Saturday, June 10, 1995, at Allegany Community College, Willowbrook Road, Cumberland, Maryland.

The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairman, Washington, D.C.
Ms. Diane C. Ellis, Brunswick, Maryland
Brother James T. Kirkpatrick, F.S.C., Cumberland, Maryland
Ms. Anne L. Gormer, Cumberland, Maryland
Ms. Elise B. Heinz, Arlington, Virginia
Mr. George M. Wykoff, Jr., Cumberland, Maryland
Mr. Rockwood H. Foster, Washington, D.C.
Mr. Barry A. Passett, Washington, D.C.
Mrs. Jo Reynolds, Potomac, Maryland
Ms. Nancy C. Long, Glen Echo, Maryland
Ms. Mary E. Woodward, Shepherdstown, West Virginia
Dr. James H. Gilford, Frederick, Maryland
Mr. Edward K. Miller, Hagerstown, Maryland
Mrs. Sue Ann Sullivan, Williamsport, Maryland
Mr. Terry W. Hepburn, Hancock, Maryland
Mr. Laidley E. McCoy, Charleston, West Virginia
Ms. Jo Ann M. Spevacek, Burke, Virginia
Mr. Charles J. Weir, Falls Church, Virginia

The primary agenda for this meeting will include a report and update on the Canal Place Authority project in Cumberland.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting or who wish to submit written statements, may contact the Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at park headquarters, Sharpsburg, Maryland.

Dated: May 25, 1995.

Terry R. Carlstrom,

Acting Regional Director, National Capital Region.

[FR Doc. 95–13544 Filed 6–1–95; 8:45 am]

BILLING CODE 4310–70–M

Notice of Public Hearing

SUMMARY: Proposed Exchange of Federally-Owned Lands for Privately-Owned Lands Both in Fulton County, Georgia.

FOR FURTHER INFORMATION CONTACT: Superintendent, Martin Luther King, Jr. National Historic Site, 526 Auburn Avenue, Atlanta, Georgia 30312.

A public hearing has been scheduled to hear and receive public comments on the proposed exchange. A Notice of Realty Action, published in the **Federal Register** on May 5, 1995, describes the proposed action which involves an equal value exchange of property between Ebenezer Baptist Church and the National Park Service.

The public hearing will be held at 6:30 p.m. on Thursday, June 15, 1995, at the Auburn Avenue Research Library of African American Culture and History, 145 Auburn Avenue, Atlanta, Georgia.

Comments will be accepted during a 45-day public comment period which ends June 19, 1995.

Dated: May 24, 1995.

Robert Deskins,

Southeast Field Director.

[FR Doc. 95–13543 Filed 6–1–95; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–706 (Final)]

In the Matter of Canned Pineapple Fruit From Thailand; Commission Determination to Conduct a Portion of the Hearing in Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon requests of petitioner Maui Pineapple Company, Ltd. (''Maui'') and respondents Thai Food Processors' Association (''TFPA'') and the Government of Thailand in the above-captioned final investigation, the Commission has unanimously determined to conduct a portion of its hearing scheduled for June 1, 1995, *in camera.* See Commission rules 207.23(d), 201.13(m) and 201.35(b)(3) (19 C.F.R. 207.23(d), 201.13(m) and 201.35(b)(3), as amended, 59 Fed. Reg. 66,719 (Dec. 28, 1994)). The remainder of the hearing will be open to the public.

FOR FURTHER INFORMATION CONTACT: Rachele R. Valente, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3089. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that the parties have justified the need for a closed session. Because Maui is virtually the sole domestic producer, a full discussion of its financial condition and of many of the indicators that the Commission examines in assessing material injury, or threat thereof, by reason of subject imports can only occur if at least part of the hearing is held *in camera.* In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will include the usual public presentations by petitioner and by respondents, with questions from the Commission. In addition, the hearing will include an *in camera* session for presentations including BPI by petitioner and respondents, and for questions from the Commission relating to the BPI. For any *in camera* session the room will be cleared of all persons except (1) those who have been granted access to BPI under a Commission administrative protective order (''APO'') and are included on the Commission's APO service list in these investigations (see 19 C.F.R. 201.35(b)(1), (2)); (2) non-APO authorized Maui personnel when Maui's BPI will be discussed; and (3) non-APO authorized foreign producer personnel when such producer's BPI will be discussed. See 19 C.F.R. 201.35(b)(1), (2). The time for the parties' presentations and rebuttals in the *in camera* session will be taken from their respective overall allotments for the hearing. All persons planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 C.F.R. 201.39) that, in her opinion, a portion of the Commission's hearing in *Canned Pineapple Fruit Thailand,* Inv. No. 731–TA–706 (Final) may be closed to the public to prevent the disclosure of BPI.

By order of the Commission.

Issued: May 26, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–13542 Filed 6–1–95; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 93–65]

Harlan J. Borcherding, D.O.; Revocation of Registration

On June 17, 1993, the Deputy Assistant Administrator (then-Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Harlan J. Borcherding, D.O., of Houston, Texas (Respondent), proposing to revoke his DEA Certificate of Registration, AB1540079, and deny any pending applications for such registration. The statutory basis for the Order the Show Cause was that Respondent's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause, and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held in Houston, Texas, on May 25, 1994.

On October 11, 1994, Judge Tenney issued his findings of fact, conclusions of law and recommended ruling. The Government filed exceptions to Judge Tenney's recommended ruling on October 28, 1994. No exceptions were filed by Respondent.

On November 11, 1994, the administrative law judge transmitted the record, including the Government's exceptions, to the Deputy Administrator. The Deputy Administrator has considered the record in its entirety and enters his final order in this matter pursuant to 21 CFR 1316.67, based on findings of fact and conclusions of law as set forth herein.

The administrative law judge found that Respondent is a primary-care family physician. Respondent's medical practice is situated in a low-income area and his clientele primarily are economically deprived individuals.

The administrative law judge further found that DEA initiated an investigation of Respondent, in March of 1990, following information received from the Texas Department of Human Services that Respondent was among the top 1,000 Medicaid prescribers. DEA also received information from the Houston Police Department that Respondent was writing numerous prescriptions for Tylenol #4, a Schedule III controlled substance, and Valium, a Schedule IV controlled substance.

The administrative law judge found that an undercover Houston police officer participated in DEA's investigation of Respondent for the purpose of obtaining prescriptions for Tylenol #4 and Valium from Respondent for non-medical reasons. The undercover officer, wired with a transmitter, visited Respondent's office on ten occasions between October 1990 and March 1991. The undercover officer completed a patient information sheet during his first meeting with Respondent on March 21, 1990, and indicated that he was unemployed. Respondent recorded the officer's blood pressure, temperature and weight, and drew a blood sample. The officer informed Respondent that he ''needed something to mellow out at the end of the day'', and specifically asked for Valium. Judge Tenney noted that Respondent explained to the officer that he did not give Valium to new patients and that he would only give it to regular patients. Respondent also asked if the lack of a job was the reason the officer complained of stress and, therefore, had requested the medication. Respondent dispensed to the officer 18 Tranxene 7.5 mg tablets, a Schedule IV controlled substance.

The administrative law judge found that the officer made his second visit the Respondent's office on April 24, 1990, and received a prescription for 30 Tranxene 7.5 mg tablets, plus one refill. Judge Tenney also noted that after giving the officer the prescription, Respondent asked him if he needed a note for work.

The administrative law judge further found that, on June 8, 1990, at his third visit, the officer informed Respondent that he had been taking two Tranxene tablets at a time. The officer received a prescription of 30 Valium 10 mg tablets, with one refill.

Judge Tenney found that, on the officer's next visit in July 1990, the officer informed Respondent that he now was taking two Valium per day and asked for a prescription for Tylenol #4. Respondent refused to prescribe Tylenol #4 stating that Tylenol #4 is only needed for pain and that the combination of Valium and Tylenol #4 is potent. Respondent also informed that officer that he could continue to take two Valium per day, but that one per day was preferable. The officer obtained a prescription for 30 Valium 10 mg tablets, plus one refill. Respondent again asked the officer if he needed a note for work.

The administrative law judge further found that during the officer's next visit in September of 1990, the officer informed Respondent that he had a new job. The officer also asked for a prescription of Tylenol #4, stating that he had run out of Valium and had taken Tylenol #4 in its place. Respondent refused the request for Tylenol #4 and, instead, again prescribed 30 Valium 10 mg tablets, plus one refill.

The administrative law judge found that the officer made another visit to Respondent on December 14, 1990, and was refused his requested refill of Valium because, as Respondent stated, narcotics agents were monitoring Respondent's prescriptions, particularly those for street drugs. However, respondent did give the officer a prescription for 30 Tranxene 7.5 mg tablets, plus one refill.

The officer again visited Respondent on January 25, 1991, and informed Respondent that he had obtained Tylenol #4 from another physician. The administrative law judge found that the officer did not complain of any illness during this visit nor give any reason why he might need a prescription for Tylenol #4. Respondent prescribed 30 Tranxene 15 mg tablets, plus one refill.

Judge Tenney found that the officer returned to Respondent on February 26, 1991. Respondent informed the officer that he should not have returned until two months after his previous January 25, 1991 visit. The officer responded that he had been giving some of his medication to his girlfriend and asked whether she could see Respondent. The officer additionally informed Respondent that the Tranxene was not working as well as the Valium. Respondent prescribed 60 Tranxene 15 mg tablets, plus one refill.

Judge Tenney found that, on March 20, 1991, at the final visit, the officer brought another undercover police officer to Respondent's office to pose as his girlfriend. The second officer requested a prescription because she ''just needed something to relax.'' Respondent refused to prescribe medication to either officer at this visit.

With regard to the officer's visits to Respondent, Judge Tenney noted that Respondent spent, on average, only three minutes with the officer on most of these visits, and that two visits lasted only one minute each. During these visits Respondent did not pursue the nature of the officer's complaints beyond checking the officer's blood pressure and, on two occasions, checking his chest with a stethoscope. Judge Tenney additionally noted that Respondent never advised the officer to call him or make arrangements for follow-up appointments.

Nonetheless, the administrative law judge concurred with Respondent's expert witness that the undercover

officer presented a legitimate medical complaint to Respondent, i.e. anxiety purportedly induced by unemployment. Judge Tenney further found that Respondent's treatment of the officer with Tranxene and Valium was medically proper.

In January of 1992, a grand jury in Harris County, Texas indicted Respondent on three counts of prescribing Clorazepate (also known by its brand name ''Tranxene''), a Schedule IV controlled substance, without a valid medical purpose. The indictment was based on Respondent's prescriptions of Tranxene to the undercover officer on December 14, 1990, January 25, 1991, and February 26, 1991.

The administrative law judge found that Respondent pled guilty to a single misdemeanor count and that adjudication of guilt was deferred. Respondent was given two years probation, a $2,000 fine and 200 hours of community service. Respondent's probationary period expired without an adjudication of guilt and the proceedings were dismissed.

Judge Tenney also found that DEA conducted an accountability audit covering the period between January 1, 1992 and February 19, 1993. The audit revealed shortages and overages of various controlled substances. The audit revealed recordkeeping violations, including failure to maintain complete and accurate records of controlled substances received and dispensed; failure to take an initial or biennial inventory of all stocks of controlled substances; and failure to maintain dispensing records of controlled substances in a readily retrievable form. The administrative law judge noted Respondent's admission concerning recordkeeping deficiencies, and additionally noted Respondent's testimony that he had instituted new office procedures to remedy his recordkeeping problems.

The administrative law judge found that the United States Attorney for the Southern District of Texas prepared a complaint seeking civil penalties for violations of 21 U.S.C. 827(a)(3) based on ''virtually identical'' recordkeeping deficiencies as those asserted in this proceeding. Respondent entered into a settlement agreement dated October 28, 1993. Judge Tenney found that no representation was made, through the course of the settlement, that DEA would surrender its claims concerning Respondent's DEA Certificate of Registration.

Pursuant to 21 U.S.C. 824(a)(4) the Deputy Administrator of the DEA may revoke the registration of a practitioner upon a finding that the registrant has committed such acts as would render his registration inconsistent with the public interest as that term is used in 21 U.S.C. 823(f). In determining the public interest, the following factors will be considered:

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

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

(3) The [registrant]'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 and safety.''

It is well established that these factors are to be considered in the disjunctive, i.e. the Deputy Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate in assessing the public interest. See Mukand Lal Arora, M.D., 60 FR 4447 (1995); Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

The Government argued that factors (2) through (5) are relevant in the instant case. The administrative law judge found that the Government had established a *prima facie* case only with respect to factors (3) and (5). Judge Tenney held, with respect to factors (2) and (4), that the Government had not proven by a preponderance of the evidence that Respondent lacked a legitimate medical purpose for dispensing and prescribing controlled substances to the undercover officer.

The administrative law judge did find, however, that this is a ''close case'', because of such facts as Respondent's average three minute office visits, and Respondent's concern that narcotics agents were monitoring his prescriptions for street drugs. Judge Tenney additionally noted the fact that Respondent, on two occasions, asked the officer if he needed a note for work, raising the question as to whether Respondent actually was treating the officer for anxiety allegedly inducted by unemployment.

With regard to factor (3), the administrative law judge rejected Respondent's argument that he had not been ''convicted'' of any offense within the meaning of 21 U.S.C. 823(f)(3). The law is well settled that a DEA registrant may be found to have been ''convicted'' within the meaning of the Controlled Substances Act, despite a deferred adjudication of guilt. See Mukand Lal Arora, M.D., 60 FR 4447 (1995) (conviction, sentence of probation and deferred adjudication may be considered under 21 U.S.C. 823(f)(3)); also, Clinton D. Nutt, D.O., 55 FR 30992 (1990), *aff'd* 916 F.2d 202 (5th Cir. 1990); Eric A. Baum, M.D., 53 FR 47272 (1988).

With respect to factor (5) the administrative law judge found that the Government presented credible, uncontradicted testimony concerning Respondent's recordkeeping deficiencies and that Respondent had conceded that his recordkeeping practices were inadequate. The administrative law judge also briefly addressed and rejected Respondent's contentions that revocation of his registration, based on these recordkeeping deficiencies, is precluded by double jeopardy and collateral estoppel following Respondent's payment of a civil fine for recordkeeping violations as part of his settlement with the United States Attorney's office for the Southern District of Texas. Judge Tenney found that the settlement agreement does not preclude DEA from revoking or suspending Respondent's registration based on deficient recordkeeping practices.

Notwithstanding his conclusion that the Government had met its burden of proof with respect to 21 U.S.C. 823(f) (3) and (5), the administrative law judge recommended that Respondent retain his DEA Certificate of Registration, but should receive a formal reprimand.

The Government took exception to Judge Tenney's findings that Respondent legitimately dispensed and prescribed controlled substances to an undercover officer from March 21, 1990 to February 26, 1991. The Government argued that Respondent's guilty plea to the criminal misdemeanor fraud count constitutes an admission that Respondent did not legitimately prescribe controlled substances to the undercover officer.

The Government further objected to the administrative law judge's failure to accord more weight to evidence introduced concerning inconsistencies in the Respondent's treatment of the undercover officer in determining whether Respondent prescribed controlled substances to the undercover officer for a legitimate medical purpose. Additionally, the Government took exception to Judge Tenney's conclusion that there was little evidence of Respondent's current non-compliance with recordkeeping requirements. The Government argued that Judge Tenney's conclusion was based, in part, on the failure of DEA personnel to return to Respondent's office to verify his

compliance following the February 1993 accountability audit in which the deficiencies were discovered. The Government further argued that it's evidentiary burden was satisfied upon establishing, as found by Judge Tenney, a *prima facie* case with respect to Respondent's deficient recordkeeping systems in the past. The Government argued that it does not have the additional burden of conducting ongoing investigations up until the date of the administrative hearing to verify continued non-compliance or recent compliance. The Government further maintained that Respondent provided no evidence of his current compliance, and, further that the Government does not have the burden of establishing whether Respondent corrected his recordkeeping systems.

The Deputy Administrator rejects the opinion and recommended decision of the administrative law judge in its entirety. The Deputy Administrator concludes that, for a controlled substance prescription to be valid, it must be written by an authorized individual acting within the scope of normal professional practice for a legitimate medical purpose. Under these parameters, the prescriptions issued to the undercover officer by Respondent were not valid prescriptions because Respondent, while authorized by law to prescribe controlled substances, did not act within the scope of normal, professional practice concerning his prescriptions of Tranxene and Valium to the undercover officer. Respondent's total treatment time averaged only three minutes per visit with two visits lasting only one minute each. The undercover officer received controlled substances at seven out of ten visits over a one year period, but Respondent never advised the officer to telephone his office or schedule an appointment for follow-up. Respondent determined that since the undercover officer did not have a job and was partially ''uptight'', a prescription for Tranxene was warranted, but subsequently asked if the officer needed a note for work. Respondent continued to prescribe controlled substances to the undercover officer after the officer informed Respondent that he was taking the medication in larger quantities and more frequently than directed and was sharing the drugs with another person. Further, the officer dictated which controlled substance he wanted, rather than Respondent, as a practitioner, determining the medication appropriate for the medical condition presented by the officer.

The Deputy Administrator further finds that the prescriptions issued by Respondent were not for a legitimate medical purpose as demonstrated by Respondent's non-medical rationale for not prescribing requested drugs. For example, Respondent initially refused the officer's request for Valium, not because the undercover officer did not present a legitimate medical problem to Respondent, but, as Respondent explained, as a rule he did not give Valium to new patients, only regular patients, as if regular patients had a more legitimate medical need for controlled substances. Additionally, after prescribing Valium to the officer on three separate visits, Respondent later refused to issue a prescription for Valium out of concern that narcotic agents were monitoring his prescriptions for street drugs, but, instead, gave the officer a prescription for Tranxene.

The Deputy Administrator concludes, in light of the foregoing, that Respondent did not legitimately dispense or prescribe controlled substances to the undercover officer. The Government has met its burden of proof in this regard and factors (2) and (4) under 21 U.S.C. 823(f) are, therefore, relevant. Further, the Deputy Administrator concurs with the administrative law judge's finding that the Government established a *prima facie* case with respect to factor (3) and factor (5) under 21 U.S.C. 823(f). Finally, the Deputy Administrator concludes that Respondent's guilty plea, and his past recordkeeping violations demonstrate a pattern of noncompliance by Respondent with the Controlled Substance Act and its implementing regulations. Therefore, in consideration of 21 U.S.C. 823(f) (2), (3), (4) and (5), Respondent's continued registration would not be consistent with the public interest.

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 DEA Certificate of Registration, AB1540079, previously issued to Harlan J. Borcherding, D.O., be, and it hereby is, revoked, and any pending applications for such registration be, and they hereby are, denied. This order is effective July 3, 1995.

Dated: May 25, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–13455 Filed 6–1–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 12, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 12, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC. this 22nd day of May, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.