intermediate points between Austin, TX and San Antonio, TX which provides for transportation to points beyond Austin, TX or San Antonio, TX.

The provisions contained in that tariff imply the following:

(1) Valley Transit may not honor any Greyhound ticket for transportation, in whole or in part, between San Antonio, TX and Austin, TX or intermediate points.

(2) Greyhound will not honor any Valley ticket for transportation, in whole or in part, between San Antonio, TX and Austin, TX, or intermediate points when the origin of the ticket is Austin, TX, San Antonio, TX or intermediate points.

(3) Greyhound will not honor at Austin, TX, or San Antonio, TX, any Valley ticket that is issued at Austin, TX, San Marcos, TX, New Braunfels, TX, or Seguin, TX, which provides for transportation to points beyond Austin, TX or San Antonio, TX.

Please inform your personnel of the above so that they will not honor tickets which will have no reclaim value to your company and so that they will not issue tickets that Greyhound will not honor.

Very truly yours,

Gregory Alexander,

Director—Industry Relations.

Certificate of Service

I hereby certify that I have caused a copy of the foregoing UNITED STATES' RESPONSE TO PUBLIC COMMENTS to be served on counsel for defendant in this matter in the manner set forth below:

By facsimile and first class mail: Mark F. Horning, Esquire, Steptoe & Johnson, 1330 Connecticut Ave., N.W., Washington, D.C. 20036–1795, for defendant Greyhound Lines, Inc.

Dated: December 18, 1995.

Michael D. Billiel,

Antitrust Division, U.S. Department of Justice, 555 Fourth Street, N.W., Washington, D.C. 20001, (202) 307–6666.

[FR Doc. 96–2663 Filed 2–8–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

The Drugstore; Denial of Application

On June 22, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to The Drugstore, (Respondent) of Oak Grove, Louisiana, proposing to deny its application, executed on January 23, 1993, for registration as a retail pharmacy under 21 U.S.C. 823(f), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged *inter alia* that David Nagem, the owner of the Respondent company (Owner), (1) dispensed 11,850 various narcotic and non-narcotic controlled substances without a valid physician's authorization; (2) pled nolo contendere to charges brought by the Louisiana State Board of Pharmacy (Louisiana Board) that he had dispensed controlled substances without valid authorization and that he was responsible for controlled substances shortages at the pharmacy where he was employed; and (3) that he pled guilty to and was convicted of two counts of illegal distribution of controlled substances on June 5, 1992. The order also notified the Respondent that, should no request for a hearing be filed within 30 days, the hearing right will be deemed waived. The DEA received a receipt from the United States Postal Service showing that the order was delivered, and the receipt was signed and dated June 27, 1994. However, no reply was received by the DEA to the order.

Therefore, the Deputy Administrator concludes that the Respondent is deemed to have waived its hearing right. After considering the investigative file, the Deputy Administrator now enters his final order in this matter without a hearing pursuant to 21 CFR 1301.54(e) and 1301.57.

The Deputy Administrator finds that the Owner submitted a DEA application for registration as a retail pharmacy dated January 23, 1993, in the name of The Drugstore. In response to a question on this application, the Owner wrote that his Louisiana pharmacy license ''was taken from Jan[uary] 25, 1992[,] to July 25, 1992[,] for giving out medicine (prescription) without proof of legal prescription from a physician. David's [Louisiana] license was taken for 6 months, fine was given & paid, and probation during [that] time.'' No other adverse information or explanations were contained on the application.

