not authorized Mr. Hurd to contact the doctor to request a refill.

Mr. Hurd testified at the hearing before Judge Bittner that he did not recall any of the undercover agent's comments about using the controlled substances with alcohol or sharing them with her boyfriend. In addition, there was testimony that there was music or a television playing in the background during these visits: that the undercover agent and Mr. Hurd were approximately two arms' length apart during the transactions; that the undercover agent was also having conversations with the pharmacy's clerk; and that the undercover agent was not standing directly in front of Mr. Hurd when she was making conversation with him.

In addition, Mr. Hurd testified that he was familiar with the doctor who purportedly issued the prescriptions; that the doctor has a good reputation in the Houston area; and that Respondent pharmacy had never had any problems with the doctor's prescriptions in the past. Mr. Hurd further testified that the prescriptions appeared to be facially valid to him; that the quantities prescribed and the frequency of the prescriptions did not raise suspicions; and that Tylenol # 4 with codeine and Valium are commonly prescribed by orthopedic physicians. He also testified that he cannot determine whether or not a customer has pain and/or anxiety simply from looking at the individual. Mr. Hurd testified that he observed the undercover agent and that she had a professional appearance, her eyes were not red, and her speech was not slurred.

Mr. Hurd testified that he concluded that the prescriptions were valid, and that had he suspected that the prescriptions were invalid, he would not have filled them. Instead, he would have reported the prescriptions to the appropriate authorities and/or called the prescribing physician for verification.

Another area pharmacist testified at the hearing before Judge Bittner on behalf of Respondent. He stated that he has worked as a retail pharmacist in Houston for 27 years and has known Mr. Hurd since 1967. Like Mr. Hurd, this pharmacist testified that he is familiar with the physician who issued the prescriptions used in the undercover operation; that the physician has a good reputation; and that so long as the physician's prescriptions met the legal requirements, he would fill them. This pharmacist also testified that his practice is similar to that of Respondent and that it is not at all unusual for customers to strike up a conversation with him while he is filling a prescription, but that he does not pay too much attention to what a customer

says because his main objective is to fill the prescription. However, the pharmacist conceded on cross-examination that he would be concerned if a customer represented that he was going to take the prescribed controlled substance with alcohol.

After the completion of the undercover investigation, DEA conducted an accountability audit of ten controlled substances at Respondent. The audit covered the period February 26, 1993 to January 25, 1994, and revealed discrepancies for nine of the audited substances. Of particular note, Respondent could not account for 5,363 dosage units of diazepam 10 mg., 1,077 dosage units of hydrocodone 7.5/500, and 6,207 dosage units of APAP with codeine 60 mg. During the course of conducting the audit, it was discovered that Respondent did not maintain copies of 12 prescriptions and 6 purchase invoices. Respondent was nonetheless given credit for these dispensations and purchases by the investigators conducting the audit. Following the audit, the results were discussed with Mr. Hurd and he was given the opportunity to provide any additional records. Mr. Hurd subsequently provided the investigators with copies of additional prescriptions, however the prescriptions did not change the audit results because they were either not for the audited substances or were outside of the audit period. In addition, Mr. Hurd subsequently informed the investigators that he had discovered another bottle of diazepam, which the investigators counted and included in the audit calculations.

At the hearing in this matter, Mr. Hurd indicated that when conducting Respondent's yearly inventory to satisfy state requirements, he estimates the number of Schedule III through V controlled substances on hand. Respondent's February 26, 1993 inventory was used as the initial inventory for DEA's accountability audit.

Following the audit of Respondent, DEA was contacted by an individual who stated that her daughter had a drug problem, was currently in drug rehabilitation, and previously had overdosed approximately four to five times on prescription drugs that she had been getting from an employee of Respondent. DEA investigators later spoke to the daughter who confirmed that she had been getting her supply of controlled substances from Respondent's employee. Both of these individuals provided DEA investigators with a bag of drugs. A DEA investigator testified at the hearing that there were in fact some valid prescriptions for the individual on file at Respondent, but that the individual claimed that she also obtained controlled substances from Respondent without a prescription. The investigator further testified however that the drugs the individual actually presented to DEA had another pharmacy's label on the bottles.

DEA investigators never spoke to Respondent's employee about the individual, however Mr. Hurd testified that he spoke with the employee and the employee never admitted to giving the individual any drugs without a prescription. Mr. Hurd nonetheless instructed the employee not to fill any more prescriptions for the individual.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications, if he determines that the continued 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 law 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 any may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16,422 (1989).

Regarding factor one, there is no evidence that any action has been taken against Respondent's state license. As Judge Bittner notes however, since ''state licensure is a necessary but not sufficient condition for DEA registration, * * * this factor is not dispositive.''

The Acting Deputy Administrator finds that factors two and four, Respondent's experience in dispensing controlled substances and its compliance with applicable laws relating to controlled substances, are extremely relevant in determining the public interest in this matter. Under the Controlled Substances Act and its implementing regulations, pharmacists have a corresponding responsibility to ensure that controlled substances are prescribed and dispensed for a legitimate medical purpose. 21 CFR 1306.04(a). The Government contends that Respondent dispensed controlled substances to the undercover agents knowing that the drugs were not for a legitimate medical purpose. However, the Acting Deputy Administrator agrees with Judge Bittner's conclusion that, ''[i]t is not clear from the record whether or not Mr. Hurd filled the prescriptions knowing that [the undercover agent] intended to use the drugs for no medical purposes.'' While the undercover agents' statements indicating a nonmedical purpose for the drugs are clearly reflected in the transcripts of the visits, Mr. Hurd's responses are unintelligible and Mr. Hurd testified that he did not hear the undercover agents make these statements. In addition, no testimony was elicited from either the undercover agent or the investigator who was monitoring the undercover visits as to what Mr. Hurd's responses were to the undercover agents' statements.

Judge Bittner does point out however, that on one occasion, the transcript indicates that Mr. Hurd asked the undercover agent when she was going to ''party'' with him, and therefore, Mr. Hurd was somewhat aware of the undercover agent's statements. Also at the hearing, Mr. Hurd testified that he dismissed the undercover agent's comment that ''My doctor writes anything I want,'' because he was familiar with the prescribing doctor and felt that the doctor would not prescribe improperly. This testimony by Mr. Hurd indicates that he in fact heard the undercover agent's statement.

The Acting Deputy Administrator finds that the record does not clearly establish whether Respondent dispensed controlled substances to the undercover agent for no legitimate medical purpose. But, like Judge Bittner, the Acting Deputy Administrator concludes that ''in light of the discussion below,* * * it [is] unnecessary to decide whether the record establishes that Mr. Hurd's filling of the prescriptions for Symone Williams would, standing alone, warrant revocation of Respondent's registration.''

The Acting Deputy Administrator finds that the record is clear that Respondent has failed, at the very least, to comply with the recordkeeping requirements of both Federal and state law as evidenced by the violations revealed by the accountability audit. Respondent failed to maintain complete

and accurate records of controlled substances in violation of 21 U.S.C. 827 and 21 CFR 1304.21, as evidenced by the audit discrepancies. For less than a one year period of time, Respondent could not account for over 13,500 dosage units of controlled substances. Respondent did not actually offer any explanation for its failure to account for these drugs. Instead, Mr. Hurd seemed to suggest that the discrepancies were caused by the compounding over time of his estimates of Schedule III through V drugs on hand when conducting his yearly inventory. The Acting Deputy Administrator recognizes that it is permissible to estimate Schedule III through V controlled substances when-conducting controlled substance inventories. See 21 CFR 1304.11(e)(3). However, such estimations would not compound over time. Instead, for each inventory, Respondent would estimate what it had on hand on that date. It was Respondent's estimated inventory taken on February 26, 1993, that was used as the initial inventory for DEA's accountability audit. It is inconceivable that Respondent's estimations on that date were off by over 13,500 dosage units. Therefore, the Acting Deputy Administrator concludes that Respondent did not offer any plausible explanation whatsoever for the tremendous shortages revealed during the audit.

Respondent's failure to maintain 6 purchase invoices and 12 prescriptions is further evidence of its failure to maintain complete and accurate records of controlled substances as required by 21 U.S.C. 827. This failure to keep accurate records also violated the Texas Controlled Substances Act, title 6 Tex. Health & Safety Code §§ 13.6(d) & 13.64(b).

While the Acting Deputy Administrator has concluded that it is unnecessary to determine whether or not Respondent dispensed controlled substances to the undercover agents for no legitimate medical purpose, its dispensing of controlled substances pursuant to the prescriptions presented nonetheless violated 21 CFR 1306.05(a). This regulation imposes a ''corresponding liability [on] the pharmacist who fills a prescription not prepared in the form prescribed by these regulations.'' Pursuant to 21 CFR 1306.05(a), a prescription must contain, among other things, the date of issuance and the address of the patient. The prescriptions filled for the undercover agents did not contain this information. Additionally, Respondent's filling of these prescriptions violated the Texas Controlled Substances Act, Title 6, Tex. Health & Safety Code § 481.074(k)(2) & (3).

Regarding factor three, as Judge Bittner found, ''[t]here is no evidence that Mr. Hurd or any other officer or agent of Respondent has ever been convicted under State or Federal laws relating to controlled substances.'' As to factor five, the Acting Deputy Administrator agrees with Judge Bittner's assessment that the allegation that Respondent dispensed controlled substances without a prescription to the individual who overdosed is entitled to little weight. No corroborating evidence was presented to support the allegation.

Judge Bittner concluded that ''Respondent offers little in the way of an explanation for the serious shortages in inventory and there is no suggestion in this record that Respondent is likely to be more responsible in the future.'' Consequently, Judge Bittner found that Respondent's continued registration would be inconsistent with the public interest, and therefore recommended that its registration be revoked. The Acting Deputy Administrator agrees with Judge Bittner. Respondent's failure to account for over 13,500 dosage units of controlled substances over an approximately one year period of time, is extremely troublesome. At the very least, the shortages indicate that respondent has failed miserably in complying with the requirement that it maintain complete and accurate records of its controlled substance handling. These requirements are in place in order to prevent and detect the diversion of these potentially dangerous substances. Respondent's failure to recognize the seriousness of the shortages, does not bode well for its future compliance with the laws and regulations relating to controlled substances. See Rocco's Pharmacy, 62 FR 3056 (1997). Therefore, the Acting Deputy Administrator concludes that Respondent's continued registration would be inconsistent with the public interest.

Accordingly, the Acting 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 DEA Certificate of Registration AT8866468, previously issued to Townwood Pharmacy, be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective March 23, 1998.

Dated: February 12, 1998.

Peter F. Gruden,

Acting Deputy Administrator.

[FR Doc. 98–4201 Filed 2–18–98; 8:45 am]

BILLING CODE 4401–09–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the Employment, Wages, and Contributions Report (ES–202 Program).

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before April 20, 1998.

The Bureau of Labor Statistics is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,