Specifically, Communications Test Design, Tucker, GA; and Lattelekom SIA, Riga, Lativia have been added as parties to this venture.

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

On May 15, 1995, DSL 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 FR 38058).

The last notification was filed with the Department on July 16, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 16, 2002 (67 FR 53619).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–32053 Filed12–19–02; 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—GE Global Research

Notice is hereby given that, on November 7, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), GE Global Research has filed written 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 GE Global Research, Niskayuna, NY; and Molecular Nanosystems, Palo Alto, CA. The nature and objectives of the ventures are to develop and demonstrate ''Template Synthesis for Nanostructured Materials.''

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–32055 Filed 12–19–02; 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—Information Storage Industry Consortium

Notice is hereby given that, on October 28, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Information Storage Industry Consortium (''INSIC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. 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, NSA, Ft. Meade, MD; and SONY, Boulder, CO have been added as parties to this venture. The following university has joined INSIC as a university associate member: University of Manchester, Manchester, United Kingdom.

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

On June 12, 1991, INSIC 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 August 13, 1991 (56 FR 38465).

The last notification was filed with the Department on may 3, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 21, 2002 (67 FR 42281).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–32054 Filed 12–19–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Marion ''Molly'' Fry, M.D.; Revocation of Registration

On March 7, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Marion ''Molly'' Fry, M.D. (Dr. Fry), proposing to revoke her DEA Certificate of Registration, BM4859178, and deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Dr. Fry's continued registration is inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4). The show cause order also notified Dr. Fry that should no request for a hearing be filed within 30 days, her hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Fry at her registered location in Cool, California, and DEA received a signed receipt indicating that it was received on March 12, 2002. A second copy of the Order to Show Cause was sent by certified mail to Dr. Fry at her residence in Greenwood, California (the Greenwood residence). However, the second copy was returned to DEA as ''not deliverable.'' DEA's Sacramento District Office then sent the Order to Show Cause to Dr. Fry's residence by Federal Express.

DEA has not received a request for hearing or any other reply from Dr. Fry or anyone purporting to represent her in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Fry is deemed to have waived her hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator's review of the investigative file reveals that Dr. Fry graduated from Western Washington University in Bellingham, Washington with a bachelor's degree in both chemistry and biology. Dr. Fry subsequently graduated from the University of California—Irvine in 1985 with a degree in medicine. Shortly thereafter, Dr. Fry obtained a medical license in the State of California where she initially specialized in general medicine. Dr. Fry is currently licensed to practice medicine in the State of California.

In October 1999, Dr. Fry and her husband Dale Schafer (Mr. Schafer) opened the California Medical Research Center located in Cool, California. Cool is a small mountain community in El Dorado County, California. The investigative file reveals that Mr. Schafer is an attorney, licensed to practice law in the State of California.

The Deputy administrator finds that as a result of a routine DEA interdiction operation in August 2000, an individual was arrested on an Amtrak train possessing ten pounds of processed

marijuana. A search of the individual's belongings revealed an address to a ranch property in El Dorado County owned by an individual hereinafter referred to as ''RS.'' During the subsequent execution of a search warrant at RS' home, DEA agents found over 1,000 mature marijuana plants. Also found during the execution of the search warrant were approximately 50 sets of documents consisting of medical recommendations from Dr. Fry to several individuals, and what purported to be registration forms for a marijuana buyers club called Sierra CPO (Cannabis Patients Only). The medical recommendations from Dr. Fry were for ailments such as anxiety, insomnia, asthma, pre-menstrual syndrome and restless leg syndrome. Each of the recommendation certificates included a waiver provision where the client signed an acknowledgment that marijuana use remains a violation of federal law.

DEA subsequently initiated an investigation of Dr. Fry and Mr. Schafer when on December 28, 2000, the agency received a telephone call from the District Security Representative of United Parcel Service (UPS) regarding seven packages that were received at a UPS location in Rocklin, California. The UPS representative informed DEA that the seven packages each contained gram quantities of marijuana and were addressed to individuals at different residential locations. The return address on each of the seven packages listed ''DALE, COOL CORNER VIDEO,'' at a location in Cool, California. The seven packages were seized. DEA subsequently learned that at least one of the packages was sent through UPS by Michael John Harvey, an employee of Dr. Fry and Mr. Schafer.

On January 2, 2001, DEA was contacted by Mr. Schafer who stated that he was the attorney representing the recipients of the marijuana packages. Mr. Schafer demanded the return of the packages and stated that his clients had a legal right to them. DEA subsequently informed Mr. Schafer that the marijuana packages would not be returned to his clients and were seized because they were Schedule I controlled substances unlawfully shipped through a private mail carrier, in violation of 21 U.S.C. 843(b).

During an investigation by DEA of a marijuana buyer's club in late 2000, it was learned from various clients whose marijuana recommendation forms were previously found at RS' ranch that Dr. Fry provided the recommendations under questionable circumstances. Several clients reported that their visits to Dr. Fry's office lasted no more than 20 minutes, and that time was usually spent with Mr. Schafer. Mr. Schafer would typically advise clients about the legal aspects of medical marijuana, and that the drug was illegal under federal law. Mr. Schafer also reportedly advised clients on how to respond if arrested while possessing marijuana.

According to some of the clients, consultations involving Dr. Fry were brief and consisted of no medical examination or review of medical records. These clients further reported that despite the lack of a medical examination, Dr. Fry would routinely issue recommendation certificates for marijuana.

One person familiar with Dr. Fry's practice reported that Dr. Fry and Mr. Schafer advised their staff to turn away potential clients who were too ''clean-cut'' because of a concern that these clients might be undercover law enforcement agents. DEA learned that Dr. Fry and Mr. Schafer charged $150 per visit which were referred to as a ''medical/legal consultation'' and the couple saw as many as 100 clients each week. DEA also received information that client fees were deposited into the bank account of Mr. Schafer's law practice.

DEA obtained further information that Mr. Schafer kept processed marijuana in a duffel bag in Dr. Fry's office, and on several occasions, he sold processed marijuana to individuals. On one occasion, Mr. Schafer purchased three pounds of processed marijuana from a third party for $3,600.00 per pound, and gave a portion of the marijuana to another individual to sell for him.

A source familiar with Dr. Fry's practice reported to DEA that in or around March 2000, hundreds of marijuana ''clones'' were observed being grown in the residential garage of Dr. Fry and Mr. Schafer. A marijuana ''clone'' is a branch clipping from a healthy, female marijuana plant. The clipping is then placed into a growing medium to allow the branch to establish a root system and mature into a marijuana plant. The clones are reported to be of high quality and high THC (the primary psychoactive chemical component of marijuana). The source further observed ''grow lights'' (a type of fluorescent light used for indoor growing of marijuana), fertilizer, plant nutrients, and cubes of a growing medium into which clones are inserted to take root.

DEA also received information that on more than 100 occasions, Mr. Schafer reportedly offered to sell marijuana ''growing kits'' to clients who came to Dr. Fry's office to receive recommendation certificates. DEA learned that these growing kits contained six marijuana clones plants, a growing tub, and grow lights. Payment for the kits were made to a business concern owned by Dr. Fry and Mr. Schafer known as ''Cool Madness.'' The kits were later delivered to clients by, among others, the son of Dr. Fry and Mr. Schafer, their daughter and her boyfriend. DEA agents also obtained information from a source familiar with Dr. Fry and Mr. Schafer that on April 16, 2000, Mr. Schafer sold approximately 40 marijuana plants to an individual in exchange for marijuana smoking paraphernalia.

DEA's investigation further revealed that in February 2001, El Dorado County, California law enforcement officials received an anonymous tip from a source that claimed that he had just completed an inspection or appraisal of the residential property of Dr. Fry and Mr. Schafer. The source reported seeing marijuana growing in the yard of the residential location. This information was later corroborated by aerial surveillance conducted by the El Dorado County Sheriff's Office (EDCSO) of the Greenwood residence of Dr. Fry and Mr. Schafer. During an aerial flight on September 26, 2001, a detective for EDCSO observed marijuana plants growing in an outdoor growing area as well as inside the greenhouse of that property.

The investigative file further reveals that in April 2000, a detective for the Western El Dorado Narcotic Enforcement Team (WENET) received a telephone call from a woman regarding her 19-year old son, who received a written recommendation for the use of marijuana from Dr. Fry. The woman informed WENET that in addition to the written recommendation, her son received a flyer stating that marijuana was ''an alternate way to party. ''

On January 11, 2001, undercover agents for WENET conducted an undercover operation involving the office of Dr. Fry and Mr. Schafer. The primary objective of the undercover visit was to have an undercover agent obtain a recommendation for marijuana from Dr. Fry or one of her associates, without the agent providing medical records or having a physical exam performed.

Upon entering the office of Fry/Schafer, the agent was shown a video on subjects related to marijuana use. Mr. Schafer then questioned the undercover agent as to why the agent came to the office. Mr. Schafer then told the agent that the number one reason people were written a marijuana recommendation was for chronic pain.

During that same undercover visit, the agent then met with Dr. Fry's physician assistant. The physician assistant questioned the undercover agent regarding the agent's health. The agent then complained of a false back injury suffered in a car accident. After a cursory examination (which consisted of the agent grabbing and squeezing the fingers of the physician assistant), the physician assistant concluded that one side of the agent's back was weaker than the other side. Despite the cursory nature of the exam and the lack of a medical record, the undercover agent was provided with a written recommendation for marijuana by Dr. Fry's physician assistant.

In February 2001, an undercover WENET agent again went to the office of Dr. Fry and Mr. Schafer posing as a potential client in need of a recommendation certificate for marijuana. In a recorded conversation, Dr. Fry was heard telling the undercover agent that she and her husband ran a business selling marijuana-growing kits. Dr. Fry was also heard complaining to the agent that her husband was not making enough money with the business. Dr. Fry then offered to provide to the undercover agent marijuana clones, lights, and plant nutrients to grow marijuana, and if the agent signed up, she would provide the agent with low-cost organic marijuana and growing equipment. Dr. Fry further advised the agent to buy everything from she and her husband because a local store was ''staked out by the narcs.''

On September 28, 2001, DEA and WENET agents executed a federal search warrant at Dr. Fry's registered location in Cool, California. Among the items seized from that location was drug paraphernalia. On that same date, a second federal search warrant was executed at the Greenwood residence. During a search of the living room area, agents seized several grocery bags of marijuana. Agents also seized from the master bedroom and bedroom closets numerous brown grocery bags and large ziplocks plastic bags containing marijuana and/or marijuana buds, two scales, a bong as well as other drug paraphernalia.

Marijuana is listed in Schedule I of the Controlled Substance Act (CSA). 21 U.S.C. 812(c); 21 CFR 1308.11. The CSA defines Schedule I controlled substances as those drugs or other substances that have ''a high potential for abuse,'' ''no currently accepted medical use in treatment in the United States,'' and ''a lack of accepted safety for use * * * under medical supervision.'' Also, every drug listed in Schedule I of the CSA lacks approval for marketing under the Federal Food Drug and Cosmetic Act (FDCA). Therefore, marijuana has not been approved for marketing as a drug by the Food and Drug Administration (FDA).

The deleterious effects of marijuana use have been outlined extensively in previous DEA final orders and will not be repeated at length here. See 66 FR 20038 (2001); 57 FR 10499 (1992). However, it bears mentioning again that the numerous significant short-term side effects and long terms risks linked to smoking marijuana, including damage to brain cells; lung problems such as bronchitis and emphysema; a weakening of the body's antibacterial defenses in the lungs; the lowering of blood pressure; trouble with thinking and concentration; fatigue; sleepiness and the impairment of motors skills, *Id.*

Marijuana was placed in Schedule I for the same fundamental reason that it has never been approved for sale by the FDA; there have never been any sound scientific studies which demonstrate that marijuana can be used safely and effectively as medicine. See 66 FR 20038 (April 18, 2001) (DEA final order denying petition to initiate proceeding to reschedule marijuana). The Supreme Court recently explained the legal significance of marijuana's placement in Schedule I of the CSA:

> Whereas some other drugs [those in Schedules II through V] can be dispensed and prescribed for medical use, *see* 21 U.S.C. 829, the same is not true for marijuana. Indeed, for purposes of the Controlled Substances Act, marijuana has ''no currently accepted medical use'' at all.
>
> *United States* v. *Oakland Cannabis Buyers' Cooperative,* 532 U.S. 483, 491 (2001).

Federal law prohibits human consumption of marijuana outside of FDA-approved, DEA registered research. *Id.* at 490 (''For marijuana (and other drugs that have been classified as 'schedule I' controlled substances), there is but one express exception, and it is available only for Government approved research projects, section 823(f).''). Further, as the Supreme Court made clear, there is no ''medical necessity exception'' that allows anyone to violate the CSA when it comes to marijuana, ''even when the patient is 'seriously ill' and lacks alternative avenues for relief.'' *Id.* at 495 n. 7.

Despite provisions of both the CSA and the FDCA regarding the non-acceptance of marijuana as an adjunct to medical treatment, several states have enacted laws in recent years (primarily through ballot initiatives) authorizing marijuana for medical purposes. These state provisions authorize a physician to provide an oral or written ''recommendation,'' ''approval,'' or some other affirmative statement indicating support for a particular patient's use of marijuana.

Effective November 6, 1996, voters in California adopted Proposition 215, otherwise known as the Compassionate Use Act of 1996 (hereinafter referred to as ''Proposition 215''). Cal. Health & Safety Code § 11362.5 (2002). Proposition 215 provides that persons may grow or possess marijuana ''upon the written or oral recommendation or approval of a physician.'' Cal. Health & Safety Code § 11362.5. Thus, a physician's ''recommendation'' serves as the ''permission slip'' under California law that allows the patient (the recipient of the recommendation) to grow or possess marijuana. Although California law does not actually allow anyone to distribute marijuana, numerous marijuana traffickers began to openly grow and distribute marijuana under the purported authority of state law following the passage of Proposition 215.

One example of this trend was the sudden appearance of ''cannabis clubs,'' one of which was the subject of the *Oakland Cannabis Buyers' Cooperative* Case. The Supreme Court's ruling in *Oakland Cannabis Buyers' Cooperative* reaffirmed what was already clear in the CSA: that marijuana is not medicine under federal law and that federal law prohibits the manufacture, distribution, and possession of marijuana—even in a state such as California, which has modified its state law to treat marijuana as medicine.

The legal significance of marijuana ''recommendations'' was explained recently by a federal court:

> [A] physician who recommends marijuana in a state that recognizes that such an act facilitates the ability of a patient to receive marijuana is essentially writing a prescription. The same rules should apply. Both situations involve a violation of the CSA, and, thus, both situations could warrant the revocation of a physician's [DEA registration].
>
> Moreover, DEA has the authority to revoke the registrations of physicians whose conduct may threaten public health or safety.
>
> ***Given marijuana's status as a Schedule I drug, the government could reasonably conclude that a prescription or recommendation from a physician to use marijuana could threaten public health and safety.
>
> *Pearson* v. *McCaffrey,* 139 F.Supp.2d 113, 124 (D.D.C. 2001).

However, before *Pearson* was decided, and before the Supreme Court issued its ruling in *Oakland Cannabis Buyers' Cooperative,* the United States District Court for the Northern District of California issued an unpublished opinion that reached a different

conclusion than the court in Pearson. In *Conant* v. *McCaffrey,* 2000 WL 1281174 (N.D. Cal. 2000), the court observed that (i) the CSA authorizes the Attorney General to revoke the DEA registration of a physician who engages in ''[s]uch other conduct which may threaten the public health and safety'' and (ii) because marijuana is a ''prohibited substance,'' ''recommending'' it to a patient ''might arguably fall within such 'other conduct.' '' Despite reaching this conclusion, and without declaring the CSA unconstitutional, the *Conant* court ruled that to enforce the CSA's revocation provisions with respect to a California physician who recommends marijuana based on a ''sincere medical judgment'' would violate the First Amendment because a doctor who engages in such conduct is engaging in a form of free speech. Therefore, the *Conant* court issued an injunction that (i) prohibits DEA from revoking the DEA registration of any California physician ''merely because the doctor recommends medical marijuana to a patient based on a ''sincere medical judgment'' and (ii) prohibits DEA ''from initiating any investigation solely on that ground.''

On October 29, 2002, the United States Court of Appeals for the Ninth Circuit affirmed the *Conant* injunction. The Department of Justice is currently reviewing the case to determine whether to petition the Supreme Court for certiorari. DEA has abided by the injunction since its inception and will continue to do so for as long as it remains in effect. Accordingly, the Deputy Administrator's determination regarding the continued registration of Dr. Fry is being made in compliance with the dictates of *Conant,* as explained in detail in this Final Order.

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 for renewal of such registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(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. Schwartz, Jr., M.D.,* 54 FR 16,422 (1989).

The continued registration of Dr. Fry is inconsistent with the public interest and the activity that she seeks to engage in under that registration is fundamentally incompatible with the CSA. The Deputy Administrator finds that Dr. Fry allowed her husband to provide client consultations related to the medical use of marijuana. These client ''consultations'' were oftentimes of short duration and consisted of legal advice and not that of a medical nature. These clients, who dealt primarily with Mr. Schafer, were advised on the proper conduct during arrests and/or how to avoid law enforcement entanglements. In addition, clients of Dr. Fry routinely received marijuana recommendation certificates despite the lack of a medical examination or a review of medical records. This practice was corroborated by an undercover visit to Dr. Fry's medical office by a law enforcement agent, where the agent received a written recommendation for marijuana from Dr. Fry's physician assistant despite receiving only a cursory examination and without medical records.

Moreover, Mr. Schafer engaged in the sale of marijuana and requested that others sell the drug for him. Mr. Schafer also exchanged with an individual, marijuana plants for drug paraphernalia. Without evidence to the contrary, the Deputy Administrator is led to the conclusion that such sales were motivated by profit. This conclusion is supported in part by Dr. Fry's admission to an undercover agent that she and her husband were in the business of selling marijuana growing kits and her complaint regarding the non-profitability of that business. Finally, Dr. Fry and Mr. Schafer possessed marijuana and drug paraphernalia at their residential location, and not at Dr. Fry's office where patients purportedly received medical treatment.

The conduct of Dr. Fry and Mr. Schafer bears no resemblance to a legitimate medical practice. Rather, it is more suggestive of persons obtaining marijuana for personal use (as evidenced by marijuana and drug paraphernalia found during the search warrant of the Greenwood residence) and engaging in the sale of dangerous drugs based upon monetary considerations. Such conduct is descriptive of unlawful distribution of a Schedule I controlled substance, in violation of 21 U.S.C. 841(a) and conspiracy to commit such offense in violation of 21 U.S.C. 846. DEA has previously found that similar criminal conduct provided a basis for revocation of a DEA Certificate of Registration and denial of an application for such registration under subsections (2), (4), and (5) of section 823(f). *See, e.g., Eugene Tapia, M.d.,* FR 26, 837 (1991); *Geoffrey A.W. DiBella* 52 FR 5844 (1987). Such conduct is particularly egregious where the registrant is trafficking in illicit (Schedule I) controlled substances. Here, the volume of marijuana trafficking and related criminal conduct is staggering for an individual entrusted with a DEA registration.

In addition, on several occasions when they had no marijuana to sell, Dr. Fry and Mr. Schafer referred patients to other marijuana dealers, and the couple sold marijuana-growing equipment to patients. These acts constitute aiding and abetting the illegal manufacture and distribution of controlled substances. 18 U.S.C. 2. At this time, Dr. Fry has not been indicted for conduct relative to her handling of marijuana. Nevertheless, it bears mentioning that the CSA provides that the revocation of a DEA Certificate of Registration is independent of, and not in lieu of, criminal prosecutions. 21 U.S.C. 824(c).

Although Dr. Fry provided her clients with marijuana recommendations on many occasions, the revocation of Dr. Fry's revocation announced here complies fully with the *Conant* injunction. The Deputy Administrator arrives at this conclusion based on the following: (i) DEA is not revoking Dr. Fry's registration ''merely because'' she recommended marijuana to a patient ''based on a sincere medical judgment''; and (ii) DEA did not initiate the investigation of Dr. Fry ''solely on that ground.'' As supported by the above findings, the Deputy Administrator's action in this regard is based primarily on the facts that Dr. Fry distributed marijuana and marijuana growing equipment directly to patients, aided and abetted the distribution of marijuana (by referring patients to marijuana dealers), and engaged in a conspiracy to commit these felony offenses.

Furthermore, there remain questions as to whether Dr. Fry's

recommendations were ''based on a sincere medical judgment.'' As alluded to above, the evidence suggests that Dr. Fry and her husband gave out recommendations solely as a moneymaking venture without conducting anything resembling a medical evaluation of the clients. Because Dr. Fry's recommendations were not ''based on a sincere medical judgment,'' the *Conant* injunction does not prohibit the investigation of Dr. Fry ''solely on that ground.''

Even if Dr. Fry's recommendations were ''sincere,'' DEA did not initiate its investigation of her ''solely on that ground.'' Rather, the investigation was initiated because Dr. Fry and Mr. Schafer distributed marijuana through a commercial shipping company. When the shipping company discovered that the packages contained marijuana, it informed DEA. During the course of the investigation, DEA agents learned that the return address labels on the marijuana packages contained an address associated with Dr. Fry and Mr. Schafer.

Dr. Fry did not respond to the Order to Show Cause and consequently did not refute the Government's assertions or information contained within the investigative file. As a result, her DEA registration must be revoked. 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 BM4859178, issued to Marion ''Molly'' Fry, M.D. be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective January 21, 2003.

Dated: December 13, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–32008 Filed 12–19–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 02–6]

Houba, Inc., Culver, IN; Notice of Administrative Hearing, Summary of Comments and Objections; Notice of Hearing

This Notice of Administrative Hearing, Summary of Comments and Objections, regarding the application of Houba, Inc. (Houba), for registration as an importer of the Schedule II controlled substances raw opium, opium poppy, and poppy straw concentrate is published pursuant to 21 CFR 1301.34(a). On September 6, 2001, notice was published in the **Federal Register**, 66 FR 46653 (DEA 2001), stating that Houba has applied to be registered as an importer of raw opium, opium poppy, and poppy straw concentrate.

By filings dated October 9, 2001, Penick Corporation (Penick), Noramco of Delaware, Inc. (Noramco), and Mallinckrodt, Inc. (Mallinckrodt), filed comments and request for hearing on Houba's application. Notice is hereby given that a hearing with respect to Houba's application to be registered as an importer of raw opium, opium poppy, and poppy straw concentrate will be conducted pursuant to the provisions of 21 U.S.C. 952(a) and 958 and 21 CFR 1301.34.

Hearing Date

The hearing will begin at 9:30 a.m. on February 3, 2003, and will be held at the Drug Enforcement Administration Headquarters, 600 Army Navy Drive, Hearing Room, Room E–2103, Arlington, Virginia. The hearing will be closed to any person not involved in the preparation or presentation of the case.

Notice of Appearance

Any person entitled to participate in this hearing pursuant to 21 CFR 1301.34, and desiring to do so, may participate by filing a notice of intention to participate, in triplicate, and in accordance with 21 CFR 1301.34, with the Hearing Clerk, Office of Administrative Law Judges, Drug Enforcement Administration, Washington, DC 20537, within 30 days of the date of publication of this notice in the **Federal Register**. Each notice of appearance must be in the form prescribed in 21 CFR 1316.48. Houba, Penick, Noramco, Mallinckrodt, and the Drug Enforcement Administration (DEA) Office of Chief Counsel need not file a notice of intention to participate.

FOR FURTHER INFORMATION CONTACT: Helen D. Farmer, Hearing Clerk, Drug Enforcement Administration, Office of Administrative Law Judges, Washington, DC 20537; Telephone (202) 307–8188.

Summary of Comments and Objections

Noramco's Comments

Noramco asserts that Houba bears the burden of providing that its registration to import would be consistent with the public interest, that Houba has apparently not engaged in the import or bulk manufacture of narcotic raw materials or controlled substances since withdrawing a previous application to manufacture the Schedule II controlled substance methylphenidate in 1994, and that existing manufacturers of bulk narcotic substances are producing an adequate and uninterrupted supply under adequately competitive conditions. Noramco further asserts that Houba's parent corporation, Halsey Pharmaceutical (Halsey), has previously failed to comply with DEA regulations and pled guilty in 1993 to drug manufacturing-related crimes, that five former Halsey employees were indicted as a result, and that a controlled substance-related murder occurred at Halsey's premises in 1992. Noramco also asserts that that there is significant evidence that Halsey has serious financial problems and does not likely have the financial resources to import and process narcotic raw materials. Finally, Noramco asserts that as of the date of its request for hearing, Mallinckrodt and Noramco were registered by DEA to import narcotic raw materials and applications by Penick, Chattem Chemicals, Inc. (Chattem), and Johnson Matthey, Inc. (Johnson Matthey), were pending, and that DEA is statutorily constrained to limit the number of approved importers and manufacturers to a number that can produce an adequate and uninterrupted supply of controlled substances for legitimate medical, scientific, research, and industrial purposes under adequately competitive conditions.

Penick's Comments

Penick states that based on information in the public record, it appears that Houba may not be able to establish that its registration to import narcotic raw materials would be in the public interest, that in light of the applications for registration to import that were pending at the time Penick filed its comments a determination of the adequacy of competition among importers could not be made; that although it is not possible to determine Houba's capabilities to process narcotic raw materials in its manufacturing facilities, it appears that Houba has never been registered to manufacture a product produced from these substances; and that Penick is not aware whether Houba has ever held DEA registration as a researcher that would allow it to develop methods and procedures for processing narcotic raw materials. Penick further asserts that additional information is necessary about Houba's experience in processing narcotic raw materials and