DEA investigators researched the Owner's record in response to this application, finding that the West Carroll Parish Sheriff's Office (Sheriff) had conducted an investigation of the Owner after receiving information from a confidential source that he was dispensing controlled substances without prescriptions. The Sheriff found that, while the Owner was employed at the West Carroll Memorial Hospital Pharmacy, Oak Grove, Louisiana, he had dispensed, *inter alia*, Tylenol No. 3 and No. 4, and Darvocet without prescriptions authorized by a physician, to two individuals over a timeframe spanning January 1990 through January 1992. Also, between September 1990 through February 1992, he had dispensed controlled and non-controlled substances, including Xanax, Restoril, and Tylenol No. 4, to six other individuals without a physician-authorized prescription. Darvocet is a brand name for a substance containing propoxyphene napsylate, a Schedule IV controlled substance, Tylenol No. 3 and No. 4 are Schedule III controlled substances, Restoril is the brand name for a substance containing temazepam, a Schedule IV controlled substance, and Xanax is a brand name for a substance containing alprazolam, a Schedule IV controlled substance. As a result of this conduct, the Louisiana Board charged the Owner with five counts of violating Louisiana law by engaging in conduct which endangered the public health, by dispensing unauthorized Schedule III and IV controlled substances, and by violating audit shortage provisions of State law. On April 22, 1992, a hearing was held, the Owner entered a nolo contendere plea, and the Board ordered that the Owner's pharmacist's license be suspended for 60 months, actively for 3 months, and on probation for 57 months.

On June 8, 1992, the Owner entered a guilty plea in the Fifth Judicial District Court, Parish of West Carroll, Oak Grove, Louisiana, to two counts of unlawful distribution of drugs in violation of Louisiana law. The court accepted his plea and sentenced him to pay a total of $7,500.00 in fines. The Owner did not disclose this conviction on his DEA application.

On February 12, 1993, the Louisiana Board voided the Owner's application for a pharmacy permit for the Drugstore, concluding that the application was no longer active.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may deny an application if he determines that the DEA 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 application should be denied as being inconsistent with the public interest. As to factor one, ''recommendation of the appropriate State licensing board,'' the Louisiana Board voided the Owner's pharmacy application for The Drugstore as being inactive. Further, the Board also suspended and placed on probation the Owner's pharmacy license as a result of finding that the Owner's conduct in 1990 through 1992 violated state controlled substances laws.

As to factor two, the Owner's ''experience in dispensing * * * controlled substances,'' factor three, the Owner's ''conviction record,'' and factor four, the Owner's ''[c]ompliance with applicable State, Federal, or local laws relating to controlled substances,'' the Owner admitted that he had dispensed controlled and non-controlled substances without prescriptions on numerous occasions in 1990 through 1992. He was convicted in June of 1992 of unlawful distribution of drugs in violation of Louisiana law.

As to factor five, ''[s]uch other conduct which may threaten the public health or safety,'' the Owner failed to note his conviction on his DEA application in violation of the requirements established by 21 U.S.C. 824(a)(1). It has been previously noted that material falsification of an application, although not expressly mentioned under Section 823 as it is under Section 824, is an appropriate action to consider under factor five. See Robert L. Vogler, Docket No. 92–87, 58 FR 51385 (1992). The appropriate test for determining whether the Respondent had materially falsified any application is whether the Respondent ''knew or should have known'' that he submitted a false application. See Bobby Watts, M.D., 58 FR 46995 (1993); accord Herbert J. Robinson, M.D., 59 FR 6304 (1994). Here, the Owner was convicted in June of 1992, and he submitted his registration application in January of 1993. The specific question asked whether the ''applicant [had] ever been convicted of a crime in connection with controlled substances under State or Federal law.'' Thus, in preparing the application, the Owner ''knew or should have known'' that the question sought information about convictions and that he had been convicted. Yet he did not disclose that information as required.

As for mitigating information, the Deputy Administrator notes that the Respondent pled guilty to the charges against him, and in a letter to the Louisiana Board, he acknowledged his misconduct and stated remorse for his actions. However, the Owner has failed to provide any information or evidence, such as attendance at remedial courses or evidence of other corrective action taken, to assure that his future conduct would comply with Federal and State law governing the dispensing of controlled substances. The Owner's failure to respond to the Order to Show Cause, either by requesting a hearing or by submitting a written statement, indicates that he is either unwilling or unable to proffer support for this application. Therefore, the Deputy Administrator finds that the public interest is best served by denying the Respondent's application at this time, for the Owner's past conduct demonstrates that he cannot be entrusted with a DEA Certificate of Registration as an owner of a retail pharmacy.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby orders that The Drugstore's application for a DEA Certificate of Registration as a retail pharmacy be, and it hereby is, denied. This order is effective March 11, 1996.

Dated: February 5, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–2766 Filed 2–8–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration,